

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 241  
Judiciary II Committee Substitute Adopted 4/4/11  
House Committee Substitute Favorable 6/15/11

Short Title: DWI/Custodial Interrogation Amendments.

(Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT DWI SENTENCING BE AT LEVEL ONE IF THE OFFENSE OCCURS WITH A CHILD LESS THAN EIGHTEEN YEARS OF AGE IN THE VEHICLE, AND TO AMEND THE LAW REGARDING ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-179(c) reads as rewritten:

"(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that the grossly aggravating factor in subdivision (4) of this subsection applies or two or more of the other grossly aggravating factors apply. If the judge does not find that the aggravating factor at subdivision (4) of this subsection applies, ~~The~~ then the judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the other grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

- a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
- b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
- c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.



- 1 (2) Driving by the defendant at the time of the offense while his driver's license  
2 was revoked under G.S. 20-28, and the revocation was an impaired driving  
3 revocation under G.S. 20-28.2(a).
- 4 (3) Serious injury to another person caused by the defendant's impaired driving  
5 at the time of the offense.
- 6 (4) Driving by the defendant while a child under the age of ~~16~~18 years was in  
7 the vehicle at the time of the offense.

8 In imposing a Level One or Two punishment, the judge may consider the aggravating and  
9 mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there  
10 are no grossly aggravating factors in the case, the judge must weigh all aggravating and  
11 mitigating factors and impose punishment as required by subsection (f)."

12 **SECTION 2.** G.S. 15A-211 reads as rewritten:

13 **"§ 15A-211. Electronic recording of interrogations.**

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

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

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

- 26 (1) Electronic recording. – An audio recording that is an authentic, accurate,  
27 unaltered record; or a visual recording that is an authentic, accurate,  
28 unaltered record. A visual and audio recording shall be simultaneously  
29 produced whenever reasonably feasible, provided that a defendant may not  
30 raise this as grounds for suppression of evidence.
- 31 (2) In its entirety. – An uninterrupted record that begins with and includes a law  
32 enforcement officer's advice to the person in custody of that person's  
33 constitutional rights, ends when the interview has completely finished, and  
34 clearly shows both the interrogator and the person in custody throughout. If  
35 the record is a visual recording, the camera recording the custodial  
36 interrogation must be placed so that the camera films both the interrogator  
37 and the suspect. Brief periods of recess, upon request by the person in  
38 custody or the law enforcement officer, do not constitute an "interruption" of  
39 the record. The record will reflect the starting time of the recess and the  
40 resumption of the interrogation.
- 41 (3) Place of detention. – A jail, police or sheriff's station, correctional or  
42 detention facility, holding facility for prisoners, or other facility where  
43 persons are held in custody in connection with criminal charges.

44 (d) Electronic Recording of Interrogations Required. – Any law enforcement officer  
45 conducting a custodial interrogation in ~~a homicide~~ an investigation of a juvenile shall make an  
46 electronic recording of the interrogation in its entirety. Any law enforcement officer conducting  
47 a custodial interrogation in an investigation relating to any of the following crimes shall make  
48 an electronic recording of the interrogation in its entirety: any Class A, B1, or B2 felony; and  
49 any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill  
50 inflicting serious injury.

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

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

50 **SECTION 3.** This act becomes effective December 1, 2011, and applies to  
51 offenses committed on or after that date.