

March 21, 2007

The Honorable Elaine Alquist  
13<sup>th</sup> Senate District  
State Capitol Building  
Sacramento, CA 95814

POSITION: **OPPOSE:** SB 511; Interrogation: recording

Dear Senator Alquist,

After careful analysis of SB 511, I regret that I must oppose your bill that addresses custodial interrogations and recordings.

If SB 511 becomes law, I foresee it giving the appellate court the opportunity to interpret the complexity of the law and create new case law that could affect (good) case law, and the current evidence code.

In most cases we make use of our interview rooms located in our Specialized Division (Homicide, Crimes Against Children, etc.) in our Headquarters office. However, there are times due to unforeseen circumstances that a suspect needs to be interviewed immediately at or near the crime scene. Perhaps the case involves the kidnapping of a child and only the suspect knows where he/she is. It is imperative to try to get an immediate confession that may save the child's life. There may not be an interview room with video and audio capabilities. We can only audio record, and that may be in the back seat of an investigator's vehicle. There was such a case in 1984 in Fontana, CA. A female child was kidnapped, sexually assaulted, and buried alive in an ice chest in the Phelan area of San Bernardino County. The suspect finally confessed but only after several hours of interrogation. That interview was audio recorded. The victim was found dead.

Due to our vast county area in San Bernardino (over 20,000 square miles), detectives drive for hours to conduct an interview/interrogation with a suspect (who is willing at that time to give a statement) at a station that may or may not have an interview room prepared with the necessary equipment to audio record or video tape the interview/interrogation. In addition, attempting to video tape a suspect at the crime scene may cause a subject/suspect to be reluctant to talk to investigators.

In our department, this will require each station and detention center to have an interview room retrofitted with the necessary equipment to audio and video record interviews and interrogations. If the state does not provide counties and cities with funds for all law enforcement agencies to retrofit their facilities, the burden of funding will be costly for the construction and hardware placement.

Currently, if a suspect is in custody on an unrelated charge in one of the state prisons and needs to be interviewed or interrogated, prison authorities do not allow video taping/recording equipment into their facilities. Special permission must be obtained in order to allow for a tape recorder to be taken into a prison.

I agree that all homicides and serious felonies need to be recorded. However, the word "shall" is too restrictive with regards to interviewing and /or interrogating a suspect in a homicide investigation. There is a concern that the focus of a trial will be more on the procedures of law enforcement using proper recording devices than on the actions of the suspect.

I have grave concerns of the "cautionary jury instruction" in the event the officer's recorded interrogation is deemed unlawful by the courts. It is unclear what "unlawful" means here. Could this involve a situation where the recording equipment malfunctioned? And then there are situations where spontaneous statements are given by a defendant prior to any recording equipment set up. Those statements are lawfully obtained, but because they are not recorded, will they be deemed "unlawful?"

If I can be of assistance in this matter please feel free to contact me.

Sincerely,

GARY S. PENROD