Electronic

Recording of Interrogations

★ Electronic recording of interrogations protects the innocent and provides the best evidence against the guilty.

★ 2004 POLICY SUMMARY ★

Electronic Recording of Interrogations

Summary

- **Every year, hundreds of innocent Americans are convicted of crimes because of false confessions.**
- **Many more innocent Americans are imprisoned and later released because of false confessions.**
- **There are many reasons why the innocent "confess," ranging from coercion to mental illness.**
- **Electronic recording of interrogations protects the innocent and provides the best evidence against the guilty.**
- **Three states—Alaska, Illinois and Minnesota—and many cities and counties now require electronic recording of interrogations.**
- **Jurisdictions that use electronic recording have proven its value.**
- **The costs of electronic recording are more than offset by the savings.**

Every year, hundreds of innocent Americans are convicted of crimes because of false confessions.

Of the 111 people sentenced to death and then exonerated since 1976, 27 of them—nearly one in four—had made false confessions. It is estimated that at least 300 innocent people are convicted of major crimes each year as a result of false confessions.[1] For example:

■ Jerry Frank Townsend, a mentally retarded man, confessed in 1979 to six murders and a rape, serving 22 years in a Florida prison. After he died of cancer on death row, DNA tests exonerated him.

■ In 1985, Ronald Jones confessed to a murder in Illinois after police beat him and threatened further abuse. He spent 14 years in prison, eight of them on death row, before being exonerated by DNA evidence.

■ In 1988, Christopher Ochoa confessed to a rape-murder in Texas after police falsely claimed they had overwhelming evidence against him and that he could only avoid the death penalty if he confessed. He was later definitively cleared.

■ In 1993, police induced Gary Gauger to speculate that he could have murdered his parents during an alcoholic blackout. While Gauger waited on death row, federal agents learned that the murders were actually committed by a Wisconsin motorcycle gang.

Many more innocent Americans are imprisoned and later released because of false confessions.

It is impossible to count how many times people are charged based on false confessions and subsequently released after exonerating evidence comes to light. A *Washington Post* investigation into one jurisdiction—Prince George's County, Maryland—described four egregious cases where homicide detectives coerced confessions which were later proven false and charges were dropped before any trial.[2] Similarly, the *Chicago Tribune* conducted a study that found 247 instances in which the defendants' self-incriminating statements were thrown out by a court or found insufficiently convincing by a jury.[3]

There are many reasons why the innocent "confess," ranging from coercion to mental illness.

While physical abuse by police still occurs,[4] interrogators don't have to use force to elicit confessions from the mentally retarded, mentally ill, juveniles, and even some poorly educated suspects. Suspects struggling with alcohol or drug problems are especially susceptible to psychologically powerful interrogation tactics. Sleep deprivation can lead to confusion, temporary psychosis, and even hallucinations. After 28 hours in an interrogation room, Keith Longtin began to believe police suggestions that he had a split personality and the "other self" had murdered his wife. He spent the next eight months in jail until DNA evidence fingered the real killer.[5]

Electronic recording of interrogations protects the innocent and provides the best evidence against the guilty.

Electronic recording prevents overt misconduct, settles disputes about what was actually said, and provides the context for any suspect's statement to police. It eliminates uncertainty and demonstrates truth.

Three states—Alaska, Illinois and Minnesota—and many cities and counties now require electronic recording of interrogations.

In 2003, Illinois became the first state to enact legislation requiring electronic recording. That law, which takes effect in 2005, applies to homicide cases and major juvenile offenses. Two other states have employed the practice for years. The Minnesota Supreme Court ruled in 1984 that custodial interrogations must be recorded "to ensure the fair and equitable presentation of evidence at trial."[6] In 1985, the Alaska Supreme Court held that an unexcused failure to record custodial interrogations violated the suspect's right to due process under the state constitution.[7] Other major jurisdictions that require electronic recording include Austin, Denver, San Diego County, Broward County, and Portland, Maine.

Jurisdictions that use electronic recording have proven its value.

A study of recorded interrogations for the U.S. Department of Justice found that jurisdictions with taping policies experience significant improvement in the quality of their police interrogations. Ninety-seven percent of police departments that have ever videotaped suspects' statements found the practice useful, the study found.[8] Judges say it streamlines the process, and prosecutors and police argue that it helps them disprove phony claims of misconduct. In jurisdictions that tape custodial interrogations, motions by the defense to suppress a confession have gone down, and guilty pleas are up.

The costs of electronic recording are more than offset by the savings.

The only real argument against electronic recording is that cameras are costly. But today such technology, especially when purchased in bulk, is not very expensive. At the same time, electronic recording saves tax money by reducing multi-million dollar awards in false arrest and police misconduct lawsuits, lowering the number of time-consuming evidence suppression hearings, and encouraging more plea agreements before trial. It also helps prevent crimes by keeping police focused on the guilty rather than the innocent. For example, in the case of Keith Longtin, cited above, the real killer sexually assaulted seven more women while Longtin languished in jail.

This policy brief relies in large part on information from the Campaign for Criminal Justice Reform.

Endnotes

[1] Richard P. Conti, "The Psychology of False Confessions," *The Journal of Credibility Assessment and Witness Psychology*, Vol. 2, No. 1, 1999.

[2] April Witt, "Allegations of Abuses Mar Murder Cases," *Washington Post*, June 3, 2001.

[3] Ken Armstrong, Steve Mills, and Maurice Possley, "Coercive and illegal tactics torpedo scores of Cook County murder cases," *Chicago Tribune*, December 16, 2001.

[4] For example, U.S. District Judge Milton Shadur wrote in 1999: "It is now common knowledge that in the early- to mid-1980s, Chicago Police Cmdr. Jon Burge and many of the officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions." *Chicago Tribune* editorial, April 21, 2002.

[5] April Witt, "Allegations of Abuses Mar Murder Cases," *Washington Post*, June 3, 2001.

[6] Minnesota v. Scales, 518 N.W.2d 587 (Minn. 1984).

[7] Stephan v. State, 711 P.2d 1156 (Alaska 1985).

[8] William Geller, "Police Videotaping of Suspect Interrogations and Confessions," Report to the National Institute of Justice, 1992.

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Electronic Recording of Interrogations

Electronic Recording of Interrogations Act

SECTION 1. SHORT TITLE

This Act shall be called the "Electronic Recording of Interrogations Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Every year, many people are jailed because of false confessions during custodial interrogations.

2. Interrogators don't have to use force to elicit confessions from the mentally retarded, mentally ill, juveniles, and even some poorly educated suspects.

3. Electronic recording of interrogations protects the innocent and provides the best evidence against the guilty.

(B) PURPOSE—The purpose of this Act is to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes in court as to what actually occurred during the interrogation, thereby improving prosecution of the guilty while affording protection to the innocent.

SECTION 3. ELECTRONIC RECORDING OF INTERROGATIONS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS – In this section:

1. "Electronic recording" means a motion picture, audiotape, videotape or digital recording.

2. "Custodial interrogation" means any interrogation which is conducted in a place of detention and during which a reasonable person in the subject's position would consider himself or herself to be in custody.

3. "Place of detention" means a police station, correctional facility, holding facility for prisoners, or other government facility where persons are held in detention in connection with criminal charges which have been or may be filed against them.

(B) ELECTRONIC RECORDING OF INTERROGATIONS REQUIRED

1. During the prosecution of a class [insert as appropriate] felony, an oral, written or sign language statement of a defendant made during a custodial interrogation shall be presumed inadmissible as evidence against a defendant in a criminal proceeding unless an electronic recording is made of the custodial interrogation in its entirety and the recording is substantially accurate and not intentionally altered.

2. If the court finds that the defendant was subjected to a custodial interrogation in violation of paragraph 1, then any statements made by the defendant following that custodial interrogation, even if otherwise in compliance with this section, are also presumed inadmissible.

Electronic Recording of Interrogations

3. The State may rebut a presumption of inadmissibility through clear and convincing evidence that the statement was both voluntary and reliable, and law enforcement officers had good cause for failing to electronically record the entire interrogation. Examples of good cause include:

a. the interrogation took place in a location other than a police station, correctional facility, or holding facility for prisoners and where the requisite recording equipment was not readily available;
b. the accused refused to have his / her interrogation electronically recorded, and the refusal itself was electronically recorded; or
c. the failure to electronically record an entire interrogation was the result of equipment failure and obtaining replacement equipment was not feasible.

4. Nothing in this section precludes the admission of:

a. a statement made by the accused in open court at his or her trial, before a grand jury, or at a preliminary hearing;
b. a spontaneous statement that is not made in response to a question;
c. a statement made after questioning that is routinely asked during the processing of the arrest of the suspect;
d. a statement made during a custodial interrogation that is conducted out-of-state;
e. a statement obtained by a federal law enforcement officer in a federal place of detention;
f. a statement given at a time when the interrogators are unaware that a class [insert as appropriate] felony has in fact occurred; or
g. a statement, otherwise inadmissible under this section, that is used only for impeachment and not as substantive evidence.

5. The State shall not destroy or alter any electronic recording made of a custodial interrogation until such time as the defendant's conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted, or the prosecution of that offense is barred by law.

SECTION 4. GRANTS FOR ELECTRONIC RECORDING EQUIPMENT

From appropriations made for that purpose, the Secretary of [Public Safety] shall make grants to local law enforcement agencies for the purchase of equipment for electronic recording of interrogations. The Secretary shall promulgate rules to implement this paragraph.

SECTION 5. TRAINING OF LAW ENFORCEMENT OFFICERS

From appropriations made for that purpose, the Secretary of [Public Safety] shall initiate, administer, and conduct training programs for law enforcement officers and recruits on the methods and technical aspects of electronic recording of interrogations.

SECTION 6. EFFECTIVE DATE

Sections 4 and 5 of this Act shall take effect on July 1, 2004. Section 3 of this Act shall take effect on July 1, 2005.