

**Effective 3/22/2018**

**77-37-4 Additional rights -- Children.**

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

- (1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.
- (2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.
- (3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.
- (4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.
- (5)
  - (a) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings. Except as provided in Subsection (6), recordings and transcripts of interviews may not be distributed, released, or displayed to anyone without a court order.
  - (b) A court order described in Subsection (5)(a):
    - (i) shall describe with particularity to whom the recording or transcript of the interview may be released and prohibit further distribution or viewing by anyone not named in the order; and
    - (ii) may impose restrictions on access to the materials considered reasonable to protect the privacy of the child victim.
  - (c) A parent or guardian of the child victim may petition a juvenile or district court for an order allowing the parent or guardian to view a recording or transcript upon a finding of good cause. The order shall designate the agency that is required to display the recording or transcript to the parent or guardian and shall prohibit viewing by anyone not named in the order.
  - (d) Following the conclusion of any legal proceedings in which the recordings or transcripts are used, the court shall order the recordings and transcripts in the court's file sealed and preserved.
- (6)
  - (a) The following offices and their designated employees may distribute and receive a recording or transcript to and from one another without a court order:
    - (i) the Division of Child and Family Services;
    - (ii) administrative law judges employed by the Department of Human Services;
    - (iii) Department of Human Services investigators investigating the Division of Child and Family Services or investigators authorized to investigate under Section 62A-4a-202.6;
    - (iv) an office of the city attorney, county attorney, district attorney, or attorney general;
    - (v) a law enforcement agency;
    - (vi) a Children's Justice Center established under Section 67-5b-102; or
    - (vii) the attorney for the child who is the subject of the interview.

- (b) In a criminal case or in a juvenile court in which the state is a party:
  - (i) the parties may display and enter into evidence a recording or transcript in the course of a prosecution;
  - (ii) the state's attorney may distribute a recording or transcript to the attorney for the defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for discovery;
  - (iii) the attorney for the defendant or respondent may do one or both of the following:
    - (A) release the recording or transcript to an expert retained by the attorney for the defendant or respondent if the expert agrees in writing that the expert will not distribute, release, or display the recording or transcript to anyone without prior authorization from the court; or
    - (B) permit the defendant or respondent to view the recording or transcript, but may not distribute or release the recording or transcript to the defendant or respondent; and
  - (iv) the court shall advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be distributed, released, or displayed without prior authorization from the court.
- (c) A court's failure to advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be used as a defense to prosecution for a violation of the disclosure rule.
- (d) In an administrative case, pursuant to a written request, the Division of Child and Family Services may display, but may not distribute or release, a recording or transcript to the respondent or to the respondent's designated representative.
- (e)
  - (i) Within two business days of a request from a parent or guardian of a child victim, an investigative agency shall allow the parent or guardian to view a recording after the conclusion of an interview, unless:
    - (A) the suspect is a parent or guardian of the child victim;
    - (B) the suspect resides in the home with the child victim; or
    - (C) the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation.
  - (ii) If the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation, the parent or guardian may petition a juvenile or district court for an expedited hearing on whether there is good cause for the court to enter an order allowing the parent or guardian to view the recording in accordance with Subsection (5)(c).
  - (iii) A Children's Justice Center shall coordinate the viewing of the recording described in this Subsection (6)(e).
- (f) A multidisciplinary team assembled by a Children's Justice Center or an interdisciplinary team assembled by the Division of Child and Family Services may view a recording or transcript, but may not receive a recording or transcript.
- (g) A Children's Justice Center:
  - (i) may distribute or display a recording or transcript to an authorized trainer or evaluator for purposes of training or evaluation; and
  - (ii) may display, but may not distribute, a recording or transcript to an authorized trainee.
- (h) An authorized trainer or instructor may display a recording or transcript according to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center or according to the authorized trainer's or instructor's scope of employment.
- (i)

- (i) In an investigation under Section 53E-6-506, in which a child victim who is the subject of the recording or transcript has alleged criminal conduct against an educator, a law enforcement agency may distribute or release the recording or transcript to an investigator operating under State Board of Education authorization, upon the investigator's written request.
  - (ii) If the respondent in a case investigated under Section 53E-6-506 requests a hearing authorized under that section, the investigator operating under State Board of Education authorization may display, release, or distribute the recording or transcript to the prosecutor operating under State Board of Education authorization or to an expert retained by an investigator.
  - (iii) Upon request for a hearing under Section 53E-6-506, a prosecutor operating under State Board of Education authorization may display the recording or transcript to a pro se respondent, to an attorney retained by the respondent, or to an expert retained by the respondent.
  - (iv) The parties to a hearing authorized under Section 53E-6-506 may display and enter into evidence a recording or transcript in the course of a prosecution.
- (7) Except as otherwise provided in this section, it is a class B misdemeanor for any individual to distribute, release, or display any recording or transcript of an interview of a child victim conducted at a Children's Justice Center.

Amended by Chapter 415, 2018 General Session