



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Support of HB8 Recording Interrogations Sponsor Representatives Plummer and West

Chair Manning, Vice Chair McColley, Ranking Member Thomas, and members of the House Criminal Justice Committee. My name is Niki Clum, and I am the legislative liaison for the Office of the Ohio Public Defender. Thank you for the opportunity to testify in support of House Bill 8 (HB8).

HB8 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, (6) the statements were made spontaneously and not in response to the interrogation, (7) 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 one of the exceptions does not apply, the court can admit the statements made during the interrogation and provide a cautionary jury instruction.

I'm sure it 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 In Ohio, we know of two individuals who were

wrongfully convicted because of a false confession. They spent a total of 24 years wrongfully in prison. One of these individuals was only twelve years old at the time.

Surprisingly, juries find confessions more compelling than even exculpatory DNA evidence.^{vi} That is why 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 full perspective.

Recording interrogations is not just beneficial to defendants, it is also beneficial to the law enforcement and prosecution. The bill protects law enforcement from false claims of force or coercion. If a defendant claims that law enforcement acted improperly during an interrogation, the existence of the recording makes resolving the matter quicker and easier as the fact finder can simply rely on the recording. Prosecutors can more efficiently determine strength of their case by determining if there are inconsistency throughout interrogation. Furthermore, seeing is believing. If the prosecutions claim 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.

HB8 is not overly burdensome for law enforcement. They are permitted to make audiovisual or just audio recordings of interrogations. This could be done a smart phone like most of us have in our pocket or purses right now. The list of exceptions to recording allows a lot of flexibility for law enforcement as well as providing them the helpful guidance of a bright-line rule. The purpose of HB8 is not to destroy the state's case, but to provide law enforcement with a clear directive that interrogations need to be recorded in these cases.

Recording confessions provides the state with highly probative evidence for prosecution, it protects defendants from wrongful conviction because of a false confession, and it protects law enforcement from false claims of violence or coercion. This committee should support HB8. Thank you for the opportunity to testify today before your committee. I am happy to answer questions at this time.



RECORDING INTERROGATIONS

RECORDING INTERROGATIONS IS GOOD PUBLIC POLICY

- It protects law enforcement from false claims of violence or coercion.
- It provides the state with highly probative evidence for prosecution. Juries find confessions more compelling than even exculpatory DNA evidence.¹
- It allows defendants to explain the circumstance of a false confession.²
- Since 1989, more than 25% of nationwide exonerees were wrongfully convicted, in part, because of a false confession.
- In Ohio, two people were wrongfully convicted, because of a false confession, amounting to 24 years wrongfully spent in prison,³ costing taxpayers \$668,038.⁴

OF NOTE

- Failure to record the interrogation cannot be the *sole* reason for suppression, but the court may consider the failure to record when adjudicating motions to suppress.
- If the interrogation is not recorded and one of the exceptions does not apply, the court shall give the jury a cautionary instruction.
- The purpose of the legislation is not to destroy the state's case, but to provide law enforcement with a clear directive that interrogations need to be recorded in these cases.

¹"The DNA Evidence May Not Save You," *APA Journal Articles Spotlight*, American Psychological Association, June 14, 2016, www.apa.org/pubs/highlights/spotlight/issue-66.

BILL SUMMARY

The bill requires audio or audiovisual recording of interrogations, unless an exception applies, when the individual is suspected of committing or attempting to commit:

- Aggravated murder
- Murder
- Manslaughter
- Rape
- Sexual battery
- First- and second-degree involuntary manslaughter and negligent homicide

EXCEPTIONS

- The person requests on the recording that the interrogation *not* be recorded;
- The equipment malfunctions;
- Public safety;
- The interrogation is outside of Ohio;
- The statements were made during booking;
- The statements were made spontaneously and not in response to the interrogation; and
- Law enforcement has no reason to believe that the individual committed one of the delineated offenses.



²False Confessions: How Innocent People Confess to Crime in the US, Witness, Aljazeera, March 13, 2019, www.aljazeera.com/programmes/witness/2019/03/false-confessions-innocent-people-confess-crime190311093100363.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, www.law.umich.edu/special/exoneration/Pages/False-Confessions-.aspx#targetText=They%20include%20227%20cases%20of,the%20extent%20of%20the%20problem.

³The National Registry of Exonerations, www.law.umich.edu/special/exoneration/Pages/browse.aspx.

⁴According to the Department of Rehabilitations and Corrections, the daily cost to incarcerate an inmate is \$76.26; see the LSC Fiscal Note regarding SB221 (Dolan)– 133rd General Assembly.



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.*

