

1 **Rule 37A. Visual recording of statement or testimony of child in abuse, neglect~~and,~~**
2 **dependency, or substantiation proceedings - Conditions of admissibility.**

3 (a) In any abuse, neglect, dependency, ~~and~~or substantiation proceedings, the oral
4 statement of a child may be recorded, and upon motion and for good cause shown is
5 admissible as evidence in any court proceeding regarding the petition if all of the
6 following conditions are met:

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

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

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

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

15 (5) the person conducting the interview of the child in the recording is present at
16 the proceeding and is available to testify and be cross-examined by either party;

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

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

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

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

28 (b) In any abuse, neglect, ~~and~~ dependency, or substantiation proceedings, the court may
29 order that the testimony of any child may be taken in a room other than the courtroom.

30 All of the following conditions ~~shall~~must be observed:

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

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

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

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

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

46 (E) normal court procedures ~~shall~~must be approximated as nearly as
47 possible;

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

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

52 (c) In any abuse, neglect, ~~and~~ dependency, or substantiation proceedings, the court may
53 order that the testimony of any child be taken outside the courtroom and be recorded.
54 That testimony is admissible as evidence, for viewing in any court proceeding regarding
55 the allegations if the provisions of Subsection (b) are observed, in addition to the
56 following provisions:

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

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

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

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

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