



**State of Connecticut**  
**DIVISION OF CRIMINAL JUSTICE**

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**Testimony of the Division of Criminal Justice**

*In Opposition to:*

**S.B. No. 149 (COMM) AN ACT CONCERNING THE VIDEOTAPING OF  
CUSTODIAL INTERROGATIONS**

**H.B. No. 7364 (RAISED) AN ACT CONCERNING ELECTRONIC RECORDING  
OF INTERROGATIONS**

*Presented by Chief State's Attorney Kevin T. Kane  
Joint Committee on Judiciary – April 10, 2007*

The Division of Criminal Justice respectfully, but strongly, recommends that the Committee reject both S.B. No. 149, An Act Concerning the Videotaping of Custodial Interrogations, and H.B. No. 7364, An Act Concerning Electronic Recording of Confessions. We would further recommend that the Committee give its Joint Favorable Report to substitute language to either of these bills to provide funding for a pilot program for the recording of confessions in major felony investigations.

It has now been two years since the Division of Criminal Justice first reported to the Judiciary Committee that the law enforcement community was studying the issue of electronic recording of confessions. This has not been a unilateral examination by the Division of Criminal Justice, but rather an effort encompassing all elements of the law enforcement community. The Connecticut Police Chiefs Association, the Connecticut State Police, the State's Attorneys and representatives of the Police Officer Standards and Training Council (POST Connecticut Police Academy) and Connecticut State Police Academy have been involved throughout the process. Last year, we were pleased to tell the Committee that we had reached agreement in principle within the Connecticut law enforcement community to move forward with the pilot program, provided the necessary funding for such a program was appropriated.

Despite initial indications that an appropriation might be forthcoming, the final state budget provided no funding whatsoever for the pilot program. Still believing the funding will be forthcoming, the Division of Criminal Justice has focused its efforts over

the past year to working with the law enforcement community to further refine what such a program would entail. We are again prepared to move forward with this program with the same caveat as last year – as long as the funding that is necessary to its establishment and implementation is provided.

That being said, the Division believes it is not only appropriate but incumbent upon us to once again state for the record the reasons for our opposition to the underlying bills as they are now written. Most obvious is the issue of funding. These bills impose a major new mandate on local police departments with no funding with which to carry it out. There are no provisions for training officers to conduct recorded interrogations and no funding to pay for such training to say nothing of paying for the equipment and facilities needed for recording.

Second, the law enforcement community strongly opposes any legislation that would mandate law enforcement practice. Absent the existence of a pattern of abuse interrogations or false confessions that requires action by the courts or the Legislature, law enforcement techniques should be left to the discretion of law enforcement. There is no such pattern at this time in Connecticut. Our efforts over the past two years to develop a pilot program underscore our commitment to examine and enact where appropriate better police practices.

But that is not what these bills are really all about. They are not about better police practices and procedures. Rather, both bills represent an attempt to have written into the law a jury instruction that the courts have consistently rejected. This is an attempt to get from the Legislature -- without showing a need – a jury instruction that has been rejected by the courts. In *State v. James* (237 Conn. 390, 428-34 (1996)), our Connecticut Supreme Court directly addressed the question of recorded interrogations. The defendant in that case, relying on the Connecticut Constitution, argued that he was denied due process because his interrogation was not recorded. Specifically, James argued that Article First, Section Eight requires the police, when feasible, to record electronically confessions, interrogations, and advisements or *Miranda* rights that occur in places of detention in order for such a confession to be admissible at trial.

The Supreme Court stated:

“Rather than establishing per se rules of corroboration for the admissibility of confessions, we consistently have allowed the trier of fact to consider the circumstances of the confession, including any lack of corroboration, in determining the weight, if any, to be afforded that particular piece of evidence.”

In the nine years since *James*, our Supreme Court has not even hinted that there is a problem. In fact, not even in *State v. LaPointe* (237 Conn. 694, 735 (1996)), often cited as the *cause celebre* by the proponents of recorded interrogations, did the court hold that due process required the recording of interrogations. The courts have generally agreed that

while the recording of interrogations might be a desirable investigative practice and that it is to be encouraged, such recording is not a requirement under due process.

Even in other states where recorded confessions are required, the rule is not absolute. In Minnesota, for example, the courts have exercised their supervisory authority in this area, and although advancing the practice of recording interrogations, have declined to give the practice constitutional standing. The Minnesota Supreme Court noted that recording of interrogations "would, in many cases, be a helpful tool in evaluating the voluntariness of a confession." But the Court further stated, "We also agree that recording would not in all circumstances be a foolproof mechanism for accurately resolving disputes between police and the accused." The Court also would not accept the defendant's premise that allowing the trial court to resolve the factual issues is unacceptable under due process standards.

While it is the consensus of the law enforcement community to engage in a pilot program there are still many who share a number of valid concerns as to the potential for detrimental effects on the ability to investigate criminal activity. We have developed a plan for a pilot program and are ready to proceed with a program in several locations if funding is provided to enable the purchase of equipment, properly equip interview rooms, provide training for police officers, and to cover other costs. We believe that the pilot program we are prepared to establish will address these concerns in a meaningful way.

Accordingly, it is the feeling of the Division of Criminal Justice and our Connecticut law enforcement community that to examine this issue we should proceed with caution by way of a pilot program with adequate funding. Accordingly, we would ask the Committee to reject S.B. No. 149 and H.B. No. 7364 and give your Joint Favorable Substitute Report to language providing for an adequately funded pilot program. The Division would be happy to provide any additional information the Committee might require or to answer any questions that you might have. Thank you.