

Testimony of the Office of Protection and Advocacy for Persons with Disabilities  
Before the Judiciary Committee

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Good afternoon and thank you for this opportunity to comment on two of the bills on your agenda today:  
**Raised Bill No. 608, AN ACT CONCERNING THE VIDEOTAPING OF INTERROGATIONS.**

This bill would establish a presumption of inadmissibility with respect to statements made by persons who are under investigation for a capitol felony or a class A or class B felony when those statements are obtained during a custodial investigation that takes place in a place of detention, unless an audiovisual recording is made of the interrogation. A number of exceptions to this requirement are listed in the bill, including circumstances where electronic recording was not feasible.

The recordings called for in this bill would help safeguard the rights of people with cognitive or psychiatric disabilities who may be subject to interrogations. Many people who have mental retardation, non-verbal learning disabilities, autism-spectrum disabilities, brain injuries and mental illnesses find themselves at a significant disadvantage when being questioned by authorities. Although generalizing is risky and often unfair, there is strong evidence to the effect that people with mental disabilities are often more easily talked into agreeing to do or say things. Some of this is a survival strategy: people who have intellectual disabilities or who experience difficulty reading social cues often cultivate a sense of how to please authority figures and “pass” in situations where they do not fully understand what is happening. In the context of custodial interrogation, relying on such a strategy can prove disastrous. But there is more involved than a desire to pass for “normal” and to please others. Some of the problem also has to do with naiveté and confusion: if you have a mental disability, it is easy to become confused or insecure as to your own recollections of past events, and you are quite likely to accept interpretations offered by others.

Unfortunately, interrogation techniques designed to undermine the resistance of “typical” suspects can so confuse people with mental disabilities that they may falsely confess, perhaps even without recognizing that they have done so. Across the country evidence is mounting that people with mental disabilities are particularly susceptible to falsely confessing when confronted by exhausting, aggressive interrogation tactics. Various studies and investigations into the phenomenon of “false confession” point to a high correlation between cognitive and psychiatric disability and susceptibility to faulty results from intensive interrogation techniques. The fact that a person has a cognitive or psychiatric disability is often not immediately apparent to interrogators. When a question of cognitive or psychological function is subsequently raised, having a recording to refer to will likely be very helpful in determining the reliability of the person’s statements and the circumstances under which they were obtained. Knowing what was actually said, and how it was said, would also go a long way toward preventing wrongful convictions, and assuring that our criminal justice system treats persons with cognitive and psychiatric disabilities fairly.

Our Office urges your support for this legislation. If there are any questions I will try to answer them.