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Electronic Recording of Police Interrogations

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Expert Summary Brief

Electronic recording of police interrogations

Policy recommendation: All VA state law enforcement agencies to adopt a written department policy requiring electronic recording of any custodial interrogation conducted in a place of detention.

Electronic recording of custodial police interrogations:

- is a simple, inexpensive, and effective law enforcement tool that benefits police, prosecutors, and defendants
- promotes fairness and transparency and protects police from false allegations
- is endorsed as a best practice by the leading police and attorney professional organizations

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BENEFITS FOR LAW ENFORCEMENT

- **Reduces allegations of police misconduct.** Recording custodial interrogations in their entirety prevents defendants from falsely claiming that police denied their requests for an attorney, used improper interrogation techniques, questioned them outside of *Miranda*, or misrepresented their statements or actions. Such false claims can cost individual officers and their agencies substantial time and money to disprove.
- **Frees interviewer from note-taking.** Police departments report that having to take copious notes during interviews prevents them from focusing on the suspect's statements and nonverbal behaviors and can distract or agitate the suspects.¹ Audiovisual recording allows interviewers to fully engage with the suspect and better control the pace and direction of the interview. Recording also enables interviewers to review the video later to identify additional cues and inconsistencies in the suspect's statements.
- **Improves accuracy and saves time.** Officers are often asked to recall specific details when testifying about past interviews. Audiovisual recording enables officers to review a full record of the interaction, which ensures accuracy, promotes efficiency, and saves officers valuable time when writing reports and testifying at hearings.
- **Provides new avenues for training.** Police agencies report that videorecorded interviews are an excellent tool for ongoing training and self-evaluation.¹

BENEFITS FOR COMMONWEALTH'S ATTORNEYS OFFICES

- **Reduces defense motions to suppress statements/confessions.** Police agencies report that having an objective record of the interrogation precludes defense attorneys' attempts to suppress confession statements and prevents "swearing matches" between police and defendants in court.
- **Jurors find confession evidence highly persuasive.** Extensive psychological research shows that confession evidence is more prejudicial than forensic, eyewitness, and other types of evidence.² Jurors have come to expect confession recordings during trial, and an audiovisual record of a lawful interrogation and suspect confession can be very convincing.

BENEFITS FOR THE JUSTICE SYSTEM

- **Increases cost savings through reduced avenues for wrongful convictions and greater court efficiencies.** Wrongful convictions are extraordinarily costly to states. For example, wrongful convictions of 85 individuals in Illinois over a 20-year period cost taxpayers \$214 million. A Nebraska county currently faces bankruptcy after a jury awarded \$28 million to six exonerees who falsely confessed and were wrongfully imprisoned. The county has since hiked property taxes, passing additional financial burden on to taxpayers. Also, courts save money via fewer motions to suppress interrogation statements and less court time spent arguing over what occurred during the interrogation.
- **Promotes due process via a complete record of suspect and officer statements and behavior.** Electronic recording ensures fairness for all parties. It can protect defendants who were legitimately mistreated during interrogations and also protect officers who are wrongfully accused of misconduct.
- **Enhances transparency, which builds public trust in law enforcement.** Police agencies report that recording interviews improve their public image by debunking interrogation myths perpetuated by television and showing the public what real interviews look like.¹

POLICY CONSIDERATIONS

- **There is a national movement toward recording interrogations.** Currently, 26 states and the District of Columbia require electronic recording in their entirety for some interrogations. The federal government also requires electronic recording of interrogations conducted by federal law enforcement agencies (e.g., FBI, ATF). The International Association of Chiefs of Police (IACP) and American Bar Association (ABA) both endorse recording as a best practice.³
- **The implementation cost is very low, yet the potential financial benefits are extremely high.** Complex, expensive video systems are not necessary to record interviews; simple handheld cameras can suffice. Digital voice recorders are available for as little as \$20. Even smartphones and body-worn cameras can and have been used to record interviews. By contrast, wrongful conviction can cost departments millions of dollars in lawsuits.
- **Best practices for electronically recording interviews are readily available.** Police agencies would not need to draft their department policies from scratch. The IACP and other agencies offer concrete, evidence-based guidelines for how and when to record custodial interviews.⁴ These guidelines cover equipment setup, data storage and retention, and handling suspect noncompliance.

IMPLEMENTATION CONSIDERATIONS

- **Recording requirements need only to apply to custodial questioning.** Officers would not need to record fact-finding inquiries conducted at a police station or other place of detention. Also, officers would not be responsible for recording spontaneous statements made by a suspect in the field or before Miranda warnings are administered.
- **The entire interview should be recorded, not merely the confession statement.** Recording does not benefit law enforcement, the prosecution, or defendants unless the interview is captured in its entirety. Recording all portions of questioning preceding a suspect's statements can show lack of coercion.
- **Audiovisual recording is preferable to audio only, but audio only is better than not recording at all.** Video allows judges and jurors to view the full picture of what transpires. It enables officers to disprove allegations of physical misconduct and provides documentation of any suspect aggression.
- **Recording does not reduce suspect cooperation.** There is currently no evidence to suggest that suspects are less willing to talk when being recorded. In fact, a recent field study showed that informing suspects of a camera's presence did not reduce their likelihood to waive Miranda rights, offer incriminating details, give confessions, or alter their demeanor or behavior.⁵ It also did not reduce conviction rates.

¹ Sullivan, T.P. (2004). *Police experiences with recording custodial interrogations*. Northwestern School of Law, Center on Wrongful Convictions.

² Kassir, S.M. (2012). Why confessions trump innocence. *American Psychologist*, 67, 431-435. doi: 10.1037/a0028212

³ <https://www.theiacp.org/resources/policy-center-resource/electronic-recording>;

https://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_revisedmy048a.pdf

⁴ Innocence Project (2015). *Implementing electronic recording of custodial interviews: A primer for law enforcement*.

⁵ Kassir, S. M. et al. (2019). Does video recording inhibit crime suspects? Evidence from a fully randomized field experiment. *Law and Human Behavior*, 43, 45-55. doi: 10.1037/lhb0000319