

# INNOCENCE PROJECT

**Michelle Feldman, Innocence Project  
Testimony on Senate Bill 92  
Senate Judiciary Hearing  
Tuesday, February 7<sup>th</sup>, 2017 at 10:30 a.m.**

My name is Michelle Feldman and I am a state policy advocate at the Innocence Project, a national organization dedicated to exonerating the wrongfully convicted. We work closely with our local partners across the country, including the Midwest Innocence Project, which exonerates wrongfully convicted Kansans. I am here to testify in strong support of Senate Bill 92.

False confessions and statements made during police interrogations are a leading contributor to wrongful convictions nationally and played a role in at least two wrongful convictions in Kansas—the cases of Eddie Lowery and Floyd Bledsoe. Recording custodial interrogations in their entirety enhances transparency and accuracy, which benefits the entire criminal justice system.

It protects the innocent by deterring against coercive interrogation tactics and by alerting investigators, judges and juries if suspects have mental limitations or other vulnerabilities that may make them more susceptible to falsely confessing. It also benefits law enforcement by removing any doubt about authentic confessions, reducing court time spent arguing motions to suppress statements and confessions, and protecting officers against frivolous claims of misconduct. Nationally, 21 states, including Nebraska, Colorado and Missouri require recording of interrogations for certain crimes and all federal law enforcement agencies, including the FBI, tape interrogations.

Last year Representative Gonzalez referred the issue of recording interrogations to the Kansas Judicial Council, which assigned it to the Criminal Law Advisory Committee. The Criminal Law Advisory Committee is made up of a range of criminal justice stakeholders including: Ed Klumpp of the Kansas Sheriffs, Police Chiefs and Peace Officers Association, Kirk Thompson, Director of the Kansas Bureau of Investigations, county and district attorneys from across the state, the Attorney General's office, defense attorneys and a judge.

All agreed that recording of interrogations was a useful and important practice. Their goal was to find the best option for implementing it uniformly in Kansas. I want to commend the committee for their hard work studying this issue over six months. They reviewed the literature, talked to their association members and heard about the experiences of other states that require the practice.

Ultimately, the Committee members were able to develop a proposal that was approved by the full Kansas Judicial Council and is now Senate Bill 92. Senate Bill 92 would require law enforcement agencies to adopt their own written policies for recording custodial interrogations in their entirety for, at minimum, suspects in homicide and felony sexual assault cases. It directs law enforcement to work with their local prosecutors to develop policies, lists circumstances that are exempt from recording requirements, and allows for either video or audio-only recording to address cost concerns. The bill would provide a one year implementation period.

It is remarkable that representatives from all sides of the criminal justice system were able to come together in support of a proposal that establishes a statewide recording practice while allowing local agencies to develop policies that are right for them. I want to thank Ed Klumpp and Kirk Thompson in particular for talking to police and sheriffs agencies across the state to help develop this proposal. They found that many agencies are already recording interrogations and they helped craft this legislation to provide flexibility to local law enforcement. The prosecutors on the committee, including Ann Swegle, the Deputy District Attorney of Sedgewick County, John Settle, the Pawnee County Attorney, and Steve Opat, the Geary County Attorney were

instrumental in drafting this bill. In addition, Shawnee County District Court Judge Cheryl Rios and former Senate Majority Leader Terry Bruce also endorsed the proposal.

Senate Bill 92 represents another step that prosecutors, law enforcement and the innocence community are taking to prevent wrongful convictions in Kansas. Last year, we worked together to pass a similar law for implementing best practices to prevent eyewitness misidentification, another leading cause of wrongful convictions. Prosecutors and law enforcement in Kansas should be applauded for their leadership on policies that protect the innocent and provide the best possible evidence in criminal investigations. This legislation is the product of hard work by law enforcement, prosecutors and defense attorneys and I hope you will support it.