

West's Utah Code Annotated
State Court Rules
Utah Rules of Evidence (Refs & Annos)
Article VI. Witnesses

Utah Rules of Evidence, Rule 616

RULE 616. STATEMENTS MADE DURING **CUSTODIAL INTERROGATIONS**

Currentness

(a) Definitions.

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

(2) “Electronic recording” means an audio recording or an audio-video recording that accurately records a **custodial interrogation**.

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

(4) “Law enforcement officer” means a person described in [Utah Code § 53-13-103\(1\)](#).

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

(6) “Statement” means the same as in [Rule 801\(a\)](#).

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

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

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- (1) The statement was made prior to January 1, 2016;
- (2) The statement was made during a **custodial interrogation** that occurred outside Utah and was conducted by officers of a jurisdiction outside Utah;
- (3) The statement is offered for impeachment purposes only;
- (4) The statement was a spontaneous statement made outside the course of a **custodial interrogation** or made during routine processing or booking of the person;
- (5) Before or during a **custodial interrogation**, the person agreed to respond to questions only if his or her statements were not electronically recorded, provided that such agreement is electronically recorded or documented in writing;
- (6) The law enforcement officers conducting the **custodial interrogation** in good faith failed to make an electronic recording because the officers inadvertently failed to operate the recording equipment properly, or without the knowledge of any of the officers the recording equipment malfunctioned or stopped operating;
- (7) The law enforcement officers conducting or observing the **custodial interrogation** reasonably believed that the crime for which the person was being investigated was not a felony under Utah law;
- (8) Substantial exigent circumstances existed that prevented or rendered unfeasible the making of an electronic recording of the **custodial interrogation**, or prevented its preservation and availability at trial; or
- (9) The court finds:
 - (A) The statement has substantial guarantees of trustworthiness and reliability equivalent to those of an electronic recording; and
 - (B) Admitting the statement best serves the purposes of these rules and the interests of justice.

(d) Procedure to determine admissibility.

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

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(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.

Credits

[Adopted effective January 1, 2016.]

Editors' Notes

ADVISORY COMMITTEE NOTES

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.

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Current with amendments received through August 15, 2018