

## What happened to the Avery bill?

**Alison Dirr, USA TODAY NETWORK-Wisconsin** 9:20 a.m. CST January 18, 2016

*A bill to prevent wrongful convictions was passed about a decade ago. What's happened since?*



*(Photo: Photo courtesy of Gimbel, Reilly, Guerin & Brown)*

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"Making a Murderer" focuses primarily on Steven Avery's second conviction — but what came out of his exoneration in the first case?

Quite a bit, it turns out.

A group — originally calling itself the Avery Task Force — was formed in 2003 to study Avery's case and developed recommendations to guard against wrongful convictions. The unequivocal proof that Avery was not guilty of the rape for which he served 18 years in prison was the catalyst for reform.

"Sometimes it's forgotten in the dialogue: What you have is when somebody is wrongfully convicted, you have an innocent person sitting in prison but you also have a guilty person still on the loose," said Wisconsin Appellate Judge Mark D. Gundrum, who formed the task force when he was a state representative. "If you don't

have the right person, the dangerous one is still out there."

Legislators, judges, prosecutors, attorneys, law enforcement and the Wisconsin Innocence Project (which [represented Avery in the 1985 case](#) ([https://media.law.wisc.edu/s/c\\_912/cyzwm/avery\\_dassev\\_cases\\_faamd.pdf](https://media.law.wisc.edu/s/c_912/cyzwm/avery_dassev_cases_faamd.pdf))) developed reforms.

The culmination of the group's work was [2005 Wisconsin Act 60](#) (<http://docs.legis.wisconsin.gov/2005/related/acts/60>), which created provisions meant to enhance the reliability of the criminal justice system. Those included procedures on the recording of police interrogations, eyewitness identifications, and testing and preservation of biological evidence. It also extended the prosecution time limits for crimes related to sexual assault.

"Avery's case, because he was wrongfully convicted in the first conviction in 1985, it provided kind of a case study of, how do some of these things happen and can we do anything to try and prevent wrongful convictions in the future," Gundrum said.

The legislation is not everything everyone wanted, but it was "a good step in the right direction," Wisconsin Innocence Project co-founder Keith Findley, [told the Wisconsin Law Journal at the time](#) (<http://wislawjournal.com/2005/08/31/avery-bill-finds-legislative-support/>).

**Timeline:** [History of the Steven Avery case](#) ([http://content.postcrescent.com/appleton/avery\\_timeline/](http://content.postcrescent.com/appleton/avery_timeline/))

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The task force was renamed the Criminal Justice Reforms Task Force after Avery was charged in the homicide of 25-year-old freelance photographer Teresa Halbach. Avery and his nephew, Brendan Dassey, are serving life terms in prison for the crime. The 10-part Netflix docu-series is bringing new attention to both of their cases, with many viewers calling for a retrial of both men.

### Taping interrogations

The stronger recording procedures give the court a clearer picture of what happened during an interrogation.

Those recordings can mean a lot for the defense, said Milwaukee attorney Raymond Dall'Osto, who served on the task force. He thinks the policy on taping interrogations has been helpful, but could be stronger.

"If your freedom's on the line, I would think we'd all want the best evidence to be in before someone gets convicted," Dall'Osto said.

Without a recording, a lot of information wouldn't come to light and the police reports from an interrogation would be taken as fact, he said.

"You had an archaic officer writing down what was being said," said Dall'Osto, who has been practicing since 1977. "Well, he's not a court reporter and he's not catching everything. You find that an interrogation ... may go on for an hour and you had one or two pages of reporting. Again, they're going to, as any human being does, they're going to take the highlights and it'll be the highlights helpful to their case."

The video lets a court or jury see the exchange, including what was said — and how. That can be helpful, if what happens in the video differs from the report or if it shows repeated questioning or a client not really saying what the prosecutors allege.

But it can also hurt the defense if someone, who is obviously not being coerced, confesses to a crime.

"That makes the defense climb significantly more uphill," Dall'Osto said.

Police have embraced these reforms, said Jim Palmer, executive director of the Wisconsin Professional Police Association.

"It provides documentation of how that interview transpired and whether or not the investigator was contaminating the interrogation with facts," Palmer said. "I know that's been a concern; obviously in the wake of the 'Making a Murderer' documentary, I think that's something more people are aware of.

"And I think having video recording in particular but audio recording as well helps diminish that potential. Those are the things that can lead to things like false confessions."

In particular, the law makes it a policy of the state to record interrogations of people suspected of committing a felony, unless there's good cause or a legal reason not to.

The provision made uniform police policies that in the past could vary from agency to agency, and even from investigation to investigation, Palmer said.

Now he doesn't know of any agency that doesn't record suspect interviews as a matter of routine. In fact, he said, many have started recording witness interviews as well — a step that isn't required and he said shows that police have embraced that reform.

The bill also allowed the state to provide grants to agencies for the recording equipment and training needed to use it.

## Eyewitness identification

The victim in the 1985 case told the jury "I had absolutely no doubt that Steven Avery is the man who assaulted me," according to reporting by the Herald Times Reporter, Manitowoc.

He was convicted largely on the basis of her identification. Later, DNA evidence would prove a different man was guilty of the brutal crime.

After Avery was exonerated, the victim talked about her experience to help change eyewitness identification procedures.

This bill does that, too.

The provisions:

- Require that, whenever possible, an officer who doesn't know the identity of the suspect conducts the witness' viewing of possible suspects so the officer can't, even unintentionally, cue the witness to pick a certain person.
- Show the witness possible suspects one-by-one instead of at the same time.
- Limit officers' verbal and nonverbal reactions to minimize the possibility that an officer will cause witnesses to identify a suspect or overstate their confidence in an identification.

"I think those reforms were very solid and good," Gundrum said.

Which reform is most important will vary based on the case and the evidence presented, he said. In cases that hinge on eyewitness identification, for instance, these reforms might be most important. If it's based on a confession, the recording will play a larger role.

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