

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL DRS15192-ND-42

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

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

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE RELIABILITY OF IN-CUSTODY INFORMANT
3 STATEMENTS THROUGH THE USE OF PRETRIAL HEARINGS THAT ESTABLISH
4 FACTS SUFFICIENT TO OVERCOME A REBUTTABLE PRESUMPTION OF
5 INADMISSIBILITY.

6 The General Assembly of North Carolina enacts:

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

9 "Article 54.

10 "Reliability of In-Custody Informant Statements.

11 "**§ 15A-981. Pretrial hearing to corroborate in-custody informant statement.**

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

18 (b) Corroboration of In-Custody Informant Testimony. – A defendant shall not be
19 convicted of an offense or receive an aggravated sentence if the only supporting evidence
20 presented to a judge or jury is the testimony of an in-custody informant. The additional evidence
21 must independently tend to connect the defendant with the offense committed and must include
22 evidence other than the testimony of another in-custody informant.

23 (c) Notice to Victim of Leniency for In-Custody Informant. – If an in-custody informant
24 receives leniency related to a pending charge, a conviction, or a sentence for a crime against a
25 victim in connection with offering or providing testimony against a suspect or defendant, the
26 prosecutor shall notify the victim. For purposes of this section, leniency means any plea bargain,
27 reduced or dismissed charges, bail consideration, reduction, or modification of sentence.

28 (d) No Disclosure of In-Custody Informant's Identity. – Upon motion of the prosecution
29 and on a showing that the disclosure of the in-custody informant's identity would endanger the
30 informant, that the informant's services to the State would be undermined, or for other reasons
31 found compelling by the court, the identity of the in-custody informant may be redacted and
32 remain undisclosed to the defense until such time as the court deems disclosure appropriate or
33 disclosure is required by law.

34 (e) Pretrial Hearing to Determine Reliability. – The court shall conduct a pretrial hearing
35 to determine whether the reliability of the testimony of the in-custody informant is sufficient to
36 overcome a rebuttable presumption of inadmissibility, unless the defendant waives such hearing.



1 (f) Certification and Burden of Proof Regarding Reliability. – Where a pretrial hearing
2 is held to determine the reliability and admissibility of the testimony of the in-custody informant,
3 the judge shall (i) require certification from the district attorney vouching for the trustworthiness
4 of the in-custody informant and (ii) determine whether the prosecution has proven by a
5 preponderance of the evidence that the testimony of the in-custody witness is reliable.

6 (g) Rebuttable Presumption of Inadmissibility. – The rebuttable presumption of
7 inadmissibility may be overcome by a determination of reliability by the trial judge after
8 consideration of the following relevant factors:

9 (1) The source of the information that the informant is providing.

10 (2) The specifics of the statements, including date, time, place, names of others
11 present, other circumstances surrounding the statement, and whether the
12 statement contains details which could reasonably be accessed by the
13 in-custody informer, other than through inculpatory statements by the
14 accused.

15 (3) The time and place of the disclosure to law enforcement or other official.

16 (4) Whether the person is a substance abuser or has a history of substance abuse.

17 (5) Relevant medical or psychological reports.

18 (6) The person's general character, which may be evidenced by the person's
19 criminal history.

20 (7) The person's relationship or history with the defendant.

21 (8) Whether the witness requested, received, has been promised any inducement,
22 or could have reasonably expected to receive an inducement, including pay,
23 immunity from or leniency in prosecution, and personal advantage or
24 assistance.

25 (9) Any other criminal case in which the witness testified to alleged confessions
26 or statements by others and any findings in relation to the accuracy and
27 reliability of that evidence.

28 (10) Whether the informant made some written or other record of the words
29 allegedly spoken by the accused and, if so, whether the record was made
30 contemporaneous to the alleged statements of the accused.

31 (11) The amount of time between the alleged statement and the informant's
32 revelation of the statement.

33 (12) Prior recantations by the informant.

34 (13) Verification of correctional records.

35 (14) Whether the informant was intentionally placed by law enforcement or
36 prosecution.

37 (15) The ability of the informant to have committed the crime.

38 (16) Conflicting statements or facts.

39 (17) Any other evidence that may attest to or diminish the reliability of the witness.

40 (h) Jury Instruction Regarding In-Custody Informant Testimony. – In any case in which
41 the judge finds the in-custody informant's testimony admissible, the judge shall instruct the jury
42 that the in-custody informant's testimony must be scrutinized with regard to reliability and that,
43 in considering the reliability of the in-custody informant, the jury may consider any of the
44 following:

45 (1) Whether the witness has received, has been promised, or could have
46 reasonably expected any inducement in exchange for testimony.

47 (2) Whether the witness has ever recanted or otherwise changed the witness's
48 testimony during the investigation or prosecution of the case.

49 (3) The general character of the witness, including the witness's criminal history.

50 (4) The nature of the relationship between the defendant and the witness.

1 (5) Whether there is any evidence that tends to independently corroborate the
2 witness's testimony.

3 (6) Any other evidence that may attest to or diminish the reliability of the witness.

4 The judge may not inform the jury that the court held an admissibility hearing or that the
5 court made any pretrial determinations regarding the reliability of the witness's testimony.

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

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

14 (k) Destruction or Modification of Recording After Appeals Exhausted. – The State shall
15 not destroy or alter any electronic recording of an in-custody informant interview until one year
16 after the 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 electronic
18 recording shall be clearly identified and catalogued by law enforcement personnel."

19 **SECTION 2.** This act becomes effective December 1, 2019, and applies to offenses
20 committed on or after that date.