

1 Rule 29A. Visual recording of statement or testimony of child victim or witness of sexual or
2 physical abuse - Conditions of admissibility.

3 ~~(1)~~(a) In any delinquency proceeding or proceeding under Section 78-3a-602 or Section 78-
4 3a-603 concerning a charge of child abuse or of a sexual offense against a child, the oral
5 statement of a victim or witness younger than 14 years of age may be recorded prior to the filing
6 of a petition, and upon motion and for good cause shown is admissible as evidence in any court
7 proceeding regarding the offense if all of the following conditions are met:

8 ~~(a)~~(a)(1) no attorney for either party is in the child's presence when the statement is
9 recorded;

10 ~~(b)~~(a)(2) the recording is visual and aural and is recorded on film or videotape or by other
11 electronic means;

12 ~~(c)~~(a)(3) the recording equipment is capable of making an accurate recording, the operator of
13 the equipment is competent, and the recording is accurate and has not been altered;

14 ~~(d)~~(a)(4) each voice in the recording is identified;

15 ~~(e)~~(a)(5) the person conducting the interview of the child in the recording is present at the
16 proceeding and is available to testify and be cross-examined by either party;

17 ~~(f)~~(a)(6) the defendant and the defendant's attorney are provided an opportunity to view the
18 recording before it is shown to the court;

19 ~~(g)~~(a)(7) the court views the recording and determines that it is sufficiently reliable and
20 trustworthy and that the interest of justice will best be served by admission of the statement into
21 evidence; and

22 ~~(h)~~(a)(8) the child is available to testify and to be cross-examined at trial, either in person or
23 as provided by Subsection ~~(2) or (3)~~ (b) or (c), or the court determines that the child is
24 unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this
25 subsection "unavailable" includes a determination, based on medical or psychological evidence
26 or expert testimony, that the child would suffer serious emotional or mental strain if required to
27 testify at trial.

28 ~~(2)~~(b) In any proceeding concerning a charge of child abuse or of a sexual offense against a
29 child, the court may order, upon motion of the prosecution and for good cause shown, that the
30 testimony of any witness or victim younger than 14 years of age be taken in a room other than
31 the courtroom. All of the following conditions shall be observed:

32 ~~(a)-(b)(1)~~ Only the judge, attorneys for each party, persons necessary to operate equipment,
33 and a counselor or therapist whose presence contributes to the welfare and emotional well-being
34 of the child may be with the child during the testimony. The defendant may also be present
35 during the child's testimony unless the defendant consents to be hidden from the child's view, or
36 the court determines that the child will suffer serious emotional or mental strain if required to
37 testify in the defendant's presence, or that the child's testimony will be inherently unreliable if
38 required to testify in the defendant's presence. If the court makes that determination, or if the
39 defendant consents:

40 ~~(i)-(b)(1)(A)~~ the defendant may not be present during the child's testimony;

41 ~~(ii)-(b)(1)(B)~~ the court shall ensure that the child cannot hear or see the defendant;

42 ~~(iii)-(b)(1)(C)~~ the court shall advise the child prior to testifying that the defendant is present
43 at the trial and may listen to the child's testimony;

44 ~~(iv)-(b)(1)(D)~~ the defendant shall be permitted to observe and hear the child's testimony, and
45 the court shall ensure that the defendant has a means of two-way telephonic communication with
46 defense counsel during the child's testimony; and

47 ~~(v)-(b)(1)(E)~~ the conditions of a normal court proceeding shall be approximated as nearly as
48 possible.

49 ~~(b)-(b)(2)~~ Only the judge and attorneys may question the child.

50 ~~(e)-(b)(3)~~ As much as possible, persons operating equipment shall be confined to an adjacent
51 room or behind a screen or mirror so the child cannot see or hear them.

52 ~~(3)-(c)~~ In any case concerning a charge of child abuse or of a sexual offense against a child,
53 the court may order, upon motion of the prosecution and for good cause shown, that the
54 testimony of any witness or victim younger than 14 years of age be taken outside the courtroom
55 and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding
56 regarding the charges if the provisions of Subsection ~~(2)-(b)~~ are observed, in addition to the
57 following provisions:

58 ~~(a)-(c)(1)~~ the recording is both visual and aural and recorded on film or videotape or by other
59 electronic means;

60 ~~(b)-(c)(2)~~ the recording equipment is capable of making an accurate recording, the operator is
61 competent, and the recording is accurate and is not altered;

62 ~~(e)-(c)(3)~~ each voice on the recording is identified; and

63 ~~(d)~~(c)(4) each party is given an opportunity to view the recording before it is shown in the
64 courtroom.

65 ~~(4)~~(d) If the court orders that the testimony of a child be taken under Subsection ~~(2) or (3)~~
66 (b) or (c), the child may not be required to testify in court at any proceeding where the recorded
67 testimony is used.

68 ~~Advisory Committee Note: This rule is based upon provisions governing admissibility of out-~~
69 ~~of-court statements of child victims of sexual abuse in adult criminal proceedings. This rule is~~
70 ~~intended to be interpreted using the case law developed under Utah Code Section 76-5-411 and~~
71 ~~Rule of Criminal Procedure 15.5.~~

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