GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

HOUSE BILL 1626
RATIFIED BILL

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) Application. – The provisions of this Article shall only apply to custodial interrogations in homicide investigations conducted at any place of detention.

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

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

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

(3) 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 finished, and clearly shows both the interrogator and the person in custody throughout. If the record is a visual recording, the camera recording the custodial interrogation must be placed so that the camera films both the interrogator and the suspect. Brief periods of recess, upon request by the person in custody or the law enforcement officer, do not constitute an "interruption" of the record. The record will reflect the starting time of the recess and the resumption of the interrogation.

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

(e) Admissibility of Electronic Recordings. – During the prosecution of any homicide, an oral, written, nonverbal, or sign language statement of a defendant made in the course of a custodial interrogation may be presented as evidence against the defendant if an electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible. If the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded in its entirety, any statements made by the defendant after that non-electronically recorded custodial interrogation, even if made during an interrogation that is otherwise in compliance with this section, may be questioned with regard to the voluntariness and

reliability of the statement. The State may establish through clear and convincing evidence that the statement was both voluntary and reliable and that law enforcement officers had good cause for failing to electronically record the interrogation in its entirety. Good cause shall include, but not be limited to, the following:

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

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

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

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

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

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

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

(1) A statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing.

(2) A spontaneous statement that is not made in response to a question.

(3) A statement made during arrest processing in response to a routine question.

(4) A statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state.

(5) A statement obtained by a federal law enforcement officer.

(6) A statement given at a time when the interrogators are unaware that the person is suspected of a homicide.

(7) A statement used only for impeachment purposes and not as substantive evidence.

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

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

In the General Assembly read three times and ratified this the 24th day of July, 2007.

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Beverly E. Perdue
President of the Senate

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Joe Hackney
Speaker of the House of Representatives

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Michael F. Easley
Governor

Approved _____.m. this _____ day of _____, 2007