

HOUSE BILL REPORT

HB 2813

As Reported by House Committee On:
Judiciary

Title: An act relating to a recording of custodial interrogations pilot project.

Brief Description: Establishing the recording of custodial interrogations pilot project.

Sponsors: Representatives Flannigan, Mastin, Pettigrew, McCoy, Jarrett, Lantz, Moeller, Newhouse, Clibborn, Hudgins, O'Brien, Kirby and Chase.

Brief History:

Committee Activity:

Judiciary: 1/29/04, 2/5/04 [DPS].

<p>Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">· Establishes a pilot project on recording of custodial interrogations.
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HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Minority Report: Without recommendation. Signed by 1 member: Representative McMahan, Assistant Ranking Minority Member.

Staff: Edie Adams (786-7180).

Background:

The Judiciary Committee established the Workgroup on Videotaping of Custodial Interrogations to discuss the desirability and feasibility of requiring law enforcement to record custodial interrogations. Legislation on this topic was introduced last session, but did not receive a hearing.

Although there are various local jurisdictions throughout the country that have implemented policies on recording of custodial interrogations, there are currently only

four states that require recording of interrogations: Alaska, Minnesota, Illinois and Texas. The recording requirements in Alaska and Minnesota stem from state supreme court decisions, while the requirements in Illinois and Texas are the result of legislative enactments. Texas' recording requirements only apply to oral or sign language statements, not written statements. Illinois' legislation only applies to homicide crimes. At least a dozen states have introduced legislation in 2003 requiring electronic recording of interrogations in some circumstances.

The Workgroup on Videotaping of Custodial Interrogations met on several occasions over the interim and developed the attached draft legislation establishing a pilot project on recording of custodial interrogations.

Under the Washington Privacy Act, law enforcement officers may make video and audio recordings of arrested persons if the following conditions are met:

- The arrested person is informed that the recording is being made during the recording;
- The recording includes an indication of the time it starts and stops;
- The arrested person is informed of his or her constitutional rights at the commencement of the recording; and
- The recordings are only used for valid police or court activities.

Summary of Substitute Bill:

A recording of custodial interrogations pilot project is created. The Criminal Justice Training Commission (Commission) is responsible for administering the pilot project. There are three identified purposes of the pilot project: (1) ensure the most accurate gathering of evidence for use in criminal proceedings; (2) increase accountability and credibility of all participants in the criminal justice system; and (3) potentially reduce or avoid costs to the criminal justice system.

The Commission must select for the pilot project no more than three law enforcement agencies that agree to participate. If possible, the Commission should select a police department in a small jurisdiction, a police department in a medium or large jurisdiction, and a county sheriff's office.

In administering the pilot project, the Commission must fund the purchase of digital audio and digital video recording equipment for use in the pilot project, establish procedures for the preservation of recordings and the methods for making recordings available to defendants, and develop a training program and provide training for law enforcement agencies participating in the pilot project.

Recordings made as part of the pilot project are exempt from the provision of the Privacy

Act that imposes certain requirements on the recording of arrested persons.

The pilot project expires July 1, 2008. The Commission must submit a report to the Legislature by December 1, 2007 that includes the following information: (1) how often interrogations of arrested persons were recorded; (2) why any un-recorded interrogations were not recorded; (3) how many of the arrested persons were criminally charged; (4) how many criminal charges ended in a guilty plea; (5) the trial outcomes of persons whose interrogations were recorded and those whose interrogations were not recorded; (6) how many recorded interrogations were subject to a suppression hearing and were suppressed as a result of the suppression hearing; and (7) cost estimates for implementation and ongoing expenses of the pilot project.

Substitute Bill Compared to Original Bill:

The original bill did not exempt the pilot project from the provision of the Privacy Act that imposes conditions on the recording of arrested persons.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Recording interrogations is the most accurate and complete way to show the judge and jury, and even the defendant's attorney, just what happened during the interrogation. Recording will enhance the truth-seeking mission by providing an objective record of the interrogation. It is a win-win for everyone. It will protect the police from false accusations of unfairness, eliminate needless suppression motions, protect the innocent, and provide irrefutable proof to convict the guilty. Experience in other states shows that recording does not deter suspects from talking. This is the direction of police practice in the future. Washington statute has allowed police to video and audio tape arrested persons for 30 years, but it is a concept that just has not been practiced.

There are some pragmatic issues that are not addressed in the bill. There is no definition of custodial interrogation, so it is unclear whether all crimes will have to be recorded or just major crimes. Most interrogations do not occur at the police station and the bill does not specify whether officers will be expected to carry recording devices with them. In addition, the bill does not specify whether the recording must be video or audio or both, and it does not address the issue of transcripts.

Testimony Against: The pilot project could only be supported if the pilot is fully

funded, and if the bill is amended to exempt the pilot from the current law's requirements that an arrested person be notified of the recording and that Miranda warnings be given on the recording. These requirements could inhibit the willingness of the arrested person to talk and could interrupt the flow of the conversation with the officer.

Persons Testifying: (In support) David Trieweiler, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; Michael Parsons, Criminal Justice Training Commission; Jerry Sheehan, American Civil Liberties Union (Washington); and Jackie McMurtrie, Innocence Project Northwest.

(Opposed) Tim Schellberg, Washington Association of Sheriffs and Police Chiefs; and Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.