

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 511

Introduced by Senator Alquist

February 22, 2007

An act to add Section 859.5 to the Penal Code, relating to interrogation.

LEGISLATIVE COUNSEL'S DIGEST

SB 511, as amended, Alquist. Interrogation: recording.

Existing law provides that under specified conditions the statements of witnesses, victims, or perpetrators of specified crimes may be recorded and preserved by means of videotape.

This bill would provide that (1) except as specified, any custodial interrogation ~~conducted at a place of detention~~ of an individual *who is in a fixed place of detention and who, at the time of the interrogation, is* suspected of committing or accused of a homicide or a violent felony, as defined, shall be electronically recorded, *except* as specified; (2) the interrogating entity shall not destroy or alter the electronic recording of a custodial interrogation, except as specified; and (3) if a court finds that a defendant was subjected to an unlawful custodial interrogation, the court shall, at the request of the defendant, provide the jury with an instruction, developed by the Judicial Council, as specified. By imposing these new requirements on local law enforcement ~~when they are interrogating a defendant suspected of committing or accused of a homicide or violent felony~~, this bill would impose a state-mandated local program ~~upon local government~~.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act to require the creation of an electronic record of an entire
3 custodial interrogation in order to eliminate disputes in court as to
4 what actually occurred during the interrogation, thereby improving
5 prosecution of the guilty while affording protection to the innocent.
6 SEC. 2. Section 859.5 is added to the Penal Code, to read:
7 859.5. (a) (1) Any custodial interrogation of an individual
8 *who is in a fixed place of detention and who, at the time of*
9 *interrogation, is suspected of committing or accused of a homicide,*
10 as defined in Chapter 1 (commencing with Section 187) of Title
11 8 of Part 1, or a violent felony, as defined in subdivision (c) of
12 Section 667.5, shall be electronically recorded in its entirety. This
13 provision applies to both adult and juvenile proceedings.
14 (2) The requirement for the electronic recordation of a custodial
15 interrogation pursuant to this section shall not apply if the person
16 to be interrogated provides an electronically recorded statement
17 expressing that he or she will speak to the law enforcement officer
18 or officers only if the interrogation is not electronically recorded.
19 Where electronic recording of that statement is refused by the
20 person to be interrogated, then that refusal may be documented in
21 writing.
22 (3) The interrogating entity shall not destroy or alter any
23 electronic recording made of a custodial interrogation of a
24 defendant until the time that a defendant's conviction for any
25 offense relating to the interrogation is final and all direct and
26 habeas corpus appeals are exhausted or the prosecution of the
27 defendant for that offense is barred by law. The interrogating entity
28 may make one or more true, accurate, and complete copies of the
29 electronic recording in a different format.
30 (b) Any law enforcement officer who conducts a custodial
31 interrogation of an individual described in subdivision (a) shall be

1 required to make an electronic recording of the interrogation
2 pursuant to subdivision (a), unless the law enforcement officer can
3 demonstrate, by a preponderance of the evidence, that the electronic
4 recording of the custodial interrogation was not feasible for a
5 specified reason, including, but not limited to, ~~either of the~~
6 following:

7 (1) Access to equipment required to electronically record an
8 interrogation could not be obtained during the period of time that
9 the defendant could be lawfully detained.

10 (2) The failure to create an electronic recording of the entire
11 custodial interrogation was the result of a malfunction of the
12 recording device and obtaining a replacement device was not
13 feasible.

14 (3) *The questions put by law enforcement personnel, and the*
15 *person's responsive statements, were part of a routine processing*
16 *or booking of the person.*

17 (4) *The law enforcement officers in good faith failed to make*
18 *an electronic recording of the custodial interrogation because the*
19 *officers inadvertently failed to operate the recording equipment*
20 *properly, or without the officer's knowledge the recording*
21 *equipment malfunctioned or stopped operating.*

22 (5) *The custodial interrogation took place in another jurisdiction*
23 *and was conducted by the officers of that jurisdiction in compliance*
24 *with the law of that jurisdiction.*

25 (6) *The law enforcement officers conducting or*
26 *contemporaneously observing the custodial interrogation*
27 *reasonably believed that the crime of which the person was*
28 *suspected was not among those listed in paragraph (1) of*
29 *subdivision (a).*

30 (7) *Exigent circumstances existed which prevented the making*
31 *of, or rendered it not feasible to make, an electronic recording of*
32 *the custodial interrogation.*

33 (c) If a court finds that a defendant was subjected to a custodial
34 interrogation in violation of subdivision (a), the court shall, at the
35 request of the defendant, provide the jury with ~~a, instruction,~~ *an*
36 *instruction* to be developed by the Judicial Council that advises
37 the jury to view the statements made in that custodial interrogation
38 with caution.

39 (d) For the purposes of this section, the following terms have
40 the following meanings:

~~(1) “Custodial interrogation” means any interrogation that is conducted at a place of detention during which a law enforcement officer is required to advise a person of his or her Miranda rights, from the beginning of questioning until the interview is complete, involving questioning that a law enforcement officer should know is reasonably likely to elicit an incriminating response from the defendant, under circumstances in which a reasonable person in the defendant’s position would believe that he or she is in custody.~~

(1) “Custodial interrogation” means express questioning or its functional equivalent that is conducted by a law enforcement officer from the time that the suspect is, or should be, informed of his or her rights to counsel and to remain silent, until the time that the questioning ends.

(2) “Electronic recording” means an analog or digital recording that includes the audio representations of any interrogator and individual involved in a custodial interrogation, provided however, that a motion picture, videotape, analog, or digital recording that includes both audio and visual representations of any interrogator and individual involved in a custodial interrogation is also permitted. If videotaping is used, the camera shall be positioned to capture images of the suspect and the interrogators. Law enforcement officers are encouraged to videotape the custodial interrogation of individuals suspected or accused of committing a homicide.

(3) “Law enforcement officer” means any officer of the police, sheriff, highway patrol, or district attorney, and any peace officer included in Chapter 4.5 (commencing with Section 830).

~~(4) “Place—“Fixed place of detention” means a police station, jail, police, or sheriff’s station, correctional facility, holding facility for prisoners, or any other law enforcement facility in which a person may be held in detention in connection with any criminal charge that has been, or may be, filed against the person. Place of detention does not include a law enforcement vehicle holding cell, or a correctional or detention facility.~~

(5) A person is “suspected of” committing a homicide or violent felony, for purposes of this section, if law enforcement officers have reasonable cause, at the time of the interrogation, to believe that the person committed a homicide or violent felony.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to

1 local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code.

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