

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 717 Session of
2023

INTRODUCED BY HUGHES, FONTANA, KEARNEY, CAPPELLETTI, SCHWANK,
KANE, COSTA AND STREET, JUNE 2, 2023

REFERRED TO JUDICIARY, JUNE 2, 2023

AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania
2 Consolidated Statutes, in preliminary provisions, adopting
3 the Uniform Electronic Recordation of Custodial
4 Interrogations Act; requiring recordings of interrogations;
5 and imposing functions on the Attorney General.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Part I of Title 44 of the Pennsylvania
9 Consolidated Statutes is amended by adding a chapter to read:

10 CHAPTER 11

11 UNIFORM ELECTRONIC RECORDATION OF

12 CUSTODIAL INTERROGATIONS ACT

13 Sec.

14 1101. Short title of chapter.

15 1102. Definitions.

16 1103. Electronic recording requirement.

17 1104. Notice and consent not required.

18 1105. Exception for exigent circumstances.

19 1106. Exception for individual's refusal to be recorded

1 electronically.

2 1107. Exception for interrogation conducted by other

3 jurisdiction.

4 1108. Exception based on belief recording not required.

5 1109. Exception for safety of individual or protection of

6 identity.

7 1110. Exception for equipment malfunction.

8 1111. Burden of persuasion.

9 1112. Notice of intent to introduce unrecorded statement.

10 1113. Procedural remedies.

11 1114. Handling and preserving electronic recording.

12 1115. Regulations relating to electronic recording.

13 1116. Limitation of liability.

14 1117. Self-authentication.

15 1118. (Reserved).

16 1119. Uniformity of application and construction.

17 1120. Relation to Electronic Signatures in Global and National

18 Commerce Act.

19 § 1101. Short title of chapter.

20 This chapter shall be known and may be cited as the Uniform

21 Electronic Recordation of Custodial Interrogations Act.

22 § 1102. Definitions.

23 The following words and phrases when used in this chapter

24 shall have the meanings given to them in this section unless the

25 context clearly indicates otherwise:

26 "Child." As defined in 42 Pa.C.S. § 6302 (relating to

27 definitions).

28 "Crime of violence." As defined in 42 Pa.C.S. § 9714(g)

29 (relating to sentences for second and subsequent offenses). The

30 term includes a violent delinquent act.

1 "Custodial interrogation." Questioning or other conduct by a
2 law enforcement officer which:

3 (1) is reasonably likely to elicit an incriminating
4 response from an individual; and

5 (2) occurs when a reasonable individual in the same
6 circumstances would consider that the individual is in
7 custody.

8 The term includes giving a required warning, advice of rights of
9 the individual being questioned and waiver of rights by the
10 individual.

11 "Electronic recording." A video recording, with audio,
12 which accurately and completely records a custodial
13 interrogation.

14 "Law enforcement agency." A governmental entity or person
15 authorized by a governmental entity or state law to enforce
16 criminal laws or investigate suspected criminal activity. The
17 term includes a nongovernmental entity which has been delegated
18 the authority to enforce criminal laws or investigate suspected
19 criminal activity. The term does not include a law enforcement
20 officer.

21 "Law enforcement officer." Any of the following:

22 (1) An individual who is employed by a law enforcement
23 agency and whose responsibilities include enforcing criminal
24 laws or investigating suspected criminal activity.

25 (2) An individual acting at the request or direction of
26 an individual described in paragraph (1).

27 "Person." Any of the following:

28 (1) An individual, corporation, business trust,
29 statutory trust, estate, trust, partnership, limited
30 liability company, association, joint venture or public

1 corporation.

2 (2) A government or governmental subdivision, agency or
3 instrumentality.

4 (3) Any other legal or commercial entity.

5 "Record electronically." To make an electronic recording.

6 "State." A state of the United States, the District of
7 Columbia, Puerto Rico, the United States Virgin Islands or a
8 territory or insular possession subject to the jurisdiction of
9 the United States.

10 "Statement." A communication, whether oral, written,
11 electronic or nonverbal.

12 "Violent delinquent act." An offense by a child which, if
13 committed by an adult, would constitute a crime of violence.

14 § 1103. Electronic recording requirement.

15 (a) Requirement.--

16 (1) Except as specified in paragraph (2) or subsection
17 (e), a custodial interrogation related to a crime of violence
18 must be recorded electronically in its entirety.

19 (2) Paragraph (1) does not apply as described in
20 section:

21 (i) 1105 (relating to exception for exigent
22 circumstances);

23 (ii) 1106 (relating to exception for individual's
24 refusal to be recorded electronically);

25 (iii) 1107 (relating to exception for interrogation
26 conducted by other jurisdiction);

27 (iv) 1108 (relating to exception based on belief
28 recording not required);

29 (v) 1109 (relating to exception for safety of
30 individual or protection of identity); or

1 (vi) 1110 (relating to exception for equipment
2 malfunction).

3 (b) Justification report.--

4 (1) This subsection applies if a law enforcement
5 officer:

6 (i) conducts a custodial interrogation to which
7 subsection (a) applies;

8 (ii) relies upon an exception under subsection (a)
9 (2) or (e); and

10 (iii) does not electronically record the custodial
11 interrogation in its entirety.

12 (2) If this subsection applies, the law enforcement
13 officer shall prepare a written or electronic report:

14 (i) explaining the reason for not recording the
15 custodial interrogation; and

16 (ii) summarizing the custodial interrogation process
17 and the statements of the individual subject to the
18 custodial interrogation.

19 (c) Report timing.--A law enforcement officer shall prepare
20 the report under subsection (b) as soon as practicable after
21 completing the interrogation.

22 (d) (Reserved).

23 (e) Spontaneous and routine statements.--This section does
24 not apply to:

25 (1) a spontaneous statement made outside the course of a
26 custodial interrogation; or

27 (2) a statement made in response to a question asked
28 routinely during the processing of the arrest of an
29 individual.

30 § 1104. Notice and consent not required.

1 Notwithstanding 18 Pa.C.S. Ch. 57 Subch. B (relating to wire,
2 electronic or oral communication), a law enforcement officer
3 conducting a custodial interrogation is not required to obtain
4 consent to electronic recording from the individual being
5 interrogated. This chapter does not permit a law enforcement
6 officer or a law enforcement agency to record a private
7 communication between an individual and the individual's lawyer.
8 § 1105. Exception for exigent circumstances.

9 Section 1103 (relating to electronic recording requirement)
10 does not apply if electronic recording is not feasible because
11 of exigent circumstances. The law enforcement officer conducting
12 the interrogation shall record electronically an explanation of
13 the exigent circumstances before conducting the interrogation,
14 if feasible, or as soon as practicable after the interrogation
15 is completed.

16 § 1106. Exception for individual's refusal to be recorded
17 electronically.

18 (a) Refusal to participate.--Section 1103 (relating to
19 electronic recording requirement) does not apply if the
20 individual to be interrogated indicates that the individual will
21 not participate in the interrogation if the interrogation is
22 recorded electronically. If feasible, the agreement to
23 participate without recording must be recorded electronically.

24 (b) Refusal to continue.--If, during a custodial
25 interrogation under section 1103, the individual being
26 interrogated indicates that the individual will not participate
27 in further interrogation unless electronic recording ceases, the
28 remainder of the custodial interrogation need not be recorded
29 electronically. If feasible, the individual's agreement to
30 participate without further recording must be recorded

1 electronically.

2 (c) Encouraging refusal.--A law enforcement officer, with
3 intent to avoid the requirement of electronic recording in
4 section 1103, may not encourage an individual to request that a
5 recording not be made.

6 § 1107. Exception for interrogation conducted by other
7 jurisdiction.

8 If a custodial interrogation occurs in another state in
9 compliance with that state's law or is conducted by a Federal
10 law enforcement agency in compliance with Federal law, the
11 interrogation need not be recorded electronically unless the
12 interrogation is conducted with intent to avoid the requirement
13 of electronic recording in section 1103 (relating to electronic
14 recording requirement).

15 § 1108. Exception based on belief recording not required.

16 (a) Initial belief.--Section 1103 (relating to electronic
17 recording requirement) does not apply if the interrogation
18 occurs when no law enforcement officer conducting the
19 interrogation has knowledge of facts and circumstances that
20 would lead an officer reasonably to believe that the individual
21 being interrogated may have committed an act for which section
22 1103 requires that a custodial interrogation be recorded
23 electronically.

24 (b) Additional factors.--If, during a custodial
25 interrogation under subsection (a), the individual being
26 interrogated reveals facts and circumstances giving a law
27 enforcement officer conducting the interrogation reason to
28 believe that an act has been committed for which section 1103
29 requires that a custodial interrogation be recorded
30 electronically, continued custodial interrogation concerning

1 that act must be recorded electronically, if feasible.

2 § 1109. Exception for safety of individual or protection of
3 identity.

4 Section 1103 (relating to electronic recording requirement)
5 does not apply if a law enforcement officer conducting the
6 interrogation or the officer's superior reasonably believes that
7 electronic recording would disclose the identity of a
8 confidential informant or jeopardize the safety of an officer,
9 the individual being interrogated or another individual. If
10 feasible and consistent with the safety of a confidential
11 informant, an explanation of the basis for the belief that
12 electronic recording would disclose the informant's identity
13 must be recorded electronically at the time of the
14 interrogation. If contemporaneous recording of the basis for the
15 belief is not feasible, the recording must be made as soon as
16 practicable after the interrogation is completed.

17 § 1110. Exception for equipment malfunction.

18 (a) General malfunction.--Section 1103 (relating to
19 electronic recording requirement) does not apply to the extent
20 that recording is not feasible because:

- 21 (1) the available electronic recording equipment fails,
22 despite reasonable maintenance of the equipment; and
23 (2) timely repair or replacement is not feasible.

24 (b) Video only.--Recording may be by video alone if audio
25 recording is not feasible under subsection (a).

26 § 1111. Burden of persuasion.

27 If the prosecution relies on an exception under section
28 1103(a)(2) (relating to electronic recording requirement) to
29 justify a failure to record electronically a custodial
30 interrogation, the prosecution must prove by a preponderance of

1 the evidence that the exception applies.

2 § 1112. Notice of intent to introduce unrecorded statement.

3 If the prosecution intends to introduce in its case-in-chief
4 a statement made during a custodial interrogation subject to
5 section 1103 (relating to electronic recording requirement)
6 which was not recorded electronically, the prosecution, not
7 later than 14 days after arraignment, must serve the defendant
8 with written notice of the prosecution's intent and of any
9 exception on which the prosecution intends to rely.

10 § 1113. Procedural remedies.

11 (a) Admissibility.--Unless the court finds that an exception
12 under section 1103(a)(2) (relating to electronic recording
13 requirement) applies, the court shall consider the failure to
14 record electronically all or part of a custodial interrogation
15 subject to section 1103 in determining whether a statement made
16 during the interrogation is admissible, including whether it was
17 voluntarily made and is reliable.

18 (b) Instruction.--If the court admits into evidence a
19 statement made during a custodial interrogation that was not
20 recorded electronically in compliance with section 1103, the
21 court, on request of the defendant, shall give a cautionary
22 instruction to the jury.

23 § 1114. Handling and preserving electronic recording.

24 Each law enforcement agency in this Commonwealth shall
25 establish and enforce procedures to ensure that the electronic
26 recording of all or part of a custodial interrogation is
27 identified, accessible and preserved as required by Pa.R.E. Art.
28 X (relating to contents of writings, recordings, and
29 photographs). The procedures shall be consistent with applicable
30 provisions contained in the regulations under § 1115 (relating

1 to regulations relating to electronic recording). The Office of
2 Attorney General shall monitor and enforce compliance with this
3 section.

4 § 1115. Regulations relating to electronic recording.

5 (a) Adoption and enforcement.--The Office of Attorney
6 General shall:

7 (1) in consultation with the Commissioner of
8 Pennsylvania State Police, promulgate regulations to
9 implement this chapter; and

10 (2) monitor enforcement of the regulations by each law
11 enforcement agency which is a governmental entity of the
12 Commonwealth.

13 (b) Scope.--Regulations promulgated under subsection (a)
14 shall address:

15 (1) how an electronic recording of a custodial
16 interrogation must be made;

17 (2) the collection and review of electronic recordings,
18 or the absence of electronic recordings, by a supervisor in
19 each law enforcement agency;

20 (3) the assignment of supervisory responsibilities and a
21 chain of command to promote internal accountability;

22 (4) a process for explaining noncompliance with
23 procedures and imposing administrative sanctions for a
24 failure to comply which is not justified;

25 (5) a supervisory system expressly imposing on
26 individuals in specific positions a duty to ensure adequate
27 staffing, education, training and material resources to
28 implement this chapter; and

29 (6) a process for monitoring the chain of custody of an
30 electronic recording.

1 (c) Making electronic video recording.--Regulations
2 promulgated under subsections (a) and (b)(1) for video recording
3 shall contain standards for the angle, focus and field of
4 vision of a recording device which reasonably promote accurate
5 recording of a custodial interrogation and reliable assessment
6 of the recording's accuracy and completeness.

7 (d) Failure to comply with regulations.--A court may
8 consider the failure by a law enforcement agency to comply with
9 regulations promulgated under subsections (a) and (b)(1) in
10 determining whether an individual's statement made during a
11 custodial interrogation conducted by the law enforcement agency
12 is admissible.

13 (e) Temporary regulations.--

14 (1) In order to facilitate the prompt implementation of
15 this chapter, the Office of Attorney General shall promulgate
16 temporary regulations under this section. Promulgation of
17 temporary regulations under this subsection shall not be
18 subject to any of the following:

19 (i) Section 612 of the act of April 9, 1929
20 (P.L.177, No.175), known as The Administrative Code of
21 1929.

22 (ii) Sections 201, 202, 203, 204 and 205 of the act
23 of July 31, 1968 (P.L.769, No.240), referred to as the
24 Commonwealth Documents Law.

25 (iii) Sections 204(b) and 301(10) of the act of
26 October 15, 1980 (P.L.950, No.164), known as the
27 Commonwealth Attorneys Act.

28 (iv) The act of June 25, 1982 (P.L.633, No.181),
29 known as the Regulatory Review Act.

30 (2) Regulations promulgated under this subsection shall

1 expire on the earlier of:

2 (i) the effective date of regulations promulgated
3 under subsection (a); or

4 (ii) two years following the publication of the
5 temporary regulations.

6 (3) Paragraph (1) shall expire 180 days following the
7 effective date of this section.

8 § 1116. Limitation of liability.

9 (a) Immunity.--A law enforcement agency which is a
10 governmental entity of the Commonwealth and has implemented
11 procedures reasonably designed to comply with regulations
12 adopted under section 1115 (relating to regulations relating to
13 electronic recording) and to ensure compliance with this chapter
14 is not subject to civil liability for damages arising from a
15 violation of this chapter. This subsection is subject to 42
16 Pa.C.S. Ch. 85 (relating to matters affecting government units).

17 (b) No right of action.--This chapter does not create a
18 right of action against a law enforcement officer.

19 § 1117. Self-authentication.

20 (a) Certification.--In any pretrial or posttrial proceeding,
21 an electronic recording of a custodial interrogation is self-
22 authenticating if it is accompanied by a certificate of
23 authenticity sworn under oath or affirmation by an appropriate
24 law enforcement officer.

25 (b) Challenges.--This chapter does not limit the right of an
26 individual to challenge the authenticity of an electronic
27 recording of a custodial interrogation under the laws of this
28 Commonwealth other than this chapter.

29 § 1118. (Reserved).

30 § 1119. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

4 § 1120. Relation to Electronic Signatures in Global and
5 National Commerce Act.

6 To the extent permitted by 15 U.S.C. § 7002 (Electronic
7 Signatures in Global and National Commerce Act), this chapter
8 may supersede provisions of that act.

9 Section 2. This act shall take effect as follows:

10 (1) The following provisions shall take effect
11 immediately:

12 (i) The addition of 44 Pa.C.S. § 1115.

13 (ii) This section.

14 (2) The remainder of this act shall take effect on the
15 earlier of:

16 (i) the effective date of the temporary regulations
17 promulgated under 44 Pa.C.S. § 1115(e); or

18 (ii) January 1, 2025.