

Testimony of Alice Craig
Proponent
Senate Bill 92
February 7, 2016

Senate Judiciary Hearing
Tuesday, February 7th, 2017 at 10:30 a.m.
Senate Bill 92

Dear Chairman Wilborn and Members of the Committee:

I am writing in my personal capacity to express my strong support for SB 92, which requires law enforcement agencies to develop policies and procedures for recording all custodial interrogations. I have been a supervising attorney in the Paul E. Wilson Project for Innocence and Post-Conviction Remedies for the last 13 years and a defense attorney for 22 years. The Project has been litigating state and federal post-conviction habeas cases since 1965.

The Project began representing Floyd Bledsoe in 2006 and eventually joined forces with the Midwest Innocence Project to prove his innocence through DNA testing. Although my colleagues and I knew Floyd was innocent, ten years passed before he was freed. Floyd spent nearly 16 years in prison for a crime he did not commit. During the police investigation of the crime, some interrogations were recorded and some were not. Discretion by law enforcement to pick and choose what statements to preserve severely hampered the ability to defend Floyd at his trial. Floyd will tell you more about his case, but I believe his wrongful conviction may have been prevented had police recorded the interrogations.

The wrongful conviction of Eddie Lowery also could have been avoided by recording all interrogations. In 1981, Mr. Lowery was a 22-year-old soldier stationed at Fort Riley when he was wrongfully convicted of raping an elderly woman in Odgen. Detectives interrogated Mr. Lowery for a full day without food or water and denied him a lawyer. He believed that he was not leaving the room until he confessed.

The detectives fed Mr. Lowery details of the crime and he repeated them back. He quickly recanted the statements and his attorney filed to suppress them, but the motion was denied. Mr. Lowery was convicted and spent nine years in prison. In 2002, DNA testing proved his innocence and was a match to Daniel Brewer who was later convicted of the crime and another rape that occurred around the same time. Had Mr. Lowery's interrogation been recorded, the detectives would likely not have used coercive and illegal tactics. Even if they had used those methods, the judge and jury would have been able to see the circumstances that led up to Mr. Lowery's confession.

Today, many police and sheriff's departments across the state routinely record interrogations including agencies in Riley, Johnson, Shawnee, Sedgwick, McPherson, Leavenworth, and Wyandotte counties. Senate Bill 92 would ensure that Kansans and law enforcement in every jurisdiction benefit from recorded interrogations, and that justice will not depend on where a person is taken into custody in our state.

This legislation will have minimal implementation costs and will result in longer-term savings. First, recording would only be required for custodial interrogations in places of detention. This requirement applies to suspect interviews in police stations, jails, or other facilities under the control of law enforcement. Field interviews or questions asked during routine booking would not have to be recorded. Second, the bill would permit audio-only or video recordings. Audio recorders can be purchased for \$30. Cell phones have the ability to record both audio and video.

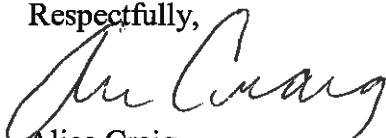
In 2015, the Innocence Project surveyed law enforcement agencies about the costs of recording interrogations in Massachusetts and Wisconsin, where the practice has been required for over a decade. They received over 100 responses, and all participants found that costs were manageable. Many smaller agencies reported using handheld digital cameras that retail for \$50-\$100, and several had equipment-sharing agreements with larger agencies. A number of agencies reported using body-worn cameras to record interrogations.

In terms of storage, the majority of agencies reported using existing computer servers or DVDs, meaning that additional storage did not have to be purchased. Approximately 70 percent of responding agencies said that they do not transcribe interviews. Most of the agencies that did report transcribing interviews said it was done on a case-by-case basis, or when requested by the prosecutor.

The practice actually results in savings for law enforcement, courts and taxpayers. Most discovery in Kansas for criminal cases is now done electronically for cost saving reasons and the storage of digital video or audio files would not be a burden on agencies.

Finally, recording interrogations might reduce the number of motions to suppress confessions and statements. The burden of proving that a confession is admissible is on the State. Courts review the duration and manner of the interrogation, the ability to communicate with the outside world, age, intellectual ability and fairness of the officers conducting the interrogation.¹ Having a digital record of the interrogation can protect law enforcement officers and agencies against frivolous lawsuits alleging misconduct during interrogations. In addition, it helps municipalities and taxpayers to avoid costly wrongful conviction lawsuits, like Eddie Lowery's claim, which cost Riley County \$7.5 million. Most importantly, it protects citizens against unfair governmental practices that can lead to wrongful convictions. Senate Bill 92 represents not only good criminal justice policy, but also sound fiscal policy.

Respectfully,



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¹ *State v. Sanders*, 272 Kan. 445, 452, 33 P.3d 596 (2001).