

MAJOR ISSUES ADDRESSED BY THE DRAFTING COMMITTEE WITH RESPECT TO THE DRAFT OF THE UNIFORM ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS ACT

There is a plethora of issues surrounding the drafting of a uniform act on the subject matter of the electronic recording of custodial interrogations.

Ones that evoked considerable discussion among the committee members and the observers include the following:

1. Should the requirement for electronic recording of custodial interrogations be limited to having them conducted at a place of detention, as that term is defined in the act?

The committee said “yes.” The committee is mindful that the mandates in this legislation will affect law enforcement agencies of all types – rural, urban, departments ranging from a one-man police force to cities having thousands of law enforcement officers – and, therefore, having them conducted at a place of detention would likely encounter less resistance than to having the mandates apply to all potential places of interrogation following arrests. The committee also is aware that audio/video recording equipment may be installed in police cruisers and that technology has been developed so that small devices may be attached to an officer’s uniform so that all of the officer’s interactions while on duty can be recorded by both audio and visual means.

2. Should the requirement for electronic recording of custodial interrogations be to record by both audio and video means?

The committee decided to mandate audio only and to leave it to the discretion of the various states and law enforcement agencies to require both audio and video recording of custodial interrogations. The committee’s decision was driven by considerations of expense for requiring both audio and video recordings, and the committee believes that the feasibility of enactment of this uniform act will be less difficult by mandating audio recordings only.

3. Should the person in custody be informed that the interrogation is being recorded electronically?

The committee determined that there was no present requirement to so inform the person being interrogated and decided not to impose any such mandate.

4. Should the person in custody, if informed that the interrogation is being recorded electronically, be required to consent to such electronic recording of the interrogation?

The committee understands that there are situations where an arrested person may agree to answer questions only if the electronic recording equipment is not being operated. Thus, in Section 6 the committee has included provisions that permit statements to be made that are not recorded electronically.

5. Should Section 9, Exception for safety of individual or protection of identity, be a bracketed provision?

The committee was evenly divided on this provision. Some members of the committee believed that this provision would be abused so as to get around the mandate for recording custodial interrogations. Others believed that it was an essential tool for law enforcement agencies.

6. What sanctions or penalties should be imposed for violations of the mandate to record custodial interrogations electronically?

- a. Regarding admissibility of an unrecorded statement in court proceedings, the committee determined that the failure to record should not automatically result in the exclusion of the unrecorded statement.
- b. Regarding administrative discipline of law enforcement officers who violated the mandates of the act, the committee determined that it was important to provide states with the option for some disciplinary sanction to be imposed against offending law enforcement officers. See Section 15(d).
- c. Regarding civil liability for violations of the act's mandates, the committee opted to limit the possibilities for civil litigation against law enforcement officers. See Section 16.

7. The committee engaged in an interesting and stimulating discussion concerning the self-authentication provision found in section 17. The committee decided to retain this provision despite strong arguments that it may not be constitutionally valid (confrontation clause).

In closing, the committee, collectively, and I, individually, want to express our deep appreciation for the exhaustive research and trenchant insights provided by Thomas Sullivan, Esquire, of the firm of Jenner & Block of Chicago. Mr. Sullivan, along with Andrew Vail, Esquire, also of the firm of Jenner & Block, have served invaluable as observers and contributors to the work of this drafting committee.

Respectfully submitted,

David A. Gibson, Chair