

Testimony of the Innocence Project
North Dakota House Judiciary Committee
Senate Bill 2376
March 20, 2023

The Innocence Project is a not-for-profit organization that represents the wrongfully convicted and works to reform the criminal legal system to prevent future injustice. Through this work, we have learned the prevalence of false confessions that lead to wrongful convictions. In fact, nearly 30% of the nation's 375 wrongful convictions overturned by DNA evidence involved some form of a false confession.

The solution is simple: record the interrogations. 30 states require the electronic recording of interrogations. In addition, hundreds of individual jurisdictions throughout the country have adopted electronic recording of interviews on their own. Recording of custodial interrogations provides a safeguard against false confessions and wrongful convictions. It helps law enforcement by substantiating confessions, preventing false claims of officer misconduct, and enhancing public confidence through the transparency of the process.

Senate Bill 2376 would ask the state's law enforcement agencies to report back on how often this important process to protect the innocent and law enforcement agencies is used, when it's not, what crime categories it's used for, how much it would cost the state to implement statewide, and to make recommendations for best practices.

The Innocence Project supports SB2376 and looks forward to seeing the results and applauding the work that North Dakota law enforcement agencies are already doing.

False Confessions

It can be difficult to understand why a person would wrongly confess to a crime he or she did not commit. Researchers who study this phenomenon have determined that the following factors contribute to or cause false confessions:

- Compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, mental limitations, mental illness, and youth.
- Interrogation techniques, such as untrue statements about the presence of incriminating evidence.
- Fear on the part of the suspect that failure to confess will yield a harsher punishment, paired with the inference that confession will lead to more lenient treatment.
- Perceived or real intimidation of the suspect

One such case occurred in Idaho, where law enforcement used deceptive interrogation techniques to coerce a confession from Christopher Tapp for the rape and murder of a young woman, even though his DNA did not match that left at the scene. Over 30 hours of interrogations, Mr. Tapp was manipulated into a false confession, which he immediately recanted upon his arrest. Luckily, the mother of the victim, urged on by the missing DNA match, started her own investigation, and after watching all 30 hours of the interrogation, it became clear to her that Mr. Tapp had falsely confessed. She was able to use genetic genealogy to track down the actual perpetrator who had remained at large. That individual confessed to the crime, matched the DNA, and testified that he had never met Mr. Tapp. Thanks in part to the recorded interrogation and more significantly to the work of the victim's mother, Mr. Tapp was exonerated nearly twenty years after his incarceration.

Need for a Statewide Law

Recording interrogations is a practice that not only protects innocent individuals, but it also protects law enforcement agencies. After statewide policies get implemented, law enforcement agencies report positive reactions and the following benefits:

- Substantiating authentic confessions by creating an irrefutable record of what occurred during closed-door interrogations.
- Preventing false claims of officer misconduct during the interrogation.
- Allowing officers to better prepare for trial, which might occur weeks or months after the interrogation, by playing the tape of the interrogation instead of having to piece together notes.
- Capturing subtle details that may be lost if unrecorded, which help law enforcement better investigate the crime.

North Dakota law enforcement agencies may or may not be already recording custodial interrogations, but without a law requiring recording of interrogations it is nearly impossible to achieve a consistent statewide practice; justice will depend on which jurisdiction a person is arrested in. For example, Ohio passed a statute in 2010 that encourages but does not require recording interrogations. In a 2017 survey conducted by the University of Cincinnati School of Criminal Justice, only 52% of agencies reported having a policy on recording interrogations. Only 12% of respondents had policies that followed the guidelines recommended in the law

Conclusion

The Innocence Project supports SB2376 to study the practices of law enforcement agencies statewide. We look forward to working with law enforcement to implement the recommendations and best practices of the study for fewer false confessions and wrongful convictions and more protected law enforcement.