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**CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS**

**COMMITTEE ON THE JUDICIARY**  
**FULL COMMITTEE**

**MARKUP HEARING ON:**

**H.R. 7636**

**“CUSTODIAL INTERROGATION RECORDING ACT”**

**TUESDAY, SEPTEMBER 15, 2020**

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- Thank you, Chairman Nadler and Ranking Member Jordan, for convening this markup hearing on the several bills listed in the notice of markup, including H.R. 7636, the “*Custodial Interrogation Recording Act*,” which I first introduced in the 113<sup>th</sup> Congress and have reintroduced every Congress since.
- I want thank you Mr. Chairman for your tremendous leadership during this Congress and the past several months of hardship, stress, and disruption not only of the regular normalized operations of this Committee but of the Congress and more importantly, the lives of the American people.

- I also to wish to thank the National Conference of Commissioners on Uniform State Laws (NCCUSL), with whom I first became involved in the issue nearly a decade ago.
- H.R. 7636, the *Custodial Interrogation Recording Act*, is intended to assist state and local law enforcement agencies that are already required by law to videotape custodial interrogations and to lessen the cost disincentive for those states which might otherwise enact legislation consistent with the “*Uniform Electronic Recordation of Custodial Interrogations Act*” adopted in July 2010 by the National Conference of Commissioners on Uniform State Laws at its 119<sup>th</sup> Annual Meeting and submitted to the several states in November 2010.
- Specifically, the legislation authorizes the Attorney General to make grants to States and units of local government to achieve the complete and accurate recording, by both audio and video means, of every custodial interrogation occurring within the State or unit of local government.
- Among the purposes for which grants may be made are the following:
  1. To purchase videotaping equipment;
  2. To fund the hiring and training of videotaping equipment operators;
  3. To fund the development, establishment, and maintenance of systems for handling and preserving recordings of videotaped interrogations; and
  4. To conduct program evaluation studies regarding the efficacy of a state or local law enforcement agency’s custodial interrogation videotaping practices.
- The practice of electronically recording complete custodial interrogations has been on the increase both in this country and throughout the world.

- In recent months, the nation has observed how powerful and compelling video evidence can be, from the killing of George Floyd in Minneapolis, the murder of Ahmed Arbery in Georgia, and Rayshard Brooks in Atlanta.
- Equally compelling and essential to the fair administration of justice is video evidence of custodial interrogations.
- According to the National Conference of Commissioners on Uniform State Laws, research has demonstrated that video recording of custodial interrogations furthers three important civic values: truth-finding, efficient and fair administration of justice, and protection of constitutional guarantees. *See Richard A. Leo, Police Interrogation and American Justice 296-305 (2008); Thomas P. Sullivan, Recording Federal Custodial Interviews, 45 Am. Crim. L. Rev. 1297 (2008).*
- Video recording of the entire process of custodial interrogation has proven to be a major advance in law enforcement, improving the ability to solve crimes and prove cases while lowering the overall costs of investigation and litigation.
- Video recording of custodial interrogations promotes truth-finding in several ways, including by reducing the incentive to fabricate, compensating for faulty or unreliable recollections of witnesses, deterring problematic interrogation methods, filtering out weak cases, enhancing the ability of finders of fact to assess witness credibility and veracity.
- Video recording of custodial interrogations promotes efficiency in the administration of the criminal justice system by reducing the number of frivolous suppression motions, improving the quality of police investigations, improving the quality of case review and screening by prosecutors, and reducing the likelihood of hung juries.

- Video recording of custodial interrogations safeguards constitutional rights and values by making it easier for courts to adjudicate motions to suppress, by making it easier for prosecutors to preserve and disclose material exculpatory evidence required under the Supreme Court decision in *Brady v. Maryland*, 373 U.S. 83 (1963).
- It does this by making it easier for superiors to train police officers in how to comply with constitutional mandates.
- Recordings make it easier for the press, the judiciary, prosecutors, independent watchdog groups, and police administrators to identify and correct misuses of power by law enforcement.
- Video recordings of custodial interrogations make it easier to identify and avoid biases, which would otherwise be difficult to detect and correct because such biases are often unconscious, thus operating outside police awareness.
- Video recordings of custodial interrogations help to improve public confidence in the fairness and professionalism of policing, which in a democracy not only is a good in itself but also a proven means of reducing crime and enhancing citizen cooperation in solving crimes.
- Video recording of the entire process of custodial interrogation is a major boon to law enforcement, improving its ability to prove its cases while lowering overall costs of investigation and litigation.
- Such recordings also improve systemic accuracy, fairness to the accused and the state alike, protection of constitutional rights, and public confidence in the justice system.
- The practice of electronically recording complete custodial interrogations reduces the likelihood that a criminal suspect may give a false confession, which is one of the major causes of wrongful convictions within the criminal justice system.

- Studies have documented that a false confession has been the major contributor in 25 percent of the cases in which an innocent defendant was convicted.
- As recently as 2017, my home state of **Texas led the nation with 229 wrongful convictions** that led to exonerations in the last 25 years.
- False confessions erode public confidence in the criminal justice system and hamper effective investigation and prosecution of crimes because incorrect statements by a suspect can mislead police, prosecutors, defense attorneys, judges and juries into focusing the case on the suspect and away from the true perpetrator of the crime, too often resulting in that perpetrator's freedom to continue criminal activity.
- Mr. Chairman, recent attention to the benefits of electronic recording has, however, been prompted significantly by concerns raised by law enforcement and numerous other system participants and observers about the risks of convicting the innocent.
- In just the past decade, numerous cases of wrongful convictions have garnered the attention of the media, prosecutors, defense counsel, legislators, and law reformers.
- Error was proven in most of these cases by DNA evidence but such evidence is not available in most cases.
- Similar, and perhaps greater, rates of wrongful conviction likely are reflected in the garden variety of cases where DNA evidence is not available.
- Social science studies of wrongful convictions have further revealed that one important contributing factor to a large percentage of the mistakes made in wrongful convictions is the admissibility at trial of a false confession.

- It is important to note that false confessions may occur no matter how conscientious or well-meaning the interrogating officer or how strong his or her belief in the suspect's guilt.
- Subtle flaws in interrogation techniques or actions based on implicit biases can elicit confessions by the innocent.
- Nevertheless, confessions are such powerful and damning evidence of guilt that prosecutors, jurors, and judges often fail to identify the false ones.
- A 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.
- That is why it is essential to improve police training in interrogation techniques that will reduce the risk of error and for improving prosecutor, jury, and judicial effectiveness in spotting mistakes based upon false confessions.
- Mr. Chairman, constitutional principles require exclusion of involuntary confessions and those taken without properly administering *Miranda* warnings, but often defense and police witnesses often tell very different tales about the degree of coercion involved in the interrogation process.
- This conflicting testimony often 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 officers.
- That is why many academics have recommended and several states have statutorily-mandated, and H.R. 7636, the *Custodial Interrogation Recording Act*, facilitates, the electronic recording of the entire custodial interrogation process, from the start of questioning to the end of the suspect's confessing.

- Although a significant number of police departments have voluntarily adopted the recording solution, the vast majority of police departments have not, and are unlikely to do in the present budgetary fiscal crunch they are experiencing due to the coronavirus pandemic.
- H.R. 7636 alleviates much of that concern by providing 75 percent of the funding and requiring only a 25 percent, rather than 50 percent match.
- In sum, Mr. Chairman, electronic recording of custodial interrogations is generally recognized as the most effective means of alleviating the most intractable problem encountered in in-court determinations of the falseness of the suspect's statements which is the difficulty in recreating who said what, who did what, and what body language and facial expressions accompanied these statements and actions.
- I am pleased that this legislation enjoys the enthusiastic support of the National Conference of Commissioners on Uniform State Laws (NCCUSL), which recommends model legislation for the states to consider and adopt.
- Thank you again, Mr. Chairman, for convening this markup and I urge all members to support H.R. 7636, the *Custodial Interrogation Recording Act*.
- I yield back my remaining time.