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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2231 Session of  
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INTRODUCED BY BRIGGS, KENYATTA, HILL-EVANS, KINSEY, DONAHUE,  
SANCHEZ, JAMES, McNEILL, SHUSTERMAN AND DALEY, APRIL 24, 2024

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REFERRED TO COMMITTEE ON JUDICIARY, APRIL 24, 2024

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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 section 1115

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