

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

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

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

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

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

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

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

17 (a)(6) the parties and the parties' attorneys are provided an opportunity to view the
18 recording before it is shown to the court;

19 (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
21 statement into evidence; and

22 (a)(8) the child is available to testify and to be cross-examined at trial, either in
23 person or as provided by Subsection (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
25 purposes of this subsection "unavailable" includes a determination, based on medical or
26 psychological evidence or expert testimony, that the child would suffer serious
27 emotional or mental strain if required to testify at trial.

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

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

39 (b)(1)(A) the party may not be present during the child's testimony;

40 (b)(1)(B) the court shall ensure that the child cannot hear or see the party;

41 (b)(1)(C) the court shall advise the child prior to testifying that the party is present at
42 the trial and may listen to the child's testimony;

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

46 (b)(1)(E) normal court procedures shall be approximated as nearly as possible;

47 (b)(2) Only the judge and attorneys may question the child unless otherwise
48 approved by the judge;

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

51 (c) In any abuse, neglect and dependency proceedings, the court may order that the
52 testimony of any child be taken outside the courtroom and be recorded. That testimony
53 is admissible as evidence, for viewing in any court proceeding regarding the allegations
54 if the provisions of Subsection (b) are observed, in addition to the following provisions:

55 (c)(1) the recording is both visual and aural and recorded on film or videotape or by
56 other electronic means;

57 (c)(2) the recording equipment is capable of making an accurate recording, the
58 operator is competent, and the recording is accurate and is not altered;

59 (c)(3) each voice on the recording is identified; and

60 (c)(4) each party is given an opportunity to view the recording before it is shown in
61 the courtroom.

62 (d) If the court orders that the testimony of a child be taken under Subsection (b) or
63 (c), the child may not be required to testify in court at any proceeding where the
64 recorded testimony is used.

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