



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Support of HB277 Recording Interrogations Sponsor Representatives Plummer and West

Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the House Criminal Justice Committee. My name is Niki Clum, and I'm the Legislative Liaison for the Office of the Ohio Public Defender. Thank you for the opportunity to testify in support of HB277.

HB277 is a straight-forward common-sense bill. The bill requires audio or audiovisual recordings of interrogations when the individual is suspected of committing or attempting to commit a serious felony, unless an exception applies.ⁱ The list of exceptions include: (1) the person requests on the recording that the interrogation not be recorded, (2) the equipment malfunctions, (3) public safety, (4) the interrogation is outside of Ohio, (5) the statements were made during booking, and (6) law enforcement has no reason to believe that individual committed one of the delineated offenses. Failure to record an interrogation may be considered by the court in adjudicating motions to suppress, but failure to record cannot be the sole basis for suppression. If the interrogation is not recorded and falls outside any of the enumerated exceptions, the court may admit the statements made by the defendant during the interrogation but it must provide a cautionary jury instruction regarding the same.

I'm sure it may be hard for everyone in this room to imagine confessing to a crime that you did not commit. However, of the exonerees nationwide since 1989, more than 25% gave a false confession.ⁱⁱ The percentage is even higher, 36%, when the individual is a child under the age of 18.ⁱⁱⁱ Of the youth that reported making a false confession, 65% reported their

interrogation lasted longer than 2 hours and 40% reported being intoxicated at the time of their interrogation.^{iv} According psychologist and false confessions expert Saul Kassin, "It's not just one kind of person who gives a false confession. We are all vulnerable under the circumstances of interrogation."^v

Surprisingly, juries find confessions more compelling than even exculpatory DNA evidence.^{vi} That is why the American Psychology-Law Society recommend recording interrogations in their entirety in order to provide "a more accurate factual record for judges and juries needing to assess the voluntariness and credibility of the confession in question."^{vii} To overcome such persuasive evidence, it is essential that the interrogation is recorded in full so that juries can understand the defendant's perspective.

Recording interrogations is not just beneficial to defendants, it is also beneficial to the law enforcement and prosecution. If a defendant claims that law enforcement acted improperly during an interrogation, the existence of the recording makes resolving the suppression motion quicker and easier as the judge can rely on the recording instead of making credibility determinations. Prosecutors can more efficiently determine strength of their case by determining if there are inconsistency throughout interrogation. Furthermore, seeing is believing. If the prosecution claims that a defendant confessed to committing a serious offense, the prosecutor should want the jury to hear that confession straight from the horse's mouth.

HB277 is not overly burdensome for law enforcement. They are permitted to make audiovisual or just audio recordings of interrogations. This could be done with a smart phone – which is readily available as most of us have one in our pocket or purses right now. The list of exceptions to recording allows a lot of flexibility for law enforcement as some exceptions are quite broad.



Recording confessions provides the state with highly probative evidence for prosecution, and it allows defendants the chance to explain the circumstance of a false confession. This committee should support HB277. Thank you for the opportunity to testify today before your committee. I am happy to answer questions at this time.

ⁱ The offense delineated in the bill for which the interrogation must be recorded include: (1) aggravated murder, (2) murder, (3) voluntary manslaughter, (4) rape, (5) sexual battery, and first- and second-degree: (6) involuntary manslaughter and (7) negligent homicide.

ⁱⁱ *False Confessions: How Innocent People Confess to Crime the US*, Witness, Aljazeera, March 13, 2019, <https://www.aljazeera.com/programmes/witness/2019/03/false-confessions-innocent-people-confess-crime-190311093100363.html>; see also Samuel Gross and Maurice Possley, *For 50 years, You've Had "The Right to Remain Silent" So why do so many suspect confess to crimes they didn't commit?*, The Marshall Project, June 12, 2016, <https://www.law.umich.edu/special/exoneration/Pages/False-Confessions-.aspx#targetText=They%20include%20227%20cases%20of,the%20extent%20of%20the%20problem>.

ⁱⁱⁱ Special Caution Required, The Realities of Youth Interrogation, <https://njdc.info/wp-content/uploads/Special-Caution-Required-Web-FINAL.pdf>

^{iv} *Id.*

^v *False Confessions: How Innocent People Confess to Crime the US*, Witness, Aljazeera, March 13, 2019, <https://www.aljazeera.com/programmes/witness/2019/03/false-confessions-innocent-people-confess-crime-190311093100363.html>

^{vi} The DNA Evidence May not Save You, APA Journal Articles Spotlight, American Psychological Association, June 14, 2016, <https://www.apa.org/pubs/highlights/spotlight/issue-66>

^{vii} *Id.*

