

**REPORT ON THE IMPLEMENTATION
OF THE REQUIREMENT FOR
RECORDATION OF CUSTODIAL
INTERROGATIONS**



MAY 30, 2007

I. Background

In State v. Thomahl Cook, 179 N.J. 533 (2004), the New Jersey Supreme Court called for a careful and deliberate study to evaluate the protections that electronic recordation of custodial interrogations affords both the State and criminal defendants. Id. at 562. Following State v. Cook, the Chief Justice appointed the Special Committee on the Recordation of Custodial Interrogations to make recommendations on the use of electronic recordation of custodial interrogations. On April 15, 2005, the Special Committee submitted its report to the Supreme Court. The report, as posted at <http://www.judiciary.state.nj.us/notices/reports/cookreport.pdf>, included a recommendation that "the Supreme Court...periodically review the implementation of the recording requirement" (Recommendation 9). The Court published the report for comment from the Bar and the public. At the close of the comment period, the Court reviewed the submissions it received and discussed the findings and recommendations of the Special Committee.

On October 14, 2005, the Supreme Court issued an Administrative Determination regarding the Special Committee's Report. (See Attachment 1). That document provided that the recordation requirement would become effective January 1, 2006 for homicide offenses, and January 1, 2007 for all other offenses specified in Rule 3:17(a). The Administrative Determination also requested that the Administrative Director of the Courts and the Criminal Practice Committee work with the Office of the Attorney General and the County Prosecutors to review the implementation of the recordation requirement. The Court anticipated receiving "a status report on this subject by June 1, 2007, or sooner if circumstances warrant it."

To meet this requirement, the Criminal Practice Committee and the Conference of Criminal Presiding Judges recommended use of a new form to be completed and submitted in cases where: (1) the defendant was charged with murder, aggravated manslaughter or manslaughter; and (2) the offense occurred on or after January 1, 2006; and, (3) the defendant was tried or the State filed a notice of intent to rely on an unrecorded statement claiming an exception to the recording requirement, and the court made a ruling thereon. This form addressing homicides was promulgated on July 18, 2006 in Directive #11-06. (See Attachment 2).

Thereafter, in Directive #22-06 (Dec. 22, 2006), the Criminal Practice Committee developed a revised form in order to collect data in the expanded category of cases for which the recordation requirement will apply as of January 1, 2007 – that is, all crimes enumerated in R. 3:17(a).¹ (See Attachment 2).

In addition, the Division of Criminal Justice created a separate form for completion by Prosecutors to capture data involving recordation of custodial interrogations from that perspective. (See Attachment 3).

Section II of this Report sets forth the implementation of the recording requirement as required by the Administrative Determination issued by the Court on October 14, 2005.

¹ The applicable crimes are 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. Note: On January 17, 2006 Attorney General Harvey issued Directive 2006-02. That directive requires recordation of custodial interrogations in all third degree crimes effective January 1, 2007. See Attachment 3.

II. Implementation of Recording Requirement

This report will provide information on recordation of custodial interrogations that have taken place in murder, aggravated manslaughter or manslaughter cases since the effective date of the recordation requirement. It will not detail information regarding recordation on cases involving the other crimes set forth in R. 3:17 as the implementation date for those crimes, January 1, 2007, is still too recent to provide any meaningful data.

As of May 1, 2007, the Attorney General's Office received forms in 111 cases in which the defendant was (1) indicted on murder, aggravated manslaughter or manslaughter charges, and (2) the offense occurred on or after January 1, 2006.² Reports from the county prosecutors indicate that custodial interrogations were recorded in all but three cases. One case involved a juvenile matter and the other two involved criminal defendants. Prosecutors noted, however, that all three cases fell under one of the exceptions to the recording requirement. The two criminal cases involved spontaneous statements, while the juvenile matter involved a juvenile who was not a suspect at the time of the interrogation. As custodial interrogations were recorded in all but three cases, all of which involved an exception to the recordation requirement, it is clear that law enforcement is complying with the Court's Administrative Determination.

In twenty-eight cases the recording was done via audio device, while in twenty-one cases the recording was done via video device. In fifty-nine cases the recording

² The form used by the Attorney General's Office is completed by prosecutors after the defendant is indicted. This differs from the form promulgated by the Administrative Office of the Courts, which is completed by judges (1) after a trial, or (2) after the judge has ruled on the admissibility of an unrecorded statement.

was done via a combination of audio and video. As previously noted, in three cases statements were not recorded.

To date, the Administrative Office of the Courts has not received any completed forms from judges. As of May 1, 2007, none of the 111 cases in which county prosecutors completed recordation forms resulted in a homicide trial. In addition, as noted above, only three cases involved unrecorded statements. In the two criminal cases that involved unrecorded statements, the judge has not yet ruled on the admissibility of those statements. The juvenile matter was not waived up to the Superior Court. Consequently, no cases have yet met the criteria that trigger completion of the AOC's form.

ATTACHMENT 1

**(Supreme Court's Administrative
Determination of October 14,
2005)**

SUPREME COURT OF NEW JERSEY
ADMINISTRATIVE DETERMINATION

RE: REPORT OF THE SPECIAL COMMITTEE
ON THE RECORDATION OF CUSTODIAL INTERROGATIONS

In deciding State v. Thomahl Cook, 179 N.J. 533 (2004), the Supreme Court indicated that it would create a Special Committee on the Recordation of Custodial Interrogations. The members of the Special Committee were appointed by the Chief Justice in August of 2004. The Special Committee filed its formal report with the Court on April 15, 2005, and the Court published the report for comment from the Bar and the public. On the close of the comment period, the Court reviewed the submissions it received and discussed the findings and recommendations of the Special Committee.

The Special Committee summarized its Recommendations as follows:

1. The Supreme Court should exercise its supervisory authority over the administration of criminal justice to encourage electronic recordation of custodial interrogations.
2. Electronic recordation may be accomplished through either audio or audio-visual recording. The method of recording should be left to the discretion of law enforcement.
3. Electronic recording should occur when a custodial interrogation is being conducted in a place of detention and should begin at, and include, the point at which Miranda warnings are required to be given.
4. Electronic recording of custodial interrogations occurring in a place of detention should occur when the adult or juvenile being interrogated is charged with an offense requiring the use of a warrant pursuant to Rule 3:3-1(c).
5. The requirement for electronic recordation of custodial interrogations occurring in a place of detention should not apply in circumstances where:
 - (a) a statement made during a custodial interrogation is not recorded because electronic recording of the interrogation is not feasible,
 - (b) a spontaneous statement is made outside the course of an interrogation,
 - (c) a statement is made in response to questioning that is routinely asked during the processing of the arrest of the suspect,
 - (d) 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,

- (e) a statement is made during a custodial interrogation that is conducted out-of-state,
 - (f) 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,
 - (g) 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.
6. The failure to electronically record a defendant's custodial interrogation should be a factor considered by the trial court in determining the admissibility of a statement, and by the jury in determining what weight, if any, to give to the statement. The Court should adopt a court rule and model jury charge to implement this recommendation.
 7. The requirement that electronic recording occur when a custodial interrogation is being conducted in a place of detention should become effective January 1, 2006 for homicide offenses and January 1, 2007 for all other offenses specified in proposed Rule 3:17(a).
 8. The electronic recordation requirement should not mandate that the defendant be notified prior to electronic recordation.
 9. The Supreme Court should periodically review the implementation of the recording requirement.

With one partial exception, the Court has approved the Recommendations as submitted by the Special Committee, substantially for the reasons expressed in the Committee's report. This includes, as part of its acceptance of Recommendation 6, the Court's adoption of Rule 3:17, Electronic Recordation, by a separate Court Order, a copy of which is appended to this Administrative Determination.

The Court's sole modification of the Committee's proposals also arises out of Recommendation 6. In proposing Model Jury Charge language, the Special Committee used a phrase that does not follow the language of new Rule 3:17. The Court-approved Model Jury Charges eliminate that inconsistency. As amended, they also are appended to this Administrative Determination.

Consistent with the Special Committee's Recommendation 9, the Court is charging the Administrative Director of the Courts and the Criminal Practice Committee with the responsibility to work with the Office of the Attorney General and the County Prosecutors to review the implementation of the recordation requirement. The Court looks to receive a status report on this subject by June 1, 2007, or sooner if circumstances warrant it.

The Supreme Court wishes to extend its thanks and appreciation to all of the members of the Special Committee. Its report and recommendations reflect the results of an extraordinary effort by all concerned.

For the Court:
/s/ Stephen W. Townsend, Esq.
Clerk of the Supreme Court

October 14, 2005

APPENDIX A

SUPREME COURT OF NEW JERSEY

IT IS ORDERED that the attached Rule 3:17, Electronic Recordation, is adopted, to take effect January 1, 2006, in respect of all homicide offenses and January 1, 2007, for all other offenses specified in paragraph (a) of the Rule.

For the Court:

/s/ Deborah T. Poritz

C.J.

Dated: October 14, 2005

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.

APPENDIX B

MODEL JURY CHARGES

JURY CHARGE TO BE GIVEN WHEN STATEMENT OF DEFENDANT HAS BEEN ADMITTED AFTER FINDING BY COURT THAT POLICE INEXCUSABLY FAILED TO ELECTRONICALLY RECORD STATEMENT

[N.B., Material deleted from the report of the Special Committee is indicated by a ~~strikeout~~. New material is underscored. The changes made by the Court to the proposed Charges are solely to make them consistent with the language of Rule 3:17(a). Note further that the offenses to which the Rule requirement applies are being phased in. Until January 1, 2007, only homicide offenses will require the use of the appropriate version of the Model Jury Charge.]

A. Charge to be Given When State Offers Statement as Direct Evidence of Defendant's Guilt:

There is for your consideration in this case a [written or oral] statement allegedly made by the defendant.

The prosecutor asserts that the defendant made the statement and that the information contained in it is credible. **[HERE STATE DEFENDANT'S ASSERTIONS, IF ANY.]**

It is your function to determine (1) whether the statement was actually made, and (2) whether it, or any portion of it, is credible.

To make that decision, you should take into consideration the circumstances and facts as to how the statement was made.

[HERE DISCUSS EVIDENCE ADDUCED BEFORE THE JURY RELATING TO SUCH FACTS AND CIRCUMSTANCES WHICH MAY INCLUDE BUT NEED NOT BE LIMITED TO RENDITION OF MIRANDA WARNINGS AND WAIVER; TIME AND PLACE OF INTERROGATION; TREATMENT OF DEFENDANT BY LAW ENFORCEMENT OFFICIALS; DEFENDANT'S MENTAL AND PHYSICAL CONDITION; AND WHETHER THE STATEMENT IS DEEMED VOLUNTARY UNDER ALL OF THE FACTS AND CIRCUMSTANCES.]

Among the factors you may consider in deciding whether or not the defendant actually gave the alleged statement and if so, whether any or all of the statement is

credible, is the failure of law enforcement officials to make an electronic recording of the interrogation conducted and the defendant's alleged statement itself. ~~New Jersey law favors~~ Our Rules require the electronic recording of interrogations by law enforcement officers when a defendant is charged with [insert applicable offenses] so as to ensure that you will have before you a complete picture of all circumstances under which an alleged statement of a defendant was given, so that you may determine whether a statement was in fact made and if so, whether it was accurately reported by State's witnesses and whether it was made voluntarily or is otherwise reliable or trustworthy. Where there is a failure to electronically record an interrogation, you have not been provided with a complete picture of all of the facts surrounding the defendant's alleged statement and the precise details of that statement. By way of example, you cannot hear the tone or inflection of the defendant's or interrogator's voices, or hear first hand the interrogation, both questions and responses, in its entirety. Instead you have been presented with a summary based upon the recollections of law enforcement personnel. Therefore, you should weigh the evidence of the defendant's alleged statement with great caution and care as you determine whether or not the statement was in fact made and if so, whether what was said was accurately reported by State's witnesses, and what weight, if any, it should be given in your deliberations. The absence of an electronic recording permits but does not compel you to conclude that the State has failed to prove that a statement was in fact given and if so, accurately reported by State's witnesses.

[IF ORAL STATEMENT, CHARGE THE FOLLOWING PARAGRAPH]

Furthermore, in considering whether or not an oral statement was actually made by the defendant, and if made, whether it is credible, you should receive, weigh, and

consider this evidence with caution as well, based on the generally recognized risk of misunderstanding by the hearer, or the ability of the hearer to recall accurately the words used by the defendant. The specific words used and the ability to remember them are important to the correct understanding of any oral communication because the presence, or absence, or change of a single word may substantially change the true meaning of even the shortest sentence.

If, after consideration of all these factors, you determine that the statement was not actually made, then you must disregard the statement completely.

If you find that the statement was made, you may give it what weight you think appropriate.

B. Charge to be Given When Statement of Defendant is Introduced by the State for the Purpose of Inferring the Defendant's Effort to Avoid Arrest and/or Prosecution Due to Consciousness of Guilt:

There is for your consideration in this case a [written or oral] statement allegedly made by the defendant.

The prosecutor asserts that the statement was made by the defendant, that it was knowingly false when it was made, and that you may draw inferences from this as to the defendant's state of mind at that time. **[HERE STATE DEFENDANT'S POSITION, IF ANY.]**

It is your function to determine whether the statement was actually made. In considering whether or not the statement was made by the defendant, you may taken into consideration the circumstances and facts surrounding the giving of the statement.

[HERE DISCUSS FACTS AND CIRCUMSTANCES SURROUNDING THE GIVING OF THE STATEMENT.]

Among the factors you may consider in deciding whether or not the defendant actually gave the alleged statement is the failure of law enforcement officials to make an electronic recording of the interrogation conducted and the alleged statement itself. ~~New Jersey law favors~~ Our Rules require the electronic recording of interrogations by law enforcement officers when a defendant is charged with [insert applicable offenses]. This is done to ensure that you will have before you a complete picture of the circumstances under which an alleged statement of a defendant was given, so that you may determine whether a statement was in fact made and accurately recorded. Where there is failure to electronically record an interrogation, you have not been provided with a complete picture of all the facts surrounding the defendant's alleged statement and the precise details of that statement. By way of example, you cannot hear the tone or inflection of the defendant's or interrogator's voices, or hear first hand the interrogation, both questions and responses, in its entirety. Instead you have been presented with a summary based upon the recollections of law enforcement personnel. Therefore, you should weigh the evidence of the defendant's alleged statement with great caution and care as you determine whether or not the statement was in fact made and if so whether it was accurately reported by State's witnesses, and what, if any, weight it should be given in your deliberations. The absence of an electronic recording permits but does not compel you to conclude that the State has failed to prove that a statement was in fact given and if so, accurately reported by State's witnesses.

[IF ORAL STATEMENT—CHARGE THE FOLLOWING PARAGRAPH]

Furthermore, in considering whether or not an oral statement was actually made by the defendant, and, if made, accurately reported by State's witnesses, you should

receive, weigh, and consider this evidence with caution based on the generally recognized risk of misunderstanding by the hearer, or the ability of the hearer to recall accurately the words used by the defendant. The specific words used and the ability to remember them are important to the correct understanding of any oral communication because the presence, or absence, or change of a single word may substantially change the true meaning of even the shortest sentence.

If after consideration of all of the evidence you determine that the statement was not made, then you should disregard it completely. If you find that the statement was made, you must determine what inferences you can draw from it and what weight, if any, to give to it.

CAVEAT

[IF THE STATE IS ALLEGING THAT PORTIONS OF THE STATEMENT ARE TRUE AND ARE ADMISSIONS OF GUILT WHILE OTHERS ARE FALSE AND EVIDENCE HIS EFFORT TO AVOID PROSECUTION AND/OR CONVICTION OR OTHERWISE EVIDENCE CONSCIOUSNESS OF GUILT, IT MAY BE NECESSARY TO GIVE PORTIONS OF BOTH A & B CHARGES.]

ATTACHMENT 2

(Administrative Directive #11-06)

[Questions or comments may
be directed to 609-292-4638.]

Directive # 11-06

**TO: ASSIGNMENT JUDGES
 CRIMINAL DIVISION JUDGES**

FROM: PHILIP S. CARCHMAN

**SUBJ: NEW CRIMINAL FORM – RECORDATION OF CUSTODIAL INTERROGATIONS
 REPORTING FORM**

DATE: JULY 18, 2006

This Directive promulgates the *Recordation of Custodial Interrogations Reporting Form*. The form is intended to capture data regarding the custodial interrogations recording requirement for murder, aggravated manslaughter, and manslaughter crimes occurring on or after January 1, 2006.

Following State v. Thomahl Cook, 179 N.J. 533 (2004), the Chief Justice appointed the Special Committee on the Recordation of Custodial Interrogations to make recommendations on the use of electronic recordation of custodial interrogations. In April 2005, the Special Committee submitted its report to the Supreme Court. The report, as posted at <http://www.judiciary.state.nj.us/notices/reports/cookreport.pdf>, included a recommendation that "the Supreme Court...periodically review the implementation of the recording requirement" (Recommendation 9).

On October 14, 2005, the Supreme Court issued its Administrative Determination on the Report of the Special Committee, inter alia giving "the Administrative Director of the Courts and the Criminal Practice Committee...the responsibility to work with the Office of the Attorney General and the County Prosecutors to review the implementation of the recordation requirement." The Court requested a status report by June 1, 2007, or sooner if the circumstances warrant it.

To meet this requirement, the Criminal Practice Committee and the Conference of Criminal Presiding Judges recommend use of the attached new form. Specifically, judges should completed and submit this form in cases where: (1) the defendant was charged with murder, aggravated manslaughter or manslaughter; and (2) the offense

occurred on or after January 1, 2006; and, (3) the defendant was tried or the State filed a notice of intent to rely on an unrecorded statement claiming an exception to the recording requirement, and the court made a ruling thereon.

Criminal judges thus should begin using this form immediately. The Division of Criminal Justice has created a separate form for completion by Prosecutors to capture data involving recordation of custodial interrogations from that perspective.

Any questions or comments regarding this Directive, or the appended form, may be directed to Assistant Director Joseph J. Barraco by e-mail or by telephone (609-292-4638).

P.S.C.

Attachment

cc: Chief Justice Deborah T. Poritz
Attorney General Zulima Farber
Public Defender Yvonne Smith Segars
County Prosecutors
Gregory Paw, DCJ Director
AOC Directors and Assistant Directors
Regional Deputy Public Defenders

Trial Court Administrators
Criminal Division Managers
Francis W. Hoeber, Special Assistant
Steven D. Bonville, Special Assistant
Vance D. Hagins, Criminal Practice
John Wieck, Criminal Practice
Melaney S. Payne, Criminal Practice

RECORDATION OF CUSTODIAL INTERROGATIONS REPORTING FORM

This form is to be filled out by the trial judge in cases where:

- A. The defendant was charged with a murder, aggravated manslaughter or manslaughter,

AND

- B. The offense occurred on or after January 1, 2006,

AND

- C. The defendant was tried OR the State filed a notice of intent to rely on an unrecorded statement claiming an exception to the recording requirement, and the Court made a ruling thereon.

1. Defendant's Name: _____

2. County: _____

3. Charge at Indictment:

☐ Murder ☐ Aggravated Manslaughter ☐ Manslaughter

4. Charge that the defendant pled guilty to, was convicted of, or acquitted of:

☐ Murder ☐ Aggravated Manslaughter
☐ Manslaughter ☐ Other: Please list _____

5. The defendant:

☐ Pled guilty ☐ Was convicted at trial ☐ Acquitted at trial

6. Was there a recorded or unrecorded statement made by the defendant during a custodial interrogation made in a place of detention? (See R. 3:17)

☐ No statement ☐ Yes. Recorded statement
☐ Yes. Unrecorded statement. If yes, answer question 8.

7. What method of electronic recording was used? (check one)

☐ Audio ☐ Video ☐ Both

8. Did the State file a notice of intent to rely on an unrecorded statement?

☐ No. If no, answer question 12.
☐ Yes. If yes, answer questions 9 through 12.

Promulgated by
Directive #11-06
(July 18, 2006)
CN 10779

9. The exception to the recording requirement that the State claimed was present was that:

- ☐ Electronic recordation was not feasible
- ☐ The statement was a spontaneous statement made outside the course of the interrogation.
- ☐ The statement was made in response to questioning that is routinely asked during the processing of the arrest of a suspect.
- ☐ The statement was made by a suspect who indicated, prior to the statement that he or she would participate in the interrogation only if it were not recorded.
- ☐ The statement was made during a custodial interrogation that was conducted out-of-state.
- ☐ The statement was given at a time when the accused was not a suspect for the crime to which that statement relates while the accused was being interrogated for a different crime that does not require recordation.
- ☐ The interrogation during which the statement was given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed.
- ☐ Other: Explain _____

10. Did the judge find that the exception claimed by the State was present?

- ☐ No. The issue was never decided by the trial judge.
- ☐ No, the judge found that another exception applied. If no, answer question 11.
- ☐ Yes

11. Exception found by judge:

- ☐ Electronic recordation was not feasible.
- ☐ The statement was a spontaneous statement made outside the course of the interrogation.
- ☐ The statement was made in response to questioning that is routinely asked during the processing of the arrest of a suspect.
- ☐ The statement was made by a suspect who indicated, prior to the statement that he or she would participate in the interrogation only if it were not recorded.
- ☐ The statement was made during a custodial interrogation that was conducted out-of-state.
- ☐ The statement was given at a time when the accused was not a suspect for the crime to which that statement relates while the accused was being interrogated for a different crime that does not require recordation.
- ☐ The interrogation during which the statement was given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed.
- ☐ Other: Explain _____

12. Name of Judge: _____

Completed original forms should be mailed to:

Administrative Office of the Courts
Criminal Practice Division
P.O. Box 982
Trenton, New Jersey 08625

(Administrative Directive #22-06)

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

PHILIP S. CARCHMAN, J.A.D.
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS



RICHARD J. HUGHES JUSTICE COMPLEX
PO Box 037
TRENTON, NEW JERSEY 08625-0037

[Questions or comments may
be directed to 609-292-4638.]

Directive # 22-06
[Supersedes Directive #11-06]

**TO: ASSIGNMENT JUDGES
 CRIMINAL DIVISION JUDGES**

FROM: PHILIP S. CARCHMAN

**SUBJ: NEW CRIMINAL FORM – RECORDATION OF CUSTODIAL INTERROGATIONS
 REPORTING FORM**

DATE: DECEMBER 19, 2006

This supersedes Directive #11-06, which was issued July 18, 2006. That earlier Directive promulgated a *Recordation of Custodial Interrogations Reporting Form*, intended to capture data regarding the custodial interrogations recording requirement for a limited category of cases -- murder, aggravated manslaughter, and manslaughter crimes -- occurring on or after January 1, 2006. This Directive promulgates a revised *Recordation of Custodial Interrogations Reporting Form* for use in an expanded category of cases, specifically, custodial interrogations conducted in any offense enumerated in Rule 3:17(a). The remainder of this Directive essentially restates the substance of superseded Directive #11-06.

Following State v. Thomahl Cook, 179 N.J. 533 (2004), the Chief Justice appointed the Special Committee on the Recordation of Custodial Interrogations to make recommendations on the use of electronic recordation of custodial interrogations. In April 2005, the Special Committee submitted its report to the Supreme Court. The report, as posted at <http://www.judiciary.state.nj.us/notices/reports/cookreport.pdf>, included a recommendation that "the Supreme Court...periodically review the implementation of the recording requirement" (Recommendation 9).

On October 14, 2005, the Supreme Court issued its Administrative Determination on the Report of the Special Committee. That document provided that the recordation requirement would become effective January 1, 2006 for homicide offenses and January 1, 2007 for all other offenses specified in Rule 3:17(a). The Administrative Determination also gave "the Administrative Director of the Courts and the Criminal Practice Committee...the responsibility to work with the Office of the Attorney General

and the County Prosecutors to review the implementation of the recordation requirement." The Court requested a status report by June 1, 2007, or sooner if the circumstances warrant it.

To meet this requirement, the Criminal Practice Committee and the Conference of Criminal Presiding Judges recommended use of the Recordation of Custodial Interrogations Reporting Form promulgated by Directive #11-06 for homicide cases. That Directive thus advised judges to complete and submit the form in cases where: (1) the defendant was charged with murder, aggravated manslaughter or manslaughter; and (2) the offense occurred on or after January 1, 2006; and, (3) the defendant was tried or the State filed a notice of intent to rely on an unrecorded statement claiming an exception to the recording requirement, and the court made a ruling thereon.

In light of the Court's direction for a status report on implementation of the recordation requirement, in order to collect data in the expanded category of cases that the recordation requirement will apply to as of January 1, 2007 – that is, all case types enumerated in Rule 3:17(a) – the Criminal Practice Committee has developed a revised version of the previously promulgated Recordation of Custodial Interrogations Reporting Form.

Criminal judges thus should use this Revised Recordation of Custodial Interrogations Reporting Form – including for those cases that were covered by the initial version of the form – beginning January 1, 2007. The Division of Criminal Justice has created a separate form for completion by Prosecutors to capture data involving recordation of custodial interrogations from that perspective.

Any questions or comments regarding this Directive, or the appended revised form, may be directed to Assistant Director Joseph J. Barraco by e-mail or by telephone (609-292-4638).

P.S.C.

Attachment

cc: Chief Justice James R. Zazzali
Attorney General Stuart Rabner
Public Defender Yvonne Smith Segars
County Prosecutors
Gregory Paw, DCJ Director
AOC Directors and Assistant Directors
Regional Deputy Public Defenders

Trial Court Administrators
Criminal Division Managers
Francis W. Hoeber, Special Assistant
Steven D. Bonville, Special Assistant
Vance D. Hagins, Criminal Practice
John Wieck, Criminal Practice
Melaney S. Payne, Criminal Practice

RECORDATION OF CUSTODIAL INTERROGATIONS REPORTING FORM

This form is to be filled out by the trial judge in cases where:

- A. The defendant was 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, 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,

AND

- B. (1) The murder, aggravated manslaughter, or manslaughter offense occurred on or after January 1, 2006

OR

- (2) Any other crime listed under paragraph A occurred on or after January 1, 2007,

AND

- C. The defendant was tried OR the State filed a notice of intent to rely on an unrecorded statement claiming an exception to the recording requirement, and the Court made a ruling thereon.

1. Defendant's Name: _____

2. County: _____

3. Charge at Indictment:

- | | |
|---|---|
| <input type="checkbox"/> Murder | <input type="checkbox"/> Aggravated Arson |
| <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Arson |
| <input type="checkbox"/> Aggravated Manslaughter | <input type="checkbox"/> Burglary |
| <input type="checkbox"/> Manslaughter | <input type="checkbox"/> Violations of Chapter 35 of Title 2C that constitute First or Second Degree Crimes |
| <input type="checkbox"/> Robbery | <input type="checkbox"/> Crime involving the Possession or Use of a Firearm |
| <input type="checkbox"/> Aggravated Sexual Assault | <input type="checkbox"/> Conspiracy or Attempt to commit |
| <input type="checkbox"/> Sexual Assault | |
| <input type="checkbox"/> Aggravated Criminal Sexual Contact | |
| <input type="checkbox"/> Criminal Sexual Contact | |
| <input type="checkbox"/> Second Degree Aggravated Assault | |

4. Charge that the defendant pled guilty to, was convicted of, or acquitted of:

- | | |
|---|---|
| <input type="checkbox"/> Murder | <input type="checkbox"/> Aggravated Arson |
| <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Arson |
| <input type="checkbox"/> Aggravated Manslaughter | <input type="checkbox"/> Burglary |
| <input type="checkbox"/> Manslaughter | <input type="checkbox"/> Violations of Chapter 35 of Title 2C that constitute First or Second Degree Crimes |
| <input type="checkbox"/> Robbery | <input type="checkbox"/> Crime involving the Possession or Use of a Firearm |
| <input type="checkbox"/> Aggravated Sexual Assault | <input type="checkbox"/> Conspiracy or Attempt to commit |
| <input type="checkbox"/> Sexual Assault | |
| <input type="checkbox"/> Aggravated Criminal Sexual Contact | |
| <input type="checkbox"/> Criminal Sexual Contact | |
| <input type="checkbox"/> Second Degree Aggravated Assault | <input type="checkbox"/> Other _____ |

5. The defendant:

- ☐ Pled guilty ☐ Was convicted at trial ☐ Was acquitted at trial

6. Was there a recorded or unrecorded statement made by the defendant during a custodial interrogation made in a place of detention? (See R. 3:17)

- ☐ No statement
☐ Yes. Recorded statement
☐ Yes. Unrecorded statement. If yes, answer question 8.

7. What method of electronic recording was used? (check one)
☐ Audio ☐ Video ☐ Both
8. Did the State file a notice of intent to rely on an unrecorded statement?
☐ No. If no, answer question 12.
☐ Yes. If yes, answer questions 9 through 12.
9. The exception to the recording requirement that the State claimed was present was that:
☐ Electronic recordation was not feasible.
☐ The statement was a spontaneous statement made outside the course of the interrogation.
☐ The statement was made in response to questioning that is routinely asked during the processing of the arrest of a suspect.
☐ The statement was made by a suspect who indicated, prior to the statement, that he or she would participate in the interrogation only if it were not recorded.
☐ The statement was made during a custodial interrogation that was conducted out-of-state.
☐ The statement was given at a time when the accused was not a suspect for the crime to which that statement relates while the accused was being interrogated for a different crime that does not require recordation.
☐ The interrogation during which the statement was given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed.
☐ Other: Explain _____
10. Did the judge find that the exception claimed by the State was present?
☐ No. The issue was never decided by the trial judge.
☐ No. The judge found that another exception applied. If no, answer question 11.
☐ Yes.
11. Exception found by judge:
☐ Electronic recordation was not feasible.
☐ The statement was a spontaneous statement made outside the course of the interrogation.
☐ The statement was made in response to questioning that is routinely asked during the processing of the arrest of a suspect.
☐ The statement was made by a suspect who indicated, prior to the statement, that he or she would participate in the interrogation only if it were not recorded.
☐ The statement was made during a custodial interrogation that was conducted out-of-state.
☐ The statement was given at a time when the accused was not a suspect for the crime to which that statement relates while the accused was being interrogated for a different crime that does not require recordation.
☐ The interrogation during which the statement was given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed.
☐ Other: Explain _____
12. Name of Judge: _____

Completed, original forms should be mailed to:

Administrative Office of the Courts
Criminal Practice Division
P.O. Box 982
Trenton, New Jersey 08625

ATTACHMENT 3

**(Attorney General's Electronic
Recordation Form)**

ATTORNEY GENERAL DIRECTIVE, 2006-02

SUPERSEDING DIRECTIVE REGARDING ELECTRONIC RECORDATION OF STATIONHOUSE INTERROGATIONS

(January 17, 2006)

On December 17, 2004, the Attorney General and the County Prosecutors' Association amended a prior policy statement so as to require that when a statement is obtained following a stationhouse interrogation in any case involving a first, second or third degree crime (or any case involving a juvenile age 14 or older suspected of committing a crime enumerated in N.J.S.A. 2A:4A-26a(2)(a)), the law enforcement entity involved either video or audio record any final statement obtained, or any acknowledgment by the suspect of the content of a written statement. That Amended Policy also put into effect a staggered time table with regard to effective dates. For all first and second degree crimes, the electronic recording requirement would go into effect on September 1, 2005. For third degree and juvenile cases, the requirement was to go into effect on January 1, 2006. The Amended Policy also noted that the Attorney General, in consultation with the County Prosecutors' Association, would subsequently make a final determination as to whether to issue a law enforcement directive "requiring expansion of the electronic recordation policy so as to cover the entire stationhouse interrogation process in certain cases."

Thereafter, on October 14, 2005, the New Jersey Supreme Court adopted the recommendations of its Special Committee on the Recordation of Custodial Interrogations. Most significantly, the recommendations included a requirement that police electronically record the entirety of all custodial interrogations occurring in a place of detention for cases in which the adult or juvenile being interrogated is charged with an offense requiring the use of a warrant pursuant to R. 3:3-1c. The effective dates for that requirement are staggered so as to go into effect for all covered homicide cases on January 1, 2006, and for all other offenses specified in R. 3:3-1c on January 1, 2007.

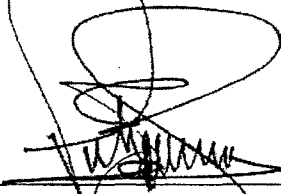
Upon review and consideration of these two sets of requirements, the Attorney General and the County Prosecutors' Association have determined that having different time frames may be difficult to implement and may cause confusion in the law enforcement community. Accordingly, the Attorney General, the Director of the Division of Criminal Justice, and the County Prosecutors have jointly determined that the two sets of requirements must be harmonized to the greatest extent possible. Electronic recording is a valuable tool to law enforcement. It insures that the suspect's or defendant's statement is accurately recorded and voluntarily made. Electronic recording also protects

detectives/investigators and prosecutors from claims of fabrication, omission or lack of thoroughness.

It is hereby adopted that, consistent with the Supreme Court's actions of October 14, 2005, law enforcement officials shall electronically record the entirety of all custodial interrogations occurring in a place of detention. This recording requirement shall apply to all first, second and third degree crimes. Also, it shall apply to adults and juveniles alike.

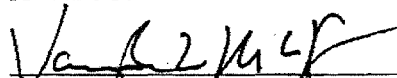
The effective dates for the above requirements are staggered. The recording requirement for all homicides listed in R. 3:17 shall go into effect on January 1, 2006. The recording requirement for all other first and second degree crimes shall go into effect on October 1, 2006. The recording requirement for all third degree crimes shall go into effect on January 1, 2007.

All existing policy statements and Directives that are in any way inconsistent with the foregoing provisions are hereby superseded and rescinded.



Peter C. Harvey, Attorney General

ATTEST:



Vaughn L. McKoy, Director

Dated: January 17, 2006

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE**

MEMORANDUM

TO: All County Prosecutors

FROM: Paul H. Heinzl
Deputy Attorney General

DATE: March 6, 2006

SUBJECT: Data Collection Memorializing Electronic Recording of Custodial Interrogations

As you know, the Supreme Court adopted the recommendation of its Special Committee; to periodically review the implementation of the electronic recording requirements set forth in R. 3:17. Representatives of this office have met with AOC staff members and, with the input of several Assistant Prosecutors from various counties, devised a data collection form designed to measure the level of compliance by the law enforcement community with the electronic recording requirement. That form is attached. It is also available on the web at either <http://www.state.nj.us/lps/dcj/directiv.htm>, or <http://www.njdcj.org/agguide.htm#stationhouse>.

The attached form is to be completed in each case in which the following two conditions both exist: (1) the defendant is charged in an indictment/accusation/juvenile complaint with a crime for which the electronic recording requirements in R. 3:17 apply (murders, manslaughters and aggravated manslaughters committed on or after January 1, 2006, and all other offenses listed in R. 3:17 committed on or after January 1, 2007); and (2) the defendant was subjected to a custodial interrogation in a "place of detention" as defined by the Rule.¹ The form is to be completed at the time of indictment by the Assistant Prosecutor assigned to the case.

The data from these forms will ultimately be compiled and included in a status report submitted to the Court on or before June 1, 2007. Please forward all completed forms to the address provided at the bottom of the form.

c: Zulima V. Farber, Attorney General
Anne Milgram, First Assistant Attorney General
Gregory A. Paw, Director

¹ Because this form is designed solely to measure compliance with the Supreme Court's Rule-based requirements, it is not intended that prosecutors complete it for those crimes covered by Attorney General Directive 2006-2, but which do not fall within R. 3:17.

Boris Moczula, AAG, Appellate Bureau Chief

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET - BOX 086 - TRENTON, NJ 08625-0086
PHONE: 609-984-6500

MEMORIALIZATION OF ELECTRONIC RECORDATION OF
CUSTODIAL INTERROGATION OF SUSPECT IN CUSTODIAL STATION HOUSE SETTING

County and Indictment No.: _____

Assistant Prosecutor Preparing Form: _____

Interviewing Officer(s) and Police Department: _____

Type of Crime Charged in Indictment for Which Recordation is Required Under R. 3:17:

Defendant:

Date(s) of Interrogation:

(a) Was the interrogation electronically recorded? (check one)

Yes

☐

No

☐

If "Yes" answer (b).

If "No" answer (c).

(b) What method of electronic recording was used? (check one)

Video

☐

Audio

☐

Both

☐

(c) Reason not electronically recorded, if applicable. (check all that apply)

_____ Electronic recordation was not feasible.

_____ The statement was a spontaneous statement made outside the course of the interrogation.

_____ The statement was made in response to questioning that is routinely asked during the processing of the arrest of a suspect.

_____ The statement was made by a suspect who indicated, prior to the statement, that he or she would participate in the interrogation only if it were not recorded.

_____ The statement was made during a custodial interrogation that was conducted out-of-state.

_____ The statement was given at a time when the accused was not a suspect for the crime to which that statement relates while the accused was being interrogated for a different crime that does not require recordation.

_____ The interrogation during which the statement was given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed:

_____ Other: (Explain below)

Completed original forms should be mailed to:

Division of Criminal Justice - Appellate Bureau
25 Market Street - Box 086 - Trenton, NJ 08625-0086