

**AMERICAN BAR ASSOCIATION**  
**ADOPTED BY THE HOUSE OF DELEGATES**  
**FEBRUARY 14, 2011**

**RESOLUTION**

RESOLVED, That the American Bar Association approves the Uniform Electronic Recordation of Custodial Interrogations Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

## REPORT

### Uniform Electronic Recordation of Custodial Interrogations Act

#### *A Summary*

In just the past decade, numerous cases of wrongful convictions have garnered the attention of the media, prosecutors, defense counsel, legislators, and law reformers. While much of this attention is focused on the faulty use of DNA evidence, wrongful convictions are prevalent in many run-of-the-mill cases where DNA evidence is never available. One important contributing factor to a large percentage of the mistakes made in many criminal cases—indeed perhaps one of *the* top contributing factors—is the admissibility at trial of a false confession.

False confessions often may occur no matter how well-meaning the interrogating officer or how strong his or her belief in the suspect’s guilt. Subtle flaws in interrogation techniques can elicit confessions by the innocent. Yet confessions are taken as such powerful evidence of guilt that prosecutors, jurors, and judges often fail to identify the false ones. Conflicting testimony sometimes 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 officer. The resulting 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.

Recognizing the impact of flawed confessions on the integrity of the criminal justice system, legislators, courts, and police departments have begun requiring recordation of interrogations. Several states have mandated that interrogations be recorded through statutory changes. Yet others have imposed conditions for recordation through court rule. Even absent statutory or judicial imposed mandates, a significant number of police departments have voluntarily adopted policies requiring interrogations to be recorded under a variety of circumstances on the theory that recordation both protects the officers involved and improves the fact finding process.

However, there are wide variations among the state provisions and the voluntarily-adopted programs mandating electronic recordation of custodial interrogations. Some approaches promise to be more effective in protecting the innocent, convicting the guilty, minimizing coercion, and avoiding frivolous suppression motions than others. The **Uniform Electronic Recording of Custodial Interrogations Act** (UERO CIA) resolves the differences found around the nation and helps improve the fairness and professionalism associated with electronic recordings.

The UERO CIA mandates the electronic recording of the entire custodial interrogation process by law enforcement, leaving it to individual states to decide where and for what types of crimes this mandate applies, as well as the means by which recording must be done. The UERO CIA thus permits states to vary the scope of the mandate based upon local variations in cost, perceived degree of need for different categories of criminal or delinquent wrongdoing, or other pressing local considerations. Nevertheless, combined audio and video recording remains the ideal, and

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the advantages of recording exist wherever custodial interrogation occurs and for whatever criminal or delinquent wrong is involved.

The UEROCIA contains several exceptions designed to allay fears of undue rigidity concerning police practices and to address many of the unforeseen circumstances that may occur during investigation and questioning. If a recording is not feasible because of exigent circumstances it is not in violation of the mandate. Also excluded from the recording mandate are interrogations in which the individual under question will not participate in interrogation if it is recorded electronically and those interrogations conducted in other jurisdiction in compliance with that jurisdiction's laws. In situations where an officer does not reasonably believe that no offense was involved that would trigger the recording mandate and situations where a recording would compromise the safety of an officer, an informant, or another individual at risk, the mandated recordation of questioning is not applicable.

Procedures for the use of the electronically recorded statement are also addressed by the UEROCIA. The Act places the burden of persuasion as to the application of any of the exceptions on the prosecution by a preponderance of evidence standard. The Act also outlines procedural remedies for violation of the requirement that the entire custodial interrogation process be electronically recorded. Courts shall consider failure to comply with the Act in ruling on a motion to suppress a confession as involuntary. Further, the Act mandates that electronic recordings of custodial interrogations be identified, accessible, and preserved in accordance to local statutes governing criminal cases. In implementing the conditions of the Act, law enforcement agencies must adopt and enforce rules for the manner in which recordings are to be made and preserved.

The UEROCIA promotes accuracy and the truth-finding process. Electronic recordation of custodial interrogations will benefit law enforcement agencies, improving their ability to prove cases while lowering overall costs of investigation and litigation. Systemic recordation will also improve accuracy and fairness to the accused and the state, protect constitutional rights, and most importantly increase public confidence in the justice system.

The work of the Drafting Committee is available at [www.nccusl.org](http://www.nccusl.org), the website of the Conference.

Respectfully submitted,

Robert A Stein  
President  
National Conference of Commissioners  
On Uniform State Laws  
February, 2011

**GENERAL INFORMATION FORM**

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: Michael Kerr, Legislative Director

1. Summary of Recommendation(s)

The National Conference of Commissioners on Uniform State Laws requests approval of the Uniform Electronic Recordation of Custodial Interrogations Act by the ABA House of Delegates. The Act was approved by the National Conference in 2010.

2. Approval by Submitting Entity

The National Conference of Commissioners on Uniform State Laws approved it in July, 2010.

3. Has this or a similar recommendation been submitted to the House or Board previously?

See #4 below.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

In 2004 the House approved a policy (904M8A) urging all law enforcement agencies to videotape custodial interrogations of crime suspects, or where videotaping is impractical, audiotaping such interrogations. That resolution further urged state legislatures and courts to enact laws and/or rules to effectuate this policy. The UEROCIA is completely consistent with, and in fact implements, this existing policy.

5. What urgency exists which requires action at this meeting of the House

Not applicable.

6. Status of Legislation (If applicable.)

As of the submission of this report, the Uniform Electronic Recordation of Custodial Interrogations Act has not been enacted in any state legislature. The UEROCIA draws significantly from prior legislation enacted in Illinois.

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7. Cost to the Association (Both direct and indirect costs.)

None.

8. Disclosure of Interest (If applicable.)

None.

9. Referrals

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. The work of the Drafting Committee is available at [www.nccusl.org](http://www.nccusl.org), the website of the Conference.

The ABA Advisor for the Uniform Electronic Recordation of Custodial Interrogations Act was Paul Giannelli of the Criminal Justice Section. Anne Swern was the Criminal Justice Section Advisor.

10. Contact Person (Prior to the meeting.)

John A. Sebert, Executive Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6603

Michael R. Kerr, Legislative Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6620

11. Contact Person. (Who will present the report to the House.)

Robert A Stein, President, National Conference of Commissioners on Uniform State Laws, University of Minnesota Law School, 229 19<sup>th</sup> Ave. S., Minneapolis, MN 55455

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## EXECUTIVE SUMMARY

### 1. Summary of the Recommendation

That the ABA approves the Uniform Electronic Recordation of Custodial Interrogations Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

### 2. Summary of the issue which the recommendation addresses

The Uniform Electronic Recordation of Custodial Interrogations Act addresses difficult problems that accompany interrogations conducted by law enforcement officials. These issues include false confessions and frivolous claims of abuse that ultimately waste court resources. By requiring law enforcement to electronically record custodial interrogations, the Act promotes truth-finding, judicial efficiency, and further protects the rights of law enforcement and those under investigation. The Act is carefully drafted to avoid undue burdens and technical pitfalls for law enforcement officials and prosecutors. The Act does not require law enforcement to make recordings that are unfeasible or that would endanger confidential informants, nor does it punish law enforcement for equipment failures. A uniform statute governing the electronic recordation of custodial interrogations will provide consistent rules between the states and improve the administration of justice.

### 3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Electronic Recordation of Custodial Interrogations Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

### 4. Summary of any minority views or opposition which have been identified

None known.