

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 667

Short Title: Expand Recording/Interviews/Interrogations. (Public)

Sponsors: Representatives Richardson, Faircloth, and Hardister (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

April 27, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND PROVISIONS SURROUNDING THE ELECTRONIC RECORDING
3 OF INTERVIEWS AND CUSTODIAL INTERROGATIONS IN PLACES OF
4 DETENTION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 8 of Chapter 15A of the General Statutes reads as rewritten:

7 "Article 8.

8 "Electronic Recording of Interviews and Interrogations.

9 **"§ 15A-211. Electronic recording of interviews and interrogations.**

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

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

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

22 ...

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



1 including the starting time and date of the recess and the resumption of the
2 interview or interrogation.

3 ...

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

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

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

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

31 (e1) Recordings of non-defendant interviews or custodial interrogations under this Article
32 shall be provided to the juvenile or criminal defendant as part of discovery requirements under
33 Chapters 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~~ an interview or 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~~ an interview or custodial interrogation that is
44 conducted in another 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~~ an interview or custodial interrogation of a
51 defendant convicted of any offense related to the interview or interrogation until one year after

1 the completion of all State and federal appeals of the conviction, including the exhaustion of any
2 appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic
3 recording should be clearly identified and catalogued by law enforcement personnel.

4 Every electronic recording of non-defendant interviews or custodial interrogations may be
5 destroyed at the conclusion of the State appeal process."

6 **SECTION 2.** This act becomes effective October 1, 2021, and applies to interviews
7 and custodial interrogations occurring on or after that date.