2023 SENATE JUDICIARY

SB 2376

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2376
2/7/2023

A BILL for an Act to provide for a legislative management study regarding the recording of custodial interrogations.

10:00 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Video taping
- False confessions
- Interview techniques
- Suspects
- Ethical standards

10:00 AM Senator Sickler introduced the bill.

10:33 AM Travis Finck, North Dakota Commission on Legal Counsel for Indigents, testified in favor of the bill and provided written testimony #19412.

10:36 AM James Trainum, retired detective, testified in favor of the bill and provided written testimony #19504.

10:41 AM Lacey Anderson, The Innocence Project, spoke on behalf of James Mayer in favor of the bill.

10:42 AM Chairman Larson closed the public hearing.

10:42 AM Senator Myrdal motion to Do Pass the bill. Motion seconded by Senator Luick.

10:42 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Sickler will carry the bill.

This bill does not affect workforce development.

Additional Written Testimony:

James Mayer provided written testimony #19394.

Bay Skoggin provided written testimony #19383.

10:43 AM Chairman Paulson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2376: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2376 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE JUDICIARY

SB 2376

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2376
3/20/2023

A bill for an Act to provide for a legislative management study regarding the recording of custodial interrogations.

9:30 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. Satrom, Rep. Schneider and Rep. Vetter. Absent: Rep. VanWinkle, and Rep. Roers Jones

Discussion Topics:

- Interrogation room.
- Retention of records.
- False confessions.

Senator Sickler: Introduced the bill. Testimony #25960

Travis Finck, Executive Director, NDCLCI: Testimony #25794

Jim Mayer, Attorney, Great North Innocence Project. Testimony #25725

Jim Trainum: Retired DC Metropolitical Police Department. Testimony #25759

Bay Scoggin, State Police Advocate, Innocence Project: Testimony #25793

The hearing closed at 9:52 AM

Rep. Vetter moved a Do Pass;

Seconded by Rep. Cory

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	A
Representative Steve Vetter	Y

Roll call vote: 11 Yes 0 No 2 Absent Motion carried.

Carrier: Rep. Rios

Additional Written Testimony- Sara Stolt-Deputy Commissioner of HHS #26366

The meeting closed at 9:54 AM

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2376: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2376 was placed on the Fourteenth order on the calendar.

TESTIMONY

HB 2376

INNOCENCE PROJECT

Executive Director
Christina Swarns, Esq.

Co-Founders & Special Counsel
Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.

Testimony of the Innocence Project
North Dakota Senate Judiciary Committee
Senate Bill 2376
February 7, 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

Senate Judiciary Committee
Testimony February 7, 2023
SB 2376

Thank you, Chairman Larson and members of the Committee. My name is James Mayer and I'm a Managing Attorney with the Great North Innocence Project. We work in North Dakota, among other places, to remedy and prevent wrongful convictions through litigation and policy advocacy.

I am here to testify in support of Senate Bill 2376, a bill that provides for study of the recording practices of local and state law enforcement during custodial interrogations. The purpose of the Study Bill is to figure out whether it might be practicable and worthwhile to establish a uniform standard for the recording of interrogations in North Dakota.

To be clear, as an organization, we support a statewide standard requiring the recording of interrogations. Recording interrogations minimizes the risk that innocent people are convicted on the basis of false confessions. It's hard to grasp why a person would falsely confess to a serious crime that they didn't commit, but we know that it happens. And it happens a lot more than you'd think. There have been about 375 wrongful convictions overturned through DNA evidence over the past few decades, and nearly a third of those cases involved a false confession.

False confessions have many causes, some having to do with characteristics of the suspect – youth, mental illness, stress and exhaustion, to name a few. Other causes have to do with the circumstances and methods of the interrogation – this could include false statements about the presence of incriminating evidence, promises that a confession will lead to lenient treatment, or coercive intimidation of the suspect, either real or perceived.

Recording of interrogations makes false confessions less likely, and it also make it easier for law enforcement and the courts to separate valid confessions from questionable ones. And recording interrogations helps law enforcement by providing proof of authentic confessions, with an objective record of what happened in the interrogation room. Recording also prevents -- or provides a defense to -- false claims of officer misconduct during interrogations.

SB 2376
68th Legislative Assembly
Senate Judiciary Committee
February 7, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate Judiciary Committee, for the record my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission respectfully request the committee provide a unanimous DO PASS recommendation.

SB 2376 calls for Legislative Management to study the feasibility and desirability for uniform implementation of recording custodial interrogations. The Innocence Project states more than 1 out of 4 people wrongfully convicted but later exonerated by DNA evidence made a false confession or incriminating statement. This can be caused by everything from perceived intimidation to compromised reasoning ability by the accused and many more reasons. Recording custodial interrogations would serve to protect the accused by allowing their counsel to review their confession in entirety.

Furthermore, recording interrogations can also be beneficial for law enforcement. Recordings allow Law Enforcement to focus on the interview, prevent disputes on how the officer treated the defendant, and capture subtle details that can sometimes be lost.

Lastly, this is a study bill. As many other states move toward enacting custodial interrogation requirements, this bill asks to study it. This would provide an opportunity for our law enforcement, prosecutors, defense attorneys, and Courts to all work with legislators in the interim to find the most practical solution for North Dakota.

Madam Chair, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:

Travis W. Finck
Executive Director, NDCLCI

My name is Jim Trainum. I am retired from the DC Metropolitan Police Department where I was a homicide detective and led the department's Violent Crime Case Review Project. Now I work with law enforcement agencies across the country to help improve investigative and interrogation practices. I am here to express my support for Senate Bill 2376.

I learned about false confessions the hard way. During one of my first major homicide cases in 1994. I obtained a confession from a suspect. It contained numerous details about the crime that we though only the true perpetrator would have known. During our follow-up investigation, we discovered the suspect had an ironclad alibi. In spite of that, we continued to believe that she had to have been involved. She just knew too many details

Because we had recorded the majority of the interrogation, which was not the common practice at the time, we were able to go back and see how she was able to provide the details that she did. We found that we had unintentionally provided the suspect with those details, often in very subtle ways.

Mandatory videotaping of interrogations in their entirety is unquestionably the best way to show the jury that proper interrogation practices were followed and the resulting confession is reliable. Having addressed this issue many times across the country, I have heard all of the reasons for resisting or limiting the practice. I will not address them here, as it has been repeatedly shown by other agencies adopting the practice that they are either invalid or can be overcome. Instead, I want to point out a couple of reasons that videotaping of interrogations in their entirety is the way to go.

First: Confessions are the most powerful evidence that any prosecutor can have. A confession often will trump even the most overwhelming evidence of a suspect's innocence. Videotaping of interrogations, a practice that is now widely expected by the public, is the best way to show that the interrogation was conducted using acceptable means and the confession was not tainted by contamination. When no videotape is available, the prosecution can only argue this through the investigator's documentation and testimony. Studies and research have repeatedly shown that the investigator's reports invariably fail to document the critical information that is necessary to make a reliable evaluation of both the interrogation and confession. What often occurs is a swearing match between the investigator's account and the suspect's. This increases the chance of a wrongful conviction. It also increases the chances that a true and reliable confession will be rejected by the jury, and an guilty person will go free.

Second – though there may be initial resistance to the idea, once such practices are implemented, history has shown that investigators and prosecutors will come to love it. My own department is a classic example. We refused to implement the practice until our city council was forced to step in and pass legislation which also included sanctions for failure to videotape. Now, investigators go well beyond what is mandated. They routinely videotape suspects who are not in custody as well as witness interviews. Like my old commander said "It was the best thing ever to be shoved down our throats."

A characteristic of a profession is conforming to the technical or ethical standards of a profession. Obtaining best evidence by videotaping of interrogations in their entirety is now an accepted standard of the profession of law enforcement. This bill, with the adoption of the Uniformed Electronic Recordation of Custodial Interrogation Act will go far in helping increase the professionalism of North Dakota's law enforcement agencies.

House Judiciary Committee Testimony
March 20, 2023
SB 2376

Thank you, members of the Committee. My name is James Mayer and I'm a Managing Attorney with the Great North Innocence Project. We work in North Dakota, among other places, to remedy and prevent wrongful convictions through litigation and policy advocacy.

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To be clear, as an organization, we support a statewide standard requiring the recording of interrogations. Recording interrogations minimizes the risk that innocent people are convicted on the basis of false confessions. It's hard to grasp why a person would falsely confess to a serious crime that they didn't commit, but we know it happens. And it happens a lot more than you'd think. There have been about 375 wrongful convictions overturned through DNA evidence over the past few decades, and nearly a third of those cases involved a false confession.

False confessions have many causes, some having to do with characteristics of the suspect – youth, mental illness, stress and exhaustion…Others having to do with the interrogation techniques – false statements about the presence of incriminating evidence, promises that a confession will lead to lenient treatment, coercive intimidation of the suspect, either real or perceived.

Recording of interrogations make false confessions less likely, and it also make it easier for law enforcement and the courts to separate valid confessions from questionable ones. And recording interrogations helps law enforcement by substantiating the authentic confessions with an irrefutable record of what happened in the interrogation room. It also prevents false claims of officer misconduct during interrogations.

As we started exploring the idea of a recording bill in North Dakota, we learned that a number of law enforcement jurisdictions already record custodial interrogations as a matter of policy, probably for many of the reasons I just mentioned. But before pushing for any new uniform standard, we believe it makes sense to study the issue. The study bill is designed to get a picture of what recording practices are in North Dakota, identifying the best practices, and gaining insight into potential costs or other barriers to implementing any uniform standard. That we can come at the issue with a perspective based on actual conditions and practices throughout the state of North Dakota.

With that, I will introduce James Trainum, formerly a detective with the District of Columbia Police Department, who can provide some information about these issues from a law enforcement perspective.

Thank you, and I will stand by for any questions members of the Committee may have.

My name is Jim Trainum. I am retired from the DC Metropolitan Police Department where I was a homicide detective and led the department's Violent Crime Case Review Project. Now I work with law enforcement agencies across the country to help improve investigative and interrogation practices. I am here to express my support for Senate Bill 2376.

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

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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.

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SB 2376
68th Legislative Assembly
House Judiciary Committee
March 20, 2023
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Respectfully Submitted:

Travis W. Finck
Executive Director, NDCLCI

SB 2376
House Judiciary
03/20/23 – 9:30AM – 327B

- SB 2376 calls for Legislative Management to study the recording practices of local and state law enforcement during custodial interrogations. This study bill is designed to better understand what recording practices are currently used in North Dakota, gain insight into potential costs or other barriers that may prevent additional agencies from adopting such policies, and determine the potential advantages and disadvantages of North Dakota adopting the Uniform Electronic Recordation of Custodial Interrogations Act, which has been enacted, at least in part, in 30 states. Advocates of recording argue that the practice protects both law enforcement and those in custody from false accusations of improper behavior.

- In 2013, based on legislation introduced at the request of the Uniform Law Commission, a similar legislative management study was completed. No further action was taken by the legislature at that time.

- Over the past decade, however, recording of certain law enforcement activities has become common. For example, body cams are used across the state to record traffic stops for the benefit of both the public and law enforcement officers. Similarly, numerous law enforcement agencies in North Dakota now record certain custodial interrogations – BCI, HP, many of the largest sheriff's departments and police departments. Certain smaller law enforcement agencies also record. But some do not, whether for purposes of costs, training, or philosophical approach to interrogations.

- The purpose of the study is not to lay the groundwork to force a one-size-fits-all approach on all law enforcement agencies. Instead, the intent is to learn what has worked well and what has not worked well from both those agencies already recording and those that do not record.

NORTH Dakota | Health & Human Services
Be Legendary.

Testimony
Senate Bill No. 2238
House Judiciary Committee
Representative Klemin, Chairman
March 14, 2023

Chairman Klemin, and members of the House Judiciary Committee, I am Sara Stolt, Deputy Commissioner of the Department of Health and Human Services (Department). I appear before you to offer information and support related to Senate Bill 2238.

Senate Bill 2238 seeks to address a challenge childcare providers and other employers have in obtaining fingerprints for their federally required fingerprint-based background checks.

The Department operates live scan fingerprint machines in each of the state's eight Human Service Centers (HSC). These fingerprinting locations can be found Fargo, Grand Forks, Devils Lake, Jamestown, Minot, Williston, Dickinson and Bismarck. In addition, live scan machines are also located at the State Hospital in Jamestown, Life Skills Transition Center (LSTC) in Grafton, and the Rolla outreach clinic. An additional portable machine is available in Dickinson to be checked out by the childcare licensors as needed.

Live scan machines allow the Department to digitally scan fingerprints, eliminating the need for ink-rolled fingerprints. The digital fingerprints are then sent directly to the Department's Central Background Check Unit and the ND Bureau of Criminal Investigations. Once the Central Background Check Unit receives the fingerprints and the full packet of materials from the HSC Live Scan Operator, the fingerprints can be processed. Live scan machines are required to be on the State of ND's IT network to assure safe