

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL DRS35288-MS-129D (03/22)

Short Title: The I. Beverly Lake, Jr., Fair Trial Act. (Public)

Sponsors: Senators Britt, McKissick, and Blue (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE RELIABILITY OF IN-CUSTODY INFORMANT
3 STATEMENTS.

4 The General Assembly of North Carolina enacts:

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

7 "Article 54.

8 "Reliability of In-Custody Informant Statements.

9 "**§ 15A-981. Corroboration of in-custody informant statement.**

10 (a) Definition. – As used in this section, the term "in-custody informant" means a
11 person, other than a co-defendant, accomplice, or co-conspirator, whose testimony is based on
12 statements allegedly made by the defendant while both the defendant and the informant were
13 held within a city or county jail or a State correctional institution or otherwise confined, where
14 statements relate to offenses that occurred outside of the confinement.

15 (b) Corroboration of In-Custody Informant Testimony. – A defendant shall not be
16 convicted of an offense or receive an aggravated sentence based solely on the testimony of an
17 in-custody informant unless the testimony is corroborated by some other evidence
18 independently tending to connect the defendant with the offense committed. Corroboration of
19 an in-custody informant shall not be provided by the testimony of another in-custody
20 informant. Corroboration is not sufficient for the purpose of this Article if the corroboration
21 only shows that the offense was committed.

22 (c) Jury Instruction Regarding In-Custody Informant Testimony. – In any case in which
23 in-custody informant testimony is presented to the jury, the judge shall instruct the jury that the
24 in-custody informant's testimony must be scrutinized with regard to reliability and that, in
25 considering the reliability of the in-custody informant, the jury may consider any of the
26 following:

- 27 (1) Whether the witness has received, has been promised, or could have
28 reasonably expected any inducement in exchange for testimony.
29 (2) Whether the witness has ever recanted or otherwise changed the witness'
30 testimony during the investigation or prosecution of the case.
31 (3) The general character of the witness, including his or her criminal history.
32 (4) The nature of the relationship between the defendant and the witness.
33 (5) Whether there is any evidence that tends to independently corroborate the
34 witness' testimony.
35 (6) Any other evidence that may attest to or diminish the reliability of the
36 witness.



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1 (d) Policies and Procedures Governing the Recording and Use of Testimony. – Each
2 district attorney shall establish policies and procedures governing the recording and use of
3 in-custody informant Testimony, including maintenance of a central file preserving all records
4 relating to contacts with in-custody informants, whether they are used as witnesses or not.

5 (e) Recording of In-Custody Informant Interview. – All interviews of in-custody
6 informants shall be recorded using a visual recording device that provides an authentic,
7 accurate, unaltered, and uninterrupted record of the interview that clearly shows both the
8 interviewer and the in-custody informant.

9 (f) Destruction or Modification of Recording After Appeals Exhausted. – The State
10 shall not destroy or alter any electronic recording of an in-custody informant interview until
11 one year after the completion of all State and federal appeals of the conviction, including the
12 exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings.
13 Every electronic recording shall be clearly identified and catalogued by law enforcement
14 personnel."

15 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
16 offenses committed on or after that date.