

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1626
Committee Substitute Favorable 5/15/07
Senate Judiciary I (Civil) Committee Substitute Adopted 7/17/07

Short Title: Enhance Reliability of Interrogations. (Public)

Sponsors:

Referred to:

April 19, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A CUSTODIAL INTERROGATION IN A
3 HOMICIDE CASE MUST BE ELECTRONICALLY RECORDED IN ITS
4 ENTIRETY.

5 The General Assembly of North Carolina enacts:

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

8 "Article 8.

9 "Electronic Recording of Interrogations.

10 "§ 15A-211. Electronic recording of interrogations.

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

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

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

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

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

24 (3) In its entirety. – An uninterrupted record that begins with and includes
25 a law enforcement officer's advice to the person in custody of that
26 person's constitutional rights, ends when the interview has completely
27 finished, and clearly shows both the interrogator and the person in
28 custody throughout. If the record is a visual recording, the camera

1 recording the custodial interrogation must be placed so that the camera
2 films both the interrogator and the suspect. Brief periods of recess,
3 upon request by the person in custody or the law enforcement officer,
4 do not constitute an "interruption" of the record. The record will reflect
5 the starting time of the recess and the resumption of the interrogation.

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

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

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

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

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

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

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

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

43 (g) Article Does Not Preclude Admission of Certain Statements. – Nothing in
44 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.
9 (6) A statement given at a time when the interrogators are unaware that
10 the person is suspected of a homicide.
11 (7) A statement used only for impeachment purposes and not as
12 substantive evidence.

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

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