

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 640
PROPOSED COMMITTEE SUBSTITUTE S640-PCS35272-CE-18

Short Title: Various Criminal Procedure Changes.

(Public)

Sponsors:

Referred to:

April 6, 2023

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 **MODIFY LAWS REGULATING THE ELECTRONIC RECORDING OF CRIMINAL**
6 **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 Interrogations.

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

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

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

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

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

27 (2) In its entirety. – An uninterrupted record that begins ~~with and includes at the~~
28 start of the custodial interrogation, including a law enforcement officer's
29 advice to the person in custody of that person's constitutional rights, and ends
30 when the ~~interview~~custodial interrogation has completely finished, ~~and~~
31 ~~clearly shows both the interrogator and the person in custody throughout~~
32 finished. If the record is a visual ~~recording~~recording of a custodial
33 interrogation, the camera recording the custodial interrogation must be placed
34 so that the camera films both the interrogator and the suspect. Brief periods of
35 recess, upon request by the person in custody or the law enforcement officer,
36 do not constitute an "interruption" of the record. The record will reflect all



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- 1 starting and ending times and dates, including the starting time and date of the
2 recess and the resumption of the interrogation.
- 3 (3) Place of detention. – A jail, police or sheriff's station, correctional or detention
4 facility, holding facility for prisoners, or other facility where persons are held
5 in custody in connection with criminal charges.
- 6 (d) ~~Electronic Recording of Interrogations Required. – Any law enforcement officer~~
7 ~~conducting a custodial interrogation in an investigation of a juvenile shall make an electronic~~
8 ~~recording of the interrogation in its entirety. Any law enforcement officer conducting a custodial~~
9 ~~interrogation, in an investigation relating to any of the following crimes a place of~~
10 detention, of (i) a juvenile involved in a criminal investigation or (ii) any person involved in a
11 felony criminal investigation shall make an electronic recording of the custodial interrogation in
12 its entirety: any Class A, B1, or B2 felony; and any Class C felony of rape, sex offense, or assault
13 with a deadly weapon with intent to kill inflicting serious injury entirety.
- 14 (e) Admissibility of Electronic Recordings. – During the prosecution of any offense to
15 which this Article applies, an oral, written, nonverbal, or sign language statement of a defendant
16 made in the course of a custodial interrogation may be presented as evidence against the
17 defendant if an electronic recording was made of the custodial interrogation in its entirety and
18 the statement is otherwise admissible. If the court finds that the defendant was subjected to a
19 custodial interrogation that was not electronically recorded in its entirety, any statements made
20 by the defendant after that non-electronically recorded custodial interrogation, even if made
21 during an interrogation that is otherwise in compliance with this section, may be questioned with
22 regard to the voluntariness and reliability of the statement. The State may establish through clear
23 and convincing evidence that the statement was both voluntary and reliable and that law
24 enforcement officers had good cause for failing to electronically record the interrogation in its
25 entirety. Good cause shall include, but not be limited to, the following:
- 26 (1) The accused refused to have the interrogation electronically recorded, and the
27 refusal itself was electronically recorded.
- 28 (2) The failure to electronically record an interrogation in its entirety was the
29 result of unforeseeable equipment failure, and obtaining replacement
30 equipment was not feasible.
- 31 (e1) Recordings of non-defendant custodial interrogations under this Article shall be
32 provided to the juvenile or criminal defendant as part of discovery requirements under Chapters
33 7B and 15A of the General Statutes.
- 34 (f) Remedies for Compliance or Noncompliance. – All of the following remedies shall
35 be granted as relief for compliance or noncompliance with the requirements of this section:
- 36 (1) Failure to comply with any of the requirements of this section shall be
37 considered by the court in adjudicating motions to suppress a statement of the
38 defendant made during or after a custodial interrogation.
- 39 ...
- 40 (g) Article Does Not Preclude Admission of Certain Statements. – Nothing in this Article
41 precludes the admission of any of the following:
- 42 ...
- 43 (4) A statement made during a custodial interrogation that is conducted in another
44 state by law enforcement officers of that state.
- 45 ...
- 46 (6) A statement given at a time when the interrogators are unaware that the person
47 is suspected of an offense to which this Article applies.
- 48 ...
- 49 (h) Destruction or Modification of Recording After Appeals Exhausted. – The State shall
50 not destroy or alter any electronic recording of a custodial interrogation of a defendant convicted
51 of any offense related to the interrogation until one year after the completion of all State and

1 federal appeals of the conviction, including the exhaustion of any appeal of any motion for
2 appropriate relief or habeas corpus proceedings. Every electronic recording should be clearly
3 identified and catalogued by law enforcement personnel. Every electronic recording of
4 non-defendant custodial interrogations may be destroyed at the conclusion of the State appeal
5 process."

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

8
9 **DIRECT STATE CRIME LAB TO ADOPT PROCEDURES TO NOTIFY THE OFFICE**
10 **OF THE DISTRICT ATTORNEY OF CODIS HITS**

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

12 "**§ 15A-266.7. Procedures for conducting DNA analysis of DNA sample.**

13 (a) The Crime Laboratory shall:

14 ...

15 (3) Notify the office of the district attorney for all CODIS matches.

16"

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

18
19 **INCREASE RELIABILITY OF IN-CUSTODY INFORMANT STATEMENTS**

20 **SECTION 3.(a)** Chapter 15A of the General Statutes is amended by adding a new
21 Article to read:

22 "Article 54.

23 "Reliability of In-Custody Informant Statements.

24 "**§ 15A-981. Corroboration of in-custody informant statement.**

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

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

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

39 **SECTION 3.(b)** This section becomes effective October 1, 2023, and applies to
40 offenses committed on or after that date.

41
42 **EFFECTIVE DATE**

43 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
44 law.