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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.

Why Record Interrogations?

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 interrogations provides an undisputed account of what occurred during closed-door questioning, protecting innocent suspects and law enforcement.

Benefits to Defendants	Benefits to Law Enforcement
<ul style="list-style-type: none">• Deters coercive interrogation tactics.	<ul style="list-style-type: none">• Provides undisputable evidence of what suspect/defendant said during questioning.
<ul style="list-style-type: none">• Ensure defendants' rights are protected.	<ul style="list-style-type: none">• Protects against false claims of misconduct during interrogation.
<ul style="list-style-type: none">• Alerts factfinders if suspect has mental limitations or other vulnerabilities to false confessions.	<ul style="list-style-type: none">• Helps police prepare for court/train on interrogations.

National Landscape

- **States:** 26 states and Washington, D.C. require law enforcement to record certain suspect interrogations in their entirety through statutes or court action.²
- **Federal:** 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.

Why does Ohio Need HB 277?

- **Need uniform practice.** Senate Bill 77 enacted in 2010 encourages but does not require recording of custodial interrogations for individuals suspected of homicide and sexual assault.³ Agencies and officers can choose when to record, if at all; as a result, there is no consistent statewide practice.
- **S.B. 77 Unconstitutional for Minors.** 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

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.

³ [R.C. 2933.81\(B\)](http://R.C. 2933.81(B))



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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.

H.B. 277 Summary

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.

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.

Costs: H.B. 277 requires recording in limited circumstances: "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.

Remedies:

- 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.
- There are a number of good cause exemptions, such equipment failure or a suspect's refusal to cooperate if recorded.
- 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.

H.B. 277 would enhance efficiency, fairness and accuracy in the criminal justice system and the Innocence Project encourages the Senate Local Government, Public Safety and Veterans Affairs Committee to pass it.

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