

AN ACT

To amend sections 2152.75, 2901.10, 2921.45, and 2933.81 of the Revised Code to revise the law governing the electronic recording of custodial interrogations, to revise the prohibition against certain types of restraint or confinement of a pregnant woman or child who is charged with or has been convicted of an offense, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2152.75, 2901.10, 2921.45, and 2933.81 of the Revised Code be amended to read as follows:

Sec. 2152.75. (A) As used in this section:

(1) "Charged or adjudicated delinquent child" means any female child to whom both of the following apply:

(a) The child is charged with a delinquent act or, with respect to a delinquent act, is subject to juvenile court proceedings, has been adjudicated a delinquent child, or is serving a disposition.

(b) The child is, following arrest, transportation, and routine processing and booking, in custody of any law enforcement, court, or corrections official.

(2) "Health care professional" has the same meaning as in section 2108.61 of the Revised Code.

(3) "Law enforcement, court, or corrections official" means any officer or employee of this state or a political subdivision of this state who has custody or control of any child who is a charged or adjudicated delinquent child.

(4) "Restrain" means to use any shackles, handcuffs, or other ~~physical restraints~~ similar appliance or device.

(5) ~~"Confine" means to place in solitary confinement in an enclosed space.~~

~~(6)~~ "Unborn child" means a member of the species homo sapiens who is carried in the womb of a child who is a charged or adjudicated delinquent child, during a period that begins with fertilization and continues until live birth occurs.

~~(7)~~(6) "Emergency circumstance" means a sudden, urgent, unexpected incident or occurrence that requires an immediate reaction and restraint of the charged or adjudicated delinquent child who is pregnant for an emergency situation faced by a law enforcement, court, or corrections official.

(B) Except as otherwise provided in division (C) of this section, beginning on the date on which a pregnancy is confirmed to law enforcement by a health care professional, no law enforcement, court, or corrections official, with knowledge that the female child is pregnant or was pregnant, shall knowingly restrain ~~or confine~~ a female child who is a charged or adjudicated delinquent child during any of the following periods of time:

- (1) If the child is pregnant, at any time during her pregnancy;
- (2) If the child is pregnant, during transport to a hospital, during labor, or during delivery;
- (3) If the child was pregnant, during any period of postpartum recovery up to six weeks after the child's pregnancy.

~~(C)(1) Except as otherwise provided in division (D) of this section, a (C) A~~ law enforcement, court, or corrections official may restrain ~~or confine~~ a female child who is a charged or adjudicated delinquent child during a period of time specified in division (B) of this section if ~~all of the following~~ apply:

~~(a) The~~ official determines that the child presents a serious threat of physical harm to herself, to the official, to other law enforcement or court personnel, or to any other person, presents a serious threat of physical harm to property, presents a substantial security risk, or presents a substantial flight risk.

~~(b)(i) Except as provided in division (C)(1)(b)(ii) of this section, prior to restraining or confining the child, the official contacts a health care professional who is treating the child and notifies the professional that the official wishes to restrain or confine the child and identifies the type of restraint and the expected duration of its use or communicates the expected duration of confinement.~~

~~(ii) The official is not required to contact a health care professional who is treating the child prior to restraining the child in accordance with division (D) of this section if an emergency circumstance exists. The use of restraint in an emergency circumstance shall be in accordance with division (D) of this section. Once the child is restrained, the official shall contact a health care professional who is treating the child and identify the type of restraint and the expected duration of its use.~~

~~(c) Upon being contacted by the official as described in division (C)(1)(b)(i) of this section, the health care professional does not object to the use of the specified type of restraint for the expected duration of its use or does not object to the expected duration of confinement.~~

~~(2) A health care professional who is contacted by a law enforcement, court, or corrections official as described in division (C)(1)(b)(i) of this section shall not object to the use of the specified type of restraint for the expected duration of its use, or the expected duration of confinement, unless the professional determines that the specified type of restraint, the use of that type of restraint for the expected duration, or the expected duration of confinement poses a risk of physical harm to the child or to the child's unborn child.~~

(D) A law enforcement, court, or corrections official who restrains a female child who is a charged or adjudicated delinquent child during a period of time specified in division (B) of this section under authority of division (C) of this section shall not use any leg, ankle, or waist restraint to restrain the child.

(E)(1) If a law enforcement, court, or corrections official restrains ~~or confines~~ a female child who is a charged or adjudicated delinquent child during a period of time specified in division (B) of this section under authority of division (C) of this section, the official shall remove the restraint ~~or cease confinement~~ if, at any time while the restraint is in use ~~or the child is in confinement~~, a health care professional who is treating the child provides a notice to the official or to the official's employing agency or court stating that the restraint ~~or confinement~~ poses a risk of physical harm to

the child or to the child's unborn child.

(2) A law enforcement, court, or corrections official shall not restrain ~~or confine~~ a female child who is a charged or adjudicated delinquent child during a period of time specified in division (B) of this section if, prior to the use of the restraint ~~or confinement~~, a health care professional who is treating the child provides a notice to the official or to the official's employing agency or court stating that any restraint ~~or confinement~~ of the child during a period of time specified in division (B) of this section poses a risk of physical harm to the child or to the child's unborn child. A notice provided as described in this division applies throughout all periods of time specified in division (B) of this section that occur after the provision of the notice.

~~(F)(1) Whoever violates division (B) of this section is guilty of interfering with civil rights in violation of division (B) of section 2921.45 of the Revised Code.~~

~~(2) A female child who is restrained or confined in violation of division (B) of this section may commence a civil action under section 2307.60 of the Revised Code against the law enforcement, court, or corrections official who committed the violation, against the official's employing agency or court, or against both the official and the official's employing agency or court. In the action, in addition to the full damages specified in section 2307.60 of the Revised Code, the child may recover punitive damages, the costs of maintaining the action and reasonable attorney's fees, or both punitive damages and the costs of maintaining the action and reasonable attorney's fees.~~

~~(3) Divisions (F)(1) and (2) of this section do not limit any right of a person to obtain injunctive relief or to recover damages in a civil action under any other statutory or common law of this state or the United States.~~

Sec. 2901.10. (A) As used in this section:

(1) "Charged or convicted criminal offender" means any woman to whom both of the following apply:

(a) The woman is charged with a crime or, with respect to a crime, is being tried, has been convicted of or pleaded guilty, or is serving a sentence.

(b) The woman is, following arrest, transportation, and routine processing and booking, in custody of any law enforcement, court, or corrections official.

(2) "Health care professional" has the same meaning as in section 2108.61 of the Revised Code.

(3) "Law enforcement, court, or corrections official" means any officer or employee of this state or a political subdivision of this state who has custody or control of any woman who is a charged or convicted criminal offender.

(4) "Restrain" means to use any shackles, handcuffs, or other ~~physical restraints~~similar appliance or device.

~~(5) "Confine" means to place in solitary confinement in an enclosed space.~~

~~(6) "Unborn child" means a member of the species homo sapiens who is carried in the womb of a woman who is a charged or convicted criminal offender, during a period that begins with fertilization and continues until live birth occurs.~~

~~(7)(6) "Emergency circumstance" means a sudden, urgent, unexpected incident or occurrence that requires an immediate reaction and restraint of the charged or convicted criminal offender who is pregnant for an emergency situation faced by a law enforcement, court, or corrections official.~~

(B) Except as otherwise provided in division (C) of this section, beginning on the date on which a pregnancy is confirmed to law enforcement by a health care professional, no law enforcement, court, or corrections official, with knowledge that the woman is pregnant or was pregnant, shall knowingly restrain ~~or confine~~ a woman who is a charged or convicted criminal offender during any of the following periods of time:

- (1) If the woman is pregnant, at any time during her pregnancy;
- (2) If the woman is pregnant, during transport to a hospital, during labor, or during delivery;
- (3) If the woman was pregnant, during any period of postpartum recovery up to six weeks after the woman's pregnancy.

~~(C)(1) Except as otherwise provided in division (D) of this section, a (C) A~~ law enforcement, court, or corrections official may restrain ~~or confine~~ a woman who is a charged or convicted criminal offender during a period of time specified in division (B) of this section if ~~all of the following apply~~:

~~(a) The official determines that the woman presents a serious threat of physical harm to herself, to the official, to other law enforcement or court personnel, or to any other person, presents a serious threat of physical harm to property, presents a substantial security risk, or presents a substantial flight risk.~~

~~(b)(i) Except as otherwise provided in division (C)(1)(b)(ii) of this section, prior to restraining or confining the woman, the official contacts a health care professional who is treating the woman and notifies the professional that the official wishes to restrain or confine the woman and identifies the type of restraint and the expected duration of its use or communicates the expected duration of confinement.~~

~~(ii) The official is not required to contact a health care professional who is treating the woman prior to restraining the woman in accordance with division (D) of this section if an emergency circumstance exists. The use of restraint in an emergency circumstance shall be in accordance with division (D) of this section. Once the woman is restrained, the official shall contact a health care professional who is treating the woman and identify the type of restraint and the expected duration of its use.~~

~~(e) Upon being contacted by the official as described in division (C)(1)(b)(i) of this section, the health care professional does not object to the use of the specified type of restraint for the expected duration of its use or does not object to the expected duration of confinement.~~

~~(2) A health care professional who is contacted by a law enforcement, court, or corrections official as described in division (C)(1)(b)(i) of this section shall not object to the use of the specified type of restraint for the expected duration of its use, or the expected duration of confinement, unless the professional determines that the specified type of restraint, the use of that type of restraint for the expected duration, or the expected duration of confinement poses a risk of physical harm to the woman or to the woman's unborn child.~~

(D) A law enforcement, court, or corrections official who restrains a woman who is a charged or convicted criminal offender during a period of time specified in division (B) of this section under authority of division (C) of this section shall not use any leg, ankle, or waist restraint to restrain the woman.

(E)(1) If a law enforcement, court, or corrections official restrains ~~or confines~~ a woman who is a charged or convicted criminal offender during a period of time specified in division (B) of this

section under authority of division (C) of this section, the official shall remove the restraint ~~or cease confinement~~ if, at any time while the restraint is in use ~~or the woman is in confinement~~, a health care professional who is treating the woman provides a notice to the official or to the official's employing agency or court stating that the restraint ~~or confinement~~ poses a risk of physical harm to the woman or to the woman's unborn child.

(2) A law enforcement, court, or corrections official shall not restrain ~~or confine~~ a woman who is a charged or convicted criminal offender during a period of time specified in division (B) of this section if, prior to the use of the restraint ~~or confinement~~, a health care professional who is treating the woman provides a notice to the official or to the official's employing agency or court stating that any restraint ~~or confinement~~ of the woman during a period of time specified in division (B) of this section poses a risk of physical harm to the woman or to the woman's unborn child. A notice provided as described in this division applies throughout all periods of time specified in division (B) of this section that occur after the provision of the notice.

~~(F)(1) Whoever violates division (B) of this section is guilty of interfering with civil rights in violation of division (B) of section 2921.45 of the Revised Code.~~

~~(2) A woman who is restrained or confined in violation of division (B) of this section may commence a civil action under section 2307.60 of the Revised Code against the law enforcement, court, or corrections official who committed the violation, against the official's employing agency or court, or against both the official and the official's employing agency or court. In the action, in addition to the full damages specified in section 2307.60 of the Revised Code, the woman may recover punitive damages, the costs of maintaining the action and reasonable attorney's fees, or both punitive damages and the costs of maintaining the action and reasonable attorney's fees.~~

~~(3) Divisions (F)(1) and (2) of this section do not limit any right of a person to obtain injunctive relief or to recover damages in a civil action under any other statutory or common law of this state or the United States.~~

Sec. 2921.45. (A) No public servant, under color of the public servant's office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right.

~~(B) No law enforcement, court, or corrections official shall violate division (B) of section 2152.75 or section 2901.10 of the Revised Code.~~

~~(C) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.~~

Sec. 2933.81. (A) As used in this section:

(1) "Custodial interrogation" means any interrogation involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider self to be in custody, beginning when a person should have been advised of the person's right to counsel and right to remain silent and of the fact that anything the person says could be used against the person, as specified by the United States supreme court in *Miranda v. Arizona* (1966), 384 U.S. 436, and subsequent decisions, and ending when the questioning has completely finished.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(3) "Electronic recording" or "electronically recorded" means an audio ~~and visual~~ or

audiovisual recording that is an authentic, accurate, unaltered record of a custodial interrogation.

(4) "Law enforcement agency" has the same meaning as in section 109.573 of the Revised Code.

(5) "Law enforcement vehicle" means a vehicle primarily used by a law enforcement agency or by an employee of a law enforcement agency for official law enforcement purposes.

(6) "Local correctional facility" has the same meaning as in section 2903.13 of the Revised Code.

(7) "Place of detention" means a jail, police or sheriff's station, holding cell, state correctional institution, local correctional facility, detention facility, or department of youth services facility. "Place of detention" does not include a law enforcement vehicle.

(8) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.

(9) "Statement" means an oral, written, sign language, or nonverbal communication.

(B) ~~All~~ Except as provided in division (C) of this section, all oral statements made by a person who is the suspect of a violation of or possible violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03, or an attempt to commit a violation of section 2907.02 of the Revised Code during a custodial interrogation in a place of detention are presumed to shall be voluntary if the statements made by the person are electronically recorded. The person making the statements during the electronic recording of the custodial interrogation has the burden of proving that the statements made during the custodial interrogation were not voluntary. There shall be no penalty against the law enforcement agency that employs a law enforcement officer if the law enforcement officer fails to electronically record as required by this division a custodial interrogation. A law enforcement officer's failure to electronically record a custodial interrogation does not create a private cause of action against that law enforcement officer any person or agency.

(C) Division (B) of this section does not apply in any of the following circumstances:

(1) The person subject to interrogation requests that the interrogation not be recorded, as long as this request is preserved by electronic recording or in writing.

(2) The recording equipment malfunctions.

(3) There are exigent circumstances related to public safety.

(4) The interrogation occurs outside of the state of Ohio.

(5) The statements are made during routine processing or booking.

(6) The statements are made spontaneously and not in response to interrogation.

(7) The interrogation occurs when no law enforcement officer conducting the interrogation has reason to believe that the individual attempted to commit, conspired to commit, was complicit in committing, or committed an offense listed in division (B) of this section.

(D) ~~A failure to electronically record a statement as required by this section shall not provide the basis to exclude or suppress the statement in any criminal proceeding, delinquent child proceeding, or other legal proceeding.~~

(~~D~~)(1) If a law enforcement agency fails to electronically record a custodial interrogation as required by division (B) of this section, the court shall do whichever of the following is applicable:

(1) If the prosecution establishes by a preponderance of the evidence that one or more of the

circumstances listed in division (C) of this section applies, the court shall admit the evidence without a cautionary instruction to the jury.

(2) If the prosecution does not establish by a preponderance of the evidence that one or more of the circumstances listed in division (C) of this section applies, the court shall provide a cautionary instruction to the jury that it may consider the failure to record the custodial interrogation in determining the reliability of the evidence.

(F)(1) Law enforcement personnel shall clearly identify and catalog every electronic recording of a custodial interrogation that is recorded pursuant to this section.

(2) If a criminal or delinquent child proceeding is brought against a person who was the subject of a custodial interrogation that was electronically recorded, law enforcement personnel shall preserve the recording until the later of when all appeals, post-conviction relief proceedings, and habeas corpus proceedings are final and concluded or the expiration of the period of time within which such appeals and proceedings must be brought.

(3) Upon motion by the defendant in a criminal proceeding or the alleged delinquent child in a delinquent child proceeding, the court may order that a copy of an electronic recording of a custodial interrogation of the person be preserved for any period beyond the expiration of all appeals, post-conviction relief proceedings, and habeas corpus proceedings.

(4) If no criminal or delinquent child proceeding is brought against a person who was the subject of a custodial interrogation that was electronically recorded pursuant to this section, law enforcement personnel are not required to preserve the related recording.

SECTION 2. That existing sections 2152.75, 2901.10, 2921.45, and 2933.81 of the Revised Code are hereby repealed.

SECTION 3. The amendment by this act of section 2933.81 of the Revised Code shall take effect ninety days after the effective date of this section.

SECTION 4. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the changes it makes in the law restricting the restraint or confinement of a pregnant woman or child are crucially needed in the interests of justice. Therefore, this act shall go into immediate effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____