

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

3 (a) In any delinquency proceeding or proceeding under Section 78A-6-702 or
4 Section 78A-6-703 concerning a charge of child abuse or of a sexual offense against a
5 child, the oral statement of a victim or other witness younger than 14 years of age may
6 be which was recorded prior to the filing of a petition is, and upon motion and for good
7 cause shown is admissible as evidence in any court proceeding regarding the offense if
8 all of the following conditions are met:

9 (a)(1) the child is available to testify and to be cross-examined at trial, either in
10 person or as provided by law, or the child is unavailable to testify at trial, but the minor
11 had a previous opportunity to cross-examine the child concerning the recorded
12 statement, such that the minor's rights of confrontation are not violated;

13 ~~(a)(4)~~(2) no attorney for either party is in the child's presence when the statement is
14 recorded;

15 ~~(a)(2)~~(3) the recording is visual and aural and is recorded on film or videotape or by
16 other electronic means;

17 ~~(a)(3)~~(4) the recording ~~equipment is capable of making an accurate recording, the~~
18 ~~operator of the equipment is competent, and the recording~~ is accurate and has not been
19 altered;

20 ~~(a)(4)~~(5) each voice in the recording is identified;

21 ~~(a)(5)~~(6) the person conducting the interview of the child in the recording is present
22 at the proceeding and is available to testify and be cross-examined by either party;

23 ~~(a)(6)~~(7) the minor and the minor's attorney are provided an opportunity to view the
24 recording before it is shown to the court; and

25 ~~(a)(7)~~(8) the court views the recording and determines that it is sufficiently reliable
26 and trustworthy and that the interest of justice will best be served by admission of the
27 statement into evidence; and

28 ~~(a)(8) the child is available to testify and to be cross-examined at trial, either in~~
29 ~~person or as provided by Subsection (b) or (c), or the court determines that the child is~~
30 ~~unavailable as a witness to testify at trial under the Utah Rules of Evidence. For~~
31 ~~purposes of this subsection "unavailable" includes a determination, based on medical or~~

32 psychological evidence or expert testimony, that the child would suffer serious
33 emotional or mental strain if required to testify at trial.

34 (b) In any delinquency proceeding or proceeding under Section 78A-6-702 or
35 Section 78A-6-703 concerning a charge of child abuse or of a sexual offense against a
36 child, the court ~~may order~~, upon motion of ~~the prosecution~~ a party and for good cause
37 shown, may order that the testimony of any ~~witness or victim~~ or other witness younger
38 than 14 years of age be taken in a room other than the courtroom. All of the following
39 conditions shall be observed:

40 (b)(1) Only the judge, attorneys for each party, the testifying child (if any), persons
41 necessary to operate equipment, and a counselor or therapist whose presence
42 contributes to the welfare and emotional well-being of the child may be in the room with
43 ~~the child~~ during the child's testimony. The minor ~~may also be present during the child's~~
44 ~~testimony unless the minor~~ who consents to be hidden from the child's view may also be
45 present unless, ~~or~~ the court determines that the child will suffer serious emotional or
46 mental strain if required to testify in the minor's presence, or that the child's testimony
47 will be inherently unreliable if required to testify in the minor's presence. If the court
48 makes that determination, or if the minor consents:

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

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

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

53 (b)(1)(D) the minor shall be permitted to observe and hear the child's testimony, and
54 the court shall ensure that the minor has a means of two-way telephonic communication
55 with defense counsel during the child's testimony; and

56 (b)(1)(E) the conditions of a normal court proceeding shall be approximated as
57 nearly as possible.

58 (b)(2) Only the judge and attorneys may question the child.

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

61 (b)(4) If the minor is present with the child during the child's testimony, the court may
62 order that persons operating the closed circuit equipment film both the child and the

63 minor during the child's testimony, so that the court may view both the child and the
64 minor, if that may be arranged without violating other requirements of Subsection (b)(1).

65 (c) In any ~~case~~ delinquency proceeding or proceeding under Section 78A-6-702 or
66 78A-6-703 concerning a charge of child abuse or of a sexual offense against a child, the
67 court may order, upon motion of ~~the prosecution~~ a party and for good cause shown, that
68 the testimony of any ~~witness or victim~~ or other witness younger than 14 years of age be
69 taken outside the courtroom and be recorded. That testimony is admissible as evidence,
70 for viewing in any court proceeding regarding the charges if the provisions of
71 Subsection (b) are observed, in addition to the following provisions:

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

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

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

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

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

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