State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
401-222-2080

Donald L. Carcieri
Governor

June 22, 2010

TO THE HONORABLE, THE PRESIDENT OF THE SENATE:

In accordance with the provisions of Section 14, Article IX of the Constitution of the State of Rhode Island and Section 43-1-4 of the Rhode Island General Laws, I transmit, with my disapproval, 2010 S 2228, "An Act Relating to Criminal Procedure – Arrest."

This bill would require electronic recording of interrogations in their entirety for a sweeping scope of serious felony cases where the potential sentence is life imprisonment. I note at the outset that the Rhode Island Supreme Court, just three (3) months ago, concluded that "neither the United States Supreme Court nor this Court has ever held that due process requires that a custodial interrogation must be contemporaneously recorded . . . '[W]e see no hint that the Supreme Court is ready to take such a major step.'" State v. Robinson, 989 A.2d 965, 978 n.23 (R.I. March 12, 2010) (quoting United States v. Montgomery, 390 F.3d 1013, 1017 (7th Cir. 2004)).

In light of the above case law, I see no reason to take such a major step at this point in time. The bill could result in valuable incriminating information being suppressed if it were uttered by a defendant voluntarily before a recording began, during a break in the interview or off camera, or after the recording. There could also be a chilling effect on defendants speaking. See, State v. James, 678 A.2d 1338, 1360 (Conn. 1996). The bill would increase litigation surrounding issues such as whether:

1. the recording device was "capable of making an accurate recording" or whether the recording was altered (§12-7-22.1(a) (3)) (see State v. Roseboro, 604 A.2d 1286 (Conn. 1992));

2. all "material" voices on the recording were identified (§12-7-22.1(a)(4));

3. taping outside a police station was properly avoided because recording equipment was "not reasonably available" (§12-7-22.1(d)(3));

4. the accused refused to be electronically recorded (§12-7-22.1(e)(1)); and

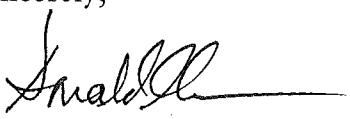
5. a recording really would have jeopardized the safety of a law enforcement officer, another person, or confidential informant (R.I. Gen. Laws 12-7-22.1(e)(5)).

There would also be costs to implementing the bill's provisions. Police departments would have to purchase multiple sets of high-tech equipment and train personnel to use the equipment during a time of severe financial distress.

Massachusetts and Connecticut do not have such strict laws regarding the recording of custodial interrogations. Com. v. DiGiambattista, 813 N.E.2d 516, 533 (Mass. 2004); James, supra. Massachusetts law states that if a confession is not completely recorded, the defendant can ask for a jury instruction telling the jurors to beware of the quality and reliability of the police testimony about the confession. DiGiambattista, 813 N.E.2d at 533. This type of approach is more balanced and desirable.

For these reasons, I disapprove of this legislation and respectfully urge your support of this veto.

Sincerely,



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