

**Senate Bill No. 511**

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Passed the Senate September 6, 2007

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*Secretary of the Senate*

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Passed the Assembly September 5, 2007

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2007, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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

## LEGISLATIVE COUNSEL'S DIGEST

SB 511, 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 require the electronic recordation of the entire proceedings of any custodial interrogation 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, except as specified. The bill would also prohibit the interrogating entity from destroying or altering any electronic recording made of the interrogation until the final conclusion of the proceedings, as specified. The bill would become operative on July 1, 2008. By imposing these new requirements on local law enforcement, this bill would impose a state-mandated local program.

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.

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

SECTION 1. It is the intent of the Legislature in enacting this act to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes in court as to what actually occurred during the interrogation, thereby improving prosecution of the guilty while affording protection to the innocent.

SEC. 2. Section 859.5 is added to the Penal Code, to read:

859.5. (a) (1) Any custodial interrogation of an individual who is in a fixed place of detention and who, at the time of interrogation, is suspected of committing or accused of a homicide, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1, or a violent felony, as defined in subdivision (c) of Section 667.5, shall be electronically recorded in its entirety. This provision applies to both adult and juvenile proceedings.

(2) The requirement for the electronic recordation of a custodial interrogation pursuant to this section shall not apply if the person to be interrogated provides an electronically recorded statement expressing that he or she will speak to the law enforcement officer or officers only if the interrogation is not electronically recorded. Where electronic recording of that statement is refused by the person to be interrogated, then that refusal may be documented in writing.

(3) The interrogating entity shall not destroy or alter any electronic recording made of a custodial interrogation until the time that a conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted or the prosecution for that offense is barred by law. The interrogating entity may make one or more true, accurate, and complete copies of the electronic recording in a different format.

(b) Any law enforcement officer who conducts a custodial interrogation of an individual described in subdivision (a) shall be required to make an electronic recording of the interrogation pursuant to subdivision (a), unless the law enforcement officer can demonstrate, by a preponderance of the evidence, that the electronic recording of the custodial interrogation was not feasible for a specified reason, including, but not limited to, the following:

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

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

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

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

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

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

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

(c) For the purposes of this section, the following terms have the following meanings:

(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. Law enforcement officers are encouraged, if videotaping, to position the camera to capture facial 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) "Fixed place of detention" means a jail, police, or sheriff's station, 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.

(d) This section shall become operative on July 1, 2008.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.





Approved \_\_\_\_\_, 2007

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*Governor*