



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 8*
134th General Assembly

Bill Analysis

[Click here for H.B. 8's Fiscal Note](#)

Version: As Reported by House Criminal Justice

Primary Sponsors: Reps. West and Plummer

Nicholas A. Keller, Attorney

SUMMARY

Electronic recording of custodial interrogation

- Except in limited circumstances, requires the recording of all statements made by a suspect of one of several specified criminal offenses during a custodial interrogation in a place of confinement.
- Allows a court to consider any failure to electronically record a statement in adjudicating motions to exclude or suppress the statement.
- Allows the court to admit evidence from an interrogation despite a violation of the bill's requirement, but, unless subject to an exception, requires the court to provide a cautionary instruction to the jury.

Shackling of pregnant inmates

- Modifies continuing law provisions that prohibit the restraint of charged or convicted criminal offenders and charged or adjudicated delinquent children who are pregnant under specified circumstances.

* This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

DETAILED ANALYSIS

Electronic recording of custodial interrogation

Required for certain suspects

Unless contained in one of the bill's exceptions (see "**Exceptions**," below), the bill requires every oral statement made in a custodial interrogation in a place of detention to be electronically recorded if the statement is made by a person who is suspected of any of the following offenses:

- Aggravated murder, murder, or voluntary manslaughter;
- A first or second degree felony violation of involuntary manslaughter or aggravated vehicular homicide;
- Rape, attempted rape, or sexual battery.

The bill replaces a provision of current law that does not require electronic recording of those statements *per se*, but appears to treat those electronic recordings favorably by placing the burden on the person making recorded statements to prove that the statements were not voluntary. The bill also eliminates a prohibition against penalizing a law enforcement agency that employs a law enforcement officer who fails to electronically record statements made in a custodial interrogation in a place of detention by a person who is suspected of one of the above offenses.¹

Exceptions

Electronic recording is not required in any of the following circumstances:²

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 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 specified above.

¹ R.C. 2933.81(B).

² R.C. 2933.81(C).

Consequences of failure to record

The bill eliminates a provision of current law that prohibits a failure to electronically record a statement from providing the basis to exclude or suppress a statement in a criminal proceeding, delinquent child proceeding, or other legal proceeding. Consequently, under the bill, a court is neither prohibited from or required to consider failure to record in adjudicating on exclusion or suppression of a statement.³ If a law enforcement agency fails to record a custodial interrogation as required by the bill and the prosecution establishes, by a preponderance of the evidence, that one of the circumstances in “**Exceptions**,” above applies, the court must admit the evidence without a cautionary instruction. If the prosecution *does not* meet the burden of proof, the court must 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.⁴

A failure to electronically record a custodial interrogation as required by the bill does not create a private cause of action against any person or agency. This expands the current law private liability exclusion that applies only to actions against a law enforcement officer.⁵

Shackling of pregnant inmates

Continuing law prohibits the restraint of charged or convicted criminal offenders and charged or adjudicated delinquent children who are pregnant under specified circumstances. The bill adds that the continuing law prohibition:

- Does not apply to a charged or convicted criminal offender until after arrest, transportation, and routine processing and booking;
- Applies to the use of shackles, handcuffs, or other similar appliances or devices that restrict the normal use of a person’s arms or legs (instead of “other physical restraints” under current law);
- Applies to the placement of a person in restrictive housing or disciplinary isolation for more than 24 hours, rather than to placement in solitary confinement in an enclosed space; and
- Applies beginning on the date on which pregnancy is confirmed to law enforcement by a health care professional and the law enforcement, court, or corrections official has knowledge that the person is pregnant or was pregnant, rather than applying based on knowledge of the pregnancy whether or not the pregnancy was confirmed.

The bill also eliminates a requirement that the law enforcement, court, or corrections official notify a health care professional that the official wishes to restrain or confine the

³ R.C. 2933.81(C), repealed with conforming changes in R.C. 2933.81(D).

⁴ R.C. 2933.81(E).

⁵ R.C. 2933.81(B).

charged or convicted offender or charged or adjudicated delinquent child and identifying the type of restraint and the expected duration of its use or communicating the expected duration of confinement.⁶

Definitions

The following terms are used in the bill, and are defined in continuing law, with any modifications noted below:⁷

A **custodial interrogation** is 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 in the landmark *Miranda v. Arizona*⁸ Supreme Court case and subsequent decisions, and ending when the questioning has completely finished.

A **detention facility** is a public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under federal law.⁹

Electronic recording or electronically recorded means an audio or audiovisual recording that is an authentic, accurate, unaltered record of a custodial interrogation. The bill modifies the definition to apply to audio or audiovisual recordings, rather than to only "audio and visual" recordings under current law.

A **law enforcement agency** is a police department, the office of a sheriff, the state highway patrol, a county prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.¹⁰

A **place of detention** is a jail, police or sheriff's station, holding cell, state correctional institution, local correctional facility, detention facility, or Department of Youth Services facility, but a law enforcement vehicle is not a place of detention.

A **statement** is an oral, written, sign language, or nonverbal communication.

The following terms as used in the bill and defined as follows:¹¹

⁶ R.C. 2152.75 and 2901.10.

⁷ R.C. 2933.81(A).

⁸ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁹ By reference to R.C. 2921.01, not in the bill.

¹⁰ By reference to R.C. 109.573, not in the bill.

¹¹ R.C. 2152.75(A)(8) and (9) and 2901.10(A)(8) and (9).

Restrictive housing means housing that separates an inmate from the general population and restricts an inmate to the inmate's cell for at least 22 hours per day.

Disciplinary isolation means the act of confining an inmate to an individual housing cell that physically separates the inmate from the general inmate population as a penalty, thereby prohibiting physical contact between the inmate and other inmates.

HISTORY

Action	Date
Introduced	02-03-21
Reported, H. Criminal Justice	---
