§ 60.45 Rules of evidence; admissibility of statements of defendants.

1. Evidence of a written or oral confession, admission, or other statement made by a defendant with respect to his participation or lack of participation in the offense charged, may not be received in evidence against him in a criminal proceeding if such statement was involuntarily made.

2. A confession, admission or other statement is "involuntarily made" by a defendant when it is obtained from him:

(a) By any person by the use or threatened use of physical force upon the defendant or another person, or by means of any other improper conduct or undue pressure which impaired the defendant's physical or mental condition to the extent of undermining his ability to make a choice whether or not to make a statement; or

(b) By a public servant engaged in law enforcement activity or by a person then acting under his direction or in cooperation with him:

(i) by means of any promise or statement of fact, which promise or statement creates a substantial risk that the defendant might falsely incriminate himself; or

(ii) in violation of such rights as the defendant may derive from the constitution of this state or of the United States.

3. (a) Where a person is subject to custodial interrogation by a public servant at a detention facility, the entire custodial interrogation, including the giving of any required advice of the rights of the individual being questioned, and the waiver of any rights by the individual, shall be recorded by an appropriate video recording device if the interrogation involves a class A-1 felony, except one defined in article two hundred twenty of the penal law; felony offenses defined in section 130.95 and 130.96 of the penal law; or a felony offense defined in article one hundred twenty-five or one hundred thirty of such law that is defined as a class B violent felony offense in section 70.02 of the penal law. For purposes of this paragraph, the term "detention facility" shall mean a police station, correctional facility, holding facility for prisoners, prosecutor's office or other facility where persons are held in detention in connection with criminal charges that

have been or may be filed against them.

(b) No confession, admission or other statement shall be subject to a motion to suppress pursuant to subdivision three of section 710.20 of this chapter based solely upon the failure to video record such interrogation in a detention facility as defined in paragraph (a) of this subdivision. However, where the people offer into evidence a confession, admission or other statement made by a person in custody with respect to his or her participation or lack of participation in an offense specified in paragraph (a) of this subdivision, that has not been video recorded, the court shall consider the failure to record as a factor, but not as the sole factor, in accordance with paragraph (c) of this subdivision in determining whether such confession, admission or other statement shall be admissible.

(c) Notwithstanding the requirement of paragraph (a) of this subdivision, upon a showing of good cause by the prosecutor, the custodial interrogation need not be recorded. Good cause shall include, but not be limited to:

(i) If electronic recording equipment malfunctions.

(ii) If electronic recording equipment is not available because it was otherwise being used.

(iii) If statements are made in response to questions that are routinely asked during arrest processing.

(iv) If the statement is spontaneously made by the suspect and not in response to police questioning.

(v) If the statement is made during an interrogation that is conducted when the interviewer is unaware that a qualifying offense has occurred.

(vi) If the statement is made at a location other than the "interview room" because the suspect cannot be brought to such room, e.g., the suspect is in a hospital or the suspect is out of state and that state is not governed by a law requiring the recordation of an interrogation.

(vii) If the statement is made after a suspect has refused to participate in the interrogation if it is recorded, and appropriate effort to document such refusal is made.

(viii) If such statement is not recorded as a result of an inadvertent error or oversight, not the result of any intentional conduct by law enforcement personnel.

(ix) If it is law enforcement's reasonable belief that such recording

would jeopardize the safety of any person or reveal the identity of a confidential informant.

(x) If such statement is made at a location not equipped with a video recording device and the reason for using that location is not to subvert the intent of the law. For purposes of this section, the term "location" shall include those locations specified in paragraph (b) of subdivision four of section 305.2 of the family court act.

(d) In the event the court finds that the people have not shown good cause for the non-recording of the confession, admission, or other statement, but determines that a non-recorded confession, admission or other statement is nevertheless admissible because it was voluntarily made then, upon request of the defendant, the court must instruct the jury that the people's failure to record the defendant's confession, admission or other statement as required by this section may be weighed as a factor, but not as the sole factor, in determining whether such confession, admission or other statement was voluntarily made, or was made at all.

(e) Video recording as required by this section shall be conducted in accordance with standards established by rule of the division of criminal justice services.