



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary – March 24, 2009

In opposition to:

- **S.B. No. 348 An Act Concerning the Videotaping of Custodial Interrogations**

The Division of Criminal Justice opposes S.B. No. 348 and would respectfully recommend that the Committee reject this bill. This bill would effectively require every law enforcement agency in the State of Connecticut to procure and install audiovisual recording equipment in a sufficient number of rooms in every state police barracks, resident state trooper's office, courthouse, correctional facility, community correctional or detention center and municipal police department and to have the equipment immediately available for use in any of those locations. Law enforcement agencies would need more than one interview/recording room to allow for the simultaneous interviewing of individuals in the same or separate investigations. Our experience has been that outfitting each interview/recording room may cost approximately \$12,000. This bill represents an unfunded mandate the cost of which could run into the millions of dollars for the state and its municipalities.

Under S.B. No. 348, the failure to record would effectively render any statements given in the course of otherwise legal and necessary interrogations inadmissible in subsequent court proceedings. The bill would also require the state to prove that the "recording is substantially accurate and not intentionally altered." This would require the courts to hold evidentiary hearings to analyze each recording in detail, not just to determine the admissibility of the recording, but to determine if officers could testify at all as to what was said during the interview. For example, the court would have to determine whether any period of silence that a defense attorney notices on the recording is or is not an intentional alteration. It could very well require expert witnesses to have to analyze every recording before the court could decide to allow the police officer to testify at all about statements made during the interview, with or without the recording itself admitted. This puts law enforcement agencies in a classic "Catch 22" situation: spend the money because if there's no recording, important evidence will be inadmissible. It is that simple. This bill is an unfunded "back-door" mandate since the failure of the municipalities to spend the money to provide extensive recording facilities would effectively shut down their ability to conduct legitimate, legal interrogations, seriously undermining their ability to enforce the law and protect the public safety.

Custodial interrogations are a critical component of the investigation of crime, as important if not more important than interviewing witnesses and collecting physical and forensic evidence. Interrogations – and resulting statements including a confession to a crime – can occur at any stage of an investigation and in any location, ranging from the crime scene itself to a police cruiser, and, yes, an interview room with or without recording capabilities. Clearly, the recording of all interrogations is not only impractical, but impossible, yet Connecticut law enforcement recognizes that the practice is desirable when and where it is feasible. This is evident from the good-faith efforts being undertaken

by the law enforcement community through the pilot program authorized by this General Assembly for the recording of interrogations in major felony investigations.

S.B. No. 348 with its sweeping mandate ignores the progress that has been made and flies in the face of the good-faith efforts and the commitment and dedication shown by the law enforcement community. We need to proceed in an orderly and cautious fashion to assure that we identify and address all potential problems and concerns, such as whether there are problems with the equipment being used, whether the recording of interrogations discourages witnesses or suspects from being interviewed and what impact it has on the investigators conducting the interrogations and the means they utilize. Other questions include whether recording should be conducted covertly or with the knowledge of the potential suspect or whether transcripts of recorded interrogations should be produced, and if so, who should pay for them. These and many other questions are arising and will continue to arise. They must be answered before we embark on any wholesale program for recording of interrogations. This is exactly what the pilot program was designed to do, and what it is doing.

The Division of Criminal Justice wishes to thank the Connecticut State Police and the municipal police departments that have stepped up to take part in the pilot program. As a first point, we must note that this voluntary effort continues to progress without any infusion of resources. The Division of Criminal Justice long ago spent the \$100,000 that was appropriated to implement the pilot program. A second \$100,000 was never made available for this purpose because of the state's fiscal problems. There is no money in the Governor's recommended budget for this purpose, nor have we received any indication that additional funds will be forthcoming through the legislative budget process. Yet the pilot program remains in place and continues to make progress examining the issues and answering the questions.

Following are some of the details of the pilot program:

- All equipment and software for recording was in place by on or about July 1, 2008, at the Eastern and Western District Major Crime Squads of the Connecticut State Police and the municipal police departments in Bridgeport, Meriden, Southington and Waterford.
- From that date through early January of this year:
 - 99 interviews were recorded, 84 of them covertly. All of the interviews were done at stationary sites (vs. the use of mobile recording equipment). The investigations ranged from possible homicides and attempted murder to robbery, assault, burglary and arson to risk of injury to a minor to witness/victim interviews in child sexual assault cases.
 - 55 interviews resulted in confessions.
 - 3 interviews resulted in statements of involvement.
 - 1 interview resulted in disclosure of a sexual assault.
 - 1 interview resulted in a statement that led to proof that a homicide had been committed.

More detailed information on the pilot program can be found in the report submitted to the General Assembly in February of this year by the Advisory Commission on Wrongful Convictions pursuant to Public Act 08-143, An Act Concerning the Compensation of Wrongfully Convicted and Incarcerated Persons, the Duties and Duration of the Sentencing Task Force and the Preparation of Racial and Ethnic Impact Statements. P.A.

08-143 required the Advisory Commission on Wrongful Convictions to, among other things, monitor and evaluate the pilot program for the videotaping of interrogations.

Beyond the fiscal and logistical implications of S.B. No. 348 are the legal ramifications. The bill is an attempt to legislate a legal finding the courts have repeatedly and consistently rejected. 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 twelve 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.

In conclusion, S.B. No. 348 should be rejected. The law enforcement community should be commended for its commitment to implementing "best practices," as evidenced by its implementation of the pilot program, and not effectively condemned through the passage of what can be seen as nothing more than punitive legislation. The Division of Criminal Justice thanks the Committee for this opportunity to provide input on this issue. We would be happy to provide any additional information or to answer any questions the Committee might have.

