

SB 732: Modifies provisions relating to criminal procedure

Senator Joseph Keaveny

Key Provisions

Eyewitness Identification

- Requires law enforcement to have written procedures regarding eyewitness identification with biannual review. A list of practices that may be included within the policies is provided.
- Court must consider the use of identification evidence that does not comply with procedures during any hearing on a motion to suppress identification evidence and when hearing claims of eyewitness misidentification.
- Court must instruct jury that it may consider evidence of compliance and non-compliance of policies when judging reliability of an identification.
- Defendant may obtain a pretrial hearing regarding evidence demonstrating the possibility of mistaken identification.
- Expert testimony on eyewitness identification is admissible if relevant.

Custodial Interrogations

- Modifies “when feasible” provision for requirement to record interrogations to apply when a person is in a fixed place of detention.
- Law enforcement must document instances when recording is not feasible.
- Repeals exception regarding suspect request to not record.
- If equipment fails or is not available, law enforcement must demonstrate a good faith effort to have compliance with the statute and record why recording was not feasible.
- Repeals current penalty for failure to comply that allows governor to withhold funding.
- Repeals a provision that prohibits compliance with the statute from being raised in a criminal trial.

Biological Evidence

- Biological evidence gathered during an investigation must be preserved until any offender who was convicted and sentenced to prison as a result of the investigation has been released from prison.
- Biological evidence gathered during an investigation of first-degree murder must be retained until 20 years after the offender has been executed or upon being pardoned or otherwise found innocent.
- If a crime remains unsolved, biological evidence must be preserved until the prosecuting attorney authorizes its destruction.
- Law enforcement agencies must develop written guidelines for the identification, collection, and preservation of biological evidence.

SB 732's Eyewitness Identification Procedures

FEEDBACK ON SIMILAR PROCEDURES

Denver Police Department Lieutenant Matthew Murray: “A lot of law enforcement has a ‘sky is falling’ mentality... But we have found that in practice, these things don’t impact cases negatively, and actually have just the opposite effect.”

Dallas Police Department Chief David Brown: “One innocent person serving time in jail is unacceptable. Once we figured out what the science was telling us, we built our practice around the science.”

1 - http://www.nytimes.com/2011/08/29/us/29witness.html?_r=2&scp=1&sq=Gary%20Wells&st=cse&

2 - <http://www.nbcnews.com/video/rock-center/46959138#46959138>

THE BENEFITS

Empowers law enforcement to better avoid wrongful convictions as the result of eyewitness misidentification.

Creates a greater chance of sparing the state costly payouts resulting from exonerations.

Allows law enforcement to continue the investigation for actual perpetrators.

Sparses the families of victims and innocents, that could be misidentified, unnecessary pain and confusion.

3 - <https://www.ajs.org/judicature-journal/editorial/eyewitness-identification-reform/>

4 - innocenceproject.org

THE FACTS

DNA-based exonerations of the innocent show that 75% are cases involving mistaken eyewitness identifications.

The Innocence Project reports that 125 actual perpetrators have been identified for the 300+ cases in which an innocent was exonerated based on DNA evidence. Those 125 real perpetrators were subsequently convicted of “130 additional crimes, included 70 sexual assaults, 32 murders, and 28 other violent crimes while the innocent sat behind bars for their earlier offense.”

About 75,000 witness identifications take place each year, and studies suggest that about a third are incorrect.

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SB 732's Custodial Interrogation Procedures

Current law requires custodial interrogations to be recorded.

FEEDBACK ON SIMILAR PROCEDURES

The Juneau, Alaska Police Department — “Electronic recordings eliminate the need for officers to take extensive notes, and allows them to observe the suspect’s body language. I can’t understand why every department doesn’t record.”

Corpus Christi, Texas Police Department — “Officers have found that they especially like the recording process because it is much faster and easier for them to simply record a suspect’s interview, rather than the old method of interviewing the suspect, writing down his version of events, having the writing typed up and having the typing signed by the suspect. Simply recording everything means when the interview is over, the suspect’s confession is recorded for posterity without all the other paperwork.”

Bozeman, Montana Police Department — “Recordings permit the viewer to see how the suspect looked and acted before being “cleaned up” for court. One video showed a suspect giggling when he described beating children. **Our experience is 100 percent positive.**”

THE BENEFITS

Increased quality and quantity of incriminating evidence available at trial.

Protection from false claims of abuse and coercion.

Allows officers to concentrate on suspect’s answers and demeanor instead of focusing on scribbling copious notes.

The recording can be viewed later to observe the suspect’s responses and behavior.

Recorded interrogations provide an excellent tool for training new officers.

Motions to suppress confessions become more rare and unlikely to be considered.

Costs are largely initial.

1 - http://mcadams.posc.mu.edu/Recording_Interrogations.pdf

THE FACTS

A National Institute of Justice survey found that nearly every police department that had videotaped interrogations found the policy useful... ongoing surveys of law enforcement personnel in jurisdictions that record reveal enthusiastic support for the practice.

Recorded confessions of suspects greatly **strengthen prosecutors’ cases**, and often lead to more guilty pleas. For these reasons, state prosecutors in jurisdictions that currently record are outspoken supporters of the practice.

2 - [http://web.williams.edu/Psychology/Faculty/Kassin/files/Justice%20Project\(07\).pdf](http://web.williams.edu/Psychology/Faculty/Kassin/files/Justice%20Project(07).pdf)

SB 732's Biological Evidence Procedures

THE BENEFITS

Provides for a larger collection of biological evidence to be at the disposal of law enforcement and prosecutors.

Provides an expanded variety of crimes that could have their biological evidence preserved.

Creates a greater source for accountability and reasonable protections for defendants and suspects.

THE FACTS

Over 300 people have received a post-conviction exoneration due to DNA evidence in the United States.

Eighteen people had been sentenced to death before DNA proved their innocence and led to their release.

In almost 50% of DNA exonerations, the actual perpetrator has been identified by DNA testing.

1 - <http://www.innocenceproject.org/know/>