

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 241
Judiciary II Committee Substitute Adopted 4/4/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S241-PCS55331-RK-114

Short Title: DWI/Custodial Interrogation Amendments.

(Public)

Sponsors:

Referred to:

March 8, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THAT DWI SENTENCING BE AT LEVEL ONE IF THE OFFENSE
3 OCCURS WITH A CHILD LESS THAN EIGHTEEN YEARS OF AGE IN THE
4 VEHICLE, AND TO AMEND THE LAW REGARDING ELECTRONIC RECORDING
5 OF CUSTODIAL INTERROGATIONS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 20-179(c) reads as rewritten:

8 "(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing,
9 based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior
10 court, must first determine whether there are any grossly aggravating factors in the case.
11 Whether a prior conviction exists under subdivision (1) of this subsection, or whether a
12 conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by
13 the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case
14 remanded back to district court from superior court, the judge shall determine whether the
15 defendant has been convicted of any offense that was not considered at the initial sentencing
16 hearing and impose the appropriate sentence under this section. The judge must impose the
17 Level One punishment under subsection (g) of this section if it is determined that the grossly
18 aggravating factor in subdivision (4) of this subsection applies or two or more of the other
19 grossly aggravating factors apply. If the judge does not find that the aggravating factor at
20 subdivision (4) of this subsection applies, The-then the judge must impose the Level Two
21 punishment under subsection (h) of this section if it is determined that only one of the other
22 grossly aggravating factors applies. The grossly aggravating factors are:

23 (1) A prior conviction for an offense involving impaired driving if:

- 24 a. The conviction occurred within seven years before the date of the
25 offense for which the defendant is being sentenced; or
26 b. The conviction occurs after the date of the offense for which the
27 defendant is presently being sentenced, but prior to or
28 contemporaneously with the present sentencing; or
29 c. The conviction occurred in district court; the case was appealed to
30 superior court; the appeal has been withdrawn, or the case has been
31 remanded back to district court; and a new sentencing hearing has
32 not been held pursuant to G.S. 20-38.7.



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- 1 Each prior conviction is a separate grossly aggravating factor.
- 2 (2) Driving by the defendant at the time of the offense while his driver's license
3 was revoked under G.S. 20-28, and the revocation was an impaired driving
4 revocation under G.S. 20-28.2(a).
- 5 (3) Serious injury to another person caused by the defendant's impaired driving
6 at the time of the offense.
- 7 (4) Driving by the defendant while a child under the age of ~~16~~18 years was in
8 the vehicle at the time of the offense.

9 In imposing a Level One or Two punishment, the judge may consider the aggravating and
10 mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there
11 are no grossly aggravating factors in the case, the judge must weigh all aggravating and
12 mitigating factors and impose punishment as required by subsection (f)."

13 **SECTION 2.** G.S. 15A-211 reads as rewritten:

14 "**§ 15A-211. Electronic recording of interrogations.**

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

19 (b) Application. – The provisions of this Article shall ~~only~~ apply to all custodial
20 interrogations of juveniles in homicide-criminal investigations conducted at any place of
21 detention. The provisions of this Article shall also apply to any custodial
22 interrogation of any person in a criminal investigation conducted at any place of detention if the
23 investigation is related to any of the following crimes: any Class A, B1, or B2 felony, and any
24 Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting
25 serious injury.

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

- 27 (1) Electronic recording. – An audio recording that is an authentic, accurate,
28 unaltered record; or a visual recording that is an authentic, accurate,
29 unaltered record. A visual and audio recording shall be simultaneously
30 produced whenever reasonably feasible, provided that a defendant may not
31 raise this as grounds for suppression of evidence.
- 32 (2) In its entirety. – An uninterrupted record that begins with and includes a law
33 enforcement officer's advice to the person in custody of that person's
34 constitutional rights, ends when the interview has completely finished, and
35 clearly shows both the interrogator and the person in custody throughout. If
36 the record is a visual recording, the camera recording the custodial
37 interrogation must be placed so that the camera films both the interrogator
38 and the suspect. Brief periods of recess, upon request by the person in
39 custody or the law enforcement officer, do not constitute an "interruption" of
40 the record. The record will reflect the starting time of the recess and the
41 resumption of the interrogation.
- 42 (3) Place of detention. – A jail, police or sheriff's station, correctional or
43 detention facility, holding facility for prisoners, or other facility where
44 persons are held in custody in connection with criminal charges.

45 (d) Electronic Recording of Interrogations Required. – Any law enforcement officer
46 conducting a custodial interrogation in a ~~homicide~~ an investigation of a juvenile shall make an
47 electronic recording of the interrogation in its entirety. Any law enforcement officer conducting
48 a custodial interrogation in an investigation relating to any of the following crimes shall make
49 an electronic recording of the interrogation in its entirety: any Class A, B1, or B2 felony; and
50 any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill
51 inflicting serious injury.

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

- 14 (1) The accused refused to have the interrogation electronically recorded, and
15 the refusal itself was electronically recorded.
- 16 (2) The failure to electronically record an interrogation in its entirety was the
17 result of unforeseeable equipment failure, and obtaining replacement
18 equipment was not feasible.

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

- 21 (1) Failure to comply with any of the requirements of this section shall be
22 considered by the court in adjudicating motions to suppress a statement of
23 the defendant made during or after a custodial interrogation.
- 24 (2) Failure to comply with any of the requirements of this section shall be
25 admissible in support of claims that the defendant's statement was
26 involuntary or is unreliable, provided the evidence is otherwise admissible.
- 27 (3) When evidence of compliance or noncompliance with the requirements of
28 this section has been presented at trial, the jury shall be instructed that it may
29 consider credible evidence of compliance or noncompliance to determine
30 whether the defendant's statement was voluntary and reliable.

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

- 33 (1) A statement made by the accused in open court during trial, before a grand
34 jury, or at a preliminary hearing.
- 35 (2) A spontaneous statement that is not made in response to a question.
- 36 (3) A statement made during arrest processing in response to a routine question.
- 37 (4) A statement made during a custodial interrogation that is conducted in
38 another state by law enforcement officers of that state.
- 39 (5) A statement obtained by a federal law enforcement officer.
- 40 (6) A statement given at a time when the interrogators are unaware that the
41 person is suspected of a ~~homicide~~an offense to which this Article applies.
- 42 (7) A statement used only for impeachment purposes and not as substantive
43 evidence.

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

50 **SECTION 3.** This act becomes effective December 1, 2011, and applies to
51 offenses committed on or after that date.