

Senate Judiciary Committee

Pete Mulvey 271-4063

SB 261-FN, requiring that custodial interrogations be recorded, establishing a fund to make grants to state law enforcement agencies to purchase equipment to enable such recordings, and making an appropriation therefor.

Hearing Date: February 18, 2025

Time Opened: 2:30 p.m.

Time Closed: 3:37 p.m.

Members of the Committee Present: Senators Gannon, Abbas, Carson, Altschiller and Reardon

Members of the Committee Absent : None

Bill Analysis: This bill requires that custodial interrogations be recorded, establishes a fund to make grants to state law enforcement agencies to purchase equipment to enable such recordings, and appropriates \$50,000 therefor.

Sponsors:

Sen. McGough

Sen. Murphy

Sen. Gannon

Rep. Lynn

Rep. Osborne

Rep. Scherr

Who supports the bill: 173 signed in support. Contact Pete Mulvey for further detail (peter.mulvey@gc.nh.gov).

Who opposes the bill: 6 signed in opposition. Contact Pete Mulvey for further detail (peter.mulvey@gc.nh.gov).

Who is neutral on the bill: Jane Graham and Steve O'Rourke.

Summary of testimony:

Senator Tim McGough

Senate District 11

- SB 261 preserves Audio/Video evidence for custodial interrogations.
- Sen. McGough stated that video and audio surveillance were ubiquitous.
- Individual's voices, movements, and likeness were recorded daily.
- A clear, indisputable record of interrogations would benefit everyone.
- The practice was largely already followed. When it was not, paper notes were relied upon which may contain discrepancies, creative edits, or may be misinterpreted.
- Recording interrogations preserved evidence and improved law enforcement techniques.

- Massachusetts, Maine, Vermont, and Connecticut followed a similar policy.
- SB 261 provided a modern, congruent approach to interrogation enforcing transparency for all.
- Sen. McGough said evidence may be recorded on a cellphone, and did not have to be complicated or costly.
- Sen. McGough indicated that he would support Department or Agency changes.
- Sen. Altschiller identified line eight on the second page and asked if that was relative to parole hearings or someone on parole being arrested for a different offense.
 - Sen. McGough clarified that the provision in question was something the Department of Corrections would address. Sen. McGough added that the term investigation was intended to be included after line seven.
- Sen. Altschiller identified line 14, providing an individual with the right to request to not be recorded, and asked Sen. McGough to elaborate on the language's purpose.
 - Sen. McGough said the line would be mirandized and captured the right to not answer questions. Sen. McGough assured that legal professionals before the committee would elaborate further.

Steven Endres

Assistant County Attorney - Merrimack County Attorney's Office

- Mr. Endres said there was nothing more powerful than playing a confession in the defendants' own words to a jury.
- In 2001, recorded cases went before the N.H Supreme Court via *State v. Barnett*. The Court determined that it was not a requirement to record the administration of Miranda rights, and further that if a confession were recorded it must be done in its entirety.
- Mr. Endres indicated that the decision was reconsidered in 2004. Mr. Endres added that the Supreme Court found mandatory recordings unreasonable and referred to *State v. Valez*.
- The language within the bill was confusing, and provided a false sense of what was recorded and what wasn't.
- Mr. Endres identified inconsistencies with the definitions for 'electronically recorded'
- Custodial interrogation was defined differently in the proposal than as defined by the supreme court.
- Mr. Endres clarified that not all interrogations at a house of corrections were considered custodial interrogations, and cited *State vs. Ford*.
- In the bill, 'place of detention' was defined as a fixed location under the control of law enforcement agencies for the purpose of questioning of alleged crimes.
- Neither a school, place of work nor back of a cruiser were places of detention.
- Mr. Endres wondered why defendants would control whether they were recorded or not.
- Mr. Endres opposed the concept and the language of the bill.
- The committee was encouraged to analyze the body camera statute instead.
- Sen. Altschiller asked Mr. Endres if providing clarity between a witness and a suspect would make the statute better.
 - Mr. Endres indicated that it would not improve his opinion of the bill.
- Sen. Altschiller asked if as a prosecutor, he believed that section two would result in recordings being subpoenaed.
 - Mr. Endres said there would be a witness chilling effect from section two.
- Sen. Abbas asked Mr. Endres if witnesses were outside the definition of custodial interrogation.
 - Mr. Endres said witnesses were in custody; you can be in custody without being under arrest

- A witness, volunteering to go to the station, who is taken by a cruiser, although by choice, can be argued as custody

Jane Graham and Steve O'Rourke

New Hampshire Department of Corrections

- The Department of Corrections was neutral
- The Department of Corrections asked for language changes.
- The Department requested to add administrative and disciplinary investigations on page two, lines seven through eight.
- Ms. Graham offered more changes to the committee relative to page three, lines one and two. The department sought language accommodating everyday booking processes.
- The Department sought language enabling non-electronically recorded statements to be brought into evidence if overheard by a staff member at the Department of Corrections.
- Language needs to accommodate interactions between probationary individuals and parole officers.

Pat Sullivan

Executive Director NH Chiefs of Police

- Mr. Sullivan said there were ample constitutional protection regarding custodial interrogations
- Police's job would be made unfeasible in some instances by this bill.
- Establishing a fund would result in inadmissible confessions while awaiting the equipment's installation
- The vagueness of the language was a concern. Codification of custodial interrogation would be difficult to follow given different court rulings between state and federal, and if those continue to change
- Interrogations were conducted all over the place and not always in a detention center
- People in organizations wanting to flip usually ask that their information not be recorded.

Bill Bright

NH State Trooper

- Mr. Bright served as a Major in the investigative services bureau.
- Mr. Bright spent ten years in the major crimes' unit.
- Circumstances were always different and couldn't be predicted.
- Mr. Bright had interviewed individuals on recording, in a non-custodial setting, who then offered to speak more off the record.
- The bill's language was confusing. In particular, the maintenance of the recording equipment was vague.
- Mr. Bright clarified that recordings were evidence and would need to be handled and stored safely – a cellphone would likely not be appropriate
- Mr. Bright was ultimately opposed to the bill.

Winnie Yi

State Policy Advocate- New England Innocence Project

- Ms. Yi encouraged the committee to support exoneration, address wrongful convictions, and support SB 261.
- SB 261 strengthened the integrity of the legal system

- The version of the bill that was introduced in 2022 was revised in accordance with feedback from Stakeholders.
- If someone under interrogation requested that the camera be turned off, that could still be admissible so long as the request was documented, and the information shared.
- Recordings promote safety, transparency, accuracy, and prevent wrongful convictions.
- 30 states, the federal government, and more jurisdictions recorded interrogations
- SB 261 would protect law enforcement against false claims of misconduct.
- Recording custodial interrogations should be the uniform standard.
- Ms. Yi clarified that the bill does indeed support funding for law enforcement agencies.

Cynthia Mousseau

Staff Attorney - New England Innocence Project

- Ms. Mousseau attested that the scenarios where recordings would not be possible was the very idea - law enforcement shouldn't be burdened with having to record every single interaction – only the ones that matter.
- The proposal was narrow on purpose. False confessions being elicited directly in custodial interrogation was the target of the legislation.
- Accommodating the language in RSA 594 allowed the presumption of inadmissibility to be overcome by stating a reasonable justification.
- People are currently asking for cameras to be turned off in custodial interrogation, and testimony may still be admitted under RSA 594.
- Interactions with witnesses and non-suspects were not considered custodial interrogation. Custodial interrogation implied arrest or its functional equivalent. If not a suspect, that is considered an interview. Custodial interrogation had a clear definition.
- Most police departments had already assumed similar initiatives.
- Funding was accommodated in the bill
- SB 261 was protective for both parties
- SB 261 was narrow, codifying best practices to protect the best interests of all parties
- There had been 453 exonerations since 1999 involving false confessions.
- Recording interrogations ensured reliability and transparency
- Senator Abbas asked what the need for strict guidelines were if most departments did this already
 - Ms. Mousseau said most did it, yet by codifying it, it was easier to capture instances where best practice is not adhered to.
 - Ms. Yi added that guidelines present uniformity and consistency. Maybe some places do record, but not properly or consistently
- Sen. Abbas reiterated that there were specific provisions in the bill that may complicate this if the intent is simply to document.
 - Ms. Yi said law enforcement can use deceptive practices to intimidate and yield confessions or useful information.
 - Interrogations can go on for a long time, compromising reason as well.

Jim Trainum

Retired, Washington DC police officer

- Mr. Trainum provided a story in which his department fielded a false confession, which was discovered following analysis of the suspect's alibi.
- Mr. Trainum had recordings of earlier admissions.

- Mr. Trainum supported the bill, as it was his video tape which proved the confession, they fielded was false.
- When agencies tried similar initiatives, their detectives quickly became converts.
- Documented evidence was typically held in higher regard than simple witness testimony
- The confession itself was not just evaluated with video, but also the tactics and environment in which that was produced
- There was always a chance the best detective could be wrong.
- Mr. Trainum believed the law was necessary for consistency.
- Video was the best evidence according to Mr. Trainum.

PM

Date Hearing Report completed: February 27, 2025