

1 change on p-2
out for comment.

Version to Mirror Utah Crim. Rule. 15.5 (2008 changes)

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~~ ^{OK} 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)(1)(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 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

1 court ~~may order~~, upon motion of ~~the prosecution~~ a party and for good cause shown, may
2 order that the testimony of any ~~witness or victim or other witness~~ younger than 14 years
3 of age be taken in a room other than the courtroom. All of the following conditions shall
4 be observed:

5 (b)(1) Only the judge, attorneys for each party ^Qand the testifying child (if any),
6 persons necessary to operate equipment, and a counselor or therapist whose presence
7 contributes to the welfare and emotional well-being of the child may be in the room with
8 ~~the child during the child's testimony~~. The minor ~~may also be present during the child's~~
9 ~~testimony unless the minor who~~ consents to be hidden from the child's view may also be
10 present unless, or the court determines that the child will suffer serious emotional or
11 mental strain if required to testify in the minor's presence, or that the child's testimony
12 will be inherently unreliable if required to testify in the minor's presence. If the court
13 makes that determination, or if the minor consents:

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

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

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

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

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

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

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

26 (b)(4) If the minor is present with the child during the child's testimony, the court
27 may order that persons operating the closed circuit equipment film both the child and the
28 minor during the child's testimony, so that the court may view both the child and the
29 minor, if that may be arranged without violating other requirements of Subsection (b)(1).

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

*should not be
changed*

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

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

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

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

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

1 Proposed rule eliminating pretrial determination requirement through notice
2 provision with mirror 15.5 changes

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

5 (a) In any delinquency proceeding or proceeding under Section 78A-6-702 or Section
6 78A-6-703 concerning a charge of child abuse or of a sexual offense against a child, if
7 either party intends to admit the oral statement of a victim or other witness younger than
8 14 years of age which was recorded prior to the filing of a petition, the party seeking
9 admission shall give notice to the opposing party as soon as practicable but not less than
10 30 days before trial or 10 days before the hearing.

11 (a)(1) Notice shall include the description of the recorded oral statement and whether
12 the victim or other witness younger than 14 years of age will be available to testify and to
13 be cross-examined at trial.

14
15 (a)(2) If the party seeking admission fails to substantially comply with the
16 requirements of this rule, the opposing party shall, if necessary to prevent substantial
17 prejudice, be entitled to a continuance of the trial or hearing sufficient to allow
18 preparation to meet the evidence.

19
20 (a)(3) If the court finds that the failure to comply with this rule is the result of bad
21 faith on the part of any party or attorney, the court shall impose appropriate sanctions.
22 The remedy of exclusion of the recorded oral statement will only apply if the court finds
23 that a party deliberately violated the provisions of this section.

24
25 (b) The oral statement of a victim or other witness younger than 14 years of age may
26 be which was recorded prior to the filing of a petition is, and upon motion and for good
27 cause shown is upon notice given pursuant to this rule, admissible as evidence in any
28 court proceeding regarding the offense if all of the following conditions are met:

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

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

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

37 (a)(3)(b)(4) the recording equipment is capable of making an accurate recording, the
38 operator of the equipment is competent, and the recording is accurate and has not been
39 altered;

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

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

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

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

9 ~~(a)(8) the child is available to testify and to be cross-examined at trial, either in~~
10 ~~person or as provided by Subsection (b) or (c), or the court determines that the child is~~
11 ~~unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes~~
12 ~~of this subsection "unavailable" includes a determination, based on medical or~~
13 ~~psychological evidence or expert testimony, that the child would suffer serious emotional~~
14 ~~or mental strain if required to testify at trial.~~

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

21 ~~(b)(c)~~(1) Only the judge, attorneys for each party and the testifying child (if any),
22 persons necessary to operate equipment, and a counselor or therapist whose presence
23 contributes to the welfare and emotional well-being of the child may be in the room with
24 ~~the child during the child's~~ testimony. The minor ~~may also be present during the child's~~
25 ~~testimony unless the minor who~~ consents to be hidden from the child's view may also be
26 present unless, or the court determines that the child will suffer serious emotional or
27 mental strain if required to testify in the minor's presence, or that the child's testimony
28 will be inherently unreliable if required to testify in the minor's presence. If the court
29 makes that determination, or if the minor consents:

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

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

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

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

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

1 ~~(b)(c)~~(2) Only the judge and attorneys may question the child.

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

4 (c)(4) If the minor is present with the child during the child's testimony, the court
5 may order that persons operating the closed circuit equipment film both the child and the
6 minor during the child's testimony, so that the court may view both the child and the
7 minor, if that may be arranged without violating other requirements of Subsection (c)(1).

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

15 ~~(e)(d)~~(1) the recording is both visual and aural and recorded on film or videotape or
16 by other electronic means;

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

19 ~~(e)(d)~~(3) each voice on the recording is identified; and

20 ~~(e)(d)~~(4) each party is given an opportunity to view the recording before it is shown
21 in the courtroom.

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

1 **Proposed rule eliminating pretrial determination requirement through notice**
2 **provision**

3 **Rule 37A. Visual recording of statement or testimony of child in abuse, neglect**
4 **and dependency proceedings - Conditions of admissibility.**

5 (a) In any abuse, neglect, dependency, and substantiation proceedings, if either party
6 intends to admit the oral statement of a child younger than 14 years of age which was
7 recorded prior to the filing of a petition, the party seeking admission shall give notice to
8 the opposing party as soon as practicable but not less than 30 days before trial or 10 days
9 before the hearing.

10 (a)(1) Notice shall include the description of the recorded oral statement and whether
11 the child younger than 14 years of age will be available to testify and to be cross-
12 examined at trial.
13

14 (a)(2) If the party seeking admission fails to substantially comply with the
15 requirements of this rule, the opposing party shall, if necessary to prevent substantial
16 prejudice, be entitled to a continuance of the trial or hearing sufficient to allow
17 preparation to meet the evidence.
18

19 (a)(3) If the court finds that the failure to comply with this rule is the result of bad
20 faith on the part of any party or attorney, the court shall impose appropriate sanctions.
21 The remedy of exclusion of the recorded oral statement will only apply if the court finds
22 that a party deliberately violated the provisions of this section.
23

24 (b) The oral statement of a child younger than 14 years of age ~~may be~~ which was
25 recorded is, and upon motion and for good cause shown is upon notice given pursuant to
26 this rule, admissible as evidence in any court proceeding regarding the petition if all of
27 the following conditions are met:

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

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

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

36 (a)(3)(b)(4) the recording equipment is capable of making an accurate recording, the
37 operator of the equipment is competent, and the recording is accurate and has not been
38 altered;

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

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

4 ~~(a)(6)(b)(7)~~ the parties and the parties' attorney are provided an opportunity to view
5 the recording before it is shown to the court; and

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

9 ~~(a)(8) the child is available to testify and to be cross-examined at trial, either in~~
10 ~~person or as provided by Subsection (b) or (c), or the court determines that the child is~~
11 ~~unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes~~
12 ~~of this subsection "unavailable" includes a determination, based on medical or~~
13 ~~psychological evidence or expert testimony, that the child would suffer serious emotional~~
14 ~~or mental strain if required to testify at trial.~~

15 ~~(b)(c)~~ In any abuse, neglect, dependency, and substantiation proceedings the court
16 may order upon motion of a party and for good cause shown, that the testimony of any
17 child younger than 14 years of age be taken in a room other than the courtroom. All of
18 the following conditions shall be observed:

19 ~~(b)(c)(1)~~ Only the judge, attorneys for each party and the testifying child (if any),
20 persons necessary to operate equipment, and a counselor or therapist whose presence
21 contributes to the welfare and emotional well-being of the child may be in the room with
22 ~~the child during the child's testimony~~. The parties ~~may also be present during the child's~~
23 ~~testimony unless the party who~~ consents to be hidden from the child's view may also be
24 present unless, or the court determines that the child will suffer serious emotional or
25 mental strain if required to testify in the party's presence, or that the child's testimony
26 will be inherently unreliable if required to testify in the party's presence. If the court
27 makes that determination, or if the party consents:

28 ~~(b)(c)(1)(A)~~ the party may not be present during the child's testimony;

29 ~~(b)(c)(1)(B)~~ the court shall ensure that the child cannot hear or see the party;

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

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

35 ~~(b)(c)(1)(E)~~ the conditions of a normal court procedures proceeding shall be
36 approximated as nearly as possible.

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

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

5 (c)(4) If the party is present with the child during the child's testimony, the court may
6 order that persons operating the closed circuit equipment film both the child and the party
7 during the child's testimony, so that the court may view both the child and the party, if
8 that may be arranged without violating other requirements of Subsection (c)(1).

9 (e)(d) In any abuse, neglect, dependency, and substantiation proceedings, the court
10 may order, upon motion of a party and for good cause shown, that the testimony of any
11 child younger than 14 years of age be taken outside the courtroom and be recorded. That
12 testimony is admissible as evidence, for viewing in any court proceeding regarding the
13 allegations if the provisions of Subsection ~~(b)~~(c) are observed, in addition to the
14 following provisions:

15 (e)(d)(1) the recording is both visual and aural and recorded on film or videotape or
16 by other electronic means;

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

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

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

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

**DIVISION OF JUVENILE JUSTICE SERVICES
ANY DJJS FACILITY HOUSING DCFS CUSTODY JUVENILES
62A-4a-415 FORM
Request By Law Enforcement to
Interview Any DCFS Juvenile in DCFS Custody**

FACILITY: ??
NAME OF JUVENILE TO BE INTERVIEWED:
DATE OF REQUEST:
REQUESTING LAW ENFORCEMENT ENTITY:
AGENT NAME:
AGENT BADGE/ID:

APPLICABLE LAW: Utah Code Ann. §62A-4a-415

The division (of child and family services) may not consent to the interview of a child in the division's custody by a law enforcement officer unless consent for the interview is obtained from the child's guardian ad litem.

INSTRUCTIONS:

1. THIS FORM IS ONLY FOR JUVENILES WHO ARE CURRENTLY IN THE LEGAL CUSTODY OF THE DIVISION OF CHILD AND FAMILY SERVICES. (If the Division of Child and Family Services is providing in-home services to the child and family, but does not have legal custody and guardianship, this form does not apply.)
2. THIS FORM MUST BE FILLED OUT FOR ALL LAW ENFORCEMENT INTERVIEWS, REGARDLESS OF WHETHER THERE IS AN OFFENSE CHARGEABLE (i.e. for BOTH interrogations and interviews).
3. THIS FORM MUST BE FILLED OUT IN ADDITION TO OTHER APPLICABLE RULE 8 FORMS IF LAW ENFORCEMENT WANTS TO INTERVIEW A CHILD FOR OFFENSES CHARGEABLE (i.e. an interrogation) AND THE DCFS JUVENILE IS IN A DJJS CORRECTIONAL FACILITY.

CONSENT:

1. Was consent obtained from the Guardian Ad Litem (GAL)?
YES ☐ (Interview may proceed) NO ☐ (Go to Question 2)
If YES, how was consent obtained?
Name of GAL giving consent?

ONCE CONSENT IS OBTAINED, LAW ENFORCEMENT MUST ALSO FILL OUT AN APPLICABLE RULE 8 FORM IF THE DCFS JUVENILE IS IN A DJJS CORRECTIONAL FACILITY

2. If consent was not obtained from the Guardian Ad Litem, then law enforcement must have a court order to complete the interview. Is there a court order?
YES ☐ (Interview/Interrogation can proceed) NO ☐ (Interview/Interrogation may not proceed)

COMPLETING THIS FORM ONLY DETERMINES WHETHER OR NOT THE INTERVIEW CAN PROCEED, NOT WHETHER THE STATEMENTS OBTAINED ARE ADMISSIBLE AS EVIDENCE.

Agent's Signature: _____

Reviewed by Division Staff: _____

(Print or Type Full Name & Title)

Division Staff Signature: _____

INTERVIEW DID ☐ or DID NOT ☐ proceed

**DIVISION OF JUVENILE JUSTICE SERVICES
CORRECTIONAL FACILITIES
RULE 8 FORM 14 & OLDER
Juvenile is 14 Years of Age or Older**

FACILITY: ??
NAME OF JUVENILE TO BE INTERVIEWED:
DATE OF REQUEST:
REQUESTING LAW ENFORCEMENT ENTITY:
AGENT NAME:
AGENT BADGE/ID:

APPLICABLE RULES: Rule 8(d) and Rule 8(e) of the Utah Rules of Juvenile Procedure

Rule 8(d) No person ... 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.

Rule 8(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.

INSTRUCTIONS:

1. This form is for juveniles 14 years of age and older.
2. All requirements must be satisfied prior to allowing the interview.
3. If the child is in DCFS custody, GAL permission is required prior to the interview and a 62A-4A-415 Form must be completed.

APPLICATION FOR PERMISSION TO INTERVIEW:

1. Has law enforcement obtained a court order to interview the child? (Check or complete all that apply)
YES ☐ Written Order? ☐ Verbal Order? ☐
(If YES, then interview may proceed) Date: _____
NO ☐ (Go to Question 2) Authorizing Judge: _____
2. Is law enforcement interviewing the minor about an "offense chargeable"?
YES ☐ (Go to Question 3) NO ☐ (Interview may proceed)
3. Has or will the child be advised of his constitutional rights?
YES ☐ (Go to Question 4) NO ☐ (Interview cannot take place without a court order)
4. Has the child AND the parent, guardian or custodian consented to the interview?
YES ☐ (Interview may proceed) NO ☐ (Interview cannot take place without a court order)

COMPLETING THIS FORM ONLY DETERMINES WHETHER OR NOT THE INTERVIEW CAN PROCEED, NOT WHETHER THE STATEMENTS OBTAINED ARE ADMISSIBLE AS EVIDENCE.

Agent's Signature: _____

Reviewed by Division Staff: _____
(Print or Type Full Name & Title)

Division Staff Signature: _____

INTERVIEW DID ☐ or DID NOT ☐ proceed

??

AGENT BADGE/ID:

Reviewed by Division Staff:

(Print or Type Full Name & Title)

Division Staff Signature:

INTERVIEW DID ☐ or DID NOT ☐ proceed