



Contact: Michelle Feldman, State Campaigns Director
(516) 557-6650 mfeldman@innocenceproject.org

Innocence Project Proponent Testimony: House Bill 277
Submitted by Michelle Feldman, State Campaigns Director
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The Innocence Project is a national organization that works to exonerate the wrongfully convicted. We collaborate with our local partners, including the Ohio Innocence Project, on policies to prevent and address wrongful conviction.

We are grateful to Representative Phil Plummer and Representative Thomas West for sponsoring House Bill 277, which would help protect against wrongful convictions stemming from false confessions.

False confessions are a leading contributor to wrongful convictions of the innocent, playing a role in 28 percent of DNA exonerations in the United States since 1989.¹ Recording suspect interrogations in their entirety minimizes the risk that untrue admissions will result in a wrongful conviction. The practice deters against coercive interrogations tactics, ensures that defendants' rights are protected, and alerts investigators, judges and juries if a suspect has mental limitations or other vulnerabilities that make him or her more susceptible to falsely confessing.

Recording interrogations also assists law enforcement by removing any doubt about the voluntariness of a suspect's confession or statement and protecting against frivolous allegations of officer misconduct during the interrogation. Less court time is spent litigating what was said and done during the interrogation—the judge can simply play the tape. Overall, the practice enhances accuracy and transparency surrounding a critical part of a criminal investigation, benefiting the entire system.

Nationally, 26 states and Washington, D.C. require law enforcement to record certain suspect interrogations in their entirety.² In these states, legislatures either enacted statutes or high courts issued decisions or rules of evidence for law enforcement to tape custodial interviews. Additionally, in 2014 the U.S. Department of Justice issued a policy for all federal law enforcement agencies—including the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco and Firearms—to videotape all custodial interrogations.

In Ohio, the Innocence Project and Ohio Innocence Project worked with lawmakers to enact Senate Bill 77 in 2010. The law encourages, but does not require recording of custodial

¹ www.innocenceproject.org

² States requiring recording of custodial interrogations: Alaska, Arkansas, California, Colorado, Connecticut, Illinois, Indiana, Kansas, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Oklahoma, Texas, Utah, Vermont, Wisconsin.



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interrogations for individuals suspected of homicide and sexual assault. It presumes that all electronically recorded interrogations are voluntary, thus incentivizing the practice.³

There is a need to improve the current law and bring it in line with the majority of other states in the country. First, S.B. 77 does not set minimum requirements for recording interrogations, leaving individual agencies and officers to decide if and when to tape an interview. As a result, there is no consistent, statewide practice, and justice varies by jurisdiction.

Second, in the 2016 *State v. Barker* case, the Ohio Supreme Court ruled that S.B. 77 is unconstitutional as it pertains to minors. The ruling was based on the case of Tyshawn Barker, a 15-year-old who confessed to murder during a police interrogation in Cincinnati in 2011. Barker's attorneys argued that his statements were not made voluntarily, and should not be admissible at trial. Prosecutors maintained that because the interrogation was electronically recorded, the Ohio law placed the burden on Barker to prove that his statements were involuntary. The Ohio Supreme Court ruled that the state law impermissibly reduced constitutional due process protections that require the government to prove a defendant's statements were voluntary.⁴ The court's rationale in the case could also be applied to adults.

House Bill 277 would address the constitutional concerns raised in *Barker* and create a uniform statewide standard, for recording interrogations. At the same time, the legislation would provide flexibility for agencies to adopt policies that meet their individual needs. It is largely modeled on the eyewitness identification provisions that were enacted as part of Senate Bill 77 in 2010.

H.B. 277 requires recording of custodial interrogations that occur in a place of detention for suspects in homicide and sexual assault cases. To address any cost concerns, agencies have the option to use audiovisual or audio-only equipment. In addition, there are a number of good cause exemptions, such equipment failure or a suspect's refusal to cooperate if recorded.

Non-compliance would result in a cautionary jury instruction and may be considered when a judge is ruling on a motion to suppress statements made during an interrogation. As per the request of the Ohio Prosecuting Attorneys' Association, the Innocence Project agreed to specify that the failure to record an interrogation shall not be the sole basis of suppressing a confession or statement from being admitted into evidence.

This proposal is a result of input from many stakeholders including the Ohio Police Chiefs Association, Buckeye Sheriffs' Association, Ohio Prosecuting Attorneys' Association, Innocence Project of Ohio, and the Office of the Ohio Public Defender. H.B. 277 would enhance efficiency, fairness and accuracy in the criminal justice system and the Innocence Project encourages the House Criminal Justice Committee to support it.

³ [R.C. 2933.81\(B\)](#)

⁴ *State v. Barker*, Slip Opinion No. 2016-Ohio-2708