

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 640

Short Title: Various Criminal Procedure Changes. (Public)

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

Referred to: Rules and Operations of the Senate

April 6, 2023

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

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

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

"Electronic Recording of Interviews and Interrogations.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

...

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

...

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

...

(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~~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.