

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

AGENDA

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

Supreme Court's Advisory Committee on the Rules of Criminal Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114
March 29, 2006
5:15 p.m.

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| 1. | WELCOME AND APPROVAL OF MINUTES | Mike Wims |
| 2. | RULE 15.5 SUBCOMMITTEE | Judge McCullagh |
| 3. | RULE 27 SUBCOMMITTEE | Judge McCullagh |
| 4. | <u>STATE V. MANNING</u> SUBCOMMITTEE | Laura Dupaix |
| 5. | RULE 14 SUBCOMMITTEE | Julie George |
| 6. | SEARCH WARRANT SUBCOMMITTEE | Vincent Meister |
| 7. | OTHER BUSINESS | |
| 8. | ADJOURN | |

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

Rule 15.5. Visual recording Out of court statement or testimony of child victim or witness of sexual or physical abuse - Conditions of admissibility.

(1a) In any case concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or witness younger than 14 years of age may be recorded prior to the filing of an information or indictment, and upon motion and for good cause shown is admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(a1) the child is available to testify and to be cross-examined at trial, either in person or as provided by statute or rule.

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

(b3) the recording is visual and aural and is recorded on film or, videotape or by other electronic means;

(c) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and (4) the recording is accurate and has not been altered;

(d5) each voice in the recording is identified;

(e6) 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;

(f7) the defendant and his attorney are provided an opportunity to view the recording before it is shown to the court or jury; and

(g8) the court views the recording before it is shown to the jury 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

New (h) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (2) or (3), 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 subsection "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.

(2b) In any criminal case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of the prosecution party, and for good cause shown, may order that the testimony of any witness or victim younger than 14 years of age be taken in a room other than the court room, and be televised by closed circuit equipment to be viewed by the jury in the court room. All of the following conditions shall be observed:

(a1) Only the presiding judge, attorneys for each party and the testifying child (if any), persons

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necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be within the room during the child's testimony. The defendant may also be present during the child's testimony unless he consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if he is required to testify in the defendant's presence, or that the child's testimony will be inherently unreliable if he is required to testify in the defendant's presence. If the court makes that determination, or if the defendant consents:

(iA) the defendant may not be present during the child's testimony;

(iiB) the court shall ensure that the child cannot hear or see the defendant;

(iiiC) the court shall advise the child prior to his testimony that the defendant is present at the trial and may listen to the child's testimony;

(ivD) the defendant shall be permitted to observe and hear the child's testimony, and the court shall ensure that the defendant has a means of two-way telephonic communication with his attorney during the child's testimony; and

(vE) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(b2) Only the presiding judge and attorneysan attorney for each party may question the child.

(c3) As much as possible, persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(d4) If the defendant is present with the child during the child's testimony, the court may order that persons operating the closed circuit equipment film both the child and the defendant during the child's testimony, so that the jury may view both the child and the defendant, if that may be arranged without violation ofviolating other requirements of Subsection (21).

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

(a1) the recording is both visual and aural and recorded on film or, videotape or by other electronic means;

(b) the recording equipment is capable of making an accurate recording, the operator is competent, and2) the recording is accurate and is not altered;

(c3) each voice on the recording is identified; and

(d4) each party is given an opportunity to view the recording before it is shown in the courtroom.

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