



# Illinois Association of Chiefs of Police



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## Response of the Illinois Association of Chiefs of Police to the Report of the Governor's Commission on Capital Punishment

The Governor's Commission on Capital Punishment released its report on April 15, 2002. The report contains numerous recommendations to improve the administration of justice in Illinois. Law enforcement has a strong interest in improving the criminal justice system, and the Illinois Association of Chiefs of Police (IACP) has a long history of promoting reform. The IACP eagerly supports the majority of the Commission's "recommendations", many of which are already enacted into law or restate reforms the Association members are presently promoting.

The Commission's recommendations are good for the most part because most are designed to promote the truth-finding function of our trial system. Especially good are those recommendations for training, certification and other measures to promote the expertise of trial judges and practitioners. Also valuable are those recommendations that promote additional forensic science resources for the truth-finding process.

The IACP is concerned with many of the recommendations outlined in *Chapter 2 – Police and Pretrial Investigations*. The recommendations reflect an inconsistent and fundamental distrust of the fairness of Illinois' criminal justice system and the integrity of its participants, particularly sworn law enforcement officers. In several areas, the Commission's report departs from its charge of reforming the death penalty system to micro managing law enforcement field operations. Several recommendations were apparently made with no consideration of the profound financial, administrative and operational impact they would have upon the investigative functions of law enforcement officers, especially the officer's duty to protect public safety and exonerate the innocent with timely work on leads. Other recommendations fail to consider the needs of other citizens in the station house, such as witnesses and victims.

No one, especially hard working, dedicated law enforcement officers, wants to see anyone in jail that should not be there or, worse yet, convicted of a serious crime and sentenced to the Death Penalty. Recent new DNA results and the untimely, suspect recantation of a confession imply that there is a certain credibility factor involved in the overall process. However, this reduced credibility factor is within the entire criminal justice system and does not rest solely on the shoulders of law enforcement officers. The Commission would remedy their concerns of mistrusting law enforcement officers by mandating videotaping. We believe these concerns need to be further and fully investigated before any decisions can be made

on audio and/or videotaping. Both of these methods have been used by law enforcement over the years as investigative tools when it was practical, but not as a mandate. Cost and resource availability are concerns which need to be collectively scrutinized, especially if this proposed mandate becomes another unfunded mandate. Of the over 1,200 municipal agencies, 102 county sheriffs' departments and a dozen or so state agencies, the majority of these law enforcement entities are small in number of personnel and financially strapped. Additionally, many of these agencies are housed in existing city or village halls or county buildings where space allocation is a premium and the prospects for additional space to accommodate videotaping are scant at best.

Suspect interrogation is not a specific science that has a regimented sequence. While normally a suspect is arrested, given his custodial rights, and then interrogated, it is not uncommon for a witness or supposed victim to become the focal point of the investigation. This turn of events can happen in a matter of minutes. Criminal investigations are usually lengthy and interrogations can occur at anytime -- anywhere. It is not practical to stop the interrogation because of a mandate to videotape. (Nor is it practical to impose a subjective thought process to the electronic recordation of a "significant witness" whose testimony may be subject to challenge at trial.) All potential trial witnesses' testimony is subject to challenge at trial. This subjective selection process would open the door to objective criteria challenges and eventually lead to electronic recordation of all witnesses.

Many of the recommendations concerning line-ups and photo spreads are being employed on a daily basis in many law enforcement agencies and are of sound professional value; however, those recommendations that represent experimental procedures are best left for further study and evaluation and not made a part of these purposed legislative enactments. Similarly, the recommendations surrounding training topics is well intentioned. We definitely support additional training in the suggested areas; here too, this endeavor will require an integrated approach involving prosecutors and law enforcement officers. Initially, retired judges could play an integral role in assisting in this area. Again, however, there is a cost factor associated with provided quality training to approximately 35,000 law enforcement officers.

As law enforcement professionals we crave the truth as much as the victims and their families. We fully recognize that problems exist within the criminal justice system and, with many of the recent findings, know that it is our responsibility to step forward and assume a leadership role that will benefit everyone who has contact with the criminal justice system. We are most willing to step forward and assume a leadership role but not at the cost of enacting legislation that will compound the problem rather than provide viable solutions.

We look forward to working with the members of the General Assembly in crafting a balanced, workable, and ethical framework in which Illinois' law enforcement officers may investigate; prosecutors may prosecute; defense attorneys may defend; judges may render decisions; and jurors may deliberate and deliver their findings as a result of enhanced standards of fairness, justice and accuracy in capital punishment cases in Illinois.

# ILLINOIS ASSOCIATION OF CHIEFS OF POLICE RESPONSES TO THE RECOMMENDATIONS OF THE COMMISSION ON CAPITAL PUNISHMENT

## Chapter 2 -Police and Pretrial Investigations

### **Recommendation 1:**

After a suspect has been identified, the police should continue to pursue all reasonable lines of inquiry, whether these point towards or away from the suspect.

### **IACP Response:**

- The concept of investigating all “reasonable lines of inquiry” has long been good police practice and is incorporated into all law enforcement investigative training curriculum. However, the Commission’s recommendation is vague and fails to specify sanctions for failure to comply. Additionally, the term reasonable is very subjective and no standards are associated with the use of this term.

### **Recommendation 2:**

- (a) The police must list on schedules all existing items of relevant evidence, including exculpatory evidence, and their location.
- (b) Record-keeping obligations must be assigned to specific police officers or employees, who must certify their compliance in writing to the prosecutor.
- (c) The police must give copies of the schedules to the prosecutors.
- (d) The police must give the prosecutor access to all investigatory materials in their possession.

### **IACP Response:**

- We support this proposal and believe this process is in place. All items of evidentiary value are disclosed to the prosecution and defense attorney through the discovery process. This is good police practice and should be adopted by all agencies not currently operating under this premise. Additionally, a review of these concepts should be made a part of the training outlined in Recommendation 16. The IACP has supported legislation similar to SB 2023, which requires any law enforcement agency responsible for investigating any felony offense to provide to the prosecuting authority all reports that have been generated by or have come into the possession of the investigating agency concerning the offense being investigated to include information that would tend to negate the guilt of the accused. The only exception to the recommendation that IACP would note is the requirement that a “specified officers or employees” be assigned the task of “certification” of records. The term certification is not defined in practice and most agencies place this obligation on the investigating officer.

## INTERROGATIONS; VIDEOTAPING THE INTERROGATION PROCESS

### **Recommendation 3:**

In a death eligible case, representation by the public defender during a custodial interrogation should be authorized by the Illinois legislature when a suspect requests the advice of counsel, and where there is a reasonable belief that the suspect is indigent. To the extent that there is some doubt about the indigence of the suspect, police should resolve the doubt in favor of allowing the suspect to have access to the public defender.

July 17, 2002

### **IACP Response:**

- Currently, when a suspect requests counsel, and can not afford or does not have counsel present, the interview terminates. This proposal would require administrative action in each county to incorporate the “readily available” Public Defender concept and would have a fiscal impact on counties. While this appears to be an excellent idea that would serve to protect the rights of the defendant, current constitutional protection at both the state and federal levels provides this right and sanctions should they not be followed. Additionally, under any scenario, police cannot make the decision as to whether or not a defendant is indigent or that the case will be a capital case; therefore, any requirements/recommendations should be based upon a bright line standard such as statutory charges of ILCS 720/5 Article 9 (homicide).

**Recommendation 4:**

**Custodial interrogations of a suspect in a homicide case occurring in a police facility should be videotaped. Videotaping should not include merely the statement made by the suspect after interrogation, but the entire interrogation process.**

**IACP Response:**

- The Illinois Association of Chiefs of Police does not support the mandatory videotaping of interrogations at this time. However, we do support the videotaping of confessions as this has the potential to improve the quality of evidence in homicide cases. However, before discussing the merits of the Commission's recommendations, one point must be clear. **The Commission's report stated that the failure to videotape the interrogation session should not be the sole test of admissibility. We strongly concur; the absence of a video recording in itself should never be grounds to exclude an otherwise voluntary confession.** It is the position of the IACP and the prosecutorial community that this position be the cornerstone of any policy created on videotaping confessions. The consequences of strict exclusion undoubtedly mean that countless violent criminals will be inappropriately set free.
- There are two alternatives for compliance with this recommendation and a third alternative that complies with the Minority Report. The first would require police to videotape the suspect from the time they entered the police facility through the time where the confession is recorded (custody to confession), and the second alternative would require videotaping only the interrogation sessions. The third alternative would be to initiate a videotaping program for confessions.
- It has been stated by proponents of videotaping interrogations from custody to confession that the most incriminating evidence occurs between interrogation sessions. We believe this is a gross exaggeration designed to strengthen their position. In reality videotaping of this magnitude has procedural complexities, legal difficulties, and an enormous fiscal impact. Additionally, any requirements/recommendations should be based upon a bright line standard such as statutory charges of ILCS 720/5 Article 9 (homicide).
- The following represents a cost analysis of the recommendations related to video confessions and interrogations. However, without additional funding to purchase equipment and develop/deliver training, none of these recommendations are possible.
  - The cost to implement complete recording of the custody to confession process is astronomical. Facility renovation costs alone are estimated at approximately \$25,000 per interrogation room. The high cost is primarily because proponents of this type of videotaping require every second of custody to be videotaped. In addition to the interview, this requires police to videotape the suspect when they are taking a break, sleeping, using the washroom, and walking to/from any of these facilities. Either, police will require elaborate and expensive video capabilities or a single facility encompassed within the interview room to allow for uninterrupted recording.

Additionally, many facilities would require multiple interview rooms, as a single individual could occupy an interview room for 2 to 72 hours at a time. At least one modified facility would be required in every county in the state, with urban areas requiring multiple facilities depending on their population and crime rate. For law enforcement to implement recording the custody to confession process, we would need approximately 1249 of these facilities throughout the state; facility costs alone would be approximately \$11,225,000.

We estimate fixed-site videotaping equipment costs at \$5,000 per room. Equipment costs include video cameras, commercial quality video recorders, low-end back-up/duplicating recorder, monitor, microphone, audio recording back-up, parts, stands, and accessories. **Equipment costs for video is estimated at \$6,245,000, making the total cost of video recording custody to confession approximately \$17,470,000.**

- If we narrow the scope to recording actual interrogations and confessions only (without recording the process of breaks, sleep, etc.), facility costs can be reduced and in most cases eliminated. Additionally, the number of equipment set-ups would be reduced because police would not need to continuously record suspects as in the custody to confession scenario. Under these circumstances the Illinois police would require a minimum of fixed recording sites. **The final cost to the Illinois law enforcement for recording only the actual interrogation and confession is estimated at \$13,470,000. The Illinois Criminal Justice Information Authority estimated the cost to be \$13.4 million.** Additionally, because of objections that will be raised by the defense, the recording of interrogations without recording the entire process would require legislation or administrative rules to guide police.
- **It is the recommendation of the IACP that we begin the videotaping procedure by videotaping confessions only.** This has proven to be a valuable tool in places such as the city of Kankakee, Cook County and Peoria County. While not fully implementing the recommendation of the Commission, it is a logical starting point to begin improvements that will fundamentally change the culture of criminal justice in Illinois. The cost to accomplish this would still be estimated at \$13.4 million because of the need to have facilities and equipment available to videotape the confessions. However, this logical starting step would give law enforcement and prosecutors the necessary experience to ascertain if videotaping interrogations would be feasible.
- Any videotaping initiative must begin with setting up videotaping facilities in partnership with local/county law enforcement throughout the state. Once in place, the IACP would recommend model policy that sets forth the requirements to videotape confessions whenever possible in all cases that would be brought under ILCS 720/5 Article 9 (homicide) sections 9-1, 9.1.2, 9-2, 9-2.1, 9-3, 9-3.2, and 9-3.3. This would require the development of a model policy by the Illinois Law Enforcement Training and Standards Board. It would also be necessary that in conjunction with model policy, legislation be developed that addresses issues such as who is allowed to review the video of confessions, freedom of information exemptions for confessions, and a myriad of other problems. Please note the concerns of the IACP regarding two videotape bills, HB 2740 and HB 4825, which were introduced during this legislative session. See Appendix I for issues that would need to be addressed legislatively.
- It must be once again noted that to adopt the recommendation of videotaping confessions will require legislation to insure that **13.4 million dollars** are made available. The legislation would need language to the effect that the law would not apply until appropriations are made to adequately fund the purchase of facilities and equipment necessary to comply; otherwise, this would be a **non-funded mandate**. Placing many law enforcement agencies and their communities into a fiscal hardship.

- Consideration should also be given to the training of police officers to conduct electronic interrogations. Appropriations should be made to the Illinois Law Enforcement Training and Standards Board to initiate, administer, and conduct training programs for permanent police officers, part-time police officers, and recruits as the methods and technical aspects of conducting electronic recordings of confessions.
- It should be noted that equipment recommendations for video recording throughout this document are based on analog VHS tape recording. While we believe digital recording will ultimately be the mechanism used by the criminal justice system, current digital technology is cost-prohibitive and has not been fully tested in the courts.

**Recommendation 5:**

**Any statements by a homicide suspect which are not recorded should be repeated to the suspect on tape, and his or her comments recorded.**

**IACP Response:**

- The IACP believes there presently exists sufficient remedies to determine the veracity of an officer's statement regarding a defendant's oral statement. Many times a suspect is willing to make statements to an officer but is not willing to write them out or have them video recorded. Additionally, those suspects who write out statements sign their statements or their statements are reduced to writing and signed-off by the suspect. Also, there are constitutional limitations on whether an officer may resume questioning, and this practice would be prohibited when defendants reconsider their decision to talk or where they request counsel.

**Recommendation 6:**

**There are circumstances in which videotaping may not be practical, and some uniform method of recording such interrogations, such as tape recording, should be established. Police investigators should carry tape recorders for use when interviewing suspects in homicide cases outside the station, and all such interviews should be audio taped.**

Every officer is an investigator during the course of investigating a homicide. Therefore, any officer may come upon information relevant to the investigation and for want of a recorder, the investigation may be delayed and crime solving hindered. According to the Illinois Law Enforcement Training and Standards Board, there are approximately 35,000 police officers in Illinois. If 20% of the officers were to be issued audio recorders, **the cost to equip Illinois police investigators would be approximately \$350,000.**

**Recommendation 7:**

**The Illinois Eavesdropping Act (720ILCS 5/14) should be amended to permit police taping of statements without the suspect's knowledge or consent in order to enable the videotaping and audiotaping of statements as recommended by the Commission. The amendment should only apply to homicide cases, where the suspect is aware that the person asking the questions is a police officer.**

**IACP Response:**

- The IACP agrees with that an amendment to the Eavesdropping Act is critical to the successful implementation of any of the aforementioned recommendations. However, because police investigations do not always start out as murder investigations, the IACP suggests that the exception be expanded to include other serious crimes, possibly even all felonies. Also, because prosecutors in various counties also interview suspects, any exemption should also include situations where the suspect is aware that the person conducting the interview is a prosecutor.

**Recommendation 8:**

**The police should electronically record interviews conducted of significant witnesses in homicide cases where it is reasonably foreseeable that their testimony may be challenged at trial.**

**IACP Response:**

- While the concept has merit, the IACP does not believe that officers will be able to readily ascertain which witnesses are “significant” or if their testimony may be subject to challenge. This concept as stated in the Commission report, it requires further study and consultation with prosecutors and police officials prior to any implementation. The officer must decide which witnesses' testimony might be challenged; or should the officers record all interviews of significant witnesses to be on the safe side? Once again the cost of audio recorders needs to be considered.

**Recommendation 9:**

**Police should be required to make a reasonable attempt to determine the suspect's mental capacity before interrogation, and if a suspect is determined to be mentally retarded, the police should be limited to asking non-leading questions and prohibited from implying that they believe the suspect is guilty.**

**IACP Response:**

- Officers should not be required to assess a suspect's mental capacity before interrogation. Officers are not qualified to assess mental capacity. Certainly, officers are aware and trained to recognize profound retardation or severe, reduced mental capacity. However, a requirement that would mandate an officer to make an assessment beyond these readily observable manifestations is not practicable. Constitutional law already requires the suppression of any statement where the defendant was incapable of understanding what his rights encompassed and what their waiver entailed.

## **LINEUPS AND PHOTO SPREADS**

**Recommendation 10:**

**When practicable, police departments should insure that the person who conducts the lineup or photo spread should not be aware of which member of the lineup or photo spread is the suspect.**

**IACP Response:**

- While this maybe an excellent idea for larger departments with unlimited personnel capable of overseeing a line up, many smaller departments do not have a sufficient amount of personnel to properly adhere to this standard. However even in the largest departments, this will present a fiscal burden in regards to staffing and court time. The Commission refers to the "1,100 police departments in Illinois, approximately half of which have 10 or fewer members." In these smaller departments, the amount of people trained to conduct line-ups would be minimal and almost certainly these same people would be involved in a major investigation involving a capital punishment sentence. In these cases, the minority's view of these procedures being mandatory would greatly hamper the investigative capabilities of these departments. We strongly disagree that there is a practice of witness steering in Illinois and feel a better alternative would be statewide refresher training for police investigators on how to conduct an impartial lineup. Again, Constitutional law currently provides adequate safeguards to thwart suggestive or improperly conducted line-ups.

**Recommendation 11:**

**(a) Eyewitnesses should be told explicitly that the suspected perpetrator might not be in the lineup or photo spread, and therefore they should not feel that they must make identification.**

**(b) Eyewitnesses should also be told that they should not assume that the person administering the lineup or photo spread knows which person is the suspect in the case.**

**IACP Response:**

- This recommendation restates current police practice and the IACP supports continuation of this practice. While this recommendation addresses the potential problems inherent with a lack of "double-blind" lineup procedures, the failure to notify witnesses of these points should not nullify the related

identification in and of its self. When determining the admissibility of a lineup, appropriate judicial officials should be able to consider the totality of the circumstances and make rulings on the facts of the case.

**Recommendation 12:**

**If the administrator of the lineup or photo spread does not know who the suspect is, a sequential procedure should be used, so that the eyewitness views only one lineup member or photo at a time and makes a decision (that is the perpetrator or that is not the perpetrator) regarding each person before viewing another lineup member or photo.**

**IACP Response:**

- We do not concur. While this appears to be a good idea on its face, it is in actuality an incomplete solution that could cause additional harm. The "relative judgment" theory (which is the basis for sequential lineups) has not been tested in the criminal justice system, only in the classroom. We believe that without further study sequential lineups could cause several problems, including the loss of valuable identifications in violent cases.
- A single lineup standard for the entire state is impractical. Police jurisdictions around the state have different available resources, different types of investigations, different needs and different requirements.
- We do not believe a single method of lineups should be legislated. It would be more beneficial to train investigators on the criticality of impartial identifications and the appropriate use of the different types of lineups such as the sequential, the modified sequential, double blind administrators, show-ups and photo spreads.
- Courts view reliability as the key, based upon several factors; among these are:
  1. May be unconstitutional to base it upon one factor that is not proven.
  2. The "science" of sequential and other eyewitness identification would likely not pass *Daubert* standard for purposes of criminal proceedings.
  3. Eyewitness identification is not automatically admitted and relied upon at trial. There are safeguards in the courtroom to assess the reliability of the eyewitness identification: judicial rulings can limit eyewitness identification if not reliable, jury assesses credibility, jury instructions can limit or instruct on weight afforded to eyewitness identification, even expert testimony can be introduced on factors which would influence the reliability of an identification (as opposed to merely testifying about the line-up procedures.)
  4. Whereas courts view reliability as the key, the proposed recommendation elevates form over actual reliability: where sequential is not practical, would you allow a **reliable** identification to be excluded? The issue is reliability, not type of line-up or number of eyewitnesses (one eyewitness can be reliable, depending upon the circumstances; there are cases where numerous eyewitnesses were unreliable - e.g., Kirk Bloodsworth case in Oregon involved five eyewitnesses and after conviction, DNA exonerated him.)

**Recommendation 13:**

**Suspects should not stand out in the lineup or photo spread as being different from the distracters, based on the eyewitnesses' previous description of the perpetrator, or based on other factors that would draw attention to the suspect.**

**IACP Response:**

- We concur. This practice is good police procedure and is consistent with most police departments' lineup procedures.

#### **Recommendation 14:**

**A clear written statement should be made of any statements made by the eyewitness at the time of the identification procedure as to his or her confidence that the identified person is or is not the actual culprit. This statement should be recorded prior to any feedback by law enforcement personnel.**

#### **IACP Response:**

- This is not feasible in all cases. This recommendation does not take into account victims' states of mind. Victims are often scared, confused and reluctant to participate in an identification process. Placing sterile obligations on them will result in less participation in the process. If the requirement was "when feasible" and additionally would not call for the exclusion of any witness statement videotaped. This recommendation would require that the options and funding outlined in Recommendation 4 be implemented since this recommendation could then be implemented concurrently at no extra cost.

#### **Recommendation 15:**

**When practicable, the police should videotape lineup procedures, including the witness' confidence statement.**

#### **IACP Response:**

- It should be noted that these recommendations might be impractical since it would require three separate cameras, one on the participants in the lineup, one on the witness and one on the officer conducting the procedure. More importantly, however, such a requirement could have a chilling effect on law enforcement because witnesses refuse to be videotaped out of a fear of reprisal. Also, this proposal fails to recognize the particular sensitivities of crime victims, especially rape victims. Notwithstanding, the IACP supports the ability of individual police departments to experiment with different procedures.

### **TRAINING AND OTHER RECOMMENDATIONS**

#### **Recommendation 16:**

**All police who work on homicide cases should receive periodic training in the following areas, and experts on these subjects should be retained to conduct training and prepare training manuals on the topics:**

1. The risks of false testimony by in-custody informants ("jailhouse snitches").
2. The risks of false testimony by accomplice witnesses.
3. The dangers of tunnel vision or confirmatory bias.
4. The risks of wrongful convictions in homicide cases.
5. Police investigative and interrogations methods.
6. Police investigating and reporting of exculpatory evidence.
7. Forensic evidence.
8. The risks of false confessions.

#### **IACP Response:**

- We concur if funding is made available. Training in these areas and others would strengthen the investigative abilities of police involved in homicide cases. The Illinois Law Enforcement Training and Standards Board estimates that the cost of initiating the training outlined in Chapter 2 for all Illinois law

enforcement is estimated at \$12 million annually. The failure to fund this mandate would place severe financial strains on police departments throughout the State.

**Recommendation 17:**

**Police academies, police agencies and the Illinois Department of Corrections should include within their training curricula information on consular rights and the notification obligations to be followed during the arrest and detention of foreign nationals.**

**IACP Response:**

- We concur.

**Recommendation 18:**

**The Illinois Attorney General should remind all law enforcement agencies of their notification obligations under the Vienna Convention on Consular Relations and undertake regular reviews of the measures taken by state and local police to ensure full compliance. This could include publication of a guide based on the U.S. State Department manual.**

**IACP Response:**

- We believe this was adequately covered in Recommendation 17, and any further notification should be at the discretion of the Illinois Attorney General.

**Recommendation 19:**

**The statute relating to the Illinois Law Enforcement Training and Standards Board, 50 ILCS 705/6.1a, should be amended to add police perjury (regardless of whether there is a criminal conviction) as a basis upon which the Board may revoke certification of a peace officer.**

**IACP Response:**

- We oppose. This change in the statute would violate the officer's right to due process. Too many variables exist which could lead to a "false" complaint against a police officer and that officer would have little or no recourse. In all cases, perjury should be investigated and prosecuted. If the violation were substantial enough for the state to revoke the officer's certification, it certainly would warrant prosecution and punishment as already allowable in Illinois law. The prosecution and conviction of a police officer for perjury should, without a doubt, disqualify that officer for duty. The problem remains that many complaints are determined to be unfounded or unsubstantiated during a subsequent investigation. While this recommendation appears to "provide an important avenue to correct improper conduct by police officers throughout the state," it has the potential to be an extremely dangerous and litigious issue. Presently the law requires de-certification of an officer convicted of perjury.

- \* This statute changes the legal definition of “custody” by significantly lowering the current standard: “Whether a reasonably innocent person would consider that he is not free to leave”.
- \* The legislation does not take into consideration the fact that law enforcement officers may not know that the person whom they are interviewing will later become a suspect. Therefore, a presumption is created that a confession given on tape later would be inadmissible.
- \* The exemptions included in the legislation are open to a great deal of interpretation, which will be used to benefit the rapists and murderers in adult cases, as well as juvenile offenders.
- \* This legislation ignores the Illinois constitutional Rights of Victims of Crime, thus rendering it meaningless.
- \* This bill still requires the consent of the offender before taping may occur. If this language were changed the current trend to videotape would increase dramatically, thus lessening the risk to public safety.
- \* This legislation will not change “bad” law enforcement officers; it will only serve to make the jobs of good law enforcement officers more difficult.
- \* The statute fails to define “exigent circumstances” as it is used in the legislation.
- \* It is sometimes not known if an investigation will result in a rape or murder charge, as the prosecutor ultimately makes that decision. However, if law enforcement fails to anticipate that a rape will be revealed or that the victim will die, the confession will be useless.
- \* The eavesdropping exception is limited to the police station only, which is inconsistent with current Illinois law.
- \* It should be remembered that very often a “statement” of a defendant is not necessarily a confession, but an utterance from which an inference of guilt can be drawn. However, this bill views all “statements” as confessions.
- \* We need to be assured that funding would be made available to purchase the necessary video equipment at a minimum projected cost of \$13.4 million (estimated by the Illinois Criminal Justice Information Authority).
- \* Aside from the cost associated with the purchase of equipment and training of personnel, there must be people available 24 hours a day, seven days a week to operate and monitor the equipment, together with an ability to catalog and store hours of tape.
- \* There need to be exceptions for those situations in which the equipment malfunctions or the offender is willing to be interviewed but does not wish to be videotaped.

## APPENDIX I-A

### DuPage County State's Attorneys Office Points Against HB 2740

- This bill will result in guilty offenders voluntarily confessing in order to escape responsibility for a crime, as the law enforcement officer has been deemed unreliable by the Illinois legislature and cannot testify to that confession. In contrast, if the offender were to confess to a convicted felon, that person would be allowed to testify and have his/her credibility considered by a jury. This would categorize law enforcement officers as no other group of citizens: even convicted felons are categorized - as unreliable and untrustworthy.
- This statute changes the legal definition of “custody” by significantly lowering the current standard: “Whether a reasonably innocent person would consider that he was not free to leave”.
- This legislation does not take into consideration the fact that law enforcement officers may not know that the person whom they are interviewing will later become a suspect. Therefore, a presumption is created that a confession given on tape later would be inadmissible.
- This bill states that taping will be mandated anywhere law enforcement is talking with a person in a location “under their control”. This could be taken too literally mean anywhere at anytime, such as in a police vehicle on the street or even at the scene of a crime.
- The exemptions included in the legislation are open to a great deal of interpretation, which will be used to benefit the rapists and murderers in adult cases, as well as juvenile offenders.
- This bill uses a *res gestae* exception, which is a legal concept abandoned under Illinois law several years ago.
- This legislation ignores the Illinois Constitutional Rights of Victims of Crime, thus rendering it meaningless.
- This bill still requires the consent of the offender before taping may occur. If this language were changed the current trend to videotape would increase dramatically, thus lessening the risk to public safety.
- This legislation will not change “bad” law enforcement officers; it will only serve to make the jobs of good law enforcement officers more difficult.
- With this legislation, the Illinois General Assembly would explicitly define a voluntary statement and set forth a higher standard than the Illinois Constitution or United States Constitution have been interpreted to require.
- The statute fails to define “exigent circumstances” as it is used in the legislation.
- It is sometimes not known if an investigation will result in a rape or murder charge, as the prosecutor ultimately makes that decision. However, if law enforcement fails to anticipate that a rape will be revealed or that the victim will die, the confession will be useless.
- The eavesdropping exception is limited to the police station only, which is inconsistent with current Illinois law.
- It should be remembered that very often a “statement” of a defendant is not necessarily a confession, but an utterance from which an inference of guilt can be drawn. However, this bill views all “statements” as confessions.