

C

West's Wisconsin Statutes Annotated [Currentness](#)

Criminal Procedure (Ch. 967 to 980)

▢ [Chapter 972. Criminal Trials \(Refs & Annos\)](#)

➔ **972.115. Admissibility of defendant's statement**

(1) In this section:

(a) “Custodial interrogation” has the meaning given in [s. 968.073\(1\)\(a\)](#).

(b) “Law enforcement agency” has the meaning given in [s. 165.83\(1\)\(b\)](#).

(c) “Law enforcement officer” has the meaning given in [s. 165.85\(2\)\(c\)](#).

(d) “Statement” means an oral, written, sign language, or nonverbal communication.

(2)(a) If a statement made by a defendant during a custodial interrogation is admitted into evidence in a trial for a felony before a jury and if an audio or audio and visual recording of the interrogation is not available, upon a request made by the defendant as provided in [s. 972.10\(5\)](#) and unless the state asserts and the court finds that one of the following conditions applies or that good cause exists for not providing an instruction, the court shall instruct the jury that it is the policy of this state to make an audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony and that the jury may consider the absence of an audio or audio and visual recording of the interrogation in evaluating the evidence relating to the interrogation and the statement in the case:

1. The person refused to respond or cooperate in the interrogation if an audio or audio and visual recording was made of the interrogation so long as a law enforcement officer or agent of a law enforcement agency made a contemporaneous audio or audio and visual recording or written record of the subject's refusal.

2. The statement was made in response to a question asked as part of the routine processing of the person.

3. The law enforcement officer or agent of a law enforcement agency conducting the interrogation in good faith failed to make an audio or audio and visual recording of the interrogation because the recording equipment did not function, the officer or agent inadvertently failed to operate the equipment properly, or, without the officer's or agent's knowledge, the equipment malfunctioned or stopped operating.

4. The statement was made spontaneously and not in response to a question by a law enforcement officer or agent of a law enforcement agency.

5. Exigent public safety circumstances existed that prevented the making of an audio or audio and visual recording or rendered the making of such a recording infeasible.

6. The law enforcement officer conducting the interrogation or the law enforcement officer responsible for observing an interrogation conducted by an agent of a law enforcement agency reasonably believed at the commencement of the interrogation that the offense for which the person was taken into custody or for which the person was being investigated, was not a felony.

(b) If a statement made by a defendant during a custodial interrogation is admitted into evidence in a proceeding heard by the court without a jury in a felony case and if an audio or audio and visual recording of the interrogation is not available, the court may consider the absence of an audio or audio and visual recording of the interrogation in evaluating the evidence relating to the interrogation and the statement unless the court determines that one of the conditions under par. (a)1. to 6 applies.

(4) Notwithstanding [ss. 968.28 to 968.37](#), a defendant's lack of consent to having an audio or audio and visual recording made of a custodial interrogation does not affect the admissibility in evidence of an audio or audio and visual recording of a statement made by the defendant during the interrogation.

(5) An audio or audio and visual recording of a custodial interrogation shall not be open to public inspection under [ss. 19.31 to 19.39](#) before one of the following occurs:

(a) The person interrogated is convicted or acquitted of an offense that is a subject of the interrogation.

(b) All criminal investigations and prosecutions to which the interrogation relates are concluded.

<<For credits, see Historical Note field.>>

Current through 2009 Act 220, published 05/19/10

© 2010 Thomson Reuters

END OF DOCUMENT