



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

In opposition to:

S.B. No. 954 (RAISED):
An Act Concerning the Electronic Recording of Custodial Interrogations

March 9, 2011

The Division of Criminal Justice opposes S.B. No. 954, An Act Concerning the Electronic Recording of Custodial Interrogations, and would respectfully recommend that the Committee take no action on the bill. The Division opposes this legislation for the same reasons it has opposed similar bills consistently and repeated in the past: the bill seeks to legislate what should be "best practices" developed and implemented by the law enforcement profession, and it seeks to impose punitive sanctions, already rejected by the courts, for the failure to record an interrogation. The bill does not give due credit to the ongoing commitment and outstanding effort initiated voluntarily by the law enforcement community to strengthen and improve investigative practices and procedures, specifically the continuing pilot program for the recording of interrogations in serious felony investigations.

The Division of Criminal Justice is pleased to report that the pilot program, inaugurated with the strong support of the Judiciary Committee, is continuing and allowing us to collect invaluable information. This pilot program is allowing the law enforcement community and the courts to assess the practice and its impact on the criminal justice system and criminal cases from the initial investigation through final disposition in court. We are finding that there are many positive aspects to this program, there are also areas of concern, both in terms of practical implication and financial impact. For example, we are finding that review of recordings from interrogations can require a substantially greater time commitment than was previously required to review hours of interrogation condensed into a matter of pages of written statements. Another concern is the significant cost that can be incurred to produce a written transcript of what can be a lengthy interrogation process.

And, of course, there is the question of cost - who is going to pay for the equipment and personnel to operate it, particularly with regard to smaller departments. It is not simply a question of taking out your cell phone and recording the interrogation. There are strict legal requirements governing the chain of evidence to document where and when the interrogation took place. There are also technical requirements to allow for review of what can be hours of

interrogations. Both to protect the integrity of the process and the rights of the accused, the equipment must be the proper equipment and it must be operated by properly trained personnel. There are also the unanswered questions of who pays to replace this equipment when it becomes outdated, which as we all know does not take very long these days when it comes to any electronic device. Given 169 cities and towns, the Connecticut State Police and other law enforcement agencies, cost is certainly a factor.

Nevertheless, the Division and the law enforcement community remain firmly committed to the pilot program. We would also note that the program on its own has expanded. We are aware of at least one municipal police department that has sought to use drug asset forfeiture funds to acquire its own recording capabilities after having utilized those of a neighboring department that is part of the pilot program. The Division also is pleased to provide the Committee with the latest information on the status of the pilot program. The pilot program is being operated by the municipal police departments in Bridgeport, Meriden, Southington and Waterford and the Connecticut State Police Eastern and Western District Major Crime Squads. The Division wishes to extend its sincere gratitude to these police departments for agreeing to participate in this program and for all of their hard work and dedication in its implementation began around July 1, 2008.

Since that time:

- 857 interviews have been recorded (620 covert). All such interviews have been at stationary sites.
- 66 interviews have resulted in confessions, including 8 homicides in Bridgeport.
- 23 interviews have resulted in arrests (only 23 been reported - the actual number is surely larger.)
- 3 interviews have resulted in statements of involvement
- 1 interview resulted in disclosure of a sexual assault (may end up being a disorderly conduct)
- 1 interview resulted in a statement that led to proof that a homicide had been committed.
- Usage ranges from investigation of possible homicide and attempted murder to Sexual Assault in the First Degree, robbery, assault, burglary and arson to risk of injury to a minor to witness/victim interviews in child sexual assault cases.

The vast majority of interviews - 643 - were conducted in Bridgeport. These interrogations resulted in 37 confessions, including 25 relating to gun offenses, two for robbery, one for attempted murder/assault with a firearm, six for homicides, and one for a double homicide. All of these interviews were covertly recorded. One-hundred percent of detective users now have positive opinions regarding the recording of interrogations. One senior police official in Bridgeport recently reported that recording is now institutionalized in that department, which is now outfitting a second interrogation room for recording.

All of the participating departments report that the pilot program is an ongoing learning process. Additional time is needed to collect additional data. For example, the Connecticut State Police Western District Major Crime Squad had yet to have an opportunity to utilize the recording process as of last report. S.B. No. 954 ignores this effort by law enforcement in seeking

to make a legislative end-run around the established case law and refusal of the courts to render inadmissible confessions rendered during interrogations that are not recorded. See *State v. James* (237 Conn. 390, 428-34 (1996)) and *State v. LaPointe* (237 Conn. 694, 735 (1996)). The courts have generally concluded that while the recording of interrogations might be a desirable investigative practice that is to be encouraged, such recording is not a requirement under the constitutional guarantee of due process. The legislature should make funding available to enable police departments to expand and develop this practice.

In conclusion, the Division would respectfully request that the Committee recognize and support the law enforcement community in its continuing efforts to implement best practices through such initiatives as the pilot program. We would further ask the Committee to recognize the longstanding findings of the court and for these reasons to reject S.B. No. 954.

