State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

In Opposition to:

S.B. No. 608 (RAISED) – An Act Concerning the Videotaping of Interrogations

Joint Committee on Judiciary – March 20, 2008

The Division of Criminal Justice respectfully requests the Committee take **no action** on **S.B. No. 608, An Act Concerning the Videotaping of Interrogations**. This bill is at the least premature and may be unnecessary in light of the actions taken by the General Assembly last year to address the underlying issues.

The General Assembly in 2007 appropriated $100,000 in each year of the current biennial budget to the Division of Criminal Justice to establish a pilot program for the electronic recording of confessions in serious felony cases. The Division is pleased to report to the Committee that the pilot program should be fully operational within a matter of months, perhaps even before this year's Regular Session adjourns in May.

At the outset, the Division wishes to thank the General Assembly, the Governor, our dedicated employees and all in the law enforcement community who have made the pilot program a reality. Since the appropriation of funding, the Division has worked closely with the Connecticut State Police and municipal police departments to design and implement this program. In less than a year, they have completed the extensive research needed to determine how such a program will operate and the administrative mechanics to put it in place. We would note that the $100,000 appropriated in this fiscal year will be spent solely for equipment and preparation of the rooms where recording of confessions will occur. All administrative costs, including the research of various systems and how recording is done in other states, has been accomplished within the existing resources of the Division.

Just this past week a contract was awarded for the procurement of the recording equipment that is central to the pilot program. This includes hardware

and software for the wiring of interview rooms and the actual recording of interrogations. The pilot program will begin at six "locations." Four of these will be the municipal police departments in Bridgeport, Meriden, Southington and Waterford. The other two "locations" will be the deployment of portable recording systems that will be utilized by the Connecticut State Police Western District Major Crime Squad and the Connecticut State Police Eastern District Major Crime Squad. It is currently anticipated that the "mobile" State Police units may be up and operating in a matter of weeks and that the four fixed locations will be wired and otherwise ready to go by the end of March.

This timetable would provide for the collection of a full three months of data in this fiscal year. In addition to developing the mechanics of the program, the Division and the law enforcement community have established the means for collecting the data necessary for a proper assessment and evaluation of the pilot program. These requirements and other aspects of the pilot program are outlined in a Memorandum of Understanding (MOU) that will be entered into by the Division of Criminal Justice and each participating police agency. The Division also has devised methodology in consultation with the Office of the Comptroller to provide for the "donation" of the hardware and software equipment purchased by the Division to the pilot program agencies.

As you can see, the departments selected for the first phase of the pilot program represent the diverse demographics of the state. There is a large city, a mid-sized city and suburban communities. There are also the two State Police squads serving large regions of the State while also having primary responsibility for investigations in many smaller, rural towns that do not have municipal police departments. Many other departments were consulted and considered, and it is anticipated that additional locations will be added in the next fiscal year, the second year for which funding was included in the biennial budget adopted last year. It should be noted, of course, that our ability to expand the program, or for that matter to successfully complete the first phase is dependent on the Division receiving the funding included in the budget passed last year.

The Division of Criminal Justice is very proud of the progress that we, working in conjunction with the law enforcement community as a whole, have made to make this exciting initiative a reality. In less than a year we have built an entirely new system from the bottom up – a system with which our state has very limited experience. We look forward to launching this pilot program and to having the ability to carefully examine and evaluate our experiences at the appropriate time. The passage of S.B. No. 608 would ignore the tremendous time, effort and resources that have been devoted by the Division and the law enforcement community to the pilot program authorized by this General Assembly.

That being said, the Division believes it is still necessary to state once again the other very significant reasons the Division opposes S.B. No. 608. These are the same objections that we have raised to similar legislation when it has been proposed in past legislative sessions, but again, we believe they must be repeated so the record is clear:

The bill is an unfunded mandate. The bill imposes a sweeping new mandate on all municipal police departments as well as all Connecticut State Police units with no funding 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.

The Division and the law enforcement community in general strongly oppose any legislation to mandate law enforcement practice. As we have stated in the past, absent the existence of a pattern of abuse of the interrogation process 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.

This is an attempt to get from the Legislature -- *without showing a need* - something that has been consistently rejected by the courts. In *State v. James* (237 Conn. 390, 428-34 (1996), the 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.

Our 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.

In conclusion, S.B. No. 608 raises a number of valid concerns as to the potential for detrimental effects on the ability of the law enforcement community to investigate and prosecute criminal activity. The law enforcement community has devoted significant time, effort, consideration and resources to the development of the pilot program. We fully expect the same degree of cooperation and collaboration on the implementation of the pilot program and its subsequent evaluation and assessment. We would respectfully ask the Committee recognize this good faith effort and take no action on S.B. No. 608.

The Division of Criminal Justice would like to thank the Committee for providing us with this opportunity to present our input and recommendations on this important issue. The Division would be happy to provide any additional information or to answer any questions the Committee might have.