



STATE OF CONNECTICUT

ADVISORY COMMISSION ON
WRONGFUL CONVICTIONS

REPORT OF THE ADVISORY COMMISSION ON WRONGFUL
CONVICTIONS

*PURSUANT TO PUBLIC ACT 08-143, AN ACT CONCERNING THE
COMPENSATION OF WRONGFULLY CONVICTED AND
INCARCERATED PERSONS, THE DUTIES AND DURATION OF THE
SENTENCING TASK FORCE AND THE PREPARATION OF RACIAL AND
ETHNIC IMPACT STATEMENTS.*

February 2009

This report is submitted to the General Assembly pursuant to Public Act 08-143, *An Act Concerning the Compensation of Wrongfully Convicted and Incarcerated persons, the duties and duration of the sentencing task force and the preparation of racial and ethnic impact statements.*”

Public Act 08-143 requires the Commission on Wrongful Convictions to monitor and evaluate the implementation of:

- (1) The procedure for the compensation of wrongfully incarcerated persons established under section 1 of Public Act 08-143
- (2) The pilot program to electronically record the interrogations of arrested persons
- (3) Eyewitness identification procedures that, when practicable, use a double-blind administration wherein the person conducting the identification procedure is not aware of which person in the photo lineup or live lineup is suspected as being the perpetrator of the crime.

The report will discuss each of these three items separately after providing some brief background about the Commission.

Background

The Advisory Commission on Wrongful Convictions was established in 2003 pursuant to Section 54-102pp of the general statutes to “review any criminal or juvenile case involving a wrongful conviction and recommend reforms to lessen the likelihood of a similar wrongful conviction occurring in the future.” Please see Appendix A of this report for the list of the current members of the Advisory Commission on Wrongful Convictions. Section 54-102pp reads as follows:

Section 54-102pp Advisory Commission on Wrongful Convictions

Sec. 54-102pp. Review of wrongful convictions. (a) The Chief Court Administrator shall establish an advisory commission to review any criminal or juvenile case involving a wrongful conviction and recommend reforms to lessen the likelihood of a similar wrongful conviction occurring in the future. The advisory commission shall consist of the Chief State's Attorney, the Chief Public Defender and the Victim Advocate, or their designees, a representative from the Connecticut Police Chiefs Association, a representative from the Connecticut Bar Association, and representatives from one or more law schools in this state and one or more institutions of higher education in this state that offer undergraduate programs in criminal justice and forensic science.

(b) Whenever a person who has been convicted of a crime is subsequently determined to be innocent of such crime and exonerated, the advisory commission may conduct an investigation to determine the cause or causes of the wrongful conviction. Such investigation shall include, but not be limited to, an examination of the nature and circumstances of the crime, the background, character and history of the defendant, and the manner in which the investigation, evidence collection, prosecution, defense and trial of the case was conducted. Notwithstanding any provision of the general statutes concerning the confidentiality, erasure or destruction of records, the advisory commission shall have access to all police and court records and records of any prosecuting attorney pertaining to the case under investigation. The advisory commission shall not further disclose such records.

(c) Upon the conclusion of its investigation, the advisory commission shall report its findings and any recommendations it may have for reforms to lessen the likelihood of similar wrongful convictions occurring in the future to the joint standing committee of the General Assembly on the judiciary, in accordance with the provisions of section 11-4a, and to other interested persons as deemed appropriate including the Chief Court Administrator, the Chief State's Attorney, the Chief Public Defender, the Commissioner of Public Safety and the chief of any local police department involved in the investigation of the case.

The procedure for the compensation of wrongfully incarcerated persons established under section 1 of Public Act 08-143

Section One of Public Act 08-143 established a procedure to compensate wrongfully incarcerated persons. It reads as follows:

(a) A person is eligible to receive compensation for wrongful incarceration if:

(1) Such person has been convicted by this state of one or more crimes, of which the person was innocent, has been sentenced to a term of imprisonment for such crime or crimes and has served all or part of such sentence; and

(2) Such person's conviction was vacated or reversed and the complaint or information dismissed on grounds of innocence, or the complaint or information dismissed on a ground consistent with innocence.

(b) A person who meets the eligibility requirements of subsection (a) of this section may present a claim against the state for such compensation with the Claims Commissioner in accordance with the provisions of chapter 53 of the general statutes. The provisions of said chapter shall be applicable to the presentment, hearing and determination of such claim except as otherwise provided in this section.

(c) At the hearing on such claim, such person shall have the burden of establishing by a preponderance of the evidence that such person meets the

eligibility requirements of subsection (a) of this section. In addition, such person shall present evidence as to the damages suffered by such person which may include, but are not limited to, claims for loss of liberty and enjoyment of life, loss of earnings, loss of earning capacity, loss of familial relationships, loss of reputation, physical pain and suffering, mental pain and suffering and attorney's fees and other expenses arising from or related to such person's arrest, prosecution, conviction and incarceration.

(d) If the Claims Commissioner determines that such person has established such person's eligibility under subsection (a) of this section by a preponderance of the evidence, the Claims Commissioner shall order the immediate payment to such person of compensation for such wrongful incarceration. In determining the amount of such compensation, the Claims Commissioner shall consider relevant factors including, but not limited to, the evidence presented by the person under subsection (c) of this section as to the damages suffered by such person and whether any negligence or misconduct by any officer, agent, employee or official of the state or any political subdivision of the state contributed to such person's arrest, prosecution, conviction or incarceration.

(e) In addition to the compensation paid under subsection (d) of this section, the Claims Commissioner may order payment for the expenses of employment training and counseling, tuition and fees at any constituent unit of the state system of higher education and any other services such person may need to facilitate such person's reintegration into the community.

(f) Any person claiming compensation under this section based on a pardon that was granted or the dismissal of a complaint or information that occurred before the effective date of this section shall file such claim not later than two years after the effective date of this section. Any person claiming compensation under this section based on a pardon that was granted or the dismissal of a complaint that occurred on or after the effective date of this section shall file such claim not later than two years after the date of such pardon or dismissal.

(g) Nothing in this section shall be construed to prevent such person from pursuing any other action or remedy at law or in equity that such person may have against the state and any political subdivision of the state and any officer, agent, employee or official thereof arising out of such wrongful conviction and incarceration.

Ms. Paula McIlduff, Clerk of the Office of the Claims Commissioner, reports that only one claim has been filed pursuant to this act, as of the date of this report. The claim was filed by James C. Tillman on January 30, 2007, for \$18 million. Mr. Tillman claimed that his federal civil rights were violated when he was wrongfully charged, convicted and incarcerated. Mr. Tillman sued the chief toxicologist from CT Health Services claiming that the chief toxicologist fabricated information that led to his wrongful conviction. The claim was withdrawn on December 7, 2007.

The Advisory Commission on Wrongful Convictions will continue to monitor and evaluate this process.

The pilot program to electronically record the interrogations of arrested persons

The Office of the Chief State's Attorney (OCSA) provided the number of interviews that have been conducted as part of the pilot program to electronically record the interrogations of arrested persons. The OCSA reports that the installation and acceptance of the equipment necessary to electronically record interrogations began on or about July 1, 2008. Since that time, a total of 99 interviews have been recorded.

Of that number:

- 84 interviews were covert;
- 55 interviews resulted in confessions;
- 3 interviews resulted in statements of involvement;
- 1 interview resulted in disclosure of a sexual assault; and
- 1 interview resulted in a statement that led to proof that a homicide had been committed.

The electronic recording of interviews has been used to investigate different crimes such as possible homicides, attempted murder, robbery, assault, burglary, arson and risk of injury to a minor. In addition, the equipment has been used successfully to electronically record interviews from witnesses and victims in child sexual assault cases. For more detailed information, please see Appendix B of this report.

Eyewitness identification procedures that, when practicable, use a double-blind administration wherein the person conducting the identification procedure is not aware of which person in the photo lineup or live lineup is suspected as being the perpetrator of the crime

The OCSA developed a protocol for eyewitness identification that incorporates double-blind procedures when practicable. This protocol is taught at all of the mandated recurring training for police officers.

Appendix C contains a copy of the September 23, 2005, letter from the Office of the Chief State's Attorney to all police chiefs regarding this protocol as well as the officer instruction and witness instruction forms for use in eyewitness identifications. These witness instruction forms are meant to ensure that the same procedures are used in all police departments throughout the state.

The Advisory Commission on Wrongful Convictions will continue to monitor the use and effectiveness of the eyewitness identification protocol that was adopted in the Fall of 2005.

Appendix A



Advisory Commission on Wrongful Convictions

List of Members

Assistant Professor James M. Adcock, Department of Criminal Justice, University of New Haven

Attorney James W. Bergenn, Shipman, Goodwin, LLP

State's Attorney Michael Dearington, New Haven Superior Court

Attorney Brett Dignam, Clinical Professor of Law and Supervising, Yale Law School

Thomas E. Flaherty, Executive Director, State of Connecticut Police Officer

Attorney John W. Hogan, Jr., Berchem, Moses & Devlin, PC

The Honorable Barbara M. Quinn, Chief Court Administrator, State of Connecticut Judicial Branch

Representative Michael P. Lawlor, Co-Chairman, Judiciary Committee

Chief of Police Robin Montgomery, Brookfield Police Department

Attorney Kevin Kane, Chief State's Attorney, State of Connecticut

Major Timothy Palmbach, Director, Forensic Science Program, University of New Haven

Attorney Michelle Cruz, Office of the Victim Advocate

Attorney Hope Seeley, Santos & Seeley, PC

Attorney Susan O. Storey, Chief Public Defender, State of Connecticut

Appendix B



OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Memorandum

TO: John Russotto, *Deputy Chief State's Attorney*

FROM: Mitch Forman, *Grants and Contracts Manager*

DATE: January 29, 2009

SUBJECT: Update on the Recording of Custodial Interrogations Pilot Project

All hardware and software is in place in Bridgeport, Meriden, Southington, Waterford, and the Eastern and Western Major Crime Squads.

Summary:

Since installation/acceptance of equipment, on or about July 1, 2009:

- 99 interviews have been recorded (84 covert). All such interviews have been at stationary sites.
- 55 interviews have resulted in confessions.
- 3 interviews have resulted in statements of involvement
- 1 interview resulted in disclosure of a sexual assault (may end up being a disorderly conduct)
- 1 interview resulted in a statement that led to proof that a homicide had been committed.

Usage ranges from investigation of possible homicide and attempted murder to robbery, assault, burglary and arson to risk of injury to a minor to witness/victim interviews in child sexual assault cases.

Bridgeport:

- 71 interviews have been recorded.
- 40 confessions – including 25 relating to gun offenses, 2 for robbery, one for attempted murder/assault with a firearm.
- 100% of the interviews were covertly recorded.
- 100% of detective users said covert recording did not influence the way the interview was recorded.
- 100% of detective users said it did not influence the outcome of the interrogation although comments were made to the effect that the true answer can only really be answered in court.
- 85% of detective users had positive opinions regarding recording the interviews, 15% were neutral.



OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Memorandum

State's Attorney Benedict and SASA Smriga provided a "mini-training" on interviews. State's Attorney Benedict states that he is pleased with the system and its results so far.

Detectives are generally pleased with the fact that the interviews are being recorded. They, according to Deputy Chief Radzimirski, "have some detectives that absolutely love it and those that had reservations now have a more favorable approach toward recordings."

Future interviews will provide data requested on Video Recorded Custodial Interrogation Data Sheet.

Meriden:

- 22 interviews have been recorded.
- 10 confessions – including 3 for robbery/assault, 1 for arson, 1 for assault on a police officer, 2 for robbery, 1 for burglary, and 2 (2 separate individuals confessed) for stabbing. One series of interviews led to confirmation that a homicide had been committed. Another interview led to a disclosure of a potential sexual assault.
- 18 of the interviews were covertly recorded. Two other interviews involved victims and/or witnesses to potential child sexual assaults and as such the interviewees were explicitly informed of being recorded.
- Of the 12 unique individuals who conducted interviews, 8 responded that their opinion of recorded interrogations was positive, 4 said that it was neutral. Of the 6 of those individuals who felt that their opinion regarding recorded interrogations had changed since they themselves conducted one, all six felt more positive about such recordings. This data available due to Meriden's use of the Video Recorded Custodial Interrogation Data Sheet (backup data sheets available upon request).

Detective Sgt. Pekrul feels that the system was easy to use and that it is simple to burn DVDs. He has not had occasion to use the marking and search/editing features but feels they may come into play in an ongoing homicide investigation. He finds the picture-in-picture feature to be distracting.

Southington:

- Per Detective Lieutenant Shanley, no crimes have as of yet met the standard for using the system for an in-custody interrogation. They did use the system for an interview of a 14 year old witness in a possible sexual assault case. The system was used in a covert fashion.

Officers report that they do not feel that the interview being recorded has impacted their questioning. Lieutenant Shanley states that there has been "no grandstanding." He has found the equipment and software to be of high quality and easy to use, although there is too long a lag time (up to one hour) before the information on the hard drive is available to burn onto a DVD. Southington, after consultation with and acceptance by State's Attorney Murphy, has developed internal usage guidelines. These were promulgated on 10/13/08.



OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Memorandum

Waterford:

Have used the system five times (including once by East Lyme PD):

- 1 case of individual "Dr. shopping" for narcotics prescriptions.
- 1 bank robbery.
- 3 burglaries (including East Lyme's usage)
- Confessions in all 5 uses.

Are continuing to work with State's Attorney Michael Regan and Supervisory Inspector Phil Fazzino regarding usage guidelines. Are conducting regional meetings with 13+ area PDs to discuss potential for their usage of the equipment.

Eastern Major Crimes Squad:

Have concerns as to practicality of system due to intrusive nature of clip-on camera as well as the amount of time it takes to get unit to site where suspect is in custody. First attempt to use system failed due to audio problems. They have contacted the vendor and the problem is being addressed. They wonder if a centralized, hardwired, fully covert installation might better serve their needs. Per Chief Inspector Jack Edwards, a portable unit(s) stationed at State's Attorney's Offices might work better as the Supervisory Inspector is much more likely to get to at custody site in a timely fashion. They have held a training session for their staff.

Western Major Crimes Squad:

Have not as of yet had an appropriate opportunity to use system.

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Attachments:

Please find below the Video Recorded Custodial Interrogation Data Sheet and the Video Recorded Custodial Interrogation Cover Sheet.

cc: Kevin Kane
Jack Edwards
Mark DuPuis



Memorandum

OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Video Recorded Custodial Interrogation Cover Sheet

- 1) AGENCY:
- 2) DATE & TIME:
- 3) CRIME:
- 4) LOCATION OF INTERVIEW:
- 5) LOCATION (JUDICIAL DISTRICT) WHERE CRIME COMMITTED:
- 6) NAME OF SUBJECT(S):
- 7) INTERVIEWER(S):
- 8) RESULT OF INTERROGATION:



OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Memorandum

Video Recorded Custodial Interrogation Data Sheet

Was the subject(s) aware of being recorded? ____ Yes ____ No.

If **yes**:

Were they informed? If yes, how did it influence the interrogation?

Did they guess? If so, when did they figure it out? What gave it away? How did it influence the interrogation?

Did being overtly recorded influence how you handled the interrogation? If yes, how? If not, why not?

Did being overtly recorded influence the outcome of the interrogation? If yes, how? If not, why not?

If **no**:

Did being covertly recorded influence how you handled the interrogation? If yes, how? If not, why not?

Did being covertly recorded influence the outcome of the interrogation? If yes, how? If not, why not?

Roughly, how many recorded interrogations have you conducted?

Overall, is your opinion of recording interrogations positive, negative, or neutral?

Are you more or less positive about recorded interrogations than you were before they were conducted in your Department? Before you conducted one personally? Why?

What area, if any, of conducting recorded interrogations would you like more training in?

General comments:



Appendix C

OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Memorandum

September 23, 2005

Chief Kevin Hale
Town of Ansonia
2 Elm St.
Ansonia, CT 06401

Re: Eyewitness Identification Protocol

Dear Chief Hale:

Enclosed please find copies of the "Officer Instruction" and "Witness Instruction" forms for use in eyewitness identifications that were agreed upon as a result of the meetings of the Chief State's Attorney's Law Enforcement Council held in January, February and April of this year. These forms were also explained at the John M. Bailey legal update training provided by POST. The council included members of the Connecticut Police Chiefs Association, the Connecticut State Police, P.O.S.T., and the thirteen State's Attorneys.

At the outset, it was agreed by all that the promotion of reliable eyewitness identifications is paramount. Some of the members voiced the concern that the problems that have forced other states to adopt wholesale the recommendations of Prof. Gary Wells, an Iowa State University professor who is the nation's leading proponent of the movement to alter the method of conducting eyewitness identification procedures, simply do not exist in Connecticut. Nevertheless, it is imperative that the law enforcement community continue to examine investigative procedures, with an eye toward improving our constant search for justice.

As part of the ongoing effort to ensure accuracy and reliability in identifications, while also reducing any hint of suggestibility, it was agreed that training in this area would be enhanced. With the use of the "Officer Instruction" form in training, we can educate our officers as to the criticisms and concerns that exist and how they can protect against those potential problems. Together with the training that they currently receive on state and federal constitutional legal requirements, we can proceed with further confidence in the identifications made by eyewitnesses.

The "Witness Instruction" forms are meant to supplement existing police work and not to replace any current procedures. It ensures that across the state, our law enforcement community is "on the same page" in this area. Moreover, the forms are dated as of September 2005 for ease in administrative purposes. Should we ever have any changes to the forms, the date would then be reflected.



Appendix C

OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Memorandum

The importance of the use of these forms is most recently highlighted by the September 19, 2005 decision by the Connecticut Supreme Court in *State v. Ledbetter*. A challenge was raised to the eyewitness identification of the defendant made during a show-up that occurred in the vicinity of the crime a short time after the incident. The court noted that it was aware of the scientific research on the potential dangers of eyewitness identification and recognized that the studies are not definitive. Nevertheless, the court felt that the importance of eyewitness identification in our criminal justice system is of such a magnitude that, from now on, if an officer in conducting an eyewitness identification fails to give the warning that "the perpetrator may or may not be present," the trial court must give the jury an instruction that the failure to so warn tends to increase the probability of a misidentification. Utilization of the agreed upon procedure and new forms will ensure that no jury will have to hear such an instruction.

I would like to commend the members of the Law Enforcement Council for the effort and attention they have given to the examination of this crucial issue. It is gratifying to see the law enforcement community come together to address these issues that affect our daily work and our ultimate goal to pursue justice.

Sincerely yours,

A handwritten signature in cursive script that reads "Christopher L. Morano".

CHRISTOPHER L. MORANO
CHIEF STATE'S ATTORNEY

CLM/md
Enclosures



Appendix C

OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Memorandum

Anywhere Police Department **Officer Instructions for Photo Identification**

A fair and objective identification procedure promotes an accurate and reliable identification or non-identification by the witness.

1. Read the witness instructions verbatim, and have the witness initial each line.
2. Confirm that the witness understands the instructions.
3. Avoid words, gestures, or expressions which could influence the witness' selection. If practical, take a position where the witness cannot see you.
4. If the witness makes an ID, refrain from making any comment on the witness' selection.
5. Write any identification results. Note the witness' statements made at the time of the identification in the "comments" section.
6. Document the date and time of the identification procedure, the names of anyone present, and the subjects and sources of all photos used. Preserve the array.



Appendix C

OFFICE OF THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE: (860) 258-5800 FAX: (860) 258-5858

Memorandum

Anywhere Police Department
Witness Instructions for Photo Identification

Incident # _____ Date _____ Time _____

- 1. I will ask you to view a set of photographs.
2. It is as important to clear innocent people as to identify the guilty.
3. Persons in the photos may not look exactly as they did on the date of the incident, because features like facial or head hair can change.
4. The person you saw may or may not be in these photographs.
5. The police will continue to investigate this incident, whether you identify someone or not.

I understand the instructions, have viewed the photos, and have identified # _____

Witness comments regarding identification:

Witness' name (print): _____

Witness' Signature: _____

Officer's Signature: _____ ID# _____