



*Office of Chief Public Defender
State of Connecticut*

30 TRINITY STREET, 4TH FLOOR
HARTFORD, CONNECTICUT 06106
TEL (860)509-6429
FAX (860)509-6499
susan.storey@jud.ct.gov

ATTORNEY SUSAN O. STOREY
CHIEF PUBLIC DEFENDER

**TESTIMONY OF
CHIEF PUBLIC DEFENDER SUSAN O. STOREY**

**Raised H.B. No. 7364
An Act Concerning Electronic Recording of Interrogations**

**Raised Bill S.B. 149
An Act Concerning the Videotaping of Custodial Interrogations**

**Public Hearing before the Judiciary Committee
April 10, 2007**

The Office of Chief Public Defender supports **Raised Bill No. 7364, An Act Concerning Electronic Recording of Interrogations** and **Raised Bill No. 149, An Act Concerning the Videotaping of Custodial Interrogations** and requests their adoption as a matter of public policy. This office is encouraged by the recent dialogue with the Division of Criminal Justice in that it is interested in the establishment of one or more pilot programs for such. Electronic recording is a truth seeking measure that can assist in convicting guilty persons as well as protect innocent persons from being wrongfully convicted of a crime, even a crime that they may have confessed to.

Although proposed in years past, electronic recording has not been mandated throughout the state. This is despite statements by the Connecticut Supreme Court in support of the practice, a growing number of law enforcement officials from other states who support it, and the adoption of a resolution by the House of Delegates of the American Bar Association at its February meeting in 2004. 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. A small number of communities in Connecticut already video or audio tape interrogations.

Based upon the opinions of law enforcement in other states where taping is conducted, there is no persuasive reason to oppose recording of interrogations. Both bills as proposed here today are limited as to where and when the taping would be required and requires that the interrogation be recorded in its entirety. That is, taping must begin when the Miranda rights are read to the individual in the places designated and ends when the interrogation is completed.

Most important to law enforcement, is the issue of what happens if taping is not conducted. For a number of years, this agency has proposed legislation that would require taping. In 2003, the Police Chiefs testified that they have "no objection to encouraging practices" but were concerned that confessions would be suppressed. Neither bill requires that a confession be suppressed if taping does not occur. Instead the proposal provides for a jury instruction to be given, at the defendant's request. This, of course, assumes that a jury trial has occurred.

In accordance with a request made to this office, there would be no objection if language was added to either 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. We agree that the tape should not be made available to the general public pursuant to the Freedom of Information statutes.

People confess to crimes for a variety of reasons and not always because they are guilty. A person who has a mental impairment or deficiency, or a child are vulnerable and at risk to give a false confession. A person may falsely confess after hours of exhausting interrogation falsely believing he/she will be free to leave after cooperating with law enforcement. A person may falsely confess to a crime because he/she was coerced, intimidated, scared, or in some way felt threatened if they did not cooperate. Electronic recording of the interrogation 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.

There are many reasons to support electronic recording of an interrogation: it may strengthen the case for the prosecution by substantiating the confession; it may prevent innocent persons from being convicted based upon a coerced confession; it minimizes and possibly eliminates costly and lengthy litigation over suppression issues; and, it protects law enforcement officials from unjustified claims that allege police brutality or a violation of constitutional rights. In most instances, it will insure the conviction of a guilty person who voluntarily confesses to a crime and subsequently claims that the confession was coerced, intimidated, or fabricated by the police. It will also eliminate subjectivity and resolve the conflicts in testimony that frequently arise at trial over what was said and done during the course of an interrogation because there will be a taped record of what was said and done. It is important that the interrogation is taped in its entirety so it provides an accurate account of what transpired during what may be many hours of an interrogation.

Electronic recording is required pursuant to the rulings of the highest courts in Minnesota, Alaska, New Jersey, Massachusetts and New Hampshire. Other court decisions that have voiced support for taping include Connecticut, Colorado, Florida, Hawaii, Indiana, Tennessee, Utah and West Virginia. A growing number of states that require electronic recording by statute include Illinois, Maine, Texas and the District of Columbia. Many other jurisdictions

require videotaping of custodial interrogations as illustrated in a 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. These jurisdictions include San Diego, California; Boulder, Colorado Springs and Denver Colorado; Corel Springs and Broward County, Florida; Sioux City, Iowa; Prince George's County, Maryland; Aberdeen Sheriff's Office, South Dakota. Where state law does not require electronic recording, local ordinances have been adopted requiring that it be done. Many jurisdictions have decided voluntarily to videotape interrogations. Other states are considering legislation to require recording of interrogations, and some jurisdictions engage in the recording of interrogations on a voluntary basis.

Police departments already conduct some videotaping of certain activities which include: videotaping of stops on the street, recording of DUI (driving under the influence) suspects, booking of arrestees, interviews of internal affairs investigations or candidate interviews and closed circuit television in certain police lock up facilities. Why then is there still opposition to having a camera record the details of a person's interrogation by law enforcement? Newly constructed police stations in this state are equipped with the latest technology and display cameras throughout - except in the interrogation room.

The general consensus among those who support electronic recording is that it will protect the innocent. Video cameras are used in a variety of important ways in our daily work and personal lives. Everyday life experiences are exposed to video cameras that are utilized in efforts to provide security to private and public concerns, document governmental meetings, public hearings and court proceedings and assist law enforcement in carrying out its responsibility to protect the public, including the use of video cameras on the dashboards of police cars.

There is no compelling reason to exempt interrogations by law enforcement involving investigations into serious crimes. "When police elicit a false confession through more sophisticated psychological pressure from an isolated and vulnerable individual, admitting the confession at trial constitutes a denial of fundamental fairness and due process which is perhaps even more pernicious for its invisibility." *False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations*, 6 Boston University Public Interest Law Journal, 744 (1997). The failure to record these events for purposes of aiding in determining the truth should no longer be accepted. This office urges support for passage of Bill No. 7364 and No. 149. At a minimum, the creation of one or more pilots programs to fully record custodial interrogations and confessions would be a substantial and positive step for justice.