

Regular Session, 2014

SENATE BILL NO. 326

BY SENATOR GARY SMITH

CRIMINAL PROCEDURE. Authorizes certain individuals to view certain videotaped statements. (8/1/14)

1 AN ACT
2 To amend and reenact R.S. 15:440.5(C), relative to electronic recordings of protected
3 persons; to authorize certain individuals to view certain videotaped statements of a
4 protected person; to provide with respect to copies and transcripts of the videotaped
5 statement; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 15:440.5(C) is hereby amended and reenacted to read as follows:

8 §440.5. Admissibility of videotaped statements; discovery by defendant

9 * * *

10 C. In a criminal prosecution, when the state intends to offer as evidence a
11 copy of a videotaped oral statement of a protected person made pursuant to the
12 provisions of this Subpart, the defendant, through his attorney only, may be provided
13 a copy of the videotape if the court determines it necessary to prepare a proper
14 defense. If the defendant's attorney is provided a copy of the videotaped statement
15 by court order or by permission of the district attorney, only ~~the attorney and the~~
16 ~~defendant shall be permitted to view the tape, and no copies shall be made by any~~
17 ~~person~~ **the following persons involved in preparing the defense of the instant**

1 **charges shall be permitted to view the videotape: the attorney and his regularly**
2 **employed staff; the defendant; any expert retained by the attorney; and any**
3 **investigator retained by the attorney. Other than a transcript of the videotaped**
4 **oral statement, no copies of the videotape shall be made by any person, except**
5 **for use as trial exhibits.** The copy **of the videotaped statement and any**
6 **transcripts** shall be securely retained by the defendant's attorney at all times and
7 shall not be possessed, transferred, distributed, copied, or viewed by any
8 unauthorized party. It shall be the affirmative duty of the defendant's attorney to
9 return the videotape to the court immediately upon conclusion of the case, but in all
10 cases prior to sentencing. A defendant who appears pro se in a criminal proceeding
11 shall be allowed reasonable access to the videotape of a protected person only with
12 an order of the court and under court-directed supervision. The tape shall be filed as
13 part of the record under seal by the clerk of court for use in subsequent legal
14 proceedings or appeals and shall ~~only~~ be released **only** upon motion of the state or
15 counsel of record with an order of court and in compliance with this Section. Any
16 violation of this Subsection shall be punished as contempt of court. Any person who
17 makes an unauthorized disclosure of the videotape or its contents may also be subject
18 to liability for civil damages, including punitive damages.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

Gary Smith (SB 326)

Present law authorizes the use of videotaped statements of protected persons. Present law defines "protected person" as a crime witness or victim who is either under the age of 17 or has a developmental disability. Present law provides that if a copy of the videotaped statement is provided to the defendant's attorney, only the defendant and his attorney are permitted to view the tape.

Proposed law retains present law and further provides that in addition to the defendant and his attorney, the following persons who are involved in preparing the defense are authorized to view the videotaped statement: the attorney's regularly employed staff; any expert retained by the defense; and any investigator retained by the defense.

Present law provides that no copies of the videotaped statement provided to the defense can be made by any person.

Proposed law changes present law to provide that copies of the videotaped statement

provided to the defense may be made if they will be used as exhibits for trial.

Present law provides that the defense copy of the videotaped statement must be securely retained by the defendant's attorney at all times and cannot be possessed, transferred, distributed, copied, or viewed by any unauthorized party.

Proposed law retains present law and adds that any transcript of the videotaped statement must also be securely retained by the defendant's attorney.

Effective August 1, 2014.

(Amends R.S. 15:440.5(C))