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West's Annotated Indiana Code [Currentness](#)

Title 34 Appendix Court Rules (Civil)

▣ Indiana Rules of Evidence ([Refs & Annos](#))

▣ [Article VI](#). Witnesses

→ **Rule 617. Unrecorded Statements During Custodial Interrogation**

<Effective Jan. 1, 2011.>

(a) In a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial, except upon clear and convincing proof of any one of the following:

- (1) The statement was part of a routine processing or “booking” of the person; or
- (2) 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 and its surrounding colloquy is Electronically Recorded or documented in writing; or
- (3) 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 said officers the recording equipment malfunctioned or stopped operating; or
- (4) The statement was made during a custodial interrogation that both occurred in, and was conducted by officers of, a jurisdiction outside Indiana; or
- (5) 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 Indiana law; or
- (6) The statement was spontaneous and not made in response to a question; or
- (7) Substantial exigent circumstances existed which prevented the making of, or rendered it not feasible to make, an Electronic Recording of the Custodial Interrogation, or prevent its preservation and availability at trial.

**(b)** For purposes of this rule, “Electronic Recording” means an audio-video recording that includes at least not only the visible images of the person being interviewed but also the voices of said person and the interrogating officers; “Custodial Interrogation” means an interview conducted by law enforcement during which a reasonable person would consider himself or herself to be in custody; “Place of Detention” means a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which persons are detained in connection with criminal investigations.

**(c)** The Electronic Recording must be a complete, authentic, accurate, unaltered, and continuous record of a Custodial Interrogation.

**(d)** This Rule is in addition to, and does not diminish, any other requirement of law regarding the admissibility of a person's statements.

CREDIT(S)

Adopted Sept. 15, 2009, effective Jan. 1, 2011.

Current with amendments received through 3-1-2010

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