



ENACTMENT NEWS

House Bill 8

Electronic recording of custodial interrogations; restraint/confinement of pregnant women

Effective May 17, 2021 and August 16, 2021

On May 17, Governor DeWine signed House Bill 8 (Rep. West and Rep. Plummer) into law. The bill requires the electronic recording of certain custodial interrogations, and makes changes to recently enacted legislation pertaining to the restraint and confinement of pregnant women by law enforcement or court personnel. The provisions in the bill pertaining to restraint of pregnant women were passed as an emergency measure and took effect immediately upon the governor's signature, while the provisions regarding interrogations take effect on August 16, 2021.

Custodial interrogations

HB 8 requires all oral statements made by a person suspected of committing a certain offense¹ to be electronically recorded when made during a custodial interrogation in a place of detention.

The bill provides exceptions to this requirement:

- The suspect requests that the statement not be recorded, provided this request is recorded in writing or electronically
- The recording equipment malfunctions
- There are exigent circumstances pertaining to public safety
- The interrogation occurs outside of Ohio
- The statements are made during routine processing/booking
- The statements are made spontaneously and not in response to interrogation
- The interrogation occurs when the law enforcement officer(s) conducting the interrogation have no reason to believe the suspect committed one of the offenses for which recording the statement would be required

If law enforcement fails to record an interrogation as required under the bill, the prosecution must show by a preponderance of the evidence that one of the above-listed exceptions applies. If the prosecution does so, the court shall admit the evidence without a cautionary instruction to the jury. If the prosecution fails to prove by a preponderance of

¹ Aggravated murder, murder, voluntary manslaughter, rape, attempted rape, sexual battery, F1 and F2 involuntary manslaughter, and F1 and F2 aggravated vehicular homicide.

the evidence that an exception applies, the court shall provide a cautionary instruction to the jury that it may consider the failure to record the interrogation when determining the reliability of the evidence.

Restraint/Confinement of pregnant women

House Bill 1 of the 133rd General Assembly contained prohibitions against the restraint and/or confinement of pregnant women. House Bill 8 makes changes to some of the processes outlined in that bill, including removing the prohibition against confining² a pregnant woman.

The bill clarifies that the prohibition applies beginning when the person's pregnancy is confirmed to law enforcement by a health care professional, and only when the woman is in custody of a law enforcement, court, or corrections official and following arrest, transportation, and routine processing and booking. Additionally, prior law enacted in HB 1 allowed for the restraint of a pregnant woman only when the woman is a serious risk of harm to herself, others, or property, or is a serious flight or security risk, and the official contacts and obtains consent from the health care provider treating the woman. HB 8 removes the requirement that the health care provider first be contacted for consent.

HB 8 also removes any criminal liability or civil actions against a person who violates the prohibitions against restraining a pregnant woman.

The House of Representatives passed the bill by a vote of 90-0 on April 15, 2021, and the Senate passed the bill by a vote of 32-0 on May 12, 2021, with the House concurring in Senate amendments by a vote of 94-0 on the same day.

² Defined in HB 1 to mean "to place in solitary confinement in an enclosed space"