

**TASK FORCE TO INVESTIGATE & DEVELOP POLICIES & PROCEDURES FOR  
ELECTRONICALLY RECORDING CUSTODIAL INTERROGATIONS**

**Rhode Island General Laws §12-7-22.**

February 1, 2012

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The Honorable Paul A. Suttell  
Chief Justice of the Rhode Island Supreme Court  
250 Benefit Street  
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Senator M. Teresa Paiva Weed  
President of the Senate  
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Representative Gordon D. Fox  
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Senator Michael J. McCaffrey  
Chairman, Senate Judiciary Committee  
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Representative Edith H. Ajello  
Chairwoman, House Judiciary Committee  
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**RE: Final Report of the TASK FORCE TO INVESTIGATE  
& DEVELOP POLICIES & PROCEDURES FOR  
ELECTRONICALLY RECORDING CUSTODIAL  
INTERROGATIONS: *RIGL §12-7-22.***

Dear Governor Chafee, Chief Justice Suttell, President Paiva  
Weed, Speaker Fox, Chairman McCaffrey & Chairwoman Ajello:

It is our pleasure to inform you that the TASK FORCE TO INVESTIGATE & DEVELOP POLICIES & PROCEDURES FOR ELECTRONICALLY RECORDING CUSTODIAL INTERROGATIONS created by *RIGL §12-7-22* has completed its work. In compliance with the legislative mandate we are submitting its final report for your consideration.

Prior to 2011 twenty three (23) states had taken a variety of statewide legislative and / or judicial actions regarding the electronic recording of custodial interrogations. In 2011 Rhode Island became the twenty-fourth when the General Assembly enacted *R.I.G.L. §12-7-22*. In so doing the legislature was clear in what it intended:

In order to:

- (1) Minimize the likelihood of a wrongful conviction caused by a false confession; and
- (2) Further improve the already high quality of criminal justice in our state, the general assembly creates a taskforce to investigate and develop policies and procedures for electronically recording custodial interrogations in their entirety. *RIGL § 12-7-22(a)*

The statute assembles a diverse group of Rhode Island's criminal justice stakeholders and empowers it to study and make recommendations concerning the establishment of a statewide law enforcement practice of electronically recording custodial interrogations in their entirety. In so doing the statute requires that the Task Force's consideration include but not be limited to the following:

- Models from other federal and state jurisdictions
- Current policies, procedures, and practices of law enforcement statewide
- Types of crimes, investigations, and settings where custodial interrogations should be electronically recorded
- Whether custodial interrogations should be electronically recorded using audio-visual or strictly audio recording
- Whether custodial interrogations should be electronically recorded with or without the knowledge of the suspect
- Appropriate procedures to be followed when the suspect refuses to be, or exigent circumstances otherwise prevent, the electronic recording of the custodial interrogation
- How to most effectively record interrogations in view of an individual police department's fiscal, staffing, and space constraints

- Appropriate policies and procedures concerning the transcription of the electronic recordings resulting from custodial interrogation
- Appropriate policies and procedures concerning the long-term preservation and storage of the electronic recordings resulting from custodial interrogation
- The desirability of written policies, procedures, training, and/or additional legislation regarding the electronic recording of custodial interrogations in their entirety statewide.

Finally, the statute requires that the task force submit a report on its recommendations concerning the investigation and development of policies and procedures for electronically recording custodial interrogations in their entirety to the Governor, the Chief Justice of the Rhode Island Supreme Court, the Speaker of the House of Representatives, the President of the Senate, and the Chairpersons of the Judiciary Committees of both the House of Representatives and the Senate no later than February 1, 2012, at which time it shall terminate.

The Task Force met to begin its work in September of 2011 and in a series of meetings held throughout the fall and winter of 2011-2012 heard from a series of experts in the fields of psychology; police procedures and capacity; and “best practices”, reform efforts, and law enforcement experiences across the country with the electronic recording of custodial interrogations. The Task Force was greatly assisted in its work by presentations from:

- Rebecca Brown, Senior Policy Analyst for State Affairs, The Innocence Project
- Melissa B. Russano, Ph.D., Associate Professor of Criminal Justice, Roger Williams University
- Thomas P. Sullivan, Esq., Senior Partner, Jenner & Block, Chicago
- Chief Sidney M. Wordell, Little Compton Police Department

The value of these presentations cannot be overstated and they are contained in the appendix to the report.

The Task Force also was guided by efforts at both the state and local level in this area including written policies from a number of different states and localities across the country. During the course of its work, the Task Force was also pleased to learn that several Rhode Island law enforcement agencies had already adopted written policies containing “best practices” for the electronic recording of custodial interrogations. These include the Rhode Island State Police and Woonsocket Police Department.

It is also our pleasure to report that a spirit of collaboration and cooperation was present throughout the work of the Task Force. Indeed, we are proud to inform you that there was complete unanimity in the nine (9) recommendations made in the report including that *R.I.G.L. §12-7-22* be amended during the 2012 session of the General Assembly to extend the life of the Task Force so that it may continue its important work in this area.

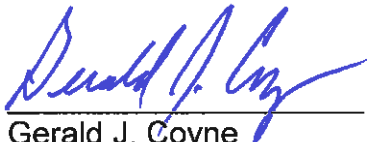
On behalf of the entire Task Force we want to thank you for the opportunity to help improve the quality of justice in our state.

Respectfully Submitted,

**The TASK FORCE TO INVESTIGATE & DEVELOP POLICIES & PROCEDURES  
FOR ELECTRONICALLY RECORDING CUSTODIAL INTERROGATIONS:**

***RIGL §12-7-22.***

BY:



Gerald J. Coyne  
Deputy Attorney General  
*Designee, Attorney General*



Michael A. DiLauro  
Assistant Public Defender //  
Director of Training & Legislative Liaison  
*Designee, Public Defender*

Enclosures: 1. Task Force Final Report 2. APPENDIX [CD-ROM]



# FINAL REPORT

TASK FORCE TO INVESTIGATE &  
DEVELOP POLICIES &  
PROCEDURES FOR  
ELECTRONICALLY RECORDING  
CUSTODIAL INTERROGATIONS

*RIGL §12-7-22.*

February 1, 2012

## MISSION & METHODOLOGY

Prior to 2011 twenty three (23) states had taken a variety of statewide legislative and / or judicial actions regarding the electronic recording of custodial interrogations<sup>1</sup>. In 2011 Rhode Island became the twenty-fourth when the General Assembly enacted *R.I.G.L. §12-7-22* (the statute). In so doing the Legislature was clear in what it intended:

In order to:

- (1) Minimize the likelihood of a wrongful conviction caused by a false confession; and
- (2) Further improve the already high quality of criminal justice in our state, the general assembly creates a taskforce to investigate and develop policies and procedures for electronically recording custodial interrogations in their entirety. *RIGL § 12-7-22(a)*<sup>2</sup>

The statute assembles a diverse group of Rhode Island's criminal justice stakeholders<sup>3</sup> and empowers it to study and make recommendations concerning the establishment of a statewide law enforcement practice of electronically

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<sup>1</sup> Ongoing research by the Office of the Public Defender regarding the States that have taken action in this area as of January 18, 2011. Appendix, 'Legislation' folder, 'MERI Summary 11.pdf'

<sup>2</sup> The Task Force heard from witnesses who advised that although the electronic recording of confessions does not prevent false confessions such a procedure is a safeguard in order to ensure an accurate record of a suspect's comments, which may help determine whether a false confession has occurred.

<sup>3</sup> The stakeholders designated by the statute are the Attorney General; Public Defender; Superintendent of the Rhode Island State Police; President of the Rhode Island Police Chiefs' Association; Head of the Municipal Police Training Academy; President of the Rhode Island Bar Association; President of the Rhode Island Association of Criminal Defense Lawyers; Public Safety Commissioner of the City of Providence; Chief of Police of a department with less than forty-five (45) sworn officers and which does not currently have an established policy concerning the electronic recording of custodial interrogations, to be agreed upon by the task force; Chief of Police of a department that already has established a policy concerning the regular electronic recording of custodial interrogations to be agreed upon by the task force; Executive Director of the Rhode Island Commission for Human Rights; or their designees. The statute designates the Attorney General and the Public Defender as co-chairs of the task force.

recording custodial interrogations in their entirety. In so doing the statute requires that the Task Force's consideration include but not be limited to the following:

- Models from other federal and state jurisdictions
- Current policies, procedures, and practices of law enforcement statewide
- Types of crimes, investigations, and settings where custodial interrogations should be electronically recorded
- Whether custodial interrogations should be electronically recorded using audio-visual or strictly audio recording
- Whether custodial interrogations should be electronically recorded with or without the knowledge of the suspect
- Appropriate procedures to be followed when the suspect refuses to be, or exigent circumstances otherwise prevent, the electronic recording of the custodial interrogation
- How to most effectively record interrogations in view of an individual police department's fiscal, staffing, and space constraints
- Appropriate policies and procedures concerning the transcription of the electronic recordings resulting from custodial interrogation
- Appropriate policies and procedures concerning the long-term preservation and storage of the electronic recordings resulting from custodial interrogation
- The desirability of written policies, procedures, training, and/or additional legislation regarding the electronic recording of custodial interrogations in their entirety statewide.

Finally, the statute requires that the task force submit a report on its recommendations concerning the investigation and development of policies and procedures for electronically recording custodial interrogations in their entirety to the Governor, the Chief Justice of the Rhode Island Supreme Court, the Speaker of the House of Representatives, the President of the Senate, and the Chairpersons of the Judiciary Committees of both the House of Representatives and the Senate no later than February 1, 2012, at which time it shall terminate.

During the course of its work and through the several presentations and other information that it has received and reviewed, the Task Force has learned that in addition to guarding against a false confession the electronic recording of custodial interrogations has many positive benefits for law enforcement in prosecuting the guilty. These include:

- Recordings make law enforcement officers more efficient and more effective while questioning suspects. Recordings permit detectives who are conducting interviews to focus on suspects rather than taking notes, which distract both police and suspects. Other police, listening to audio or watching video by remote hookups in nearby rooms, are often able to suggest questions or lines of inquiry to the officers conducting the interviews.
- Full custodial recordings make it unnecessary for police to struggle to recall details when later writing reports and testifying about what occurred during the interviews.
- Recordings also offer the prosecution and the defense an efficient way of determining whether the custodial interviews were conducted in accordance



with legal requirements. They usually illustrate the expertise and professionalism of police, show that required *Miranda* warnings were given, reproduce precisely what the police and suspects said and did, and demonstrate whether the suspects' statements were voluntarily and knowingly made.

- When defense lawyers have the opportunity to evaluate recordings of properly conducted interviews of their clients, pretrial motions to suppress statements and confessions are drastically reduced, because there is little or no room for dispute as to what happened. Furthermore, police officers and prosecutors do not have to spend time preparing for and engaging in pretrial hearings, and detectives are spared hostile cross examinations about failing to give *Miranda* warnings, use of coercive tactics, and misstating what occurred. In short, when custodial interrogations are electronically recorded the number of contested pre-trial motions to suppress, trials, and appeals are reduced and guilty pleas increase resulting in a substantial costs savings both to the state and local municipalities and police departments.

*Thomas P. Sullivan, Recording Federal Custodial Interviews, 45 American Criminal Law Review 1297, 1306 (2008)*<sup>4</sup>

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<sup>4</sup> Mr. Sullivan is a partner at the law firm of Jenner & Block, Chicago, and a former United States Attorney for the Northern District of Illinois, Co-Chair of Illinois Governor George H. Ryan's Commission on Capital Punishment, and Chair of the Capital Punishment Reform Study Committee. Mr. Sullivan is acknowledged by most to be the foremost expert in the country in the area electronic recording of interrogations generally and the universally positive experiences of law enforcement with it in particular. See, *Sullivan, Departments That Currently Record A Majority of Custodial Interrogations (9/16/09)*(ongoing and anecdotal research collects police departments across the United States that electronically record custodial interrogations, either in response to the requirements of law in their states or as a matter of departmental policy); THOMAS P. SULLIVAN, CENTER ON WRONGFUL CONVICTIONS, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, POLICE EXPERIENCES WITH RECORDING CUSTODIAL

The Task Force met to begin its work in September of 2011 and in a series ten (10) meetings held throughout the fall and winter of 2011-2012 heard from a variety of experts in the fields of psychology; police procedures and capacity to record; and “best practices”, reform efforts, and law enforcement experiences across the country with the electronic recording of custodial interrogations. The Task Force is of the opinion that it was provided with the very best information available during presentations made to it by:

- Rebecca Brown, Senior Policy Analyst for State Affairs, The Innocence Project. During her presentation on October 20, 2011, Ms. Brown provided the task force with an overview of the issue; how and why false confessions occur; and how the problem is being addressed across the United States.
- Melissa B. Russano, Ph.D., Associate Professor of Criminal Justice, Roger Williams University. During her presentation on November 14, 2011, Dr. Russano discussed the psychology of false confessions and how and why they occur.
- Thomas P. Sullivan, Esq., Senior Partner, Jenner & Block, Chicago. During his presentation on November 28, 2011, Attorney Sullivan discussed the overall and positive law enforcement experience with the electronic recording of custodial interrogations across the United States.
- Chief Sidney M. Wordell, Little Compton Police Department. During his presentation on December 19, 2011 Chief Wordell discussed the questionnaire to and compilation of data regarding Rhode Island law enforcement agencies capacity to electronically record custodial interrogations.

The value of these presentations which are contained in the appendix to this report cannot be overstated<sup>5</sup>. The Task Force wishes to publicly acknowledge

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INTERROGATIONS 1 (2004), <http://www.jenner.com/policestudy>; Thomas P. Sullivan, *Electronic Recording of Custodial Interrogations*, THE CHIEF OF POLICE: NAT'L ASS'N OF CHIEFS OF POLICE, Nov.-Dec. 2005, at 17. The Task Force was pleased to receive a presentation from Mr. Sullivan on November 28, 2011.

<sup>5</sup> Appendix, 'Presentations' folder

and thank each of these presenters for sharing their wealth of knowledge and experience with it.

The Task Force also was guided by efforts at both the state and local level in this area including written policies from a number of different states, law enforcement agencies, and municipalities across the country. During the course of its work, the Task Force was also pleased to learn that several Rhode Island law enforcement agencies had already adopted written policies containing “best practices” for the electronic recording of custodial interrogations. These include the Rhode Island State Police and Woonsocket Police Department<sup>6</sup>.

It is also our pleasure to report that a spirit of collaboration and cooperation was present throughout the work of the Task Force. Indeed, we are proud to inform you that there was complete unanimity in the nine (9) recommendations made in the report including that *R.I.G.L. §12-7-22* be amended during the 2012 session of the General Assembly to extend the life of the Task Force so that it may continue its important work in this area.

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<sup>6</sup> All of the written policies received and reviewed by the Task Force including those recommended by Attorney Sullivan are contained in the Appendix, 'Written Policies & 'Best Practices" folder. Those from the State of Florida are in the Appendix, 'Florida Innocence Commission Materials' folder.

## DEFINITIONS & EXPLANATION

Several of the written policies received and reviewed by the Task Force contain a definitional section both for clarity and construction purposes<sup>7</sup>. For that reason the following definitions shall apply at all times throughout this report:

**(1) “Custodial interrogation” means express questioning or its functional equivalent including words or actions on the part of the police other than those normally attendant to arrest and custody that the police should know are reasonably likely to elicit an incriminating response from the suspect initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way such that a reasonable individual in the same circumstances would consider themselves in custody.**

**(2) “Electronic recording” means an audio recording or audio and video recording that accurately records a custodial interrogation. “Record electronically” and “recorded electronically” have a corresponding meaning.**

**(3) “Law enforcement officer” means any sworn member of the following agencies:**

- **The Rhode Island State Police**
- **Any municipal or local police department**
- **The Rhode Island Airport Corporation Police**
- **The Rhode Island Capitol Police**
- **The Rhode Island Department of Environmental Management Division of Law Enforcement**
- **The Rhode Island State Fire Marshal**
- **Providence Fire Department Arson Investigators**
- **Brown University Police Department**
- **Rhode Island School of Design Public Safety Department**
- **University of Rhode Island Campus Police**

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<sup>7</sup> Appendix, “Written Policies & ‘Best Practices” folder: *District of Columbia Metropolitan Police General Order #SPT-304-16, Section III* (for the purposes of DC recording policy definitions of such critical words and phrases as ‘custodial interrogations’; ‘crimes of violence’; ‘interview room’; and ‘subject’); *UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (9/30/10), SECTION 2. DEFINITIONS* at pp. 9, 10.

- Rhode Island College Campus Security
- Community College of Rhode Island Campus Security
- Rhode Island Sheriff's Department
- Rhode Island Attorney General's Office Inspectors appointed pursuant to 42-9-8.1

**(4) "Place of detention" means a fixed location under the control of a law enforcement agency where individuals are questioned about alleged crimes. The term includes a jail, police station, holding cell, and correctional or detention facility.**

**(5) "Statement" means a communication whether oral, written, electronic, or nonverbal<sup>8</sup>.**

Finally the Task Force recognizes that as of the date of this report, neither the United States Supreme Court nor the Rhode Island Supreme Court has held that a suspect has a constitutional right to have their statement to police electronically recorded. Recognizing, instead, that the electronic recording of a confession is a "best practice", the Task Force is mindful that none of its recommendations should be misconstrued to create a substantive or procedural right that does not presently exist.

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<sup>8</sup> The definitions in this section are taken from or suggested by:

- "Custodial interrogation" - *State v. Perez*, 422 A.2d 913, 914-915 (R.I. 1980) quoting *Fare v. Michael C.*, 442 U.S. 707, 709, 99 S. Ct. 2560, 2563, 61 L. Ed. 2d 197, 202 (1979); *Miranda v. Arizona*, 384 U.S. at 444, 86 S. Ct. at 1612, 16 L. Ed. 2d at 706; *State v. Vargus*, 118 R.I. 113, 120, 373 A.2d 150, 153 (1977); *Rhode Island v. Innis*, 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980) (definitions of "custodial interrogation"); *UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (9/30/10), SECTION 2. DEFINITIONS* at pp. 9, 10.
- "Law enforcement officer" - *RIGL § 12-7-21* (definition of "peace officer" for purposes of arrest statute)
- "Custodial interrogation"; "Electronic recording"; "Place of detention"; and "Statement" - *UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (9/30/10), SECTION 2. DEFINITIONS* at pp. 9, 10.

## **TASK FORCE RECOMMENDATIONS**

### **RECOMMENDATION #1**

In order to:

- Further improve the already high quality of criminal justice in our state;
- Create a model for “best practices” in evidence gathering;
- Protect law enforcement personnel from claims of coercion or that *Miranda* protections were not afforded the suspect; and
- Create a permanent record of the custodial interrogation that may be revisited for investigative and/or training purposes

the Task Force recommends that every Rhode Island law enforcement agency adopt uniform written policies and procedures requiring the electronic recording of custodial interrogations in their entirety. The Task Force further recommends that every Rhode Island law enforcement agency have such a written policy in place no later than July 1, 2013. Such written policies should be consistent with: 1) recommendations made by the Task Force; 2) the training afforded law enforcement personnel by the Rhode Island Municipal Police Training Academy, Providence Police Training Academy, Rhode Island State Police Training Academy, and all entities within the Rhode Island Department of Public Safety; 3) oversight given by the Department of the Attorney General; and 4) standards promulgated by the Rhode Island Police Chief's Accreditation Commission

**Standards Committee. The Task Force also recommends that for ease of use, a written policy should contain an initial "definitions" section as do those of several law enforcement agencies that it has considered. The Task Force further recommends that consideration be given to using the definitions contained in the preceding section in any written policy regarding the electronic recording of custodial interrogations in their entirety. Finally, the Task Force recommends that should its existence be extended by the General Assembly it should engage in further consideration to determine 1) if any other law enforcement agencies should be included in the definition of "law enforcement officer"; and 2) if a definition of "In its entirety" or "In their entirety" should be included. At that time the Task Force should consider feedback from the law enforcement community regarding the use of written policies in this area and any implementation issues that may have arisen as a result of not having such definitions.**

Explanation of Recommendation: *RIGL Sec. 12-7-22* (the statute) creates, empowers, and prescribes the mission of the Task Force. It presumes the desirability of the practice of electronically recording custodial interrogations in their entirety and requires that the Task Force help to effectuate it consistently on a statewide basis. *RIGL Sec. 12-7-22(a)(2), (d), (e)*. See also, *Sullivan, Police Experiences with Recording Custodial Interrogations, Northwestern University School of Law* (benefits of electronically recording custodial interrogations and law enforcement's positive experiences with it across the country). The benefits to be derived from a uniform statewide policy on the electronic recording of custodial interrogations in their entirety are taken from the statute

and suggested by a written policy of the Rhode Island State Police in a similar area. See, *RISP General Order 59D3, Use of Mobile Videotape/DVD-Video Discs/Audio Recording Equipment (Rev. 11/16/06)*(general order concerning the use of electronic recording equipment by the state police during traffic stops); See also, *District of Columbia Metropolitan Police General Order #SPT-304-16, Section I* (background and purposes of electronic recording of custodial interrogations). The portion of this recommendation regarding consistency, training, and oversight is adapted from the final report of the *TASK FORCE TO IDENTIFY & RECOMMEND POLICIES & PROCEDURES TO IMPROVE THE ACCURACY OF EYEWITNESS IDENTIFICATION: RIGL §12-1-16, RECOMMENDATION #1* (regarding the use of written policies for conducting eyewitness identification procedures). An explanation of the standards and accreditation process currently being undertaken by the Rhode Island Police Chief's Accreditation Commission Standards Committee is contained in correspondence received by the Task Force at its meeting on January, 25, 2012. These are a letter and memo dated January 25, 2012 and January 23, 2012, respectively, explaining the nature of the work being undertaken in this area. The definitions recommended for use in any written policy in this area are contained in the previous section at pp. 6-8. The benefits of a comprehensive definitional section are suggested by *District of Columbia Metropolitan Police General Order #SPT-304-16, Section III* (for the purposes of DC recording policy definitions of such critical words and phrases as 'custodial interrogations'; 'crimes of violence'; 'interview room; and 'subject') and the *UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT*,



*NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (9/30/10), SECTION 2. DEFINITIONS at pp. 9, 10.* Most of the information and materials cited herein can be accessed in the Appendix, "Legislation" and "Written Policies & 'Best Practices'" folders; the balance are in the public domain or available upon request.

## **RECOMMENDATION #2**

- a) **The Task Force recognizes and acknowledges the numerous law enforcement agencies across the United States that have adopted written policies and procedures requiring the electronic recording of custodial interrogations in their entirety as a "best practice". Some have done so at the behest of the legislature and / or the courts in their states. The Task Force has considered and recognizes the value of the thoughtful written policies that it has received from a number of law enforcement agencies across the United States including the District of Columbia; Florida (Bradford County, Clearwater, Gainesville, Miami Beach, and Tallahassee); Illinois (Chicago and St. Claire); Denver, CO; and Boston, MA.**
- b) **The Task Force recognizes and acknowledges those Rhode Island law enforcement agencies that have adopted written policies and procedures requiring the electronic recording of custodial interrogations in their entirety as a "best practice". The Task Force has considered and recognizes the value of the thoughtful written policies that it has received from both the Rhode Island State Police and the Woonsocket Police Departments.**

c) **The Task Force has learned that in July, 2012, the Rhode Island Police Chiefs Accreditation Commission Standards Committee will work to formulate standards which will be used to implement a uniform statewide written policy regarding the electronic recording of custodial interrogations in their entirety. The Task Force therefore recommends that the aforementioned written policies help inform that process and should be considered by all law enforcement agencies.**

Explanation of Recommendation: The statute requires that the Task Force receive and consider information such as this. *RIGL Sections 12-7-22(d)(1), (2)*. All of the written policies received and considered by the Task Force including those recommended by Attorney Sullivan are contained in the Appendix, 'Written Policies & 'Best Practices" folder. Those from the State of Florida are in the Appendix, 'Florida Innocence Commission Materials' folder.

### **RECOMMENDATION #3**

**Because Rhode Island is a "One Party Consent State", the Task Force recognizes that it is generally legal for a custodial interrogation to be electronically recorded in its entirety without the knowledge of the suspect. The Task Force recommends that any written policy in this area take into consideration this opportunity when deemed appropriate by each individual law enforcement agency.**

Explanation of Recommendation: The statute requires that the Task Force consider this issue. *RIGL Sections 12-7-22(d)(5)*. Current Rhode Island law allows surreptitious electronic recording of a conversation when one party to the conversation has knowledge of the recording taking place. *State v. Marini, 638 A.2d 507 (R.I. 1994)*(interpreting *RIGL Sec. 12-5.1 THE INTERCEPTION OF WIRELESS AND ORAL COMMUNICATIONS ACT*, the Court held that an arson suspect's voluntarily-induced, secretly recorded statements at the police station were not "wire communications" nor were they "oral communications" since the suspect did not have a justifiable expectation of privacy in those statements); *State v. Ahmadjian, 438 A.2d 1070 (R.I. 1981)*(in situations where an individual consents to having his communications monitored *RIGL Sec. 12-5.1* does not apply); *State v. Williams, 752 A.2d 951 (R.I. 2000)*(participant monitoring is not governed by this chapter).

#### **RECOMMENDATION #4**

- a) **The Task Force recognizes the superiority of audio-visual over strictly audio recording. The Task Force therefore recommends that custodial interrogations be electronically recorded in their entirety using audio-visual equipment whenever feasible, which includes the suspect and interviewer(s) and that any written policies reflect that preference.**
- b) **The Task Force further recognizes that circumstances may render the use of audio-visual equipment impossible or impractical. The Task Force therefore recommends that, in instances in which a good-faith determination has been**

**made that audio-visual recording is impossible or impractical, audio recording of custodial interrogations in their entirety be undertaken.**

Explanation of Recommendation: The statute requires that the Task Force consider and address this issue. *RIGL Sec. 12-7-22(d)(4)*. Those who provided information to the Task Force were unanimous in recommending audio-visual recording as a 'best practice'. Also, during her presentation on November 14, 2011, Dr. Melissa Russano suggested that in so doing the audio portion may be extracted from the video portion if that method is deemed preferable during the presentation of evidence in court.

#### **RECOMMENDATION #5**

**The Task Force recommends that any written policy regarding the electronic recording of custodial interrogations in their entirety contain the following provision: that when a suspect refuses to be recorded the department be permitted to dispense with the requirement of electronically recording the custodial interrogation. In such cases the Task Force recommends that the refusal be memorialized either electronically or in writing. Refusals in writing should be executed by the officer, suspect, or both.**

Explanation of Recommendation: The statute requires that the Task Force consider and address this issue. *RIGL Sec. 12-7-22(d)(6)*. The following written policies contained in the appendix have procedures to be followed and forms to be used when a suspect refuses to be electronically recorded. *District of Columbia Metropolitan Police General*

*Order #SPT-304-16, Section IV, I, 1; Section O, 3.; Boston Police Department Rules and Procedures, Rule 332, Sec. 4 Procedure (8/6/10); Boston Police Department Electronic Recording Refusal Form (BPD Form 0001-BIS-1204). Appendix, 'Written Policies & 'Best Practices'' folder.*

### **RECOMMENDATION #6**

**The Task Force recommends that any written policy regarding the electronic recording of custodial interrogations in their entirety should contain provisions dispensing with the requirement of electronically recording when exigent circumstances are present. For these purposes 'exigent circumstances' shall be defined as circumstances that would cause a reasonable person to believe that prompt action was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts. In such cases the specific exigent circumstances should be documented.**

Explanation of Recommendation: The statute requires that the Task Force consider and address this issue. *RIGL Sec. 12-7-22(d)(6)*. The definition of 'exigent circumstances' is taken from *United States v. McConney, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984)*.

## **RECOMMENDATION #7**

**The Task Force recommends that any written policy regarding the electronic recording of custodial interrogations in their entirety contain provisions that contain and provide for the following:**

- a) how to most effectively record interrogations in view of an individual police department's fiscal, staffing, and space constraints;**
- b) appropriate policies and procedures concerning the transcription of the electronic recordings resulting from custodial interrogation; and**
- c) appropriate policies and procedures concerning the long-term preservation and storage of the electronic recordings resulting from custodial interrogation.**

Explanation of Recommendation: The statute requires that the Task Force consider and address these issues. *RIGL Sec. 12-7-22(d)(7)-(9)*. The Task Force recognizes that every Rhode Island community and law enforcement agency is unique in its access to and allocation of resources. Therefore each department's written policy should be allowed flexibility in its implementation of the end desired by the statute - statewide uniformity in the electronic recording custodial interrogations in their entirety. It should also be noted that several written policies received and considered by the Task Force have detailed provisions regarding preservation, chain of custody, and related issues and are contained in the appendix. *E.g. see, District of Columbia Metropolitan Police General Order #SPT-304-16, Section V, PROCEDURAL GUIDELINES. Appendix, 'Written Policies & 'Best Practices'' folder.*

### **RECOMMENDATION #8:**

**The Task Force recommends that any written policy require the electronic recording of custodial interrogations in their entirety of a suspect taking place at a place of detention during the investigation of any crime for which a potential sentence of life imprisonment may be imposed. The determination of the crime being investigated shall be based upon facts known to the officer or officers conducting the interrogation at the time the interrogation begins. This recommendation should be construed as a minimum list of criminal offenses that should be electronically recorded and should not preclude or discourage any individual police department from expanding that list. Nothing in this recommendation should be interpreted to limit recording in any case in which the recording is not mandated by policy.**

Explanation of Recommendation: The statute requires that the Task Force consider and address these issues. *RIGL Sec. 12-22-7(d)(3)*(types of crimes, investigations, and settings where custodial interrogations should be electronically recorded). In making this recommendation the Task Force is mindful of the information it received and what it heard during the presentations made to it, especially that of Thomas P. Sullivan, Esq., who reported a nearly universal positive experience by law enforcement across the country with the electronic recording of custodial interrogations. The Task Force therefore feels that going forward the designation of capital offenses should be viewed as a "floor and not a ceiling".

**RECOMMENDATION #9:**

**In recommending that every Rhode Island law enforcement agency adopt uniform written policies and procedures requiring the electronic recording of custodial interrogations in their entirety, the Task Force recognizes the unique situations of smaller communities and departments; the need for additional training; and other issues related to implementation. The Task Force therefore recommends that legislation be introduced extending its life until December 31, 2013; that it meet periodically in the interim in order to assess the impact of the recommendations it has made; that it conduct further research in the area of the electronic recording of custodial interrogations; that it specifically assess the implementation of written policies in these areas by Rhode Island law enforcement agencies; and that it determine whether or not any additional legislation regarding the electronic recording of custodial interrogations in their entirety statewide is required. Said meetings shall be called by agreement of the attorney general and public defender. A supplemental report from the Task Force shall be delivered in the same manner as its initial report and not later than December 31, 2013.**

Explanation of Recommendation: The statute requires that the Task Force consider, “how to most effectively record interrogations in view of an individual police Department’s fiscal, staffing, and space constraints.” *RIGL Sec. 12-7-22(d)(7)*. It should also be noted that a similar Task Force made up of criminal justice stakeholders and created by statute had its life extended and for nearly identical



reasons as are stated here. The improvement of lineup procedures Task Force created in 2010 by *RIGL Sec. 12-1-16* had its life extended in 2011 by *2011 RIPL Chapters 104, 110* which states that:

The task force shall meet periodically thereafter in order to assess the impact of the recommendations made in the report; to conduct further research in the area of eyewitness identification; to specifically assess the use of sequential and simultaneous lineups by Rhode Island law enforcement agencies; and to consider whether, in light of that experience, the use of sequential lineups should be recommended as a "best practice." Said meetings shall be called by agreement of the attorney general and public defender. A supplemental report from the task force shall be delivered in the same manner as its initial report and not later than April 30, 2012.

## **A FINAL WORD & ACKNOWLEDGMENT**

A final word and acknowledgement is in order here. Although his untimely death prevented his direct participation in most of the work of the Task Force, the influence of the late Public Defender John J. Hardiman was not only profound but present throughout. It was through John's vision, persistence, and dedication that the Task Force came into existence and his inspirational presence helped to guide its work. Indeed, the morning after his death, the Task Force agreed to hold one of its regularly scheduled meetings because everyone in attendance knew that is just what he would have wanted. His career long dedication to the cause of improving the quality of justice while ensuring fairness in our state's criminal justice system was, is, and always will be an inspiration to all of us.

TASK FORCE TO INVESTIGATE & DEVELOP POLICIES & PROCEDURES  
FOR ELECTRONICALLY RECORDING CUSTODIAL INTERROGATIONS:  
RIGL §12-7-22.

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**TASK FORCE TO INVESTIGATE & DEVELOP POLICIES & PROCEDURES FOR  
ELECTRONICALLY RECORDING CUSTODIAL INTERROGATIONS**

**RIGL Sec. 12-7-22**

**FINAL REPORT // APPENDIX [CD-ROM]**

**FOLDERS**

- **Agendas, Handouts & Minutes of Task Force Meetings**
  - September 29, 2011
  - October 20, 2011
  - November 14, 2011
  - November 28, 2011
  - December 19, 2011
  - January 5, 2012
  - January 12, 2012
  - January 19, 2012
  - January 25, 2012
  - January 31, 2012
  - Checklist I (12/27/11)& Checklist II (1/5/12)
    - ISSUES & INFORMATION THE TASK FORCE IS OBLIGED TO CONSIDER & ADDRESS: *RIGL Sec. 12-7-22(d), (e)*
    - THE STATUTE & SUGGESTED ORDER OF CONSIDERATION
    - PROPOSED RECOMMENDATIONS FOR DISCUSSION
- **Correspondence**
  - John J. Hardiman, Public Defender, to Task Force members (9/16/11)

- Gerald J. Coyne, Deputy Attorney General & John J. Hardiman, Public Defender, to Task Force members; proposed agenda for first Task Force meeting on September 29, 2011 (9/19/11)

- **Florida Innocence Commission Materials**

- Tab 1 – Commission Reports
- Tab 2 – Chart with Jurisdictions
- Tab 2A – States Requiring Recordings
- Tab 3 – Jury Instructions & Court Rules
- Tab 4 – Florida Protocols On Recording: Bradford County, Clearwater, Gainesville, Miami Beach & Tallahassee
- Tab 5 – Journal Articles
- Table of Contents, March Minutes, False Confession Summary, READ THIS FIRST

- **Legislation**

- Legislation creating Task Force: RIGL § 12-7-22. Electronic recording of custodial interrogations task force.
- Cover letter and proposed legislation amending RIGL § 12-7-22 and extending life of Task Force
- *UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (Long version, September, 2010; Short version, July, 2010)*
- *Ohio Revised Code Section 2933.81. Electronic Recording During Custodial Interrogation.*
- MERI Summary 11.pdf. Summary of law across the United States addressing the electronic recording of custodial interrogations prepared by the Office of the Public Defender.

- **Written Policies & 'Best Practices'**

- Written Policies Recommended by Tom Sullivan
  - Illinois (Chicago and St. Claire)
  - Denver, CO
- Rhode Island Law Enforcement Agencies
  - RI Spreadsheet: canvas of RI law enforcement agencies regarding whether or not they have written policies in this area compiled by Chief Edward Mello, Jamestown Police Department (10/20/11)
  - Pawtucket Police Department
  - *Rhode Island State Police General Order 77A, Criminal Investigations* (last revised on May 20, 2010)
  - Woonsocket Police Department
  - Letter dated 1/25/12 and a memo dated 1/23/12 explaining the nature of the work of the Rhode Island Police Chief's Accreditation Commission Standards Committee both now and in the future. These were provided to the Task Force at its meeting on 1/25/12 by Col. Stephen McCartney, Chief of Police, Warwick Police Department,
- Boston Police Department (includes interrogation, eyewitness identification, and forms)
- District of Columbia (includes both implementing legislation and written policy promulgated in response)
- Overview of exceptions to recording requirements across the United States (spreadsheet compiled by the Innocence Project)

- **Presentations**

- Rebecca Brown, Senior Policy Analyst for State Affairs, The Innocence Project (10/20/11)(overview of the issue; how and why false confessions occur and how the problem is being addressed across the United States)
- Melissa B. Russano, Ph.D., Associate Professor of Criminal Justice, Roger Williams University (11/14/11)(psychology of false confessions)

- Thomas P. Sullivan, Esq., Senior Partner, Jenner & Block, Chicago (11/28/11)(police experience with the electronic recording of custodial interrogations across the United States). The following information was provided to the Task Force prior to its meeting on 11/28/11:

Just a reminder that our next Task Force Meeting is scheduled for Monday, 11/28/11 at 9:30 AM at the Rhode Island State Police headquarters in Scituate. We are scheduled to hear from Tom Sullivan via teleconference call. As you know Tom has written extensively on the topic of the electronic recording of custodial interrogations especially the experiences of law enforcement across the country with it. A great deal of information about Tom and his qualifications and publications are available on his web page on the Jenner & Block website.  
<http://www.jenner.com/people/bio.asp?id=179>.

Subsequent to this meeting Attorney Sullivan provided the Task Force with the written policies of the Chicago and St. Claire, Illinois and Denver, CO police departments in this area that he had received in the course of his research. See, 'Written Policies & 'Best Practices"' folder, *supra*. A summary of Attorney Sullivan's presentation can be found in the minutes of the meeting. See, 'Agendas, Handouts & Minutes of Task Force Meetings' folder, *supra*.

- Chief Sidney M. Wordell, Little Compton Police Department (12/19/11; updated on 1/31/12)(questionnaire to and compilation of data regarding Rhode Island law enforcement agencies capacity to electronically record custodial interrogations)