

RULE 3:17. Electronic Recordation

- **(a)** Unless one of the exceptions set forth in paragraph (b) are present, all custodial interrogations conducted in a place of detention must be electronically recorded when the person being interrogated is charged with murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, violations of Chapter 35 of Title 2C that constitute first or second degree crimes, any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. For purposes of this rule, a "place of detention" means a building or a police station or barracks that is a place of operation for a municipal or state police department, county prosecutor, sheriff or other law enforcement agency, that is owned or operated by a law enforcement agency at which persons are or may be detained in connection with criminal charges against those persons. Place of detention shall also include a county jail, county workhouse, county penitentiary, state prison or institution of involuntary confinement where a custodial interrogation may occur.
- **(b)** Electronic recordation pursuant to paragraph (a) must occur unless: (i) a statement made during a custodial interrogation is not recorded because electronic recording of the interrogation is not feasible, (ii) a spontaneous statement is made outside the course of an interrogation, (iii) a statement is made in response to questioning that is routinely asked during the processing of the arrest of the suspect, (iv) a statement is made during a custodial interrogation by a suspect who indicated, prior to making the statement, that he/she would participate in the interrogation only if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded, (v) a statement is made during a custodial interrogation that is conducted out of state, (vi) a statement is given at a time when the accused is not a suspect for the crime to which that statement relates while the accused is being interrogated for a different crime that does not require recordation, (vii) the interrogation during which the statement is given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed. The State shall bear the burden of proving, by a preponderance of the evidence, that one of the exceptions is applicable.
- **(c)** If the State intends to rely on any of the exceptions set forth in paragraph (b) in offering a defendant's unrecorded statement into evidence, the State shall furnish a notice of intent to rely on the unrecorded statement, stating the specific place and time at which the defendant made the statement and the specific exception or exceptions upon which the State intends to rely. The prosecutor shall, on written demand, furnish the defendant or defendant's attorney with the names and addresses of the witnesses upon whom the State intends to rely to establish one of the exceptions set forth in paragraph (b). The trial court shall then hold a hearing to determine whether one of the exceptions apply.
- **(d)** The failure to electronically record a defendant's custodial interrogation in a place of detention shall be a factor for consideration by the trial court in determining the admissibility of a statement, and by the jury in determining whether the statement was made, and if so, what weight, if any, to give to the statement.
- **(e)** In the absence of an electronic recordation required under paragraph (a), the court shall, upon request of the defendant, provide the jury with a cautionary instruction.

Note: Adopted October 14, 2005, to be effective in respect of all homicide offenses as of January 1, 2006, and as of January 1, 2007, in respect of the other offenses specified in paragraph (a) of the Rule.