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To: Senate Judiciary Committee

From: Kevin Werner, Policy Director

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Re: Proponent Testimony for Sub. House Bill 8

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Chairman Manning, Vice Chair McColley, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to testify today in favor of Sub. House Bill 8. My name is Kevin Werner and I am the policy director at the Ohio Justice & Policy Center, a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems. OJPC strongly supports House Bill 8 because it will make improvements to custodial interrogations.

Time and again, Ohio judges and juries are tasked with what to do when confronted with disputes over what was or was not said during an interrogation. The resolution of those disputes can be the difference between acquittal and a guilty finding. When truth hangs in the balance, we ought to avail ourselves to every practical tool and best practice at our disposal. Fully recording custodial interrogations brings together both what is practical and best practice.

While OJPC typically represents individuals accused of offenses or who have already been sentenced, it is clear that HB 8 will protect both investigators and individuals facing criminal charges. The benefits to members of the law enforcement community are significant. Investigating officers need not worry that a person being questioned will make false claims about the manner in which they were interrogated or the circumstances and treatment a person received. Investigators can instead focus on their task at hand interviewing the individual and ensuring the integrity of information they are receiving. Investigating officers also have the benefit if being able to review recorded interviews multiple times taking notice of subtle nuances. Details matter and the surest way to have command of the details is through use of recordings.

On the other hand, recorded interrogations protect against the outcome the justice system works hard to avoid—the wrongful conviction of an innocent



person. By recording all interrogations of an individual, rather than snippets, we ensure coerced confessions do not occur and that the individual's rights are not violated. Recording the full interrogation can also protect against manipulation and the production of audio or video designed to fit a particular theory of the case or circumstances.

Joe D'Ambrosio is a man I have come to know well. Joe is from Cleveland. He spent 22 years on Ohio's death row for a crime he did not commit. Joe's interrogation was not recorded. Prosecutors in that case made false statements they attributed to Joe's interrogation. Joe said all along that prosecutors made statements about him that were untrue. "I never said that or did that," is a common phrase Joe says if you ask him about his case. And now that he has been fully exonerated, we know Joe was telling the truth. If Joe's interrogation was recorded and some transparency brought into his case, he might not have been wrongfully convicted and sentenced to death for a crime he did not and could not have committed.

Damon Thibodeaux is another man I've come to know, although he is not from Ohio. Damon's 14-year old cousin, Crystal, went missing in July 1996 in Louisiana. Damon was part of the search party for Crystal. Damon had been searching for her for approximately 36 hours before going home to sleep. Just as he settled in, police came to the house and said they needed to ask him some questions. They brought him to the police station and interrogated him overnight for nine hours. By the eighth hour he confessed to raping and killing his cousin. Police recorded the interrogation only after Damon's false confession, which they asked him to repeat once the camera was rolling. He was tried, convicted and sentenced to death despite glaring discrepancies in his false statements and the facts of the case. Fifteen years later, Damon was exonerated with DNA evidence that proved he did not commit the crime. He said, "how much of an interrogation can you take? Everyone has their breaking point. And when you break, you'll tell them anything they want to hear. And I would have—I would have told them anything they wanted me to."

Tyra Patterson is a friend and colleague of mine at the Ohio Justice & Policy Center. Tyra has been OJPC's Outreach Coordinator since 2018 shortly after she was released from incarceration. Tyra spent 23 years in prison for a crime she did not commit. During Tyra's interrogation investigators coerced her into giving a false confession because she thought if she told the investigators what they wanted to hear, they would let her go home. Much of her interrogation was done



without making a recording. Only when she made the false confession did the investigators turn on the recorder and had her repeat the false confession. Tyra plans to share her story with the committee.

The cases I draw to your attention may seem like extreme outliers—like anomalies that can be explained by collision of chance and bad luck. Wrong place, wrong time. Isolated incidents that are exceedingly rare. Unfortunately, they are the tip of the iceberg. According to the National Registry of Exonerations, 27 percent of people in the registry who were accused of homicide gave false confessions. What’s more, 81 percent of people with mental illness gave false confessions when accused of homicides.¹ The Innocence Project reports that almost 30 percent of wrongful conviction cases overturned by DNA evidence involved a false confession. HB 8 will help ensure these manifest injustices cease to occur.

HB 8 is a sensible improvement to current law on interrogations. Investigators are protected, individuals being questioned are protected and judges can see for themselves when wadding through the veracity of information collected during interrogations.

The Ohio Justice & Policy Center urges the committee to pass HB 8.

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¹ Blakemore, Erin. *The Washington Post*, “Examining why false confessions occur in the US criminal justice system.” June 23, 2019.