GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

SESSION LAW 2023-74
HOUSE BILL 790

AN ACT TO MODIFY LAWS RELATING TO THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AND TO MODIFY VARIOUS LAWS RELATED TO CRIMINAL PROCEDURE.

The General Assembly of North Carolina enacts:

MODIFY LAWS RELATING TO THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

SECTION 1.(a) Article 92 of Chapter 15A of the General Statutes reads as rewritten:

"Article 92.

"North Carolina Innocence Inquiry Commission.

…

"**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall report to the Director of the Administrative Office of the Courts, who shall consult with the Commission chair. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or devises from any source. The acceptance of private gifts, donations, and devises shall not create any obligation for the Commission.

…

"**§ 15A-1468. Commission proceedings.**

…

(a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the holding of a prehearing conference to be held at least ~~10~~ 30 days prior to any proceedings of the full Commission. The Commission may also call a prehearing conference at any time the Commission has developed credible evidence to support a claim of factual innocence. If a Commission hearing is continued for any reason, at least 10 days before the newly scheduled hearing there shall be a subsequent prehearing conference to discuss any newly developed evidence that was not previously provided. Only the following persons shall be notified and authorized to attend ~~the~~ a prehearing conference: the ~~District Attorney, or the District Attorney's~~ district attorney, or the district attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based; the claimant's counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and any Commission staff designated by the Director. ~~The District Attorney, or designee, shall be provided (i) an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and (ii) any information that the District Attorney, or the District Attorney's designee, deems relevant to the proceedings.~~ The district attorney, or designee, and the claimant's counsel shall be provided the ability to

access, review, and inspect the Commission's entire case file at least 60 days prior to the Commission hearing. The Commission shall present and make available the information pursuant to this section in a reasonably organized manner that is not to be overly burdensome to the Commission, the district attorney, or the claimant's counsel. At least ~~72 hours~~ 10 days prior to ~~any~~ a Commission ~~proceedings,~~ hearing, the ~~District Attorney~~ district attorney or designee is authorized to provide the Commission with a written statement, which shall be part of the record. The Commission shall have an ongoing duty to provide any newly discovered evidence to the district attorney and the claimant's counsel until the hearing begins. Evidence not provided to the district attorney and the claimant's counsel in the initial release of information shall be provided at least 10 days prior to the Commission hearing. The Commission shall keep a clear record of which materials have been previously made available for review and inspection.

(b) The Director shall use all due diligence to notify the victim at least ~~30~~ 10 days prior to ~~any proceedings of the full Commission~~ the initial prehearing conference required in subsection (a2) of this section held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of the victim's intent to attend. Nothing in this section prevents the Director from notifying the victim at an earlier date in the proceedings.

…

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the district attorney, or the district attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based, the convicted ~~person~~ person, and the convicted person's counsel, if the convicted person has counsel.

…

"**§ 15A-1469. Postcommission three-judge panel.**

…

(a1) If the Commission concludes that there is credible evidence of prosecutorial misconduct ~~in the case,~~ by the current district attorney of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based, the Chair of the Commission may request pursuant to G.S. 7A-64 the ~~Attorney General~~ Director of the Administrative Office of the Courts to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. The request for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion finding sufficient evidence of innocence to merit judicial review.

~~Upon receipt of a request under this subsection to appoint a special prosecutor, the Attorney General may temporarily assign a district attorney, assistant district attorney, or other qualified attorney, to represent the State at the hearing before the three-judge panel.~~ However, the ~~Attorney General~~ Director of the Administrative Office of the Courts shall not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted ~~person, or is a prosecuting attorney in the district where the convicted person was tried.~~ person. The appointment shall be made no later than 20 days after the receipt of the request.

…

(d) The three-judge panel shall conduct an evidentiary ~~hearing.~~ hearing in accordance with the North Carolina Rules of Evidence. At the hearing, the court, and the defense and prosecution through the court, may compel the testimony of any witness, including the convicted person. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. The convicted person may not assert

any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing. At least 10 days before the evidentiary hearing, the parties shall disclose all information required by Article 48 of Chapter 15A of the General Statutes as if the parties have requested in writing that the other party comply with a discovery request. The Commission file provided to the parties pursuant to G.S. 15A-1468(g) shall be deemed disclosed. Nothing contained in this section shall prohibit the three-judge panel from setting an earlier disclosure deadline or the parties from agreeing to provide earlier disclosure. Evidence not timely disclosed pursuant to this section shall be inadmissible at the hearing, absent good cause shown.

…

"**§ 15A-1475. Reports.**

The North Carolina Innocence Inquiry Commission shall report annually by February 1 of each year on its activities to the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include a record of the receipt and expenditures of all private donations, gifts, and devises for the reporting period. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General."

SECTION 1.(b) This section is effective when it becomes law and applies to proceedings held on or after that date.

MODIFY LAWS REGULATING THE ELECTRONIC RECORDING OF CRIMINAL OR JUVENILE INTERROGATIONS

SECTION 2.(a) Article 8 of Chapter 15A of the General Statutes reads as rewritten:

"Article 8.

"Electronic Recording of Interrogations.

"**§ 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.~~efficiency and confidence.

(b) Application. – The provisions of this Article shall apply to all custodial interrogations of juveniles in criminal investigations conducted at any place of detention. The provisions of this Article shall also apply to any 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 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~~ 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 a custodial interrogation, 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 all starting and ending times and dates, including the starting time and date 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 an investigation of a juvenile shall make an electronic recording of the interrogation in its entirety.~~ Any law enforcement officer conducting a custodial ~~interrogation~~ 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 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 custodial interrogation may be presented as evidence against the defendant if an electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible. If the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded in its entirety, any statements made by the defendant after that non-electronically recorded custodial interrogation, even if made during an 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 interrogation in its entirety. Good cause shall include, but not be limited to, the following:

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

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

(e1) Recordings of nondefendant 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 custodial interrogation.

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims that the defendant's statement was involuntary or is unreliable, provided the evidence is otherwise admissible.

(3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine whether the defendant's statement was voluntary and reliable.

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

(1) A statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing.
(2) A spontaneous statement that is not made in response to a question.
(3) A statement made during arrest processing in response to a routine question.
(4) A statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state.
(5) A statement obtained by a federal law enforcement officer.
(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.
(7) A statement used only for impeachment purposes and not as substantive evidence.

(h) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of a custodial interrogation of a defendant convicted of any offense related to the 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 nondefendant custodial interrogations may be destroyed at the conclusion of the State appeal process."

SECTION 2.(b) This section becomes effective October 1, 2023, and applies to custodial interrogations occurring on or after that date.

DIRECT STATE CRIME LAB TO ADOPT PROCEDURES TO NOTIFY THE OFFICE OF THE DISTRICT ATTORNEY OF CODIS HITS

SECTION 3.(a) G.S. 15A-266.7(a) reads as rewritten:

"(a) The Crime Laboratory shall:

…

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

SECTION 3.(b) This section becomes effective October 1, 2023.

INCREASE RELIABILITY OF IN-CUSTODY INFORMANT STATEMENTS

SECTION 4.(a) Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 54.

"Reliability of In-Custody Informant Statements.

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

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

(b) Recording of In-Custody Informant Interview. – All interviews of in-custody informants by a law enforcement officer shall be recorded using a visual recording device that provides an authentic, accurate, unaltered, and uninterrupted record of the interview that clearly shows both the interviewer and the in-custody informant. This subsection shall not apply to attorneys for the State or defense conducting an interview as part of trial preparation.

(c) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of an in-custody informant interview 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 shall be clearly identified and catalogued by law enforcement personnel."

SECTION 4.(b) This section becomes effective October 1, 2023, and applies to offenses committed on or after that date.

EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:50 p.m. this 7th day of July, 2023