

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1626
Committee Substitute Favorable 5/15/07

Short Title: Enhance Reliability of Interrogations.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CUSTODIAL INTERROGATION IN A
HOMICIDE CASE MUST BE ELECTRONICALLY RECORDED IN ITS
ENTIRETY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a
new Article to read:

"Article 8.

"Electronic Recording of Interrogations.

"§ 15A-211. Electronic recording of interrogations.

(a) Purpose. – The purpose of this Article is to require the creation of an
electronic record of an entire custodial interrogation in order to eliminate disputes about
interrogations, thereby improving prosecution of the guilty while affording protection to
the innocent and increasing court efficiency.

(b) Definitions. – The following definitions apply in this Article:

(1) Custodial interrogation. – An interview that occurs in a place of
detention, during which a reasonable person in the subject's position
would consider himself or herself in custody, and involves
questioning by law enforcement personnel that is reasonably likely to
elicit incriminating responses.

(2) Electronic recording. – An audio recording that is an authentic,
accurate, unaltered record; or a visual recording that is an authentic,
accurate, unaltered record.

(3) Place of detention. – A jail, police or sheriff's station, correctional or
detention facility, holding facility for prisoners, or other place where
persons are held in connection with criminal charges.

(4) In its entirety. – An uninterrupted record that begins with and includes
a law enforcement officer's advice to the person in custody of that
person's constitutional rights, ends when the interview has completely

1 finished, and clearly shows both the interrogator and the person in
2 custody throughout. If the record is a visual recording, the camera
3 recording the custodial interrogation must be placed so that the camera
4 films both the interrogator and the suspect.

5 (c) Electronic Recording of Interrogations Required. – Any law enforcement
6 officer conducting a custodial interrogation in a homicide investigation shall make an
7 electronic recording of the interrogation in its entirety.

8 (d) Admissibility of Electronic Recordings. – During the prosecution of any
9 homicide, an oral, written, nonverbal, or sign language statement of a defendant made in
10 the course of a custodial interrogation may be presented as evidence against the
11 defendant if an electronic recording was made of the custodial interrogation in its
12 entirety and the statement is otherwise admissible. If the court finds that the defendant
13 was subjected to a custodial interrogation that was not electronically recorded in its
14 entirety, any statements made by the defendant after that custodial interrogation, even if
15 otherwise in compliance with this section, may be questioned with regard to the
16 voluntariness and reliability of the statement. The State may establish through clear and
17 convincing evidence that the statement was both voluntary and reliable, and that law
18 enforcement officers had good cause for failing to electronically record the
19 interrogation in its entirety. Good cause shall include, but not be limited to, the
20 following:

21 (1) The accused refused to have the interrogation electronically recorded,
22 and the refusal itself was electronically recorded.

23 (2) The failure to electronically record an interrogation in its entirety was
24 the result of unforeseeable equipment failure, and obtaining
25 replacement equipment was not feasible.

26 (e) Remedies for Compliance or Noncompliance. – All of the following remedies
27 shall be granted as relief for compliance or noncompliance with the requirements of this
28 section:

29 (1) Failure to comply with any of the requirements of this section shall be
30 considered by the court in adjudicating motions to suppress a
31 statement of the defendant made during or after a custodial
32 interrogation.

33 (2) Failure to comply with any of the requirements of this section shall be
34 admissible in support of claims that the defendant's statement was
35 involuntary or is unreliable, provided the evidence is otherwise
36 admissible.

37 (3) When evidence of compliance or noncompliance with the
38 requirements of this section has been presented at trial, the jury shall
39 be instructed that it may consider credible evidence of compliance or
40 noncompliance to determine whether the defendant's statement was
41 voluntary and reliable.

42 (f) Article Does Not Preclude Admission of Certain Statements. – Nothing in
43 this Article precludes the admission of any of the following:

- 1 (1) A statement made by the accused in open court during trial, before a
2 grand jury, or at a preliminary hearing.
3 (2) A spontaneous statement that is not made in response to a question.
4 (3) A statement made during arrest processing in response to a routine
5 question.
6 (4) A statement made during a custodial interrogation that is conducted in
7 another state by law enforcement officers of that state.
8 (5) A statement obtained by a federal law enforcement officer in a federal
9 place of detention.
10 (6) A statement given at a time when the interrogators are unaware that
11 the person is suspected of a homicide.
12 (7) A statement used only for impeachment purposes and not as
13 substantive evidence.

14 (g) Destruction or Modification of Recording After Appeals Exhausted. – The
15 State shall not destroy or alter any electronic recording of a custodial interrogation of a
16 defendant convicted of any offense related to the interrogation until one year after the
17 completion of all State and federal appeals of the conviction, including the exhaustion
18 of any appeal of any motion for appropriate relief or habeas corpus proceedings. Every
19 electronic recording should be clearly identified and catalogued by law enforcement
20 personnel."

21 **SECTION 2.** This act becomes effective July 1, 2008, and applies to
22 interrogations occurring on or after that date.