

1 **Rule 616. Statements Made During Custodial Interrogations.**

2
3 **(a) Definitions.**

4
5 (1) "Custodial interrogation" means questioning or other conduct by a law enforcement officer
6 that is reasonably likely to elicit an incriminating response from a person and occurs when
7 reasonable persons in the same circumstances would consider themselves in custody.

8
9 (2) "Electronic recording" means an audio recording or an audio-video recording that accurately
10 records a custodial interrogation.

11
12 (3) "Law enforcement agency" means a governmental entity or person authorized by a
13 governmental entity or by state law to enforce criminal laws or investigate suspected criminal
14 activity. The term includes a nongovernmental entity that has been delegated the authority to
15 enforce criminal laws or investigate suspected criminal activity.

16
17 (4) "Law enforcement officer" means a person described in Utah Code § 53-13-103(1).

18
19 (5) "Place of detention" means a facility or area owned or operated by a law enforcement
20 agency where persons are detained in connection with criminal investigations or questioned
21 about alleged criminal conduct. The term includes a law enforcement agency station, jail, holding
22 cell, correctional or detention facility, police vehicle or any other stationary or mobile building
23 owned or operated by a law enforcement agency.

24
25 (6) "Statement" means the same as in Rule 801(a).

26
27 **(b) Admissibility.** Except as otherwise provided in Subsection (c) of this rule, evidence of a
28 statement made by the defendant during a custodial interrogation in a place of detention shall not be
29 admitted against the defendant in a felony criminal prosecution unless an electronic recording of the
30 statement was made and is available at trial. This requirement is in addition to, and does not diminish,
31 any other requirement regarding the admissibility of a person's statements.

32
33 **(c) Exceptions.** Notwithstanding subsection (b), the court may admit a statement made under any of
34 the following circumstances if the statement is otherwise admissible under the law:

35
36 (1) The statement was made prior to January 1, 2016;

37

38 (2) The statement was made during a custodial interrogation that occurred outside Utah and was
39 conducted by officers of a jurisdiction outside Utah;

40

41 (3) The statement is offered for impeachment purposes only;

42

43 (4) The statement was a spontaneous statement made outside the course of a custodial
44 interrogation or made during routine processing or booking of the person;

45

46 (5) Before or during a custodial interrogation, the person agreed to respond to questions only if
47 his or her statements were not electronically recorded, provided that such agreement is
48 electronically recorded or documented in writing;

49

50 (6) The law enforcement officers conducting the custodial interrogation in good faith failed to
51 make an electronic recording because the officers inadvertently failed to operate the recording
52 equipment properly, or without the knowledge of any of the officers the recording equipment
53 malfunctioned or stopped operating;

54

55 (7) The law enforcement officers conducting or observing the custodial interrogation reasonably
56 believed that the crime for which the person was being investigated was not a felony under Utah
57 law;

58

59 (8) Substantial exigent circumstances existed that prevented or rendered unfeasible the making
60 of an electronic recording of the custodial interrogation, or prevented its preservation and
61 availability at trial; or

62

63 (9) The court finds:

64 (A) The statement has substantial guarantees of trustworthiness and reliability equivalent
65 to those of an electronic recording; and

66 (B) Admitting the statement best serves the purposes of these rules and the interests of
67 justice.

68

69 **(d) Procedure to determine admissibility.**

70

71 (1) **Notice.** If the prosecution intends to offer an unrecorded statement under an exception
72 described in Subsection (c)(4) through (9) of this Rule, the prosecution must serve the
73 defendant with written notice of an intent to rely on such an exception not later than 30 days
74 before trial.

75
76
77
78
79

80
81
82
83
84
85

86
87
88

89
90
91
92
93
94

95
96
97
98

(2) **Instruction.** If the court admits into evidence a statement made during a custodial interrogation that was not electronically recorded under an exception described in Subsection (c)(4) through (9) of this Rule, the court, upon request of the defendant, may give cautionary instructions to the jury concerning the unrecorded statement.

2015 Advisory Committee Note – In 2008, the Utah Attorney General's Office, in cooperation with statewide law enforcement agencies, drafted a Best Practices Statement for Law Enforcement that recommended electronic recording of custodial interrogations. Since then, most agencies have adopted the Statement or their own policies to record custodial interviews. This rule is promulgated to bring statewide uniformity to the admissibility of statements made during custodial interrogations. See *State v. Perea*, 2013 UT 68, ¶ 130, 322 P.3d 624.

Several states have adopted requirements for recording custodial interviews, and the National Conference of Commissioners on Uniform State Law has approved and recommended for enactment a Uniform Electronic Recordation of Custodial Interrogations Act.

The benefits of recording custodial interrogations include “avoiding unwarranted claims of coercion”; preventing the use of “actual coercive tactics by police”; and demonstrating “the voluntariness of the confession, the context in which a particular statement was made, and . . . the actual content of the statement.” *State v. James*, 858 P.2d 1012, 1018 (Utah Ct. App. 1993) (internal quotation marks omitted). Recordings assist the fact-finder and protect police officers and agencies from false claims of coercion and misconduct. *Perea*, 2013 UT 68, ¶ 130 n.23.

The rule addresses direct custodial questioning by law enforcement as well as other conduct during custodial questioning. It is intended to ensure that the custodial interrogation, including any part of the interrogation that is written or electronically transmitted, is fully and fairly recorded. Also, the admissibility of evidence under this rule is a preliminary question governed by Rule 104.