

1 Rule 37A. Visual recording of statement or testimony of child in abuse, neglect and  
2 dependency proceedings - Conditions of admissibility.

3 ~~(1)~~(a) In any abuse, neglect and dependency proceedings, the oral statement of a child may  
4 be recorded, and upon motion and for good cause shown is admissible as evidence in any court  
5 proceeding regarding the petition if all of the following conditions are met:

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

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

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

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

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

14 ~~(f)~~(a)(6) the parties and the parties' attorneys are provided an opportunity to view the  
15 recording before it is shown to the court;

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

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

25 ~~(2)~~(b) In any abuse, neglect and dependency proceedings, the court may order that the  
26 testimony of any child may be taken in a room other than the courtroom. All of the following  
27 conditions shall be observed:

28 ~~(a)~~(b)(1) Only the judge, attorneys for each party, persons necessary to operate equipment,  
29 and a counselor or therapist whose presence contributes to the welfare and emotional well-being  
30 of the child may be with the child during the testimony. The parties may also be present during  
31 the child's testimony unless a party consents to be hidden from the child's view, or the court

32 determines that the child will suffer serious emotional or mental strain if required to testify in the  
33 party's presence, or that the child's testimony will be unreliable if required to testify in the  
34 party's presence. If the court makes that determination, or if the party consents:

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

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

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

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

42 ~~(v)-(b)(1)(E)~~ normal court procedures shall be approximated as nearly as possible;

43 ~~(b)-(b)(2)~~ Only the judge and attorneys may question the child unless otherwise approved by  
44 the judge;

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

47 ~~(3)-(c)~~ In any abuse, neglect and dependency proceedings, the court may order that the  
48 testimony of any child be taken outside the courtroom and be recorded. That testimony is  
49 admissible as evidence, for viewing in any court proceeding regarding the allegations if the  
50 provisions of Subsection ~~(2)-(b)~~ are observed, in addition to the following provisions:

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

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

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

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

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

61 ~~Advisory Committee Note: This rule is based upon provisions governing admissibility of out-~~  
62 ~~of-court statements of child victims of sexual abuse in adult criminal proceedings. This rule is~~

63 ~~intended to be interpreted using the case law developed under Utah Code Section 76-5-411 and~~  
64 ~~Rule of Criminal Procedure 15.5.~~

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