



Senate

General Assembly

File No. 630

January Session, 2011

Senate Bill No. 954

Senate, April 26, 2011

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2011*) (a) For the purposes of
2 this section:

3 (1) "Custody" means the circumstance when (A) a person has been
4 placed under formal arrest, or (B) there is a restraint on a person's
5 freedom of movement of the degree associated with a formal arrest
6 and a reasonable person, in view of all the circumstances, would have
7 believed that he or she was not free to leave;

8 (2) "Interrogation" means questioning initiated by a law
9 enforcement official or any words or actions on the part of a law
10 enforcement official, other than those normally attendant to arrest and
11 custody, that such official should know are reasonably likely to elicit
12 an incriminating response from the person;

13 (3) "Custodial interrogation" means any interrogation of a person
14 while such person is in custody;

15 (4) "Place of detention" means a police station or barracks,
16 courthouse, correctional facility, community correctional center or
17 detention facility; and

18 (5) "Electronic recording" means an audiovisual recording made by
19 use of an electronic or digital audiovisual device.

20 (b) An oral, written or sign language statement of a person under
21 investigation for or accused of a capital felony or a class A or B felony
22 made as a result of a custodial interrogation at a place of detention
23 shall be presumed to be inadmissible as evidence against the person in
24 any criminal proceeding unless: (1) An electronic recording is made of
25 the custodial interrogation, and (2) such recording is substantially
26 accurate and not intentionally altered.

27 (c) Every electronic recording required under this section shall be
28 preserved until such time as the person's conviction for any offense
29 relating to the statement is final and all direct and habeas corpus
30 appeals are exhausted or the prosecution is barred by law.

31 (d) If the court finds by a preponderance of the evidence that the
32 person was subjected to a custodial interrogation in violation of this
33 section, then any statements made by the person during or following
34 that nonrecorded custodial interrogation, even if otherwise in
35 compliance with this section, are presumed to be inadmissible in any
36 criminal proceeding against the person except for the purposes of
37 impeachment.

38 (e) Nothing in this section precludes the admission of:

39 (1) A statement made by the person in open court at his or her trial
40 or at a preliminary hearing;

41 (2) A statement made during a custodial interrogation that was not
42 recorded as required by this section because electronic recording was

43 not feasible;

44 (3) A voluntary statement, whether or not the result of a custodial
45 interrogation, that has a bearing on the credibility of the person as a
46 witness;

47 (4) A spontaneous statement that is not made in response to a
48 question;

49 (5) A statement made after questioning that is routinely asked
50 during the processing of the arrest of the person;

51 (6) A statement made during a custodial interrogation by a person
52 who requests, prior to making the statement, to respond to the
53 interrogator's questions only if an electronic recording is not made of
54 the statement, provided an electronic recording is made of the
55 statement by the person agreeing to respond to the interrogator's
56 question only if a recording is not made of the statement;

57 (7) A statement made during a custodial interrogation that is
58 conducted out-of-state;

59 (8) A statement made at a time when the interrogators are unaware
60 that a death has in fact occurred; and

61 (9) Any other statement that may be admissible under law.

62 (f) The state shall have the burden of proving, by a preponderance
63 of the evidence, that one of the exceptions specified in subsection (e) of
64 this section is applicable.

65 (g) Nothing in this section precludes the admission of a statement,
66 otherwise inadmissible under this section, that is used only for
67 impeachment and not as substantive evidence.

68 (h) The presumption of inadmissibility of a statement made by a
69 person at a custodial interrogation at a place of detention may be
70 overcome by a preponderance of the evidence that the statement was
71 voluntarily given and is reliable, based on the totality of the

72 circumstances.

73 (i) Any electronic recording of any statement made by a person at a
74 custodial interrogation that is made by any law enforcement agency
75 under this section shall be confidential and not subject to disclosure
76 under the Freedom of Information Act, as defined in section 1-200 of
77 the general statutes, and the information shall not be transmitted to
78 any person except as needed to comply with this section.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2011</i>	New section
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JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Public Safety, Dept.	GF - Cost	26,000 - 76,000	35,000 - 101,000

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 12 \$	FY 13 \$
Various Municipalities	STATE MANDATE - Potential Cost	See Below	See Below

Explanation

The bill results in a potential cost to various law enforcement agencies by requiring an electronic recording of custodial interrogations for a capital felony or class A or B felony at places of detention if said interrogation is submitted as evidence in court. The cost, which includes recording equipment and software, transcription fees, and training for staff, would only apply to those agencies which currently have no electronic recording equipment.

This cost will depend on the type of equipment chosen and level of training required by staff. Current electronic recording systems used by law enforcement agencies in the state range from \$2,500 up to \$8,000 per system. The cost to local police departments would therefore range from \$2,500 to \$8,000, assuming each police department currently unequipped purchases one system. The cost to equip the Department of Public Safety (DPS) would range from \$30,000 to \$96,000 to equip each barrack with one electronic recording system. Other equipment and recording necessities such as DVDs and

transcription fees would result in additional minimal costs to municipalities and a minimal cost of less than \$5,000 to DPS. Furthermore, at least one room would need to be designated as the interview room at each facility.

The cost to train staff depends on the type of system, as some are user-friendly while others are more complicated. Police departments that have electronic recording equipment conducted in-house training or received training from outside sources including the Chief State's Attorney's Office.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: Connecticut Department of Public Safety
State of Connecticut Advisory Commission on Wrongful Convictions Report,
February 2009*

OLR Bill Analysis**SB 954*****AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS.*****SUMMARY:**

When someone is investigated for or accused of a capital felony or class A or B felony, this bill presumes that a statement made by the person as a result of a custodial interrogation at a place of detention is inadmissible as evidence against the person in a criminal proceeding unless:

1. there is an audiovisual recording of the custodial interrogation made by an electronic or digital audiovisual device and
2. the recording is substantially accurate and not intentionally altered.

The bill applies to oral, written, and sign language statements.

If the court finds by a preponderance of the evidence that a person's custodial interrogation was not recorded, the bill makes any statements made during or following the non-recorded custodial interrogation, even if otherwise complying with the bill, presumed inadmissible in any criminal proceeding against the person except for impeachment purposes (to question the credibility of the person's testimony).

The bill's presumptions can be overcome if a preponderance of the evidence shows that the statement (1) was voluntarily given and (2) is reliable based on the totality of the circumstances.

The bill includes a number of exceptions to the recording requirement. It also does not prevent admitting a statement for

impeachment purposes only.

EFFECTIVE DATE: October 1, 2011

CUSTODIAL INTERROGATIONS AT A PLACE OF DETENTION

The bill applies to a custodial interrogation at a place of detention which:

1. is (a) questioning initiated by a law enforcement official or (b) words and actions by the official, other than those usually used during arrest and custody, that the official should know are reasonably likely to elicit an incriminating response from the person;
2. occurs when (a) the person has been formally arrested or (b) his or her freedom of movement is restrained as with a formal arrest and a reasonable person would believe he or she is not free to leave based on all the circumstances; and
3. occurs at a police station or barracks, courthouse, correctional facility, community correctional center, or detention facility.

EXCEPTIONS

The bill does not prevent admission of a statement made:

1. by a person in open court at trial or a preliminary hearing;
2. during a custodial interrogation that was not recorded because it was not feasible;
3. voluntarily, whether or not the result of a custodial interrogation, that has a bearing on the person's credibility as a witness;
4. spontaneously and not in response to a question;
5. after questioning routinely asked during processing an arrest;
6. by a person who requests, before making the statement, to

answer questions only if there is no electronic recording and there is an electronic recording of the person agreeing to respond only if there is no recording;

- 7. during a custodial interrogation outside Connecticut; or
- 8. when the interrogators are unaware that a death occurred.

The bill also does not prevent admission of statements that may be admissible under the law.

The bill requires the state to prove by a preponderance of the evidence that one of these exceptions applies.

PRESERVING RECORDINGS AND CONFIDENTIALITY

The bill requires preserving electronic recordings until the person’s conviction of any offense related to the statement is final and direct and habeas corpus appeals are exhausted or the prosecution is legally barred.

The bill makes an electronic recording by law enforcement of a person’s custodial interrogation confidential and exempt from disclosure under the Freedom of Information Act. The bill prohibits transmitting the information to anyone except as needed to comply with the bill.

BACKGROUND

Class A or B Felonies

Table 1 displays crimes that are classified as class A or B felonies

<i>Classification</i>	<i>Crime</i>
Class A Felony	Murder (53a-54a)
	Felony murder (53a-54c)
	Assault of pregnant woman resulting in termination of pregnancy (53a-59c)
	Aggravated sexual assault of a minor

	(53a-70c)
	Kidnapping 1 st degree (53a-92)
	Kidnapping 1 st degree with a firearm (53a-92a)
	Home invasion (53a-100aa)
	Arson 1 st degree (53a-111)
	Employing a minor in an obscene performance (53a-196a)
Class A or B Felony	Sexual assault 1 st degree (53a-70)
	Aggravated sexual assault 1 st degree (53a-70a)
Class B Felony	Manslaughter 1 st degree with a firearm (53a-55a)
	Manslaughter 1 st degree (53a-55)
	Assault 1 st degree (53a-59)
	Assault of an elderly, blind, disabled, pregnant, or mentally retarded person 1 st degree (53a-59a)
	Assault of Department of Correction employee 1 st degree (53a-59b)
	Sexual assault in spousal or cohabitation relationship (53a-70b)
	Sexual assault 2 nd degree (when the victim is under age 16) (53a-71)
	Sexual assault 3 rd degree with a firearm (when the victim is under age 16) (53a-72b)
	Promoting prostitution 1 st degree (53a-86)
	Enticing a minor (when the victim is under age 13 or a 3 rd or subsequent offense with victim 13 or older) (53a-90a)
	Kidnapping 2 nd degree (53a-94)
	Kidnapping 2 nd degree with a firearm (53a-94a)
	Burglary 1 st degree (53a-101)

Arson 2 nd degree (53a-112)
Larceny 1 st degree (53a-122)
Identity theft 1 st degree (53a-129b)
Robbery 1 st degree (53a-134)
Possession of a weapon or dangerous instrument in a correctional institution (53a-174a)
Rioting at correctional institution (53a-179b)
Trafficking in persons (53a-192a)
Promoting a minor in an obscene performance (53a-196b)
Importing child pornography (53a-196c)
Possessing child pornography 1 st degree (53a-196d)
Computer crime 1 st degree (53a-252)
Money laundering 1 st degree (53a-276)
Vendor fraud 1 st degree (53a-291)
Computer crime in furtherance of terrorism (53a-301)
Selling, delivering, or transferring a pistol or revolver (knowing it is stolen or has an altered identification mark) (29-33)
Fraudulent claim or receipt of workers' compensation benefits (over \$2,000) (31-290c)
Risk of injury to a minor (related to sexual contact) (53-21)
Deprivation of a person's equal rights and privileges by force or threat (when resulting in death) (53-37b)
Bomb manufacturing (53-80a)
Firearms trafficking (more than five firearms) (53-202aa)
Manufacturing chemical, biological, or radioactive weapon

	(53-209a)
	Extortionate extension of credit (53-390)
	Advance of money for use in extortionate extension of credit (53-391)
	Participation or conspiracy in use of extortionate means (53-392)

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 23 Nay 19 (04/06/2011)