

SPONSOR: Rep. Minor-Brown & Rep. Dorsey Walker &
Rep. Heffernan & Sen. Pinkney
Reps. Baumbach, Griffith, K. Johnson, Kowalko, Lynn,
Morrison; Sens. Gay, Lopez, Townsend

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 419
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CUSTODIAL INTERROGATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 20, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 20. ~~Uniform Electronic Recordation of~~ Custodial Interrogations. ~~Interrogations Act.~~

Subchapter 1. Uniform Electronic Recordation of Custodial Interrogations Act

§ 2001. Short title.

This ~~chapter~~ subchapter may be cited as the "Uniform Electronic Recordation of Custodial Interrogations Act."

§ 2002. Definitions.

For purposes of this subchapter: ~~chapter.~~

§ 2004. Notice and consent not required.

Notwithstanding Chapter 24 of this title, a law enforcement officer conducting a custodial interrogation is not required to obtain consent to electronic recording from the individual being interrogated or to inform the individual that an electronic recording is being made of the interrogation. This ~~chapter~~ subchapter does not permit a law enforcement officer or a law enforcement agency to record a private communication between an individual and the individual's lawyer or a child and the child's parent or guardian.

§ 2013. Handling and preserving an electronic recording.

Each law enforcement agency in this State shall establish and enforce procedures to ensure that the electronic recording of all or part of a custodial interrogation and a report or other document required to be prepared under this ~~chapter~~ subchapter is identified, accessible, and preserved consistent with the law of this State governing the preservation of evidence in criminal and delinquency cases.

§ 2014. Rules relating to electronic recording.

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LC : HVW : CBM : 5081510271
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(a) The Council on Police Training shall adopt rules to implement this ~~chapter,~~ subchapter, which each law enforcement agency that is a governmental entity of this State shall enforce.

(b) The rules adopted under subsection (a) of this section must address all of the following topics:

(5) A supervisory system expressly imposing on individuals in specific positions a duty to ensure adequate staffing, education, training, and material resources to implement this ~~chapter.~~ subchapter.

§ 2015. Limitation of liability.

(a) A law enforcement agency that is a governmental entity in this State which has implemented procedures to enforce the rules adopted under § 2014 of this title and ensure compliance with this ~~chapter~~ subchapter is not subject to civil liability for damages arising from a violation of this ~~chapter.~~ subchapter.

(b) This ~~chapter~~ subchapter does not create a right of action against a law enforcement officer.

§ 2016. No right to electronic recording or transcript.

(a) This ~~chapter~~ subchapter does not create a right of an individual to require a custodial interrogation to be recorded electronically.

(b) This ~~chapter~~ subchapter does not require preparation of a transcript of an electronic recording of a custodial interrogation.

Subchapter 2. Deceptive tactics in interrogations of persons under 18 years of age.

§ 2021. Definitions.

As used in this subchapter:

(1) "Custodial interrogation" means as defined in § 2002 of this chapter.

(2) "Deceptive tactics" means stating evidence presently exists, knowing that it does not, or communicating promises of leniency in sentencing, charging, or pretrial release in order to induce a confession or other incriminating evidence.

(3) "Law enforcement officer" means as defined in § 2002 of this chapter.

§ 2022. Deceptive tactics prohibited.

(a) Deceptive tactics in a custodial interrogation of a person under 18 years of age are prohibited.

(b)(1) Except as provided in paragraphs (b)(2) and (3) of this section, a statement of a person, who at the time of the interrogation was under 18 years of age, is inadmissible in any criminal or delinquency court proceeding if it was made during a custodial interrogation in which deceptive tactics were used. An inadmissible statement under this subsection shall have no effect on the admissibility of evidence obtained as a result of the statement if the evidence would have been discovered through independent lawful means or if knowledge of the evidence was acquired through an independent source.

(2) A statement that is otherwise inadmissible under paragraph (b)(1) of this section may be admitted if the State proves by a preponderance of the evidence that the statement is reliable and was not induced by the use of deceptive tactics.

(3) A statement that is otherwise inadmissible under this section may be admitted to impeach the defendant, if the State proves by a preponderance of the evidence that the statement is reliable and not induced by the use of deceptive tactics.