

HB0157S01 compared with HB0157

~~{deleted text}~~ shows text that was in HB0157 but was deleted in HB0157S01.

inserted text shows text that was not in HB0157 but was inserted into HB0157S01.

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Representative Jennifer M. Seelig proposes the following substitute bill:

RAPE KIT PROCESSING AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the provisions of the Utah Code of Criminal Procedure regarding the victim's bill of rights.

Highlighted Provisions:

This bill:

- ▶ provides that a victim of a sexual offense has the following rights:
 - to be informed whether the DNA profile of the assailant was obtained;
 - to be informed whether the DNA profile of the assailant has been entered into the Utah Combined DNA Index System;
 - to be informed if there is a match between the DNA profile of the assailant and a DNA profile contained in the Utah Combined DNA Index System, provided the disclosure of this information would not impede or compromise an ongoing

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investigation; and

- to designate a person to receive information provided by law enforcement;
- ▶ provides that a law enforcement agency that chooses not to analyze DNA evidence in a case where the identity of the perpetrator is in doubt shall inform the victim of that decision;
- ▶ provides that a law enforcement agency shall provide written notification to a victim or the victim's designee 60 days before destroying or disposing of evidence from an unsolved sexual assault case;
- ▶ provides that the law enforcement office where the sexual offense is reported shall have the responsibility to inform the victim of these rights; and
- ▶ provides that a victim may designate a person of the victim's choosing to receive any information from the law enforcement agency.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-37-3, as last amended by Laws of Utah 2011, Chapter 177

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-37-3** is amended to read:

77-37-3. Bill of rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be

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informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections 62A-7-109.5, 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have [a] the following rights:

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(i) the right to [be informed of their right to] request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the alleged sexual offender for HIV infection as provided in Section 76-5-502[-The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.];

(ii) the right to be informed whether ~~the~~ a DNA profile ~~of the assailant~~ was obtained from the testing of the rape kit evidence or from other crime scene evidence;

(iii) the right to be informed whether ~~the~~ a DNA profile ~~of the assailant~~ developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;

(iv) the right to be informed whether there is a match between ~~the~~ a DNA profile ~~of the assailant~~ developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and

(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).

~~(vi) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.~~

(2) The law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication, or by email, if an email address is available.

(3) The law enforcement agency investigating a sexual offense has the following authority and responsibilities:

~~(a) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.~~

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~~(b)~~ If the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed, the law enforcement agency shall notify the victim or the victim's designee.

(b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification of that intention and information on how to appeal the decision to the victim or the victim's designee of that intention.

(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

(c) A law enforcement agency responsible for providing information under Subsections (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the victim or the victim's designee, shall advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.

~~(d) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification to the victim or the victim's designee of that intention.~~

~~(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.~~

~~(f)~~ (d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).

~~(2)~~ (4) Informational rights of the victim under this chapter are based upon the victim providing the [victim's] current [address and telephone number] name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

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Legislative Review Note

~~as of 2-20-14 4:11 PM~~

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~~Office of Legislative Research and General Counsel~~