

THE JUSTICE PROJECT

Electronic Recording of Custodial Interrogations in Tennessee: A Review of Current Practices

The Justice Project

February 2010

The Justice Project
1025 Vermont Ave. NW, Third Floor
Washington, DC 20005
(202) 638-5855
www.TheJusticeProject.org

Electronic Recording of Custodial Interrogations in Tennessee: A Review of Current Practices

The application of readily available technology to police work can lead to major benefits for law enforcement agencies. Many jurisdictions across the country, for example, have benefitted from documenting the interrogations of suspects in custody with audio and/or video recording equipment. By creating a fully reviewable record of an interrogation, prosecutors get the best, most reliable evidence possible.

Legislation has been introduced in the Tennessee General Assembly (HB 596 and SB 261) that would require electronic recording of custodial interrogations in homicide cases in Tennessee. Under the proposed law, if an interrogation is not recorded for some reason it would still be admissible in court, as it is today. The legislation would simply extend this valuable evidence-gathering policy, already employed in many Tennessee jurisdictions, to law enforcement departments statewide.

In order to understand the current use of electronic recording in Tennessee, The Justice Project conducted a statewide survey of law enforcement agencies and requested copies of any written policies on recording interrogations. The results indicate that a majority of Tennessee law enforcement agencies electronically record interrogations at least some of the time, and report that the practice strengthens the credibility and reliability of criminal investigations and prosecutions. This report presents the results of The Justice Project's survey and details the advantages of statewide implementation of electronic recording of custodial interrogations.

Why Electronically Record?

The central objective of the criminal justice system is to ascertain the facts surrounding criminal offenses and correctly identify and prosecute perpetrators. The electronic recording of custodial interrogations contributes to that objective both by developing the strongest evidence to help convict the guilty, and by protecting against false or coerced confessions that can lead investigators away from the true perpetrator. As a result, electronic recording has emerged as a powerful tool that helps our criminal justice system get the truth and reach just outcomes.

The efficiency and accuracy of the criminal justice system are enhanced by creating a comprehensive, reviewable record of interrogations. Judges are often confronted with conflicting accounts of what took place during an interrogation. Recording allows these disputes to be resolved more easily. As a result, defense motions to suppress a suspect's statement are reduced and are more readily adjudicated. Appropriate plea deals are also more likely to be reached quickly. Additionally, electronic recording protects police from false claims of abuse or coercion and can substantially strengthen a prosecutor's case. Recordings provide a valuable training and supervisory tool that contributes to the overall professionalism and effectiveness of police interrogations.

Obtaining an audio or audio/video recording of custodial interrogations also serves as a first line of defense against false or coerced confessions. Confessions are often viewed as the most powerful evidence at trial and are highly persuasive to juries. However, studies have documented that false confessions play a significant role in wrongful convictions. Over 250 individuals have been exonerated by post-conviction DNA testing for crimes they did not commit. About 25 percent of those wrongful convictions were secured because innocent defendants either made false incriminating statements or falsely confessed to the crime. While juveniles and those with mental illness or mental retardation are especially at risk, even suspects without such vulnerabilities have produced false and unreliable statements under the stress of a criminal interrogation. A reviewable record of the interrogation can help to identify problems that can lead investigators off the track of the true perpetrator. Because confessions hold so much weight, it is critical to equip jurors with the tools they need to effectively evaluate the voluntariness and reliability of a suspect's statement.

By reducing the risk of unreliable suspect statements leading to the premature closing of an investigation, electronically recording custodial interrogations helps police focus their time and resources on finding the actual perpetrator. This saves law enforcement (and taxpayers) time and money, and can even save lives and prevent further victimization of the community.

As a result of these benefits, hundreds of police departments around the country electronically record custodial interrogations. Additionally, a growing list of states, including Alaska, Minnesota, New Jersey, North Carolina, New Mexico, Maine, Wisconsin and Illinois, have mandated recording of custodial interrogations in order to strengthen the quality of evidence available for criminal prosecutions. Police departments that record interrogations have reported overwhelmingly favorable reviews of the practice to the National Institutes of Justice and other researchers, and have indicated that the policy increases the quality and quantity of incriminating evidence available at trial.

Tennessee currently has no law that would ensure that the state reaps the many benefits of recording of custodial interrogations. As such, many criminal cases are forced to proceed without the strongest, most reliable evidence possible.

Electronic Recording in Tennessee

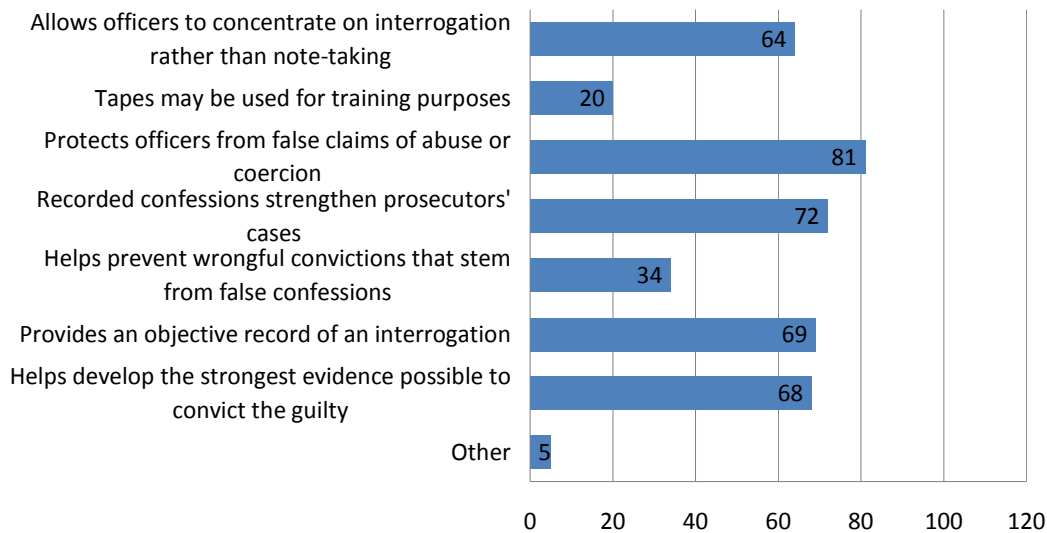
In order to better determine existing practices in this area, The Justice Project conducted a statewide survey of all Tennessee law enforcement agencies (numbering 306) regarding electronic recording of custodial interrogations. The Justice Project made a two-fold request of Tennessee law enforcement agencies so as to obtain thorough and accurate data on the current practices and policies in the state. First, The Justice Project requested any written policies and procedures regarding the use of electronic recording. Additionally, departments were asked to fill out a multi-question survey to determine any unwritten practices, and to gain feedback from departments on their support or disapproval of the practice. Of the 208 responses received by The Justice Project, 119 departments indicated that they either routinely record custodial interrogations, record interrogations for certain classes of felonies, or record interrogations at the discretion of the investigator. The fact that so many Tennessee departments already record

interrogations demonstrates the practical feasibility of the procedure and means that the proposed legislation would not introduce a foreign practice into criminal investigations and prosecutions in the state.

When specifically asked their reasons for recording custodial interrogations, eighty-one departments (over 65 percent) indicated that recording interrogations protects officers from false claims of abuse or coercion. A majority also cited their experience that recording strengthens prosecutors' cases. Moreover, recording serves a practical purpose: sixty-four respondents (54 percent) who record interrogations indicated that it allows officers to focus on the interrogation itself, rather than note-taking (see the full results in the table below).

Additionally, the widespread use of recording in the state does much to dispute the most common arguments against recording. For example, although cost of implementation is of concern to some, at least 119 departments in the state already have appropriate recording equipment operational. Departments that have not recorded in the past are also generally concerned about storage issues, but can draw upon the experiences of departments that do record to share solutions to any storage issues that cannot be solved through digital, computer-based archives. Finally, police and prosecutors that have not had experience with the policy sometimes believe that jurors will react negatively to the interrogation techniques they view or hear on tape, or that suspects will refuse to talk if they are being recorded. The large number of law enforcement agencies that record, however, indicate that those departments find recording to be helpful rather than harmful to prosecutions.

Why Many Tennessee Departments Record



Many Tennessee police departments have demonstrated that electronic recording is a practical and valuable law enforcement tool that helps to build the best evidence possible in criminal cases. The numerous benefits to law enforcement identified in our survey mirror other research

that shows that police officers with experience recording interrogations overwhelmingly endorse it as an effective law enforcement tool.¹

A significantly smaller number of departments indicated they do not electronically record custodial interrogations. While it is important for police departments to have discretion over their own policies and procedures, the survey responses indicating reasons for not recording contradict compelling evidence of the benefits of the practice that are born out in the experience of departments that actually do it. Some non-recording departments also cited anticipated problems that other jurisdictions have established are not difficult to overcome. For example, of the thirty-eight departments who indicated in the survey that they do not electronically record custodial interrogations, eighteen (47 percent) of them indicated that they do not record because recording equipment is too expensive. While cost is a legitimate concern, the benefits of recording far outweigh the minimal costs because the technology available today is very inexpensive, and many departments already have the necessary technology in place. Providing the option of audio recording in particular ensures that no department will have to bear major costs to implement a recording policy. Digital audio recorders can be purchased for well under \$100 and only require a computer for storage. Audio files can be backed up with other law enforcement data through existing procedures.

¹ Thomas P. Sullivan, a former U.S. Attorney in Illinois now in private practice, has conducted extensive surveys of police who record interrogations electronically. He has published a series of articles detailing the results of this research, including substantial positive feedback from law enforcement personnel on the benefits of the practice.

"The Case for Recording Police Interrogation,"

http://www.jenner.com/files/tbl_s20Publications%5CRelatedDocumentsPDFs1252%5C2133%5CLitigation_Mag_Sullivan_Vail_0508.pdf

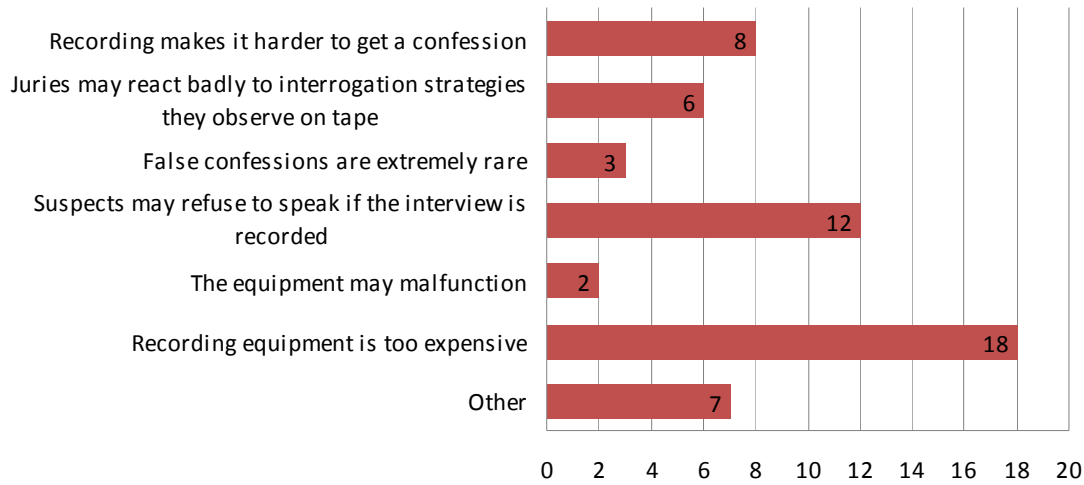
"Police Experiences with Recording Custodial Interrogations,"

http://www.jenner.com/files/tbl_s20Publications%5CRelatedDocumentsPDFs1252%5C748%5CCWC_article_with%20Index_final.pdf

"Electronic Recording of Custodial Interrogations: Everybody Wins,"

<http://www.thejusticeproject.org/wp-content/uploads/sullivanrecording.pdf>

Why Some Tennessee Departments Do Not Record



Two departments indicated they do not electronically record custodial interrogations at the request of the district attorney, which is problematic given the ability of electronic recordings to strengthen criminal prosecutions. One department expressed opposition to requiring custodial interrogations because suspects often make incriminating statements in the field and not in an interrogation room equipped with recording equipment, imposing the unrealistic expectation that officers be equipped to electronically record at all times. However, both the proposed legislation in Tennessee and the successfully implemented laws in other states make it clear that the policy only applies to custodial interrogations that take place at a police department or sheriff’s office. Spontaneous comments of suspects outside of the interrogation are not affected. Concerns of some officers that suspects will be less willing to talk while recorded have not emerged as a significant problem in departments that record. Most states that mandate recording also provide good-faith exceptions for suspects who refuse to answer questions while being recorded (as long as that refusal is recorded) as well as exceptions for equipment problems.

Overall, the responses to The Justice Project’s survey indicate that a majority of Tennessee police departments and sheriff’s offices are already equipped to electronically record custodial interrogations. All written policies provided to The Justice Project by law enforcement agencies recognize the importance of creating a thorough record of custodial interrogations by requiring either a handwritten or electronic record. Although there is evidence that many law enforcement agencies across Tennessee electronically record custodial interrogations at least some of the time, it is often an optional practice rather than a formally stated policy. Pending legislation would fill the gaps and ensure that *all* criminal cases can proceed with the strongest, most reliable evidence possible.

A Summary of Recording Policies in Tennessee's Largest Cities and Counties

An examination of the responses from police departments and sheriffs' offices in Tennessee's most populous jurisdictions revealed the following practices:

- **Chattanooga Police Department:** While the Chattanooga PD maintains a practice of electronically recording interrogations at the discretion of the lead investigator, the department does not have any written policies regarding electronic recording.
- **Knoxville Police Department:** General Orders from Knoxville PD's Criminal Investigation Division (CID) mandate that all interviews conducted in the CID interview rooms be audio and video recorded, unless the Deputy Chief of Police of the Criminal Investigation Division directs otherwise. The policy also states that all interviews of witnesses and prisoners/suspects should take place in the CID interview rooms due to the availability of audio/visual recording equipment in those facilities.
- **Murfreesboro Police Department:** Murfreesboro PD maintains a routine practice of recording custodial interrogations, although the department does not have any written policies in place regarding electronic recording.
- **Metro Nashville Police Department:** Nashville PD maintains a practice of electronically recording custodial interrogations at the discretion of the lead investigator. The department reports that among other benefits, electronic recording shows that a suspect confessed lawfully, without duress, and provides a permanent record of the suspect's statement.
- **Bartlett Police Department:** Bartlett PD General Order No. 17-12 states that investigative officers are encouraged to use the agency's video and audio recording capabilities for purposes of recording statement and confessions in an overt or covert manner consistent with state law.
- **Bristol Police Department:** Bristol PD sometimes records interrogations at the discretion of the District's Attorney's Office or the Criminal Investigation Division's Commander but has no written departmental policy mandating the electronic recording of custodial interrogations. The department reports that the practice is useful in reviewing a suspect's demeanor during an interrogation.
- **Collierville Police Department:** Collierville PD General Orders encourage officers to conduct interviews of suspects at the Police Department and take either written notes or obtain an audio recording of the interview.
- **Germantown Police Department:** While the Germantown PD maintains a practice of routinely recording custodial interrogations, the department does not have any written policies regarding the use of electronic recording.

- **Johnston City Police Department:** Johnston City PD departmental policies do not mandate the recording of custodial interrogations, but do mandate a record of custodial interviews and interrogations be kept in note form *or* through an audio recording. Additionally, departmental policies mandate a number of aspects of the interview or interrogation be documented or recorded, including the Miranda warnings.
- **Kingsport Police Department:** Kingsport PD has no departmental policies regarding the recording of custodial interrogations, and does not utilize the practice at the recommendation of the District Attorney.
- **Morristown Police Department:** Departmental policies at Morristown PD state that custodial interrogations may be recorded either electronically or in note form. The department maintains a practice of electronically recording custodial interrogations at the discretion of the lead investigator.
- **Oak Ridge Police Department:** Oak Ridge PD had previously maintained a practice of utilizing both audio and video during most major crimes interviews and interrogations, but stopped utilizing the practice at the direction of a prior District Attorney. Currently under a new District Attorney, Oak Ridge PD is seeking to establish new policies and practices of using electronic recording and making the resource available to all officers.
- **Shelby County Sheriff's Office:** The General Investigation Bureau's Standard Operating Procedures mandate that all interviews and interrogations will be video/audio recorded. Additionally, the General Investigation Bureau's Newly Assigned Officer Training Program mandates that all new officers be trained on the proper use of the video/audio equipment for recording interviews and interrogations.
- **Rutherford County Sheriff's Office:** The Rutherford County Sheriff's Office routinely electronically records custodial interrogations but does not have any written department policies on the practice.
- **Sullivan County Sheriff's Office:** The Standard Operating Procedure document states that a suspect's statement may not be electronically recorded without prior approval from the Sheriff, and that if a recording is to be made that the person being interviewed shall be informed that the officer will be electronically recording the interview.
- **Sumner County Sheriff's Office:** Criminal investigators and internal affairs investigators record the majority of their interviews with victims, witnesses and suspect to preserve information received.
- **Williamson County Sheriff's Office:** The Williamson County Sheriff electronically records custodial interrogations at the discretion of the lead investigator but has no written policies on the issue.

- **Washington County Sherriff's Office:** The Washington County Sherriff records interrogations at the discretion of the lead investigator but has no written policies on the issue.
- **Blount County Sherriff's Office:** Blount County Sherriff's Office reports that they routinely electronically record custodial interviews and interrogations, but policies do not require it. Among other reasons cited, Blount County officials record because the practice helps develop the strongest evidence possible against the guilty, strengthens prosecutors' cases, provides an objective record of an interrogation, and prevents wrongful convictions.
- **Madison County Sherriff's Office:** Madison County Sherriff's office does record interrogations at the discretion of the lead investigator but has no written policies that require the practice.
- **Tennessee Bureau of Investigation (TBI):** The TBI has written policies and procedures regarding the electronic recording of custodial interrogations that give the interviewing Special Agent the discretion over whether to record and outlining procedures officers must follow if they decided to electronically record an interrogation.

The policies above demonstrate that there is great inconsistency in how electronic recording is conducted across Tennessee jurisdictions. This inconsistency means that the benefits and protections of electronic recording are available in some cities and counties in some cases, but are absent in others. Electronic recording has emerged as an important police tool that enhances the reliability of evidence. Adopting a statewide rule would ensure consistency in the use of the practice across the state, and would establish Tennessee among the leaders in the effort to modernize the criminal justice system.

For more information related to the use of this practice in other jurisdictions:

Electronic Recording of Custodial Interrogations: A Policy Review, The Justice Project.

http://www.thejusticeproject.org/wp-content/uploads/polpack_recording-fin2.pdf

"Police Experiences with Recording Custodial Interrogations," Thomas P. Sullivan (2004).

http://www.jenner.com/files/tbl_s20Publications%5CRelatedDocumentsPDFs1252%5C748%5CCWC_article_with%20Index.final.pdf

Electronic Recording of Custodial Interrogations: Everybody Wins, Thomas Sullivan (2005).

<http://www.thejusticeproject.org/wp-content/uploads/sullivanrecording.pdf>

A Compendium of Electronic Recording Current Practices and Recommendations, Wisconsin Department of Justice, 2005.

<http://www.doj.state.wi.us/dles/tns/elecrecord/09Compend>.