

# Videotaping Interrogations in Pennsylvania

## A Wilson Center for Science and Justice and Quattrone Center for the Fair Administration of Justice Report

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### *Introduction*

Two bills regarding electronic recording of interrogations in Pennsylvania have been introduced in the 2021-2022 session. First, [PA House Bill 2005](#) would require that a law enforcement agency make a complete and contemporaneous electronic recording of each custodial interrogation relating to the investigation of all offenses. Second, [PA Senate Bill 328](#) would require a complete and contemporaneous electronic recording of each custodial interrogation for certain offenses.

In this report, we describe the results of a state-wide project using public records requests to review the interrogation policies of over 1,000 law enforcement agencies in Pennsylvania. What we found suggests that a state-wide overhaul of interrogation policy and practice is needed in Pennsylvania. Many agencies lacked custodial interrogation policies entirely or did no more than set out the *Miranda* warnings required by the U.S. Constitution. Only about one-third of law enforcement agencies had policies regarding interrogations. Of those, 116 agencies required electronic recording of interrogations all or some of the time, while 101 encouraged recording or made it an option. Thus, of over 1,000 agencies, only about 217 had written policies on recording interrogations.

Legislation requiring videotaping of interrogations can both prevent wrongful convictions due to false confessions, and also powerfully benefits law enforcement. Detectives can focus on interviewing a person, rather than note-taking. During an investigation, law enforcement can review a clear record of what was said during the questioning. The presence of video cameras can deter misconduct. Conversely, if there is a defense challenge to a professionally-conducted interrogation, a judge can readily review a clear record. There is strong evidence that the presence

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of cameras does not inhibit suspects.<sup>4</sup> For all these reasons, agencies have been highly enthusiastic about electronic recording practices.<sup>5</sup>

Further, jurisdictions that do record interrogations and that have created model policies can provide useful models for those jurisdictions currently lacking such policies. Indeed, in addition to legislation, the creation of a model policy would be advisable to provide further guidance to local agencies and to ensure that policies do not have loopholes or vague provisions that undermine their effectiveness.<sup>6</sup> For example, the International Association of Chiefs of Police recommends recording “all interviews involving major crimes” with a preference for video recordings, as well as recommending the adoption of policies that guide officer conduct during interrogations.<sup>7</sup>

## 1. Why Videotaping Confessions Matters

Innocent people have falsely confessed in Pennsylvania cases, but the wrongful convictions did not come to light until years later due to the lack of a complete electronic record of their interrogations. For that reason, the Advisory Committee on Wrongful Convictions, convened by the Joint State Government Commission, consisting of members appointed by the House and Senate, found in its 2011 report that:

*A statute should require custodial interrogations to be electronically recorded with a coextensive wiretap exception for law enforcement.*

In Pennsylvania, five persons have been exonerated by post-conviction DNA testing who had falsely confessed: Bruce Godschalk, William Kelly, Barry Laughman, Anthony Wright, and Nicholas Yarris. Kelly, for example, had given a written confession statement, and pleaded guilty to murder after the judge ruled the statement admissible. Kelly had an IQ of 69 and suffered from manic depression, alcoholism, and a history of blackouts. There was no recording of the interrogation. Three years later he was exonerated when another person confessed, led investigators to the landfill where the victim’s body was found, and identified two other persons’ remains. DNA tests identified him as the culprit.

Nine additional people in Pennsylvania who had falsely confessed were exonerated by non-DNA evidence. For example, Willie Veasy had initially told police that he was innocent and had no information about a 1992 shooting in Philadelphia. After a two-hour interrogation, which was not recorded, Veasy signed a statement that one of the police officers drafted. It included details concerning how the shooting took place, and Veasy almost immediately retracted the statement. It was found admissible at trial, Veasy was convicted in 1993, and he was exonerated in 2019,

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<sup>4</sup> Saul M. Kassin, Melissa R. Russano, Aria D. Amron, Johanna Hellgren, Keff Kukucka, and Victoria Z. Lawson, *Does Video Recording Inhibit Crime Suspects? Evidence From a Fully Randomized Field Experiment*, 43 L. & Hum. Behav. 45 (2019).

<sup>5</sup> Thomas P. Sullivan, *Electronic Recording of Custodial Interrogations: Everybody Wins*, 95 J. Crim. L. & Criminology 1127 (2005).

<sup>6</sup> Saul Kassin and David Thompson, *Videotape All Police Interrogations*, N.Y. Times, Aug. 1, 2019.

<sup>7</sup> International Association of Chiefs of Police, National Summit on Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions 18 (August 2013); *see also* International Association of Chiefs of Police, Interviewing and Interrogating Juveniles Model Policy (May 2012); International Association of Chiefs of Police, Electronic Recording of Interrogations and Confessions Model Policy (February 2006).

after an investigation by the Pennsylvania Innocence Project and Philadelphia District Attorney's Office.

One problem of false confessions is "confession contamination", in which law enforcement report that a suspect had volunteered supposedly inside information during an interrogation.<sup>8</sup> Almost all DNA exonerations in the United States that involved false confessions also involved reports by law enforcement that the defendant had volunteered these key crime scene details. We now know that those people were innocent and could not have known how the crime occurred; these interrogations were contaminated by the use of leading questions or feeding facts to the suspect. At least in part because there was no record of who said what in the interrogation room, these botched interrogations still resulted in convictions. None of the interrogations in these cases of DNA exonerations had been recorded in their entirety.<sup>9</sup> The American Law Institute and a range of law, psychology, and criminal procedure experts have long recommended electronically recording interrogations, preferably by videotaping the full interrogation.

Doing so not only prevents confession contamination and wrongful convictions,<sup>10</sup> as described, but it creates a clear record of the interrogation.<sup>11</sup> That record greatly simplifies the task of a trial judge determining admissibility and gives the factfinder important information about the confession's reliability. If an interrogation is handled professionally, as it should be, the electronic record creates a far more powerful record of guilt and avoids unnecessary litigation concerning interrogation practices.

## 2. Interrogation Policies in Pennsylvania

We filed Right to Know requests with every law enforcement agency in Pennsylvania, which has over 1,000 agencies. We ultimately contacted 1,048 agencies (see Appendix B). As summarized below, a large number of agencies have no written policies regarding custodial interrogations. Of those that did have written policies, many were quite dated and had not been updated for many years.

Regarding how to conduct interrogations, only about one-third had written policies regarding police questioning of witnesses in custody, or who were not free to leave. These types of police interviews are termed custodial interrogations. Of those, only 63 required video

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<sup>8</sup> Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 21-44 (2011).

<sup>9</sup> See Brandon L. Garrett, *Confession Contamination Revisited*, 101 Va. L. Rev. 395 (2015). In addition, the National Registry of Exonerations includes over 200 exonerations that involved confessions, the majority of which were non-DNA exonerations. The National Registry of Exonerations, Joint Project of Mich. Law & Nw. Law, Exonerations by Contributing Factor, at <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>.

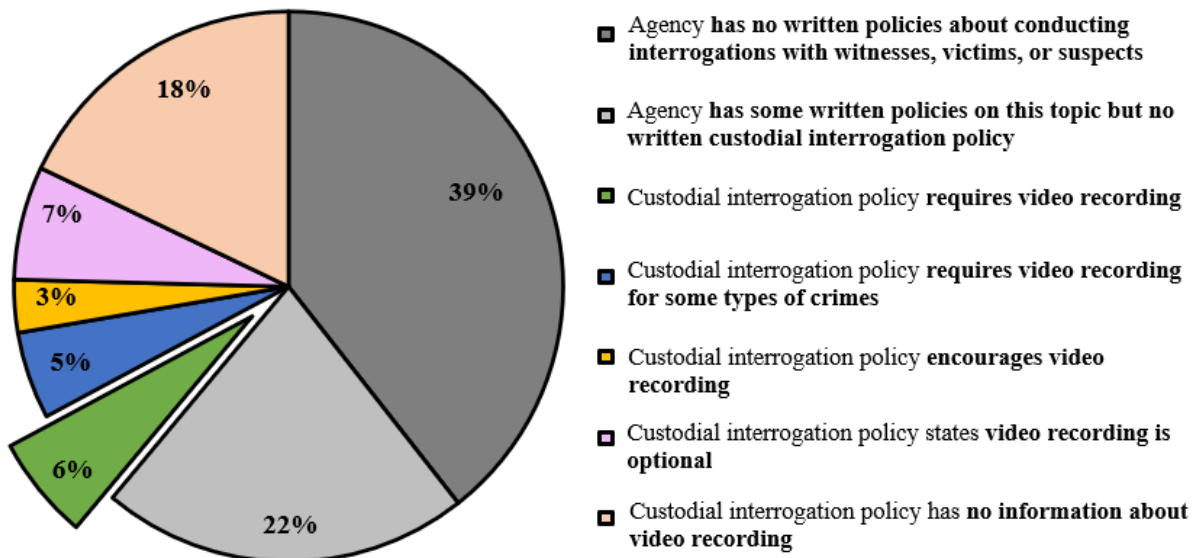
<sup>10</sup> Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. Am. Acad. Psych. & L. 332, 337 (2009) ("Interrogators help create the false confession by pressuring the suspect to accept a particular account and by suggesting facts of the crime to him, thereby contaminating the suspect's postadmission narrative ... If the entire interrogation is captured on audio or video recording, then it may be possible to trace, step by step, how and when the interrogator implied or suggested the correct answers for the suspect to incorporate into his postadmission narrative.").

<sup>11</sup> Orin Kerr, *Fourth Amendment Seizures of Computer Data*, 119 Yale L. J. 700, 715 (2010) ("To create a record of the event, the officer might record a suspect's confession.").

recording of all custodial interrogations. An additional 53 required sometimes recording interrogations, such as for certain types of offenses. Still others encouraged recording or made it optional. Appendix A lists each of these agencies and Figure 1 displays these data (see below).

We also note that even for more elementary subjects, like a policy regarding administration of the *Miranda v. Arizona* warnings, only 603 agencies (58%) of the 1033 agencies had written policies.

**Figure 1.** Custodial Interrogation Policies in Pennsylvania Law Enforcement Agencies ( $N = 1033$ )



### Conclusion

Agencies have reported highly positive experiences with recording interrogations because doing so, as noted, provides powerful documentation that interrogations are conducted professionally and without coercion.<sup>12</sup> Fears that “few would allow themselves to be interviewed or interrogated” if it were known that interviews and interrogations are recorded have not been realized.<sup>13</sup> Across the country, law enforcement agencies have shifted to requiring recordings.<sup>14</sup>

<sup>12</sup> Thomas P. Sullivan & Andrew W. Vail, *The Consequences of Law Enforcement Officials’ Failure to Record Custodial Interviews as Required by Law*, 99 J. Crim. L. & Criminol. 215, 220-221, 228-234 (2009).

<sup>13</sup> Nathan J. Gordon & William L. Fleischer, Academy For Scientific Investigative Training, *Effective Interviewing & Interrogation Techniques* 209 (2d ed. 2006).

<sup>14</sup> Saul M. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 LAW & HUM. BEHAV. 381, 382 (2007).

A large number of states,<sup>15</sup> as well as state courts,<sup>16</sup> have responded by requiring electronic recording of interrogations.

Pennsylvania agencies, however, have remained largely as outliers. A consistent requirement that interrogations be electronically recorded is needed. Given the variation in existing policies and how few agencies have detailed policies to guide the conduct of custodial interrogations, we suggest that a model Pennsylvania interrogation policy is needed, along the lines of what other states have provided.

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<sup>15</sup> State statutes increasingly have required recording at least some categories of police questioning. ANN. CAL. PENAL CODE § 859.5 (West 2014) (requiring recordings for juveniles suspected of murder; exception for “exigent circumstances”); CONN. GEN. STAT. § 54-10 (West 2014) (requiring recordings for suspects of capital or class A or B felonies; statements made during or after unrecorded interrogations presumptively inadmissible); D.C. CODE § 5-116.01 (2009) (requiring police to record all custodial investigations); 725 ILL. COMP. STAT. ANN. 5/103-2.1 (West 2009) (requiring police to record interrogations in all homicide cases); 705 ILL. COMP. STAT. ANN. 401.5(b-5) (expanding range of felonies for which recording is required for juvenile suspects); 725 ILL. COMP. STAT. ANN. 103-2.1(b-5) (expanding range of felonies for which recording is required for adult suspects); ME. REV. STAT. ANN. tit. 25, § 2803-B (2009) (mandating recording “interviews of suspects in serious crimes”); MD. CODE ANN., CRIM. PROC. § 2-402 (2009) (requiring that law enforcement make “reasonable efforts” to record certain felony interrogations “whenever possible”); MICH. COMP. LAWS ANN. §§ 763.8, 763.9 (West 2013) (requiring recordings for individuals suspected of major felonies); MO. REV. STAT. ch. 590.700 (Vernon 2013) (requiring recording for certain felonies); MONT. CODE ANN. § 46-4-408 (West 2009) (requiring the recording of all custodial interrogations); NEB. REV. STAT. ANN. §§ 29-4503, 29-4504 (West 2008) (requiring recording for interrogations relating to certain offenses and providing for jury instructions in the event of failure to do so); N.M. STAT. ANN. § 29-1-16 (West 2006) (requiring recordings of all custodial interrogations); N.C. GEN. STAT. § 15A-211 (2009) (requiring complete electronic recording of custodial interrogations in homicide cases); OHIO REV. CODE ANN. § 2933.81 (Baldwin 2010) (providing for a presumption of voluntariness for recorded statements made in response to interrogation); OR. REV. STAT. § 133.400 (West 2009) (requiring the recording of interrogations of suspects for aggravated murder, crimes requiring imposition of a mandatory minimum sentence, or adult prosecution of juvenile offenders); WIS. STAT. ANN. §§ 968.073, 972.115 (West 2009) (requiring recording of felony interrogations and permitting jury instruction if interrogation not recorded); 13 V.S.A. § 5581 (2014) (requiring recording of entire interrogations in homicide and sexual-assault investigations, with a burden on prosecutors to show by a preponderance of the evidence that an exception justified failure to comply); see also TEX. CODE CRIM. PROC. ANN. art. 38.22, § 3 (Vernon 2007) (rendering unrecorded oral statements inadmissible unless the statements contain “assertions of facts or circumstances that are found to be true . . .”).

<sup>16</sup> See *Stephan v. State*, 711 P.2d 1156, 1158 (Alaska 1985) (“[A]n unexcused failure to electronically record a custodial interrogation conducted in a place of detention violates a suspect’s right to due process. . . .”); *State v. Hajtic*, 724 N.W.2d 449, 456 (Iowa 2006) (“[E]lectronic recording, particularly videotaping, of custodial interrogations should be encouraged, and we take this opportunity to do so.”); *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994) (“[A]ll questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention.”); *State v. Cook*, 847 A.2d 530, 547 (N.J. 2004) (“[W]e will establish a committee to study and make recommendations on the use of electronic recordation of custodial interrogations.”); *In re Jerrell C.J.*, 699 N.W.2d 110, 123 (Wis. 2005) (“[W]e exercise our supervisory power to require that all custodial interrogation of juveniles in future cases be electronically recorded where feasible, and without exception when questioning occurs at a place of detention.”); see also *Commonwealth v. DiGiambattista*, 813 N.E.2d 516, 535 (Mass. 2004) (allowing defense to point out failure to record interrogation and calling unrecorded admissions “less reliable”); *State v. Barnett*, 789 A.2d 629, 663 (N.H. 2001) (“immediately following the valid waiver of a defendant’s *Miranda* rights, a tape recorded interrogation will not be admitted into evidence unless the statement is recorded in its entirety”); N.J. Supreme Court Rule 3:17 (following *Cook*, requiring electronic recording of custodial interrogations).

## Appendix A. Pennsylvania Agencies Requiring Videotaping of Interrogations

Required for all interrogations	Required for some interrogations
Allentown Police Department	Allegheny County Office of the District Attorney
Altoona Police Department	Allegheny County Police Department
Annville Township Police Department	Arnold Police Department
Bellwood Police Department	Beaver County Sheriff's Office
Bensalem Township Police Department	Bell Acres Police Department
Bradford Township Police Department	Bern Township Police Department
Briar Creek Township Police Department	Cambria Township Police Department
Butler Township Police Department	Centerville Borough Police Department
Central Berks Regional Police Department	Coraopolis Borough Police Department
Chester County District Attorney's Office	Covington Township Police Department
Chester County Sheriff's Office	Cumberland Township Police Department
Cochranton Borough Police Department	East Lansdowne Police Department
Croyle Township Police Department	Elizabethtown Police Department
Cumru Township Police Department	Ephrata Police Department
East Cocalico Township Police Department	Findlay Township Police Department
East Hempfield Township Police Department	Franklin County Office of the District Attorney
East Lampeter Township Police Department	Hampden Township Police Department
East Pennsboro Township Police Department	Hollidaysburg Borough Police Department
Economy Police Department	Huntingdon Police Department
Elizabeth Township Police Department	Johnstown Police Department
Emporium Borough Police Department	Limerick Township Police Department
Forty Fort Police Department	McCandless Township Police Department
Greenfield Township Police Department	Millvale Police Department
Hanover Borough Police Department	Monroeville Police Department
Harmar Township Police Department	Mount Lebanon Police Department
Hulmeville Police Department	New Castle Police Department
Lower Merion Township Police Department	North Middleton Township Police Department
Mahanoy City Police Department	Ohio Township Police Department
Moosic Police Department	Ohioville Police Department
Murrysville Police Department	Patton Township Police Department
Nazareth Borough Police Department	Penn Township Police Department (York Co.)
New Holland Township Police Department	Penndel Police Department
North Coventry Township Police Department	Pequea Township Police Department
Northern Lancaster County Regional Police Department	Philadelphia Police Department
Old Forge Police Department	Pleasant Hills Police Department
Palmer Township Police Department	Richland Township Police Department (Cambria Co.)
Pine Grove Borough Police Department	Scranton Police Department
Pottsville Bureau of Police	Shaler Township Police Department
Renovo Police Department	Shamokin Dam Police Department
Roaring Brook Township Police Department	Silver Spring Township Police Department
Salisbury Township Police Department	Spring Garden Township Police Department
Scott Township Police Department (Allegheny Co.)	Strasburg Borough Police Department
Snyder County Sheriff's Office	Warwick Township Police Department
South Coatesville Police Department	West Lampeter Township Police Department
South Park Township Police Department	West Mifflin Borough Police Department
Spring Township Police Department (Centre Co.)	West Pikeland Township Police Department
Stockertown Borough Police Department	West Pottsgrove Township Police Department
Tamaqua Police Department	Whitehall Police Department

Upper Nazareth Township Police Department Upper St. Clair Township Police Department Valley Township Police Department Warren Police Department Weatherly Police Department West Brandywine Township Police Department West Fallowfield Township Police Department West Mahanoy Township Police Department Wilson Police Department Woodward Township Police Department Youngsville Borough Police Department	
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## Appendix B. Flow Chart of Right-to-Know Process

