

1 **Rule 616. Statements Made During Custodial Interrogations.**
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3 **(a) Definitions.**
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5 (1) "Custodial interrogation" means questioning or other conduct by a law enforcement
6 officer that is reasonably likely to elicit an incriminating response from an individual and
7 occurs when reasonable individuals in the same circumstances would consider
8 themselves in custody.
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10 (2) "Electronic recording" means an audio recording or an audio and video recording
11 that accurately records a custodial interrogation.
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13 (3) "Law enforcement agency" means a governmental entity or person authorized by a
14 governmental entity or by state law to enforce criminal laws or investigate suspected
15 criminal activity. The term includes a nongovernmental entity that has been delegated
16 the authority to enforce criminal laws or investigate suspected criminal activity.
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18 (4) "Law enforcement officer" means a person described in Utah Code § 53-13-103(1).
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20 (5) "Place of detention" means a facility or area under the control of a law enforcement
21 agency where individuals are detained in connection with criminal investigations or
22 questioned about alleged criminal conduct. The term includes a law enforcement agency
23 station, jail, holding cell, correctional or detention facility, police vehicle or any other
24 stationary or mobile building owned or operated by a law enforcement agency.
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26 (6) "Statement" means a communication whether it is oral, written, electronic,
27 nonverbal, or in sign language.
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29 **(b) Admissibility.** Except as otherwise provided in Subsection (c) of this rule, evidence of a
30 statement made by the defendant during a custodial interrogation in a place of detention shall not
31 be admitted against the defendant in a felony criminal prosecution unless an electronic recording
32 of the statement was made and is available at trial. This requirement is in addition to, and does
33 not diminish, any other requirement regarding the admissibility of a person's statements.
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35 **(c) Exceptions.** Notwithstanding subsection (b), a statement made under any of the following
36 circumstances is admissible:
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38 (1) A spontaneous statement made outside the course of a custodial interrogation or
39 made during routine processing or booking of the person;

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

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45 (3) The law enforcement officers conducting the custodial interrogation in good faith
46 failed to make an electronic recording because the officers inadvertently failed to operate
47 the recording equipment properly, or without the knowledge of any of the officers the
48 recording equipment malfunctioned or stopped operating;

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50 (4) The law enforcement officers conducting or observing the custodial interrogation
51 reasonably believed that the crime for which the person was being investigated was not a
52 felony under Utah law;

53
54 (5) A statement found by the court to have substantial guarantees of trustworthiness and
55 reliability and to have not been coerced by a law enforcement officer;

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

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61 (7) The statement was made during a custodial interrogation that occurred outside Utah
62 and was conducted by officers of a jurisdiction outside Utah;

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64 (8) A statement made prior to _____, 2015; or

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66 (9) A statement offered for impeachment purposes only.

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

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70 (1) **Notice.** If the prosecution intends to offer an unrecorded statement under an
71 exception described in Subsection (c)(1) through (6) of this Rule, the prosecution
72 must:

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74 (A) not later than 30 days before trial, serve the defendant with written notice of an
75 intent to rely on such an exception; and

76 (B) prove by a preponderance of the evidence that the exception applies.

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78 (2) **Instruction.** If the court admits into evidence a statement made during a custodial
79 interrogation that was not electronically recorded under an exception described in
80 Subsection (c)(1) through (6) of this Rule, the court, upon request of the defendant,
81 may give cautionary instructions to the jury concerning the unrecorded statement.