

Rule 8. Rights of minor while in detention.

(a) A minor shall be advised of the right to telephone the minor's parent, guardian or custodian and an attorney immediately after being admitted to a detention facility.

(b) A minor has a right to confer in private at any time with an attorney, cleric, parent, guardian or custodian. After the initial visit, the minor may visit such persons at reasonably established visiting hours, or at other times when special circumstances so warrant.

(c) No person other than a probation officer or a staff member of a detention facility shall be permitted to interview a child under 14 years of age held in the facility regarding an offense chargeable against the child without the child's parent, guardian or custodian present, unless:

(c)(1) the parent, guardian or custodian has given written permission for the interview to be held outside the presence of the child's parent, guardian, or custodian;

(c)(2) the parent, guardian or custodian had been advised of the child's constitutional rights ~~as provided in Rule 26(a)~~ and has knowingly and voluntarily waived such rights; ~~and~~

(c)(3) the child had been advised of the child's constitutional rights ~~as provided in Rule 26(a)~~ and has knowingly and voluntarily waived such rights; and

(c)(4) Nothing in this rule shall affect the admissibility of statements pursuant to Rule 27A.

(d) No person other than a probation officer or a staff member of a detention facility shall be permitted to interview a child 14 years of age or older in a detention facility regarding an offense chargeable against the child without the consent of the child and the child's parent, guardian or custodian after first advising said child of constitutional rights ~~as described in Rule 26~~ and such rights having been knowingly and voluntarily waived by the child .

(e) If the child's parent, guardian or custodian is not available, the consent of the court shall be obtained before interviewing a child in a detention facility.

(f) Consent to interview a child in the custody of the Division of Child and Family Services must comply with 62A-4a-415.

Rule 27A. Admissibility of statements given by minors.

(a) If a minor is in custody for the alleged commission of an offense that would be a crime if committed by an adult, any statement given by a minor in response to questions asked by a police officer is inadmissible unless the police officer informed the minor of the minor's rights before questioning begins.

(a)(1) If the child is under 14 years of age, the child is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a child's rights unless a parent, guardian, or legal custodian is present during waiver.

(a)(2) If the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor's rights without the benefit of having a parent, guardian, or legal custodian present during questioning.

(b) The presumptions outlined in paragraphs (a)(1) and (a)(2) may be overcome by a preponderance of the evidence showing the ability or inability of a minor to comprehend and waive the minor's rights.

(c) Consent to interview a child in the custody of the Division of Child and Family Services must comply with 62A-4a-415.

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

(a) In any delinquency proceeding or proceeding under Section 78A-6-702 or Section 78A-6-703 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 a petition, 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:

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

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

(a)(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;

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

(a)(5) 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)(6) the minor and the minor's attorney are provided an opportunity to view the recording before it is shown to the court;

(a)(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

(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 and for good cause shown, 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, 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 minor may also be present during the child's testimony unless the minor 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 minor's presence, or that the child's testimony will be inherently unreliable if required to testify in the minor's presence. If the court makes that determination, or if the minor consents:

(b)(1)(A) the minor 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 ;

(b)(1)(C) the court shall advise the child prior to testifying that the minor is present at the trial and

may listen to the child's testimony;

(b)(1)(D) the minor shall be permitted to observe and hear the child's testimony, and the court shall ensure that the minor 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 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 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 (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

Rule 15.5. Out of court statement 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 other witness younger than 14 years of age which was recorded prior to the filing of an information or indictment is, upon motion and for good cause shown, 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, videotape or other electronic means;

(a)(4) 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.

(b) In a criminal case concerning a charge of child abuse or of a sexual offense against a child, the court, upon motion of a party and for good cause shown, may order that the testimony of any victim or other witness 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 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 in the room during the child's testimony. A defendant who consents to be hidden from the child's view may also be present unless the court determines that the child will suffer serious emotional or mental strain if required to testify in the defendant's presence, or that the child's testimony will be inherently unreliable if 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 judge and 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 violating 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 a party and for good cause shown, that the testimony of any victim or other witness 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 visual and aural and recorded on film, videotape or by other electronic means;

(c)(2) 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 (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

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

(a) In any delinquency proceeding or proceeding under Section 78A-6-702 or Section 78A-6-703 concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age ~~may be~~ which was recorded prior to the filing of a petition is, ~~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:

(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 minor had a previous opportunity to cross-examine the child concerning the recorded statement, such that the minor's rights of confrontation are not violated;

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

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

(a)(3)(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)(4)(5) each voice in the recording is identified;

(a)(5)(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)(6)(7) the minor and the minor's attorney are provided an opportunity to view the recording before it is shown to the court; and

(a)(7)(8) 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 or other witness 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 in the room ~~with the child during the child's testimony~~. The minor ~~may also be present during the child's testimony unless the minor~~

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 presence, or that the child's testimony will be inherently unreliable if required to testify in the minor's presence. If the court makes that determination, or if the minor consents:

(b)(1)(A) the minor 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;

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

(b)(1)(D) the minor shall be permitted to observe and hear the child's testimony, and the court shall ensure that the minor 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 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.

(b)(4) If the minor 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 minor during the child's testimony, so that the court may view both the child and the minor, if that may be arranged without violating other requirements of Subsection (b)(1).

(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~~ or other witness 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;

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

Katie Gregory - URJP question

From: Whitney Kania
To: Gregory, Katie
Date: 9/3/2010 3:50 PM
Subject: URJP question

Hi Katie,

I'm sending you this email to discuss the URJP issue that came up in the July meeting regarding U.C.A 76-5-411, URCrP 15.5 and URJP 29A. I believe the issue was "what is the effect on the repealment (is that a word?) of the 76-5-411 line of caselaw." I wasn't able to get into a lot of research on the legislative history behind why 76-5-411 was repealed but it seems to have been completely replaced with URCrP 15.5 and URJP 29A, meaning all the same elements are in the rules that were in the statute. So I talked to Jessica Van Buren (law librarian) and she said that the caselaw from 76-5-411 is now *persuasive* and can still be used when dealing with the rules because the rules and the statute are so similar.

I hope that answers the question enough. You might even get more information when Mr. Jantzen comes to the meeting. He'll probably have more insight with regard to actual practice.

Thanks,
Whitney