
HB

242

- Protects the innocent
 - Helps punish the guilty
 - Instills credibility in the legal system
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HB 242 requires the electronic recording of the complete interrogation of suspects in homicide cases. The electronic recording of the complete interrogation not only protects the innocent, it also serves the interests of everyone in our justice system.

HB 242 protects the innocent by:

- Preventing the erroneous convictions based on coerced statements.
- Alerting judges and juries to the vulnerabilities of particular defendants (like impressionable juveniles and those with mental illness).
- Eliminating excessively coercive interrogation techniques.
- Helping to ensure law enforcement complies with *Miranda*.
- Exposing overzealous police officers.

The minimal cost of providing recording equipment (for the rare police force which does not already have it) is easily offset by reducing false arrest and police misconduct lawsuits, lowering the number of suppression hearings and encouraging more plea agreements.

HB 242 instills credibility in the legal system and serves the interests of law enforcement and judiciary by:

- Strengthening prosecution cases.
- Preventing wrongful convictions based on false/coerced confessions.
- Minimizing lengthy and costly appeals.
- Protecting law enforcement agencies from allegations of misconduct.
- Improving the overall efficiency of the legal process.
- Lessening number of lengthy suppression hearings.
- Increasing public confidence.
- Providing judges with better documented evidence.
- Providing appellate courts with a clear record for review.

HB 242 helps punish the guilty by:

- Providing clear evidence of voluntary nature of the statements.
- Removing any doubt of what was said and why.
- Identifying false confessions and admissions quickly so that law enforcement can find the actual offender(s).

Why Kentucky Needs HB 242

Every year, hundreds of Americans are wrongly convicted of crimes because of false confessions. On the other side of the coin, many law enforcement officers are charged each year with abusing prisoners and/or misstating what they said during unrecorded sessions, leading to motions to suppress confessions or civil law suits for injury. These disputes will be avoided by recording entire interviews from the *Miranda* warning until the person is released from custody.

It is impossible to know how often people are charged based on false confessions and subsequently released after exonerating evidence came to light. A *Washington Post* investigation of Prince George's County, Maryland found four egregious cases where homicide detective coerced confessions, which were later proven to be false. (Witt 2001) A *Chicago Tribune* study found 247 instances in which defendants' self-incriminating statements were thrown out by a judge or disbelieved by a jury. (Armstrong, Mills and Possley 2001) Unfortunately, there is no way to know how often false confessions are never discovered.

There are many reasons why innocent people "confess" to a crime they did not commit. Physical abuse by police occasionally occurs, but it is not the norm. Skilled interrogators do not need to use force to elicit false confessions from vulnerable people, particularly juveniles, mentally retarded, mentally ill and poorly educated suspects. Alcohol and drug addiction and sleep deprivation make people susceptible to police coercion. For example, after 28 hours in an interrogation room, Keith Longtin began to believe police suggestions that he had a split personality and that his other self had murdered his wife. He spent eight months in jail before DNA evidence identified the real killer. (Witt 2001)

Even with no improper questioning on the part of the police, people who are mentally ill or mentally retarded may still wish to tell the questioner what they think he wants to hear, and thus may falsely confess even without overtly being subjected to any improper questioning technique.

In the first 142 exonerations based on DNA, 35 of the defendants – nearly one in four – had made false confessions. (Drizin and Reich 2004) It is estimated that at least 300 innocent people are convicted of major crimes each year as a result of false confessions. (Conti 1999)

Contemporaneous electronic recordings of suspect interviews have been shown to decrease the likelihood of false confessions. They also have proved to be efficient and powerful law enforcement tools. Audio is good, video is better. Both methods create a permanent record of exactly what occurred. However, audio taping has limitations because it is not able to capture facial expressions and other body language or signs of physical intimidation.

Recordings prevent disputes about officers' conduct, the treatment of suspects and statements they made. Police are not called upon to paraphrase statements or try later to describe suspects' words, actions, and attitudes. Instead, viewers and listeners see and/or hear precisely what was said and done, including whether suspects were forthcoming or evasive, changed their versions of events, and appeared sincere and innocent or deceitful and guilty. An electronic record made in the station interview room is law enforcement's version of instant replay. (Sullivan 2004)

Electronic recording of interrogations is a good method to preserve what happens in the stationhouse. Police departments that have begun videotaping suspects' statements have found the practice useful according to a 2004 survey of 238 law enforcement agencies conducted by Thomas Sullivan. Sullivan reports that the officers enthusiastically supported the practice. (Sullivan 2004)

The most commonly heard objection to electronic recording is a belief that suspects will "clam up" if they are recorded, refuse to be interviewed or refuse to cooperate with the questioner. According to a national study conducted by Thomas Sullivan, most detectives he spoke with said that the suspects' awareness of being recorded is not a hindrance, because when interviews get underway any initial hesitation fades and suspects focus attention on the subject of their interview. Also, most state laws permit surreptitious recording of interrogations, so this is not an issue in those jurisdictions. A minority of detectives stated that some suspects voiced concerns and became uncomfortable. If the suspect refuses to permit recording of the interrogation, then the interviews should be conducted by hand and the legislation should make an exception to the recording requirement.

Another argument against electronic recording is that cameras are costly. But with today's technology, purchase of electronic recording devices is financially feasible, especially when purchased in bulk. Electronic recording will likely save taxpayer money by reducing awards in false arrest and police misconduct lawsuits, lowering the number of suppression hearings and encouraging pleas before trial. Most importantly, it may keep the police focused on the guilty rather than the innocent. In the case of Keith Longtin, the real killer sexually assaulted seven more women during the eight months Longtin spent in jail.

Support for HB 242 demonstrates concern for innocent human life and a desire to punish only the guilty. Supporters of HB 242 are giving law enforcement officials and judges a valuable tool to carry out their mission to protect society from those who would harm others.