

Tab 2



Utah R. Juv. P. Rule 9 (2007)

Review Court Orders which may amend this Rule

Rule 9. Detention hearings; scheduling; hearing procedure.

(a) The officer in charge of the detention facility shall provide to the court a copy of the report required by Section 78-3a-113. At a detention hearing, the court shall order the release of the minor to the parent, guardian or custodian unless there is reason to believe:

- (1) the minor will abscond or be taken from the jurisdiction of the court unless detained;
- (2) the offense alleged to have been committed would be a felony if committed by an adult;
- (3) the minor's parent, guardian or custodian cannot be located;
- (4) the minor's parent, guardian or custodian refuses to accept custody of the minor;
- (5) the minor's parent, guardian or custodian will not produce the minor before the court at an appointed time;
- (6) the minor will undertake witness intimidation;
- (7) the minor's past record indicates the minor may be a threat to the public safety;
- (8) the minor has problems of conduct or behavior so serious or the family relationships are so strained that the minor is likely to be involved in further delinquency; or,
- (9) the minor has failed to appear for a court hearing within the past twelve months.

(b) The court shall hold a detention hearing within 48 hours of the minor's admission to detention, weekends and holidays excluded. The officer in charge of the detention facility shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and manner of such hearing.

(c) The court may at any time order the release of a minor whether a detention hearing is held or not.

(d) At the beginning of the detention hearing, the court shall advise all persons present as to the reasons or allegations giving rise to the minor's admission to detention and the limited scope and purpose of the hearing as set forth in paragraph (g). If the minor is to be arraigned at the detention hearing, the provisions of Rules 24 and 26 shall apply.

(e) The court may receive any information, including hearsay and opinion, that is relevant to the

decision whether to detain or release the minor. Privileged communications may be introduced only in accordance with the Utah Rules of Evidence.

(f) A detention hearing may be held without the presence of the minor's parent, guardian or custodian if they fail to appear after receiving notice. The court may delay the hearing for up to 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the rights of the parent, guardian or custodian. The court may appoint counsel for the minor with or without the minor's request.

(g) If the court determines that no reasonable basis exists for the offense or condition alleged as required in Rule 6 as a basis for admission, it shall order the minor released immediately without restrictions. If the court determines that reasonable cause exists for continued detention, it may order continued detention, place the minor on home detention, or order the minor's release upon compliance with certain conditions pending further proceedings. Such conditions may include:

- (1) a requirement that the minor remain in the physical care and custody of a parent, guardian, custodian or other suitable person;
- (2) a restriction on the minor's travel, associations or residence during the period of the minor's release; and
- (3) other requirements deemed reasonably necessary and consistent with the criteria for detaining the minor.

(h) If the court determines that a reasonable basis exists as to the offense or condition alleged as a basis for the minor's admission to detention but that the minor can be safely left in the care and custody of the parent, guardian or custodian present at the hearing, it may order release of the minor upon the promise of the minor and the parent, guardian or custodian to return to court for further proceedings when notified.

(i) If the court determines that the offense is one governed by Section 78-3a-601, Section 78-3a-602, or Section 78-3a-603, the court may by issuance of a warrant of arrest order the minor committed to the county jail in accordance with Section 62A-7-201.

(j) Any predisposition order of detention, or order of home detention exceeding fifteen days, shall be reviewed by the court once every seven days. Orders placing a minor in an alternative detention program for a specific period of time not to exceed thirty days do not need to be reviewed except on motion of any party. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.

Tab 3



IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

In re: Proposed Amendments  
to Rule 15.5 of the Utah  
Rules of Criminal Procedure

Case No. 20060707-SC

---

ORDER

IT IS HEREBY ORDERED that the attached proposed amendments to Rule 15.5 of the Utah Rules of Criminal Procedure are approved and promulgated effective November 1, 2008, except that the phrase "victim or witness" found in 15.5(a) and the phrase "witness or victim" found in 15.5(b) and (c) shall be replaced with the phrase "victim or other witness."

FOR THE COURT:

July 15, 2008  
Date

Christine M. Durham  
Christine M. Durham  
Chief Justice

**Rule 15.5. ~~Visual recording~~ Out of court statement or and testimony of child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.**

(a) 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~~ which was recorded prior to the filing of an information or indictment, ~~and is~~, 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:

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

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

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

~~(a)(4) 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;~~

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

(a)(6) 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;

(a)(7) the defendant and his attorney are provided an opportunity to view the recording before it is shown to the court or jury; and

(a)(8) 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

~~(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.~~

(b) In any a 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 a 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:

(b)(1) Only the presiding judge, attorneys for each party and the testifying child (if any), 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 in the room during the child during his child's testimony. The defendant may also be present during the child's testimony ~~unless he~~ A defendant who consents to be hidden from the child's view may also be present unless 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:



- (b)(1)(A) the defendant may not be present during the child's testimony;
- (b)(1)(B) the court shall ensure that the child cannot hear or see the defendant;
- (b)(1)(C) 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;
- (b)(1)(D) 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
- (b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.
- (b)(2) Only the presiding judge and attorneys an attorney for each party may question the child.
- (b)(3) 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.
- (b)(4) 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~~ violating of other requirements of Subsection (b)(1).
- (c) 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~~ a 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 (2) (b) are observed, in addition to the following provisions:
- (c)(1) the recording is ~~both~~ visual and aural and recorded on film, ~~or~~ videotape or by other electronic means;
- (c)(2) ~~the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;~~
- (c)(3) each voice on the recording is identified; and
- (c)(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 Subsection (2)(a) or (3)(b), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

### **Rule 33. Regulation of conduct in the courtroom.**

- (a) All pleadings, written motions and other papers must be free from burdensome, irrelevant, immaterial, scandalous, or uncivil matters. All attorneys must likewise govern their conduct. Pleadings, written motions and other papers and attorney conduct which are not in compliance may be disregarded or stricken, in whole or in part, and the court may impose sanctions against the offending person.
- (b) The court may make appropriate orders regulating the conduct of officers, parties, spectators and witnesses prior to and during the conduct of any proceeding.

Tab 4



## MEMORANDUM

**TO: Juvenile Rules Committee**  
**FROM: Paul Wake**  
**SUBJECT: Rule 29A**  
**DATE: June 6, 2008**

---

Attached is a copy of criminal rule 15.5, which was recently out for comment. It originally dealt in part with using CJC videotapes as evidence, and it was revised because *Crawford* said prosecutors can't just use such things as videotapes in lieu of in-person testimony because defendants can't cross examine a videotape. Subsection (a) deals with such videotapes. The main *Crawford*-inspired revision was to add a paragraph allowing use of such videotapes as long as the child is in the building and available for cross examination if the defense attorney really wants to grill the child. The criminal rules committee also changed subsection (a) to limit that subsection's applicability to child victims, rather than to continue to let it apply to all child witnesses. The criminal rules committee tinkered with a few other parts of their rule, apparently for clarity. It doesn't appear there were substantive changes to subsections (b) or (c). Subsection (b) lets a child testify from another room by closed circuit TV to the jury in the courtroom, and also has provisions for doing so without the defendant being present in the room the child is testifying from if that would really mess up the child. It appears the criminal rules committee left that subsection, and subsection (c), applicable to all child witnesses. Subsection (c) has something to do with post-charge videotapes of testimony, which if made with the possibility of cross examination can then be used as evidence. We have two juvenile rules that I believe were originally modeled on criminal rule 15.5, which also might benefit from tinkering in light of *Crawford*.

Attached is also a copy of juvenile rule 29A, with some changes I have made as suggestions for discussion. I have not redlined juvenile rule 37A (the dependency version of the delinquency-related rule 29A), because I didn't want to meddle with a dependency rule and because I didn't have time. In case the committee decides to look over my revisions to rule 29A, here is an explanation of what I did, along with some concerns about the rule:

- In 29A(a), I left the rule applicable to all child witnesses under 14, rather than changing it to limit it only to child victims. However, this may not please all members of the committee, so it merits discussion.
- In 29A(a)(1), I copied the criminal rule's new paragraph, and that probably deals adequately with *Crawford* concerns.

- In a few places I changed “minor” back to “defendant.” It seems like discussion of children and minors in the same sentence could cause confusion about whether we are talking about the witness or the person on trial. If we change those instances back to “minor,” we will also have to fix some other instances of “defendant” that came in along with the rule 15.5 changes.
- Here and there I did add a couple of semicolons, and underlines to numbering changes that should have been underlined in the criminal rule.
- I did not make some changes that you can see changed in 15.5, because we have apparently already made those changes to our rule.
- The second sentence of (b)(1) had been confusing me, but it is beginning to make more sense now. Someone else should read it and see if it makes sense. The criminal rules committee changed it because a comment suggested the original version sort of contradicted itself.
- In my limited experience with CCTV testimony in juvenile court, we had the defendant go into another room by himself and watch in-court testimony from there, rather than having the witness, judge, attorneys, and others go into the other room to have the child testify back to a largely empty courtroom. The existing rule—specifically subsection (b)—seems built around the original assumption of 15.5, which is that trial would likely be a jury trial in open court, so testimony from another room would be quieter for the child witness, and showing the testimony by a CCTV connection to the courtroom would be the easiest way to accomodate jurors and spectators. I wonder if provision for sort of a reversing of the rooms should be made at the end of subsection (b), to allow for most people to stay in the courtroom, with the defendant going somewhere else? Maybe something like “(b)(4) Alternatively, if the judge and the attorneys for the parties agree, the testimony of the child witness can be taken in court, with the defendant viewing the testimony from another room, provided the defendant has means for two-way telephonic communication with defense counsel during the child’s testimony. ”? If we were to do that, I’m not sure how to handle the issue of spectators. Perhaps something like “Such a hearing can by closed by the court upon findings on the record for good cause.”? Or we could just assume that can be done under Utah Code § 78A-6-114.
- (b)(1) has a restrictive list of who can be present in the room where remote testimony is taking place. Since under some circumstances the defendant would be in that room also, it seems odd that court security wouldn’t have made the list.

**Rule 15.5. Visual recording Out of court statement or and testimony of child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.**

(a) 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~~ which was recorded prior to the filing of an information or indictment, ~~and is,~~ 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:

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

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

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

(a)(4) ~~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;~~

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

(a)(6) 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;

(a)(7) the defendant and his attorney are provided an opportunity to view the recording before it is shown to the court or jury; and

(a)(8) 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,

~~(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.~~

(b) In any a 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~~ a 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:

(b)(1) Only the presiding judge, attorneys for each party and the testifying child (if any), 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 in the room during the child during his child's testimony. ~~The defendant may also be present during the child's testimony unless he~~ A defendant who consents to be hidden from the child's view may also be present unless 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:

- (b)(1)(A) the defendant may not be present during the child's testimony;
- (b)(1)(B) the court shall ensure that the child cannot hear or see the defendant;
- (b)(1)(C) 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;
- (b)(1)(D) 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
- (b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.
- (b)(2) Only the presiding judge and attorneys an attorney for each party may question the child.
- (b)(3) 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.
- (b)(4) 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~~ violating of other requirements of Subsection (b)(1).
- (c) 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~~ a 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 (2) (b) are observed, in addition to the following provisions:
- (c)(1) the recording is ~~both~~ visual and aural and recorded on film, or videotape or by other electronic means;
- (c)(2) ~~the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;~~
- (c)(3) each voice on the recording is identified; and
- (c)(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 Subsection (2)(a) or (3)(b), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

**Rule 29A. ~~Visual recording of Out of court statement or and~~ testimony of child victims or child witnesses of sexual or physical abuse — Conditions of admissibility.**

(a) In any delinquency proceeding or proceeding under Section 78-3a-602 or Section 78-3a-603 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~~ which was recorded prior to the filing of a petition, ~~and is~~, 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:

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

(a)(~~12~~) no attorney for either party is in the child's presence when the statement is recorded;

(a)(~~23~~) the recording is visual and aural and is recorded on film, ~~or videotape~~, or by other electronic means;

(a)(~~34~~) ~~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;~~

(a)(~~45~~) each voice in the recording is identified;

(a)(~~56~~) 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;

(a)(~~67~~) the ~~minor defendant~~ and the ~~minor defendant's~~ attorney are provided an opportunity to view the recording before it is shown to the court; and

(a)(~~78~~) 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

(a)(8) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (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 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;

(b) In any proceeding concerning a charge of child abuse or of a sexual offense against a child, the court ~~may order~~, upon motion of ~~the prosecution a 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 courtroom. All of the following conditions shall be observed:



(b)(1) Only the judge, attorneys for each party and the testifying child (if any), 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 within the room during the child's testimony. ~~The minor may also be present during the child's testimony unless the minor~~ A defendant who consents to be hidden from the child's view may also be present unless, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the ~~minor's defendant's~~ presence, or that the child's testimony will be inherently unreliable if required to testify in the ~~minor's defendant's~~ presence. If the court makes that determination, or if the ~~minor defendant~~ consents:

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

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

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

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

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

(b)(2) Only the judge and ~~attorneys~~ an attorney for each party may question the child.

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

(c) 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 prosecution~~ a 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 (b) are observed, in addition to the following provisions:

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

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

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

(c)(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 Subsection (ba) or (bc), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

**Rule 15.5. Visual recording Out of court statement or and testimony of child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.**

(a) 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~~ which was recorded prior to the filing of an information or indictment, ~~and is,~~ 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:

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

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

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

(a)(4) ~~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;~~

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

(a)(6) 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;

(a)(7) the defendant and his attorney are provided an opportunity to view the recording before it is shown to the court or jury; and

(a)(8) 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

~~(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.~~

(b) In any a 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 a 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:

(b)(1) Only the ~~presiding~~ judge, attorneys for each party and the testifying child (if any), 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 in the room during the child during his child's~~ testimony. The defendant may also be present during the child's testimony unless he A defendant who consents to be hidden from the child's view may also be present unless 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:

TO Katie

FROM THE DESK OF - **Matty Branch**

Date: 6/18/08

Here's form of Rule 15.5  
of the Rules of Criminal  
procedure which the  
committee has sent to  
the court requesting  
approval.



- (b)(1)(A) the defendant may not be present during the child's testimony;
- (b)(1)(B) the court shall ensure that the child cannot hear or see the defendant;
- (b)(1)(C) 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;
- (b)(1)(D) 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
- (b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.
- (b)(2) Only the presiding judge and attorneys an attorney for each party may question the child.
- (b)(3) 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.
- (b)(4) 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~~ violating of other requirements of Subsection (b)(1).
- (c) 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~~ a 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 ~~(2)~~ (b) are observed, in addition to the following provisions:
- (c)(1) the recording is ~~both~~ visual and aural and recorded on film, ~~or~~ videotape or by other electronic means;
- (c)(2) ~~the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;~~
- (c)(3) each voice on the recording is identified; and
- (c)(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 Subsection ~~(2)~~ (a) or ~~(3)~~ (b), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

### **Rule 33. Regulation of conduct in the courtroom.**

- (a) All pleadings, written motions and other papers must be free from burdensome, irrelevant, immaterial, scandalous, or uncivil matters. All attorneys must likewise govern their conduct. Pleadings, written motions and other papers and attorney conduct which are not in compliance may be disregarded or stricken, in whole or in part, and the court may impose sanctions against the offending person.
- (b) The court may make appropriate orders regulating the conduct of officers, parties, spectators and witnesses prior to and during the conduct of any proceeding.