

HB0399S01 compared with HB0399

~~{deleted text}~~ shows text that was in HB0399 but was deleted in HB0399S01.

inserted text shows text that was not in HB0399 but was inserted into HB0399S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{VICTIMS}~~ Representative LaVar Christensen proposes the following substitute bill:

VICTIMS' RIGHTS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the ~~{victim's bill of rights by amending provisions relating to victims, witnesses, and victim advocates}~~ Utah Code of Criminal Procedure related to defendants, victims, and witnesses.

Highlighted Provisions:

This bill:

- ▶ ~~{asserts}~~ provides that the rights recognized and the support and assistance provided to victims and witnesses ~~{are alleged roles until proven in trial;~~
- ▶ ~~describes the role of the victim advocate; and~~
- ▶ ~~requires victims, witnesses, and victim advocates to be advised of the consequences of making false allegations}~~ shall be applied without denying criminal defendants the constitutional rights and protections to which criminal defendants are entitled.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-37-1, as enacted by Laws of Utah 1987, Chapter 194

~~{ **77-37-3**, as last amended by Laws of Utah 2014, Chapter 232~~

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

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

77-37-1. Legislative intent.

(1) ~~{~~The~~}~~ Subject to the paramount rights and protections guaranteed to defendants by the United States Constitution and the Utah Constitution, the Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

(2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

~~{Section 2. 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~~

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~~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 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 77-24a-1 through 77-24a-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~~

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~~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 the following rights:~~

~~—— (i) the 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;~~

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

~~—— (iii) the right to be informed whether a DNA profile 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 a DNA profile 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).~~

~~—— (k) 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) If the law enforcement agency determines that DNA evidence will not be analyzed~~

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~~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) 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):~~

~~—— (4) Informational rights of the victim under this chapter are based upon the victim providing the current 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:~~

~~—— (5) (a) All references to victims or witnesses in this chapter are only allegations until proven at trial.~~

~~—— (b) All defendants are presumed innocent until proven guilty and are thus entitled at all times to full due process of law.~~

~~—— (c) Fundamental constitutional rights and protections may not be diminished, interfered with, undermined, or unfairly affected by this chapter.~~

~~—— (6) (a) Victim advocates are not part of a criminal prosecution and may not interfere with or undermine a defendant's rights and constitutional protections.~~

~~—— (b) Victim advocates are only offered to a victim for the victim's support and assistance in understanding the judicial process and the victim's potential role in the criminal proceeding if called upon to testify.~~

~~—— (7) The appropriate law enforcement agency shall fully and properly advise all victims.~~

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~~witnesses, and victim advocates of the applicable statutes and potential consequences relating to false allegations.~~

Legislative Review Note

~~Office of Legislative Research and General Counsel;~~ (3) The rights recognized and the support and assistance provided under this chapter shall be applied without denying criminal defendants the constitutional rights and protections to which criminal defendants are entitled.