

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

statement.

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))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Deletes "any expert" and adds specific defense team members authorized by proposed law to view the videotaped statements.