

ELECTRONIC RECORDATION OF JUVENILE INTERROGATIONS¹

The electronic recordation of all juvenile interrogations involving acts that could be charged as felonies if committed by adults is proposed in the Model Juvenile Code for Georgia released by the Juvenile Law Committee of the Young Lawyers Division of the State Bar of Georgia in March, 2008.²

What would the electronic recordation of custodial interrogations entail?

- Recordings include the juvenile being advised of his or her *Miranda* rights, followed by the entire custodial interrogation.
- Recordings are made to audiotape, videotape, or digital media and will be preserved by the state until the child's adjudication is final and all direct and habeas corpus appeals are exhausted.
- Recordings are not admissible unless they are accurate and not intentionally altered.

Why is recording the custodial interrogations of juveniles important?

- Recording custodial interrogations benefits the accused by protecting against forced or false confessions.³
- Forced or false confessions are not as rare as one might think. Research indicates that they have contributed to 15-25% of wrongful convictions nationally. Additionally, 55% of all false confessions in the United States between 1989 and 2003 were found to be from defendants who were under the age of eighteen, or mentally disabled, or both.⁴
- Recording custodial interrogations also benefits law enforcement officials and the community by providing strong evidence that can help to convict the guilty.⁵

How does this impact Georgia's current law?

- There is currently no law in the O.C.G.A. that addresses the electronic recordation of custodial interrogations.

¹ April 14, 2008 by Nick Burton, Student Intern, Emory University Rollins School of Public Health class of 2008.

² Soledad A. McGrath, Velma Cowen Tilley & Lucy S. McGough, State Bar of Georgia Young Lawyers Division Juvenile Law Committee, THE JUVENILE CODE REVISION PROJECT: A MODEL CODE FOR GEORGIA, § 15-11-709 (2008).

³ Kimberly A. Horiuchi, Assembly Committee on Public Safety, California SB 511 Senate Bill Analysis (July 7, 2007), available at http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0501-0550/sb_511_cfa_20070625_095700_asm_comm.html.

⁴ Samuel R. Gross et al., *Exonerations in the United States, 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 544 - 545 (2005).

⁵ *Id.*

- The proposed model code would amend O.C.G.A. Title 15 to add this new requirement.

Electronic recordation in other states

- Legislation mandating the electronic recording of custodial interrogations for any person accused of serious crimes exists in Illinois, Maine, New Mexico, and the District of Columbia.⁶
- The state supreme courts of Alaska, Massachusetts, Minnesota, New Hampshire, New Jersey, and Wisconsin have ruled that law enforcement officials must electronically record interrogations of juveniles when possible.⁷
- More than 450 police and sheriff's departments throughout the country have independently adopted electronic recording procedures.⁸

⁶ 725 ILL. COMP. STAT. 5/103-2.1 (2005) (for cases involving a homicide); ME. REV. STAT. ANN. Tit. 25, § 2803-B(1)(K) (2004) (for cases involving crimes deemed to be serious); N.M. Stat. § 29-1-16 (2006) (for cases involving any felony); D.C. Code § 5-116.01 (2005) (for cases involving crimes of violence).

⁷ *Stephan v. State*, 711 P.2d 1156 (Alaska 1985); *State v. DiGiambattista*, 813 N.E.2d 516 (Mass. 2004); *State v. Scales*, 518 N.W.2d 587 (Minn. 1994); *State v. Barnett* 789 A.2d 629, 632-633 (N.H. 2002), *State v. Cook*, 847 A.2d 530 (N.J. 2004); *State v. Jerrell C.J.*, 699 N.W. 2d 110 (Wis. 2005).

⁸ Thomas P. Sullivan, *Electronic Recording of Custodial Interrogations: Everybody Wins*, 95, J.CRIM. L. & CRIMINOLOGY, 1126, 1131-1136 (2005).