Rule 37A. Visual recording of statement or testimony of child in abuse, neglect, dependency, substantiation, child protective order, or other related non-delinquency proceedings; conditions of admissibility.

(a) In any abuse, neglect, dependency, substantiation, child protective order, or other related non-delinquency proceeding, the oral statement of a child may be recorded, and upon motion and for good cause shown is admissible as evidence in any court proceeding regarding the petition if all of the following conditions are met:

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

(2) the recording is visual and aural and is recorded on film, videotape, or other electronic means;

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

(4) each voice in the recording is identified;

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

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

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

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

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

(b) In any abuse, neglect, dependency, substantiation, child protective order, or other related non-delinquency proceeding, the court may order that the testimony of any child may be taken in a room other than the courtroom. All of the following conditions must be observed:

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

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

(B) the court will ensure that the child cannot hear or see the party;

(C) the court will advise the child prior to testifying that the party is present at the trial and may listen to the child's testimony;

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

(E) normal court procedures must be approximated as nearly as possible;

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

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

(c) In any abuse, neglect, dependency, substantiation, child protective order, or other related non-delinquency proceeding, the court may order that the testimony of any child be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the allegations if the provisions of paragraph (b) are observed, in addition to the following provisions:

(1) the recording is both visual and aural and recorded on film, videotape, or other electronic means;

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

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

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

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

Effective date: *May 1, 2027*