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North Dakota Peace Officers Association

Phone (701) 952-0208 Fax (701) 952-0683 1210 9th St. SW Jamestown, North Dakota 58401-4518
www.ndpoa.org

January 3, 2012

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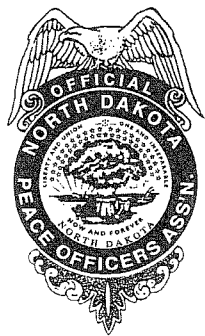
GARY BITZ
Jamestown

On behalf of the North Dakota Peace Officers Association, I am writing in response to Senate Bill #2125. In reviewing the proposed legislation and receiving numerous responses from law enforcement from around the state of North Dakota, the general consensus from law enforcement is they are against the proposed legislation. Law enforcement officers and agencies believe that Senate Bill #2125 would have a detrimental impact on law enforcement, as well as the court system. It is the belief of law enforcement that there isn't a need for the proposed legislation for the electronic recording of custodial interrogations, that it would be more beneficial to allow the individual agencies and departments the ability to implement policies and procedures to address the issue. A number of officers that I spoke with already record their interviews and interrogations. It is widely perceived that the proposed legislation would eliminate the discretion of the officer and their agencies.

Senate Bill #2125, as it is written has many flaws and is vague with some the requirements. I will attempt to address the concerns relayed to me by law enforcement officers, agencies, and departments:

Section 1:

In Subsection 1 the definition of "custodial interrogations" is somewhat lacking. When does a reasonable individual feel that they are in custody? If law enforcement executes a search warrant and there are a number of individuals in the residence, it is commonly perceived that they are "in custody" until they are allowed to leave. Again the proposed legislation would mandate the officer to record the interviews or interrogations of each subject, because they may elicit an incriminating response. Some incidents begin with a custodial interview that may lead to a custodial interrogation because of the statements that the subject has made during the initial interview or because of statements that have been made by



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another individual that is being interviewed by another officer at the same time. Again it is my belief that the majority of officers already record their interviews and interrogations. In Subsection 2 the definition of "place of detention" is also flawed. If an officer has an individual in the rear of a squad car and is unable to leave, he would consider himself in custody and may believe that that is a "place of detention". Again if while executing a search warrant and the officer is questioning a subject in his residence and other officers are conducting the search, that individual may consider himself in custody and may believe that that is a "place of detention".

Section 2:

The requirement in subsection 1 that custodial interrogations at a place of detention must be recorded by both audio and video means would place a huge fiscal impact on law enforcement and the court system. Just the fiscal impact on agencies of requiring the necessary equipment to be in compliance with Senate Bill #2125 is enormous. Not only the necessary audio and video equipment, but also the other equipment and office supplies necessary to copy the recording for the case file, the prosecution, and the defense. Subsections 2, 3, and 4 requires written reports by the officer explaining the reason a custodial interrogation wasn't recorded and explaining the circumstances as to why it wasn't done in compliance with the proposed legislation is unnecessary paperwork and places additional workload on the departments and the court system.

Section 3:

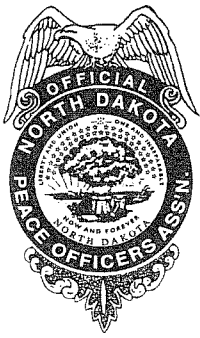
Law enforcement does not have any specific issues with this particular section.

Section 4:

This section is somewhat ambiguous, because if the officer would have time to record the explanation for not recording the custodial interrogation in the first place, they would have time to record the custodial interrogation.

Section 5:

In Subsections 1 and 2 it may be difficult to have individual that is unwilling to participate in a recorded custodial interrogation, record their refusal for the



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recording. There is no statutory remedy for documentation by the officer as to the refusal in the proposed legislation.

Section 6:

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If an officer requests another jurisdiction or federal law enforcement agency to conduct an interview and interrogation at their behalf, it is common practice to have that jurisdiction or federal law enforcement agency make a recording of the interview and interrogation. The reason being that the recording may be introduced as evidence and stipulated to by counsel instead of having the officer that made the recording testify.

Section 7:

In Subsection 1 and 2 the verbal refers more to an interview than to a custodial interrogation. It is common practice by law enforcement that if they are conducting a custodial interrogation, that person is of interest in the investigation and the custodial interrogation is commonly recorded.

Section 8:

Law enforcement does not have any specific issues with this particular section.

Section 9:

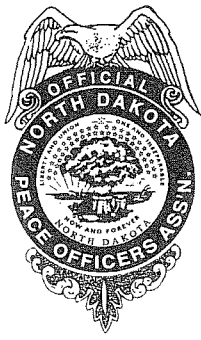
Law enforcement does not have any specific issues with this particular section.

Section 10:

It is the belief of law enforcement that the proposed legislation would place additional strain on an already burgeoning court system. This requirement would place additional responsibilities on the prosecution with additional testimony, motions, and the answering of defense motions.

Section 11:

Again, this requirement would place additional responsibilities on the prosecution in regards to filing a written notice as to why the prosecution wants to introduce a report or the officer's testimony, even though the custodial



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interrogation was not recorded. Law enforcement believes that this requirement may taint the officer's integrity and or testimony with a jury.

Section 12:

The requirements in Subsection 1 and 2 would restrict the prosecution's ability to effectively present a case and allows the defense an advantage, creating an unlevel playing field. Again it may taint the officer's integrity and testimony with a jury.

Section 13:

This section is somewhat confusing. It allows each individual agency or department the ability to develop policies and procedures to handling and preserving the electronic recording, but it does not allow each individual agency or department the ability to develop policies and procedures for the electronic recording of custodial interrogations. Law enforcement agencies should be allowed to develop their own policies and procedures as to the electronic recording of custodial interrogations and it should not be mandated by state law. Also the proposed legislation does not account for retention and storage of the electronic recordings. This alone will place an immense fiscal impact of the law enforcement agencies.

Section 14:

Subsections 1 and 2 address the North Dakota Attorney General's office responsibilities and will be discussed during the hearing by members of the North Dakota Attorney General's office. Subsection 3 may be unreasonable to smaller law enforcement agencies to comply with, because of office configuration and building constraints, as well as equipment and budget constraints. Items in Subsection 4 should be dealt with by the policies and procedures of each individual agency.

Section 15:

Law enforcement does not have any specific issues with this particular section.

Section 16:

Law enforcement does not have any specific issues with this particular section.

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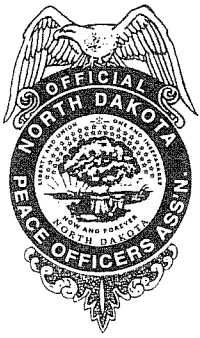
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Office of the Secretary
Jamestown, North Dakota

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Section 17:

While the requirements in Subsection 2 does not require preparation of a transcript of the electronic recording, if mandated by law there is a possibility it may lead to the increased requests by defense attorneys for transcripts. Again this maybe an unforeseen fiscal impact of the proposed legislation.

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Section 18:

Law enforcement does not have any specific issues with this particular section.

Law enforcement around the state of North Dakota has relayed to the North Dakota Peace Officers Association that they are vehemently opposed to Senate Bill #2125. It is perceived Law enforcement would prefer that they are allowed to adopt their own policies and procedures for the electronic recording of custodial interrogations, purchase the necessary equipment that is fiscally appropriate for their agency and not be mandated by state law to audio and video record custodial interrogations. Thank you for your attention in this matter.

Sincerely

Michael J. Ness

President

North Dakota Peace Officers Association