



Office of Chief Public Defender

State of Connecticut

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**TESTIMONY OF
CHIEF PUBLIC DEFENDER GERARD A. SMYTH**

**Concerning Raised S.B. No. 456
*An Act Concerning Electronic Recording of Interrogations***

**Public Hearing before the Judiciary Committee
March 13, 2005**

As in years past, this office supports electronic recording of interrogations as proposed in **Raised Bill No. 456, An Act Concerning Electronic Recording of Interrogations** and requests the support of this Committee to adopt this legislative proposal as a matter of public policy.

During the 2005 legislative session, this Committee heard testimony in regard to ***Raised Bill 1281, An Act Concerning Electronic Recording of Interrogations***. During the public hearing held on March 28, 2005, members of the law enforcement community requested that they be allowed time to examine the issue of recording statements of persons in custody for the commission of certain offenses. As Commissioner Leonard Boyle of the Department of Public Safety testified, allowing time would permit law enforcement to “examine the issue of the feasibility and practicality of recording statements that are taken when a person is in custody for certain types of offenses.” Commissioner Boyle further articulated that “for the legislature to step in and impose a recording requirement is fraught with potential problems that we think are best addressed if that matter is studied in advance, and that’s what we are requesting we be given the opportunity to do.”

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During this same hearing, Chief State's Attorney Christopher Morano referenced a subcommittee that had been working on the issue of eyewitness identification and this issue. He testified that: "I think that recorded confessions have their place in some cases. But it should be based upon the needs of the investigation and the resources of the investigating agency." Chief State's Attorney Morano also testified that he had "used" recorded confessions and "would where possible, record any confession that a suspect" gave him and that the "also would record witnesses" in gang cases in the 1990s.

Chief James Strillacci testified at this public hearing that "most departments in this state do not currently routinely record all . . . interviews . . . for practical reasons. The equipment costs, the staff and the training required, the necessity to preserve and store all of the recordings, the reluctance of some suspects or subjects to go on tape." However, he testified that "Frankly, when it counts we like to tape. And what I mean by that is at my department, we tape interviews of applicants to be employee sponsors, we tape internal affairs investigations, because the credibility and integrity of a police office is paramount to us."

The Office of Chief Public Defender strongly supports this legislation. What should also "*count*" is the liberty interest of the person that is at stake. Electronic recording is a truth seeking measure. This tool can protect innocent persons from being wrongfully convicted of a crime, even a crime that they may have confessed to. And this tool can also assist in convicting guilty persons. Despite the inexpensive and sophisticated technology that exists, opposition remains to requiring electronic recording in Connecticut as law enforcement continues to interrogate citizens behind closed doors when it chooses to do so.

This bill does **not** require the suppression of a confession if taping of the interrogation does not occur. Instead the proposal provides for a jury instruction to be given, at the defendant's request, after the conclusion of the presentation of the state's and defense's case at trial. The bill also proposes that the interrogation be recorded in its entirety. This is important so that all of what transpired is recorded, not just a snapshot of what occurred during the interrogation. Taping an interrogation in its entirety will ensure the reliability of a confession by a guilty party, as well as protect the rights those who are innocent and may falsely confess. Despite the inexpensive and sophisticated technology that exists opposition remains to requiring electronic recording in Connecticut as law enforcement continues to interrogate citizens behind closed doors when it chooses to do so.

As indicated in its 2005 testimony, this office has no objection if language was added to the bill that would prohibit the release of a taped confession to anyone except parties to a criminal proceeding entitled to such pursuant to the rules of court. This office also agrees that the tape should not be made available to the general public pursuant to the Freedom of Information statutes.

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Currently there is no requirement in Connecticut that any oral interrogation, confession or statement of an accused be recorded. However, the Connecticut Supreme Court has stated that "the recording of confessions and interrogations generally might be a **desirable investigative practice, which is to be encouraged**". State v. James, 237 Conn. 390, 434 (1996); see also, State v. LaPointe, 237 Conn. 694, 734 (1996). To date, however, this is not done consistently throughout Connecticut as only a minority of communities in Connecticut video or audio tape interrogations.

Electronic recording is currently required under certain circumstances by statute in **Wisconsin, Illinois, Maine, New Mexico, Texas and the District of Columbia**. It is also required pursuant to rulings of certain state's highest courts in **Minnesota, Alaska, New Jersey, Massachusetts and New Hampshire**. Other court decisions that have articulated support for taping include Connecticut. In addition, courts in **Colorado, Florida, Hawaii, Indiana, Tennessee, Utah and West Virginia** have also articulated a preference for taping. Many other jurisdictions require videotaping of custodial interrogations. (See the recent report in support of electronic recording authored by Thomas P Sullivan of Jenner & Block, LLP of Chicago, Illinois, Chair of the Illinois Commission on Capital Punishment and the former United States Attorney for the Northern District of Illinois.) In addition, the House of Delegates of the American Bar Association adopted a resolution in support of such at its 2004 February meeting.

In conclusion, this office respectfully requests that this legislation be adopted.