

**As Reported by the Senate Judiciary Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**Sub. H. B. No. 8**

**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**

**Senator Manning**

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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 12

female child to whom both of the following apply: 13

(a) The child is charged with a delinquent act or, with 14  
respect to a delinquent act, is subject to juvenile court 15  
proceedings, has been adjudicated a delinquent child, or is 16  
serving a disposition. 17

(b) The child is, following arrest, transportation, and 18  
routine processing and booking, in custody of any law 19  
enforcement, court, or corrections official. 20

(2) "Health care professional" has the same meaning as in 21  
section 2108.61 of the Revised Code. 22

(3) "Law enforcement, court, or corrections official" 23  
means any officer or employee of this state or a political 24  
subdivision of this state who has custody or control of any 25  
child who is a charged or adjudicated delinquent child. 26

(4) "Restrain" means to use any shackles, handcuffs, or 27  
other ~~physical restraints~~similar appliance or device. 28

(5) ~~"Confine" means to place in solitary confinement in an-~~ 29  
~~enclosed space.~~ 30

~~(6)~~"Unborn child" means a member of the species homo 31  
sapiens who is carried in the womb of a child who is a charged 32  
or adjudicated delinquent child, during a period that begins 33  
with fertilization and continues until live birth occurs. 34

~~(7)~~(6) "Emergency circumstance" means a sudden, urgent, 35  
unexpected incident or occurrence that requires an immediate 36  
reaction and restraint of the charged or adjudicated delinquent 37  
child who is pregnant for an emergency situation faced by a law 38  
enforcement, court, or corrections official. 39

(B) Except as otherwise provided in division (C) of this 40

section, beginning on the date on which a pregnancy is confirmed 41  
to law enforcement by a health care professional, no law 42  
enforcement, court, or corrections official, with knowledge that 43  
the female child is pregnant or was pregnant, shall knowingly 44  
~~restrain or confine~~ a female child who is a charged or 45  
adjudicated delinquent child during any of the following periods 46  
of time: 47

(1) If the child is pregnant, at any time during her 48  
pregnancy; 49

(2) If the child is pregnant, during transport to a 50  
hospital, during labor, or during delivery; 51

(3) If the child was pregnant, during any period of 52  
postpartum recovery up to six weeks after the child's pregnancy. 53

~~(C) (1) Except as otherwise provided in division (D) of~~ 54  
~~this section, a (C) A~~ law enforcement, court, or corrections 55  
official may restrain ~~or confine~~ a female child who is a charged 56  
or adjudicated delinquent child during a period of time 57  
specified in division (B) of this section if ~~all of the~~ 58  
~~following apply:~~ 59

~~(a) The~~ official determines that the child presents a 60  
serious threat of physical harm to herself, to the official, to 61  
other law enforcement or court personnel, or to any other 62  
person, presents a serious threat of physical harm to property, 63  
presents a substantial security risk, or presents a substantial 64  
flight risk. 65

~~(b) (i) Except as provided in division (C) (1) (b) (ii) of~~ 66  
~~this section, prior to restraining or confining the child, the~~ 67  
~~official contacts a health care professional who is treating the~~ 68  
~~child and notifies the professional that the official wishes to~~ 69

~~restrain or confine the child and identifies the type of~~ 70  
~~restraint and the expected duration of its use or communicates~~ 71  
~~the expected duration of confinement.~~ 72

~~(ii) The official is not required to contact a health care~~ 73  
~~professional who is treating the child prior to restraining the~~ 74  
~~child in accordance with division (D) of this section if an~~ 75  
~~emergency circumstance exists. The use of restraint in an~~ 76  
~~emergency circumstance shall be in accordance with division (D)~~ 77  
~~of this section. Once the child is restrained, the official~~ 78  
~~shall contact a health care professional who is treating the~~ 79  
~~child and identify the type of restraint and the expected~~ 80  
~~duration of its use.~~ 81

~~(e) Upon being contacted by the official as described in~~ 82  
~~division (C) (1) (b) (i) of this section, the health care~~ 83  
~~professional does not object to the use of the specified type of~~ 84  
~~restraint for the expected duration of its use or does not~~ 85  
~~object to the expected duration of confinement.~~ 86

~~(2) A health care professional who is contacted by a law~~ 87  
~~enforcement, court, or corrections official as described in~~ 88  
~~division (C) (1) (b) (i) of this section shall not object to the~~ 89  
~~use of the specified type of restraint for the expected duration~~ 90  
~~of its use, or the expected duration of confinement, unless the~~ 91  
~~professional determines that the specified type of restraint,~~ 92  
~~the use of that type of restraint for the expected duration, or~~ 93  
~~the expected duration of confinement poses a risk of physical~~ 94  
~~harm to the child or to the child's unborn child.~~ 95

(D) A law enforcement, court, or corrections official who 96  
restrains a female child who is a charged or adjudicated 97  
delinquent child during a period of time specified in division 98  
(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 129~~

~~violation of division (B) of this section may commence a civil- 130  
action under section 2307.60 of the Revised Code against the law- 131  
enforcement, court, or corrections official who committed the- 132  
violation, against the official's employing agency or court, or- 133  
against both the official and the official's employing agency or- 134  
court. In the action, in addition to the full damages specified- 135  
in section 2307.60 of the Revised Code, the child may recover- 136  
punitive damages, the costs of maintaining the action and- 137  
reasonable attorney's fees, or both punitive damages and the- 138  
costs of maintaining the action and reasonable attorney's fees. 139~~

~~(3) Divisions (F) (1) and (2) of this section do not limit 140  
any right of a person to obtain injunctive relief or to recover 141  
damages in a civil action under any other statutory or common- 142  
law of this state or the United States. 143~~

**Sec. 2901.10.** (A) As used in this section: 144

(1) "Charged or convicted criminal offender" means any 145  
woman to whom both of the following apply: 146

(a) The woman is charged with a crime or, with respect to 147  
a crime, is being tried, has been convicted of or pleaded 148  
guilty, or is serving a sentence. 149

(b) The woman is, following arrest, transportation, and 150  
routine processing and booking, in custody of any law 151  
enforcement, court, or corrections official. 152

(2) "Health care professional" has the same meaning as in 153  
section 2108.61 of the Revised Code. 154

(3) "Law enforcement, court, or corrections official" 155  
means any officer or employee of this state or a political 156  
subdivision of this state who has custody or control of any 157  
woman who is a charged or convicted criminal offender. 158

(4) "Restrain" means to use any shackles, handcuffs, or 159  
other ~~physical restraints~~ similar appliance or device. 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 163  
sapiens who is carried in the womb of a woman who is a charged 164  
or convicted criminal offender, during a period that begins with 165  
fertilization and continues until live birth occurs. 166

~~(7)~~ (6) "Emergency circumstance" means a sudden, urgent, 167  
unexpected incident or occurrence that requires an immediate 168  
reaction and restraint of the charged or convicted criminal 169  
offender who is pregnant for an emergency situation faced by a 170  
law enforcement, court, or corrections official. 171

(B) Except as otherwise provided in division (C) of this 172  
section, beginning on the date on which a pregnancy is confirmed 173  
to law enforcement by a health care professional, no law 174  
enforcement, court, or corrections official, with knowledge that 175  
the woman is pregnant or was pregnant, shall knowingly restrain 176  
~~or confine~~ a woman who is a charged or convicted criminal 177  
offender during any of the following periods of time: 178

(1) If the woman is pregnant, at any time during her 179  
pregnancy; 180

(2) If the woman is pregnant, during transport to a 181  
hospital, during labor, or during delivery; 182

(3) If the woman was pregnant, during any period of 183  
postpartum recovery up to six weeks after the woman's pregnancy. 184

~~(C) (1) Except as otherwise provided in division (D) of  
this section, a (C) A law enforcement, court, or corrections~~ 185  
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.~~

(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 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
<del>(B) No law enforcement, court, or corrections official</del>	278
<del>shall violate division (B) of section 2152.75 or section 2901.10</del>	279
<del>of the Revised Code.</del>	280
<del>(C) Whoever violates this section is guilty of interfering</del>	281
<del>with civil rights, a misdemeanor of the first degree.</del>	282
<b>Sec. 2933.81.</b> (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 <del>and visual</del> or <u>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 in section 2903.13 of the Revised Code.	306 307
(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.	308 309 310 311 312
(8) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.	313 314
(9) "Statement" means an oral, written, sign language, or nonverbal communication.	315 316
(B) <del>All Except as provided in division (C) of this</del> <del>section, all oral</del> 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 <del>are presumed to</del> <u>shall be</u> <del>voluntary if the statements made by the person are</del> electronically recorded. <del>The person making the statements during</del> <del>the electronic recording of the custodial interrogation has the</del> <del>burden of proving that the statements made during the custodial</del> <del>interrogation were not voluntary. There shall be no penalty</del> <del>against the law enforcement agency that employs a law</del> <del>enforcement officer if the law enforcement officer fails to</del> <del>electronically record as required by this division a custodial</del> <del>interrogation. A law enforcement officer's failure to</del>	317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333

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
<b>Section 2.</b> That existing sections 2152.75, 2901.10,	396
2921.45, and 2933.81 of the Revised Code are hereby repealed.	397
<b>Section 3.</b> 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
<b>Section 4.</b> 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