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Representatives West, Plummer

Cosponsors: Representatives Fraizer, Riedel, Crossman, Miller, A., Leland, Smith, K., Miller, J., Miranda, Sheehy, Pavliga, Stewart, LaRe, Sweeney, Schmidt, Swearingen, Denson, Galonski, Seitz, Abrams, Baldrige, Blackshear, Brent, Brown, Callender, Carruthers, Click, Creech, Dean, Ghanbari, Ginter, Gross, Hillyer, Holmes, Householder, Howse, Ingram, John, Johnson, Jones, Kelly, Lanese, Lepore-Hagan, Lightbody, Liston, Loychik, McClain, Ray, Robinson, Russo, Skindell, Smith, M., Sobecki, Stein, Sykes, Weinstein, White, Young, T., Speaker Cupp

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A BILL

To amend sections 2152.75, 2901.10, 2921.45, and 1
2933.81 of the Revised Code to revise the law 2
governing the electronic recording of custodial 3
interrogations, to revise the prohibition 4
against certain types of restraint or 5
confinement of a pregnant woman or child who is 6
charged with or has been convicted of an 7
offense, and to declare an emergency. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2152.75, 2901.10, 2921.45, and 9
2933.81 of the Revised Code be amended to read as follows: 10

Sec. 2152.75. (A) As used in this section: 11

(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.~~ 69
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~~(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.~~ 73
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~~(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.~~ 82
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~~(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.~~ 87
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~~(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~~ 96
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(B) of this section under authority of division (C) of this 99
section shall not use any leg, ankle, or waist restraint to 100
restrain the child. 101

(E) (1) If a law enforcement, court, or corrections 102
official restrains ~~or confines~~ a female child who is a charged 103
or adjudicated delinquent child during a period of time 104
specified in division (B) of this section under authority of 105
division (C) of this section, the official shall remove the 106
restraint ~~or cease confinement~~ if, at any time while the 107
restraint is in use ~~or the child is in confinement~~, a health 108
care professional who is treating the child provides a notice to 109
the official or to the official's employing agency or court 110
stating that the restraint ~~or confinement~~ poses a risk of 111
physical harm to the child or to the child's unborn child. 112

(2) A law enforcement, court, or corrections official 113
shall not restrain ~~or confine~~ a female child who is a charged or 114
adjudicated delinquent child during a period of time specified 115
in division (B) of this section if, prior to the use of the 116
restraint ~~or confinement~~, a health care professional who is 117
treating the child provides a notice to the official or to the 118
official's employing agency or court stating that any restraint 119
~~or confinement~~ of the child during a period of time specified in 120
division (B) of this section poses a risk of physical harm to 121
the child or to the child's unborn child. A notice provided as 122
described in this division applies throughout all periods of 123
time specified in division (B) of this section that occur after 124
the provision of the notice. 125

~~(F) (1) Whoever violates division (B) of this section is 126
guilty of interfering with civil rights in violation of division 127
(B) of section 2921.45 of the Revised Code. 128~~

~~(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.~~ 129
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~~(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.~~ 140
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Sec. 2901.10. (A) As used in this section: 144

(1) "Charged or convicted criminal offender" means any woman to whom both of the following apply: 145
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(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. 147
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(b) The woman is, following arrest, transportation, and routine processing and booking, in custody of any law enforcement, court, or corrections official. 150
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(2) "Health care professional" has the same meaning as in section 2108.61 of the Revised Code. 153
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(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 155
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woman who is a charged or convicted criminal offender.	158
(4) "Restrain" means to use any shackles, handcuffs, or other physical restraints <u>similar appliance or device.</u>	159 160
(5) "Confine" means to place in solitary confinement in an enclosed space.	161 162
(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.	163 164 165 166
(7) <u>(6)</u> "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.	167 168 169 170 171
(B) Except as otherwise provided in division (C) of this section, <u>beginning on the date on which a pregnancy is confirmed to law enforcement by a health care professional,</u> 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:	172 173 174 175 176 177 178
(1) If the woman is pregnant, at any time during her pregnancy;	179 180
(2) If the woman is pregnant, during transport to a hospital, during labor, or during delivery;	181 182
(3) If the woman was pregnant, during any period of postpartum recovery up to six weeks after the woman's pregnancy.	183 184
(C) (1) Except as otherwise provided in division (D) of	185

~~this section, a (C) A law enforcement, court, or corrections 186
official may restrain or confine a woman who is a charged or 187
convicted criminal offender during a period of time specified in 188
division (B) of this section if all of the following apply: 189~~

~~(a) The official determines that the woman presents a 190
serious threat of physical harm to herself, to the official, to 191
other law enforcement or court personnel, or to any other 192
person, presents a serious threat of physical harm to property, 193
presents a substantial security risk, or presents a substantial 194
flight risk. 195~~

~~(b) (i) Except as otherwise provided in division (C) (1) (b) 196
(ii) of this section, prior to restraining or confining the 197
woman, the official contacts a health care professional who is 198
treating the woman and notifies the professional that the 199
official wishes to restrain or confine the woman and identifies 200
the type of restraint and the expected duration of its use or 201
communicates the expected duration of confinement. 202~~

~~(ii) The official is not required to contact a health care 203
professional who is treating the woman prior to restraining the 204
woman in accordance with division (D) of this section if an 205
emergency circumstance exists. The use of restraint in an 206
emergency circumstance shall be in accordance with division (D) 207
of this section. Once the woman is restrained, the official 208
shall contact a health care professional who is treating the 209
woman and identify the type of restraint and the expected 210
duration of its use. 211~~

~~(c) Upon being contacted by the official as described in 212
division (C) (1) (b) (i) of this section, the health care 213
professional does not object to the use of the specified type of 214
restraint for the expected duration of its use or does not 215~~

~~object to the expected duration of confinement.~~ 216

~~(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.~~ 217
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(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. 226
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(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. 232
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(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 243
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division (B) of this section if, prior to the use of the 246
~~restraint or confinement~~, a health care professional who is 247
treating the woman provides a notice to the official or to the 248
official's employing agency or court stating that any restraint 249
~~or confinement~~ of the woman during a period of time specified in 250
division (B) of this section poses a risk of physical harm to 251
the woman or to the woman's unborn child. A notice provided as 252
described in this division applies throughout all periods of 253
time specified in division (B) of this section that occur after 254
the provision of the notice. 255

~~(F)(1) Whoever violates division (B) of this section is 256
guilty of interfering with civil rights in violation of division 257
(B) of section 2921.45 of the Revised Code. 258~~

~~(2) A woman who is restrained or confined in violation of 259
division (B) of this section may commence a civil action under 260
section 2307.60 of the Revised Code against the law enforcement, 261
court, or corrections official who committed the violation, 262
against the official's employing agency or court, or against 263
both the official and the official's employing agency or court. 264
In the action, in addition to the full damages specified in 265
section 2307.60 of the Revised Code, the woman may recover 266
punitive damages, the costs of maintaining the action and 267
reasonable attorney's fees, or both punitive damages and the 268
costs of maintaining the action and reasonable attorney's fees. 269~~

~~(3) Divisions (F)(1) and (2) of this section do not limit 270
any right of a person to obtain injunctive relief or to recover 271
damages in a civil action under any other statutory or common 272
law of this state or the United States. 273~~

Sec. 2921.45. (A) No public servant, under color of the 274
public servant's office, employment, or authority, shall 275

knowingly deprive, or conspire or attempt to deprive any person	276
of a constitutional or statutory right.	277
(B) No law enforcement, court, or corrections official	278
shall violate division (B) of section 2152.75 or section 2901.10	279
of the Revised Code.	280
(C) Whoever violates this section is guilty of interfering	281
with civil rights, a misdemeanor of the first degree.	282
Sec. 2933.81. (A) As used in this section:	283
(1) "Custodial interrogation" means any interrogation	284
involving a law enforcement officer's questioning that is	285
reasonably likely to elicit incriminating responses and in which	286
a reasonable person in the subject's position would consider	287
self to be in custody, beginning when a person should have been	288
advised of the person's right to counsel and right to remain	289
silent and of the fact that anything the person says could be	290
used against the person, as specified by the United States	291
supreme court in <i>Miranda v. Arizona</i> (1966), 384 U.S. 436, and	292
subsequent decisions, and ending when the questioning has	293
completely finished.	294
(2) "Detention facility" has the same meaning as in	295
section 2921.01 of the Revised Code.	296
(3) "Electronic recording" or "electronically recorded"	297
means an audio and visual <u>or audiovisual</u> recording that is an	298
authentic, accurate, unaltered record of a custodial	299
interrogation.	300
(4) "Law enforcement agency" has the same meaning as in	301
section 109.573 of the Revised Code.	302
(5) "Law enforcement vehicle" means a vehicle primarily	303

used by a law enforcement agency or by an employee of a law 304
enforcement agency for official law enforcement purposes. 305

(6) "Local correctional facility" has the same meaning as 306
in section 2903.13 of the Revised Code. 307

(7) "Place of detention" means a jail, police or sheriff's 308
station, holding cell, state correctional institution, local 309
correctional facility, detention facility, or department of 310
youth services facility. "Place of detention" does not include a 311
law enforcement vehicle. 312

(8) "State correctional institution" has the same meaning 313
as in section 2967.01 of the Revised Code. 314

(9) "Statement" means an oral, written, sign language, or 315
nonverbal communication. 316

(B) ~~All-Except as provided in division (C) of this~~ 317
~~section, all oral~~ statements made by a person who is the suspect 318
of a violation of or possible violation of section 2903.01, 319
2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 320
that is a felony of the first or second degree, a violation of 321
section 2907.02 or 2907.03, or an attempt to commit a violation 322
of section 2907.02 of the Revised Code during a custodial 323
interrogation in a place of detention ~~are presumed to shall be~~ 324
~~voluntary if the statements made by the person are~~ 325
electronically recorded. ~~The person making the statements during~~ 326
~~the electronic recording of the custodial interrogation has the~~ 327
~~burden of proving that the statements made during the custodial~~ 328
~~interrogation were not voluntary. There shall be no penalty~~ 329
~~against the law enforcement agency that employs a law~~ 330
~~enforcement officer if the law enforcement officer fails to~~ 331
~~electronically record as required by this division a custodial~~ 332

~~interrogation. A law enforcement officer's failure to~~ 333
~~electronically record a custodial interrogation does not create~~ 334
~~a private cause of action against that law enforcement officer~~ 335
~~any person or agency.~~ 336

(C) Division (B) of this section does not apply in any of 337
the following circumstances: 338

(1) The person subject to interrogation requests that the 339
interrogation not be recorded, as long as this request is 340
preserved by electronic recording or in writing. 341

(2) The recording equipment malfunctions. 342

(3) There are exigent circumstances related to public 343
safety. 344

(4) The interrogation occurs outside of the state of Ohio. 345

(5) The statements are made during routine processing or 346
booking. 347

(6) The statements are made spontaneously and not in 348
response to interrogation. 349

(7) The interrogation occurs when no law enforcement 350
officer conducting the interrogation has reason to believe that 351
the individual attempted to commit, conspired to commit, was 352
complicit in committing, or committed an offense listed in 353
division (B) of this section. 354

~~(D) A failure to electronically record a statement as~~ 355
~~required by this section shall not provide the basis to exclude~~ 356
~~or suppress the statement in any criminal proceeding, delinquent~~ 357
~~child proceeding, or other legal proceeding.~~ 358

~~(D) (1) If a law enforcement agency fails to electronically~~ 359

record a custodial interrogation as required by division (B) of 360
this section, the court shall do whichever of the following is 361
applicable: 362

(1) If the prosecution establishes by a preponderance of 363
the evidence that one or more of the circumstances listed in 364
division (C) of this section applies, the court shall admit the 365
evidence without a cautionary instruction to the jury. 366

(2) If the prosecution does not establish by a 367
preponderance of the evidence that one or more of the 368
circumstances listed in division (C) of this section applies, 369
the court shall provide a cautionary instruction to the jury 370
that it may consider the failure to record the custodial 371
interrogation in determining the reliability of the evidence. 372

(F) (1) Law enforcement personnel shall clearly identify 373
and catalog every electronic recording of a custodial 374
interrogation that is recorded pursuant to this section. 375

(2) If a criminal or delinquent child proceeding is 376
brought against a person who was the subject of a custodial 377
interrogation that was electronically recorded, law enforcement 378
personnel shall preserve the recording until the later of when 379
all appeals, post-conviction relief proceedings, and habeas 380
corpus proceedings are final and concluded or the expiration of 381
the period of time within which such appeals and proceedings 382
must be brought. 383

(3) Upon motion by the defendant in a criminal proceeding 384
or the alleged delinquent child in a delinquent child 385
proceeding, the court may order that a copy of an electronic 386
recording of a custodial interrogation of the person be 387
preserved for any period beyond the expiration of all appeals, 388

post-conviction relief proceedings, and habeas corpus	389
proceedings.	390
(4) If no criminal or delinquent child proceeding is	391
brought against a person who was the subject of a custodial	392
interrogation that was electronically recorded pursuant to this	393
section, law enforcement personnel are not required to preserve	394
the related recording.	395
Section 2. That existing sections 2152.75, 2901.10,	396
2921.45, and 2933.81 of the Revised Code are hereby repealed.	397
Section 3. The amendment by this act of section 2933.81 of	398
the Revised Code shall take effect ninety days after the	399
effective date of this section.	400
Section 4. This act is hereby declared to be an emergency	401
measure necessary for the immediate preservation of the public	402
peace, health, and safety. The reason for such necessity is that	403
the changes it makes in the law restricting the restraint or	404
confinement of a pregnant woman or child are crucially needed in	405
the interests of justice. Therefore, this act shall go into	406
immediate effect.	407