



House Criminal Justice Committee  
October 31, 2019

**Pierce Reed, Ohio Innocence Project  
Proponent Testimony Re: Sub. H.B. 277**

My name is Pierce Reed and I am the program director for policy and education for the Ohio Innocence Project (OIP), an organization that investigates and litigates wrongful conviction claims here in Ohio.

In the past 16 years, the work of OIP has led to the release of 28 Ohioans who collectively served more than 525 years in Ohio prisons for crimes they did not commit. Nationally, there are more than 2,500 people who have been exonerated. Those people collectively served more than 20,000 years in prisons for crimes they did not commit. Wrongful convictions not only harmed these people and their families, but also caused harm to crime victims and eroded the faith of the public in our court systems.

OIP works to both free those who have been wrongfully convicted, and to prevent wrongful convictions of Ohioans from happening in the first instance. OIP urges the Criminal Justice Committee of the Ohio House of Representatives to report favorably on Sub. House Bill 277, which will help prevent wrongful convictions in Ohio and foster trust in our law enforcement officers.

***The Problem with the Status of Current Ohio Law***

When the Ohio General Assembly passed S.B. 77, it created a statutory presumption that statements made during a recorded custodial interrogations would be deemed to have been made voluntarily. See R.C. 2933.81(B). But in *State v. Barker*, the Ohio Supreme Court held that presumption was unconstitutional as applied to juveniles because it offended constitutional due process protections that a legislature cannot abrogate. *State v. Barker*, 149 Ohio St.3d 1, 2016-Ohio-2708, ¶ 38. Although the Ohio Supreme Court limited the holding in *Barker* to juveniles, the analysis used by the Court would be applicable equally to adults. Thus, there is a clear need for a new law on recordation of custodial interrogations.

***Sub. H. B. 277 Would Protect Both Individuals and Law Enforcement Agents***

Recording custodial interrogations helps prevent wrongful convictions by creating a clear record of the statements made during an interrogation, and the conditions that occurred during the interrogation process. A clear record of the interrogation allows superior law enforcement officers, prosecutors, defense counsel, judges, and jurors to ascertain the credibility of the

statements made during the interrogation and the circumstances under which those statements were made. That record protects both individual Ohioans and law enforcement agents in Ohio.

OIP and its partners has actively sought input from law enforcement stakeholders about the scope of Sub. H.B. 277 and its financial impact on law enforcement agencies. OIP greatly values the work and expertise that law enforcement agents provide, and believes that nothing in innocence work is antithetical to smart, constitutional policing. False claims of coercion or misconduct against police and other law enforcement agents undermine the work that innocence projects perform, and harm all of us.

Recordings of interrogations help protect against false claims of coercion or misconduct against law enforcement agents, reduce the likelihood of ill-founded motions to suppress or unsupported civil rights claims, and increase public confidence in the work law enforcement agents do each day throughout Ohio.

As importantly, recordings of interrogations also help the courts and criminal justice personnel evaluate the veracity of claims of innocence by convicted people, particularly in cases in which there are claims of false confessions.

False confessions are a vexing problem for the court system, government, and the public. Admittedly, it is hard to understand why someone who falsely confess to a horrific crime like murder or rape. But under some circumstances any person can make a false confession. And some populations, including juveniles and people with disabilities, are susceptible to false confessions.

In juveniles, we now know that the prefrontal cortex of the brain, which is responsible for judgment, problem-solving, and decision-making, is not fully formed and that juveniles therefore do not have good regulation of impulsive behaviors. Adolescents have difficulty weighing and assessing risks, they emphasize immediate rewards rather than long-term consequences, and they are vulnerable to external pressure. As both the United States Supreme Court and the International Association of Chiefs of Police recognize, these traits make adolescents particularly likely to respond to the fear and stress of interrogation by making involuntary or false statements. See, e.g., *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011); *Reducing Risks: An Executive Guide to Effective Juvenile Interview and Interrogation* (IACP 2018), available at: <https://www.theiacp.org/resources/document/reducing-risks>

Similarly, people with intellectual disabilities are at risk for false confession. In a study of nearly 250 known cases of false confessions that led to wrongful convictions, approximately 25% of the person making the false confession had some form of cognitive impairment. See Schatz, *Interrogated with Intellectual Disabilities: The Risk of False Confession*, 70 *Stanford Law Review* 643 (2018).

Not surprisingly then, organizations like the International Association of Chiefs of Police consider the recording of interrogations to be one of the best juvenile interrogation practices for law enforcement agencies. *Reducing Risks* at p. 12. Through Sub. H.B. 277, the Ohio General Assembly can mandate that all Ohio law enforcement agencies follow that best practice, thereby preventing wrongful convictions of juveniles and others, and protecting law enforcement from false claims of misconduct.

OIP asks for your support and vote in favor of this bipartisan, common sense, fiscally-sound bill.