

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL DRS35225-ND-109

Short Title: Various Criminal Procedure Changes. (Public)

Sponsors: Senators Britt, B. Newton, and Daniel (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY VARIOUS LAWS RELATED TO CRIMINAL PROCEDURE.
3 The General Assembly of North Carolina enacts:

4
5 **INCLUDE INTERVIEWS IN LAWS REGULATING THE ELECTRONIC RECORDING**
6 **OF CRIMINAL OR JUVENILE INTERROGATIONS**

7 **SECTION 1.(a)** Article 8 of Chapter 15A of the General Statutes reads as rewritten:
8 "Article 8.

9 "Electronic Recording of Interviews and Interrogations.

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

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

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

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

23 (1) Electronic recording. – An audio recording that is an authentic, accurate,
24 unaltered record; or a visual recording that is an authentic, accurate, unaltered
25 record. A visual and audio recording shall be simultaneously produced
26 whenever reasonably feasible, provided that a defendant may not raise this as
27 grounds for suppression of evidence.

28 (2) In its entirety. – An uninterrupted record that begins ~~with and includes at the~~
29 ~~start of the interview or custodial interrogation, including~~ a law enforcement
30 officer's advice to the person in custody of that person's constitutional rights,
31 and ends when the interview or custodial interrogation has completely
32 ~~finished, and clearly shows both the interrogator and the person in custody~~
33 ~~throughout.~~finished. If the record is a visual ~~recording,~~recording of an
34 interview or custodial interrogation, the camera recording the interview or
35 custodial interrogation must be placed so that the camera films both the
36 interviewer and the suspect or the interrogator and the suspect. Brief periods



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1 of recess, upon request by the person being interviewed, the person in custody
2 or the law enforcement officer, do not constitute an "interruption" of the
3 record. The record will reflect all starting and ending times and dates,
4 including the starting time and date of the recess and the resumption of the
5 interview or interrogation.

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

9 (d) Electronic Recording of Interviews and Interrogations Required. – ~~Any law~~
10 ~~enforcement officer conducting a custodial interrogation in an investigation of a juvenile shall~~
11 ~~make an electronic recording of the interrogation in its entirety.~~ Any law enforcement officer
12 conducting ~~a~~ an interview or custodial interrogation, in an investigation relating to
13 ~~any of the following crimes~~ a place of detention, of (i) a juvenile involved in a criminal
14 investigation or (ii) any person involved in a felony criminal investigation shall make an
15 electronic recording of the interview or custodial interrogation in its entirety: ~~any Class A, B1,~~
16 ~~or B2 felony; and any Class C felony of rape, sex offense, or assault with a deadly weapon with~~
17 ~~intent to kill inflicting serious injury.~~ entirety.

18 (e) Admissibility of Electronic Recordings. – During the prosecution of any offense to
19 which this Article applies, an oral, written, nonverbal, or sign language statement of a defendant
20 made in the course of ~~a~~ the interview or custodial interrogation may be presented as evidence
21 against the defendant if an electronic recording was made of the interview or custodial
22 interrogation in its entirety and the statement is otherwise admissible. If the court finds that the
23 defendant was subjected to ~~a~~ an interview or custodial interrogation that was not electronically
24 recorded in its entirety, any statements made by the defendant after that non-electronically
25 recorded interview or custodial interrogation, even if made during an interview or interrogation
26 that is otherwise in compliance with this section, may be questioned with regard to the
27 voluntariness and reliability of the statement. The State may establish through clear and
28 convincing evidence that the statement was both voluntary and reliable and that law enforcement
29 officers had good cause for failing to electronically record the interview or interrogation in its
30 entirety. Good cause shall include, but not be limited to, the following:

31 (1) The accused refused to have the interview or interrogation electronically
32 recorded, and the refusal itself was electronically recorded.

33 (2) The failure to electronically record an interview or interrogation in its entirety
34 was the result of unforeseeable equipment failure, and obtaining replacement
35 equipment was not feasible.

36 (e1) Recordings of non-defendant interviews or custodial interrogations under this Article
37 shall be provided to the juvenile or criminal defendant as part of discovery requirements under
38 Chapters 7B and 15A of the General Statutes.

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

41 (1) Failure to comply with any of the requirements of this section shall be
42 considered by the court in adjudicating motions to suppress a statement of the
43 defendant made during or after ~~a~~ an interview or custodial interrogation.

44 ...

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

47 ...

48 (4) A statement made during ~~a~~ an interview or custodial interrogation that is
49 conducted in another state by law enforcement officers of that state.

50 ...

(6) A statement given at a time when the interrogators are unaware that the person is suspected of an offense to which this Article applies.

...

(h) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of a ~~an~~ interview or custodial interrogation of a defendant convicted of any offense related to the interview or interrogation until one year after the completion of all State and federal appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic recording should be clearly identified and catalogued by law enforcement personnel. Every electronic recording of non-defendant interviews or custodial interrogations may be destroyed at the conclusion of the State appeal process."

SECTION 1.(b) This section becomes effective October 1, 2023, and applies to interviews and custodial interrogations occurring on or after that date.

DIRECT STATE CRIME LAB TO ADOPT PROCEDURES TO NOTIFY INDIGENT DEFENSE SERVICES OF CODIS HITS THAT ARE EXCULPATORY IN NATURE

SECTION 2.(a) G.S. 15A-266.7 reads as rewritten:

"§ 15A-266.7. Procedures for conducting DNA analysis of DNA sample.

(a) The Crime Laboratory shall:

...

(3) Adopt procedures for the notification of Indigent Defense Services for postconviction CODIS hits that are exculpatory in nature.

...."

SECTION 2.(b) This section becomes effective October 1, 2023.

EFFECTIVE DATE

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.