

AMENDED IN ASSEMBLY JULY 5, 2007

AMENDED IN SENATE APRIL 9, 2007

**SENATE BILL**

**No. 511**

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**Introduced by Senator Alquist**

February 22, 2007

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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 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, 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.

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, the following:

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

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

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

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

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

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

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

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

37 (d) For the purposes of this section, the following terms have  
38 the following meanings:

39 (1) "Custodial interrogation" means express questioning or its  
40 functional equivalent that is conducted by a law enforcement officer

1 from the time that the suspect is, or should be, informed of his or  
2 her rights to counsel and to remain silent, until the time that the  
3 questioning ends.

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

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

18 (4) “Fixed place of detention” means a jail, police, or sheriff’s  
19 station, holding cell, or a correctional or detention facility.

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

25 SEC. 3. If the Commission on State Mandates determines that  
26 this act contains costs mandated by the state, reimbursement to  
27 local agencies and school districts for those costs shall be made  
28 pursuant to Part 7 (commencing with Section 17500) of Division  
29 4 of Title 2 of the Government Code.

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