

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE DRH10292-LH-52A (01/27)

Short Title: The I. Beverly Lake, Jr., Fair Trial Act. (Public)

Sponsors: Representatives Daughtry, Zachary, and Glazier (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE RELIABILITY OF IN-CUSTODY INFORMANT
3 STATEMENTS THROUGH THE USE OF PRETRIAL HEARINGS THAT ESTABLISH
4 FACTS SUFFICIENT TO OVERCOME A REBUTTABLE PRESUMPTION OF
5 INADMISSIBILITY.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 15A of the General Statutes is amended by adding a new
8 article to read:

9 "Article 54.

10 "Reliability of In-Custody Informant Statements.

11 **§ 15A-981. Pretrial hearing to corroborate in-custody informant statement.**

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

18 (b) Corroboration of In-Custody Informant Testimony. – A defendant shall not be
19 convicted of an offense or receive an aggravated sentence based solely on the testimony of an
20 in-custody informant unless the testimony is corroborated by some other evidence
21 independently tending to connect the defendant with the offense committed. Corroboration of
22 an in-custody informant shall not be provided by the testimony of another in-custody
23 informant. Corroboration is not sufficient for the purpose of this Article if the corroboration
24 only shows that the offense was committed.

25 (c) Pretrial Disclosure. – In any case to which this section applies, the prosecution must
26 timely disclose, prior to trial or entry of a guilty plea, its intent to introduce the testimony of an
27 in-custody informant.

28 (d) No Disclosure of In-Custody Informant's Identity. – Upon motion of the prosecution
29 and on a showing that the disclosure of the in-custody informant's identity would endanger the
30 informant, that the informant's services to the State would be undermined, or for other reasons
31 found compelling by the court, the identity of the in-custody informant may be redacted and
32 remain undisclosed to the defense until such time as the court deems disclosure appropriate or
33 disclosure is required by law.

34 (e) Pretrial Hearing to Determine Reliability. – The court shall conduct a pretrial
35 hearing to determine whether the reliability of the testimony of the in-custody informant is



1 sufficient to overcome a rebuttable presumption of inadmissibility, unless the defendant waives
2 such hearing.

3 (f) Guilty Plea and Waiver to Cross-Examine In-Custody Informant. – Before the
4 defendant enters a guilty plea, the court shall advise the defendant that at a trial the in-custody
5 informant may be cross-examined concerning credibility or reliability and that by pleading
6 guilty to resolve the case, the defendant waives the right to cross-examine the informant.

7 (g) Certification and Burden of Proof Regarding Reliability. – Where a pretrial hearing
8 is held to determine the reliability and admissibility of the testimony of the in-custody
9 informant, the judge shall: (i) require certification of reliability by the district attorney, and (ii)
10 determine whether the prosecution has proven by a preponderance of the evidence that the
11 testimony of the in-custody witness is reliable.

12 (h) Rebuttable Presumption of Inadmissibility. – The rebuttable presumption of
13 inadmissibility may be overcome by a determination of reliability by the trial judge after
14 consideration of the following relevant factors:

15 (1) The source of the information that the informant is providing.

16 (2) The specifics of the statements, including date, time, place, names of others
17 present, other circumstances surrounding the statement, and whether the
18 statement contains details which could reasonably be accessed by the
19 in-custody informer, other than through inculpatory statements by the
20 accused.

21 (3) The time and place of the disclosure to law enforcement or other official.

22 (4) Whether the person is a substance abuser or has a history of substance abuse.

23 (5) Relevant medical or psychological reports.

24 (6) The person's general character, which may be evidenced by his or her
25 criminal history.

26 (7) The person's relationship or history with the defendant.

27 (8) Whether the witness requested, received, has been promised any
28 inducement, or could have reasonably expected to receive an inducement,
29 including pay, immunity from or leniency in prosecution, and personal
30 advantage or assistance.

31 (9) Any other criminal case in which the witness testified to alleged confessions
32 or statements by others and any findings in relation to the accuracy and
33 reliability of that evidence.

34 (10) Whether the informant made some written or other record of the words
35 allegedly spoken by the accused and, if so, whether the record was made
36 contemporaneous to the alleged statements of the accused.

37 (11) The amount of time between the alleged statement and the informant's
38 revelation of the statement.

39 (12) Prior recantations by the informant.

40 (13) Verification of correctional records.

41 (14) Whether the informant was intentionally placed by law enforcement or
42 prosecution.

43 (15) The ability of the informant to have committed the crime.

44 (16) Conflicting statements or facts.

45 (17) Any other evidence that may attest to or diminish the reliability of the
46 witness, including the presence or absence of any relationship between the
47 defendant and the witness.

48 (i) Jury Instruction Regarding In-Custody Informant Testimony. – In any case in which
49 the judge finds the in-custody informant's testimony admissible, the judge shall instruct the jury
50 that the in-custody informant's testimony must be scrutinized with regard to reliability and that,

1 in considering the reliability of the in-custody informant, the jury may consider any of the
2 following:

- 3 (1) Whether the witness has received, has been promised, or could have
4 reasonably expected any inducement in exchange for testimony.
- 5 (2) Whether the witness has ever recanted or otherwise changed the witness's
6 testimony during the investigation or prosecution of the case.
- 7 (3) The general character of the witness, including his or her criminal history.
- 8 (4) The nature of the relationship between the defendant and the witness.
- 9 (5) Whether there is any evidence that tends to independently corroborate the
10 witness's testimony.
- 11 (6) Any other evidence that may attest to or diminish the reliability of the
12 witness.

13 The judge may not inform the jury that the court held an admissibility hearing or that the
14 court made any pretrial determinations regarding the reliability of the witness's testimony.

15 (j) Policies and Procedures Governing the Recording and Use of Testimony. – Each
16 district attorney shall establish policies and procedures governing the recording and use of
17 in-custody informant testimony, including maintenance of a central file preserving all records
18 relating to contacts with in-custody informants, whether they are used as witnesses or not.

19 (k) Recording of In-Custody Informant Interview. – All interviews of in-custody
20 informants shall be recorded using a visual recording device that provides an authentic,
21 accurate, unaltered, and uninterrupted record of the interview that clearly shows both the
22 interviewer and the in-custody informant.

23 (l) Destruction or Modification of Recording After Appeals Exhausted. – The State
24 shall not destroy or alter any electronic recording of an in-custody informant interview until
25 one year after the completion of all State and federal appeals of the conviction, including the
26 exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings.
27 Every electronic recording shall be clearly identified and catalogued by law enforcement
28 personnel."

29 **SECTION 2.** This act becomes effective December 1, 2015, and applies to
30 offenses committed on or after that date.