

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 162

Short Title: Elec. Record Interrogation/B1, B2, C Felony. (Public)

Sponsors: Representatives Glazier, Blue, Ross, Stam (Primary Sponsors); M. Alexander, Fisher, E. Floyd, Hall, Harrison, Hughes, Jones, Lucas, Luebke, Mackey, Weiss, and Womble.

Referred to: Judiciary II, if favorable, Appropriations.

February 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CUSTODIAL INTERROGATION IN A CLASS B1, CLASS B2, OR CLASS C FELONY CASE MUST BE ELECTRONICALLY RECORDED IN ITS ENTIRETY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-211 reads as rewritten:

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

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

(b) Application. – The provisions of this Article shall only apply to custodial interrogations in ~~homicide~~ investigations of any of the following crimes conducted at any place of ~~detention~~ detention: a homicide, a Class B1 felony, a Class B2 felony, or a Class C felony.

(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.

(2) In its entirety. – An uninterrupted record that begins with and includes a law enforcement officer's advice to the person in custody of that person's constitutional rights, ends when the interview has completely finished, and clearly shows both the interrogator and the person in custody throughout. If the record is a visual recording, the camera recording the custodial interrogation must be placed so that the camera films both the interrogator and the suspect. Brief periods of recess, upon request by the person in custody or the law enforcement officer, do not constitute an "interruption" of the record. The record will reflect the starting time of the recess and the resumption of the 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 Interrogations Required. – Any law enforcement officer conducting a custodial interrogation in ~~a homicide~~ an investigation of any of the following crimes shall make an electronic recording of the interrogation in its ~~entirety~~ entirety: a homicide, a Class B1 felony, a Class B2 felony, or a Class C felony.



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1 (e) Admissibility of Electronic Recordings. – During the prosecution of any homicide,  
2 Class B1 felony, Class B2 felony, or Class C felony, an oral, written, nonverbal, or sign  
3 language statement of a defendant made in the course of a custodial interrogation may be  
4 presented as evidence against the defendant if an electronic recording was made of the  
5 custodial interrogation in its entirety and the statement is otherwise admissible. If the court  
6 finds that the defendant was subjected to a custodial interrogation that was not electronically  
7 recorded in its entirety, any statements made by the defendant after that non-electronically  
8 recorded custodial interrogation, even if made during an interrogation that is otherwise in  
9 compliance with this section, may be questioned with regard to the voluntariness and reliability  
10 of the statement. The State may establish through clear and convincing evidence that the  
11 statement was both voluntary and reliable and that law enforcement officers had good cause for  
12 failing to electronically record the interrogation in its entirety. Good cause shall include, but not  
13 be limited to, the following:

- 14 (1) The accused refused to have the interrogation electronically recorded, and  
15 the refusal itself was electronically recorded.
- 16 (2) The failure to electronically record an interrogation in its entirety was the  
17 result of unforeseeable equipment failure, and obtaining replacement  
18 equipment was not feasible.

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

- 21 (1) Failure to comply with any of the requirements of this section shall be  
22 considered by the court in adjudicating motions to suppress a statement of  
23 the defendant made during or after a custodial interrogation.
- 24 (2) Failure to comply with any of the requirements of this section shall be  
25 admissible in support of claims that the defendant's statement was  
26 involuntary or is unreliable, provided the evidence is otherwise admissible.
- 27 (3) When evidence of compliance or noncompliance with the requirements of  
28 this section has been presented at trial, the jury shall be instructed that it may  
29 consider credible evidence of compliance or noncompliance to determine  
30 whether the defendant's statement was voluntary and reliable.

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

- 33 (1) A statement made by the accused in open court during trial, before a grand  
34 jury, or at a preliminary hearing.
- 35 (2) A spontaneous statement that is not made in response to a question.
- 36 (3) A statement made during arrest processing in response to a routine question.
- 37 (4) A statement made during a custodial interrogation that is conducted in  
38 another state by law enforcement officers of that state.
- 39 (5) A statement obtained by a federal law enforcement officer.
- 40 (6) A statement given at a time when the interrogators are unaware that the  
41 person is suspected of a ~~homicide~~-homicide, a Class B1 felony, a Class B2  
42 felony, or a Class C felony.
- 43 (7) A statement used only for impeachment purposes and not as substantive  
44 evidence.

45 (h) Destruction or Modification of Recording After Appeals Exhausted. – The State  
46 shall not destroy or alter any electronic recording of a custodial interrogation of a defendant  
47 convicted of any offense related to the interrogation until one year after the completion of all  
48 State and federal appeals of the conviction, including the exhaustion of any appeal of any  
49 motion for appropriate relief or habeas corpus proceedings. Every electronic recording should  
50 be clearly identified and catalogued by law enforcement personnel."

1                   **SECTION 2.** This act becomes effective December 1, 2008, and applies to  
2 interrogations occurring on or after that date.