

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE DRH30400-LH-83B (02/07)

Short Title: Enhance Reliability of Interrogations. (Public)

Sponsors: Representatives Glazier and Ross (Primary Sponsors).

Referred to:

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

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

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

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

1 (4) In its entirety. – A record that begins with and includes a law
2 enforcement officer's advice to the person in custody of that person's
3 constitutional rights, ends when the interview has completely finished,
4 and clearly shows both the interrogator and the person in custody
5 throughout. If the record is a video recording, the camera recording the
6 custodial interrogation must be placed so that the camera films both
7 the interrogator and the suspect.

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

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

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

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

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

32 (2) Failure to comply with any of the requirements of this section shall be
33 admissible in support of claims of the voluntariness and reliability of
34 the defendant's statement, as long as such evidence is otherwise
35 admissible.

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

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

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

- 1 (2) A spontaneous statement that is not made in response to a question.
2 (3) A statement made after questioning that is routinely asked during the
3 processing of the arrest of the suspect.
4 (4) A statement made during a custodial interrogation that is conducted
5 out-of-state.
6 (5) A statement obtained by a federal law enforcement officer in a federal
7 place of detention.
8 (6) A statement given at a time when the interrogators are unaware that
9 the person is suspected of a homicide.
10 (7) A statement, otherwise inadmissible under this Article of the General
11 Statutes that is used only for impeachment and not as substantive
12 evidence.

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

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