



UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT

- SUMMARY -

In just the past decade, numerous cases of wrongful convictions have garnered the attention of the media, prosecutors, defense counsel, legislators, and law reformers. While much of this attention is focused on the faulty use of DNA evidence, wrongful convictions are prevalent in many run-of-the-mill cases where DNA evidence is never available. One important contributing factor to a large percentage of the mistakes made in many criminal cases—indeed perhaps one of *the* top contributing factors—is the admissibility at trial of a false confession.

False confessions may often occur no matter how well-meaning the interrogating officer or how strong his or her belief in the suspect's guilt. Subtle flaws in interrogation techniques can elicit confessions by the innocent. Yet confessions are taken as such powerful evidence of guilt that prosecutors, jurors, and judges often fail to identify the false ones. Conflicting testimony sometimes results in judges or jurors believing the wrong tale, other times allowing for frivolous suppression motions wasting the court's time and impugning careful, professional, and honest police officer. The resulting wrongful conviction means not only that an innocent person may languish in prison or jail but also that the guilty offender goes free, perhaps to offend again.

Recognizing the impact of flawed confessions on the integrity of the criminal justice system, legislators, courts, and police departments have begun requiring recordation of interrogations. Several states have mandated that interrogations be recorded through statutory changes. Yet others have imposed conditions for recordation through court rule. Even absent statutory or judicial imposed mandates, a significant number of police departments have voluntarily adopted policies requiring interrogations to be recorded under a variety of circumstances on the theory that recordation both protects the officers involved and improves the fact-finding process.

However, there are wide variations among the state provisions and the voluntarily adopted programs mandating electronic recordation of custodial interrogations. Some approaches promise to be more effective in protecting the innocent, convicting the guilty, minimizing coercion, and avoiding frivolous suppression motions than others. The **Uniform Electronic Recordation of Custodial Interrogations Act** (UERCIA) resolves the differences found around the nation and helps improve the fairness and professionalism associated with electronic recordings.

The UERCIA mandates the electronic recording of the entire custodial interrogation process by law enforcement, leaving it to individual states to decide where and for what types of crimes this mandate applies, as well as the means by which recording must be done. The UERCIA thus permits states to vary the scope of the mandate based upon local variations in cost, perceived degree of need for different categories of criminal or delinquent wrongdoing, or other pressing local considerations. Nevertheless, combined audio and video recording remains the ideal, and

the advantages of recording exist wherever custodial interrogation occurs and for whatever criminal or delinquent wrong is involved.

The UERCIA contains several exceptions designed to allay fears of undue rigidity on police practices and to address many of the unforeseen circumstances that may occur during investigation and questioning. If a recording is not feasible because of exigent circumstances it is not in violation of the mandate. Also excluded from the recording mandate are interrogations in which the individual under question will not participate in interrogation if it is recorded electronically and those interrogations conducted in other jurisdiction in compliance with that jurisdiction's laws. In situations where an officer does not reasonably believe that no offense was involved that would trigger the recording mandate and situations where a recording would compromise the safety of an officer, an informant, or another individual at risk, the mandated recordation of questioning is not applicable.

Procedures for the use of the electronically recorded statement are also addressed by the UERCIA. The Act places the burden of persuasion as to the application of any of the exceptions on the prosecution by a preponderance of evidence standard. The Act also outlines procedural remedies for violation of the requirement that the entire custodial interrogation process be electronically recorded. Courts shall consider failure to comply with the Act in ruling on a motion to suppress a confession as involuntary. Further, the Act mandates that electronic recordings of custodial interrogations be identified, accessible, and preserved in accordance to local statutes governing criminal cases. In implementing the conditions of the Act, law enforcement agencies must adopt and enforce rules for the manner in which recordings are to be made and preserved.

The UERCIA promotes accuracy and the truth finding process. Electronic recordation of custodial interrogations will benefit law enforcement agencies, improving their ability to prove cases while lowering overall costs of investigation and litigation. Systemic recordation will also improve accuracy and fairness to the accused and the state, protect constitutional rights, and most importantly increase public confidence in the justice system.

For further information about the Uniform Electronic Recordation of Custodial Interrogations Act, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.