

**VICTIM COMMUNICATIONS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill enacts provisions related to victim communications.

**Highlighted Provisions:**

This bill:

- ▶ enacts the Privileged Communications with Victim Advocates Act, including:
  - providing a purpose statement;
  - defining terms;
  - outlining the scope of the part;
  - providing a privilege for confidential communications;
  - addressing government records; and
  - requiring certain notices;
- ▶ addresses examination of a victim advocate; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78B-1-137**, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

**77-38-401**, Utah Code Annotated 1953

- 30 77-38-402, Utah Code Annotated 1953
- 31 77-38-403, Utah Code Annotated 1953
- 32 77-38-404, Utah Code Annotated 1953
- 33 77-38-405, Utah Code Annotated 1953

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

36 Section 1. Section 77-38-401 is enacted to read:

37 **Part 4. Privileged Communications with Victim Advocates Act.**

38 **77-38-401. Title.**

39 This part is known as the "Privileged Communications with Victim Advocates Act."

40 Section 2. Section 77-38-402 is enacted to read:

41 **77-38-402. Purpose.**

42 It is the purpose of this part to enhance and promote the mental, physical, and emotional  
43 recovery of victims by restricting the circumstances under which a confidential communication  
44 with the victim may be disclosed.

45 Section 3. Section 77-38-403 is enacted to read:

46 **77-38-403. Definitions.**

47 As used in this part:

48 (1) "Advocacy services" means assistance provided that supports, supplements,  
49 intervenes, or links a victim or a victim's family with appropriate resources and services to  
50 address the wide range of potential impacts of being victimized.

51 (2) "Advocacy services provider" means an entity that has the primary focus of  
52 providing advocacy services in general or with specialization to a specific crime type or  
53 specific type of victimization.

54 (3) "Confidential communication" means a communication that is intended to be  
55 confidential between a victim and a victim advocate for the purpose of obtaining advocacy  
56 services.

57 (4) "Criminal justice system victim advocate" means an individual who:

58 (a) is employed or authorized to volunteer by a government agency that possesses a  
59 role or responsibility within the criminal justice system;

60 (b) has as a primary responsibility addressing the mental, physical, or emotional  
61 recovery of victims;

62 (c) completes a minimum 40 hours of trauma-informed training:

63 (i) in crisis response, the effects of crime and trauma on victims, victim advocacy  
64 services and ethics, informed consent, and this part regarding privileged confidential  
65 communication; and

66 (ii) that have been approved or provided by the Utah Office for Victims of Crime; and

67 (d) is under the supervision of the director or director's designee of the government  
68 agency.

69 (5) "Health care provider" means the same as that term is defined in Section  
70 [78B-3-403](#).

71 (6) "Mental health therapist" means the same as that term is defined in Section  
72 [58-60-102](#).

73 (7) "Nongovernment organization victim advocate" means an individual who:

74 (a) is employed or authorized to volunteer by an nongovernment organization advocacy  
75 services provider;

76 (b) has as a primary responsibility addressing the mental, physical, or emotional  
77 recovery of victims;

78 (c) has a minimum 40 hours of trauma-informed training:

79 (i) in assisting victims specific to the specialization or focus of the nongovernment  
80 organization advocacy services provider and includes this part regarding privileged confidential  
81 communication; and

82 (ii) (A) that have been approved or provided by the Utah Office for Victims of Crime;

83 or

84 (B) that meets other minimally equivalent standards set forth by the nongovernment  
85 organization advocacy services provider; and

86 (d) is under the supervision of the director or the director's designee of the  
87 nongovernment organization advocacy services provider.

88 (8) "Record" means a book, letter, document, paper, map, plan, photograph, file, card,  
89 tape, recording, electronic data, or other documentary material regardless of physical form or  
90 characteristics.

91 (9) "Victim" means:

92 (a) a "victim of a crime" as defined in Section [77-38-2](#);

93 (b) an individual who is a victim of domestic violence as defined in Section [77-36-1](#); or

94 (c) an individual who is a victim of dating violence as defined in Section [78B-7-402](#).

95 (10) "Victim advocate" means:

96 (a) a criminal justice system victim advocate;

97 (b) a nongovernment organization victim advocate; or

98 (c) an individual who is employed or authorized to volunteer by a public or private

99 entity and is designated by the Utah Office for Victims of Crime as having the specific purpose  
100 of providing advocacy services to or for the clients of the public or private entity.

101 (d) "Victim advocate" does not include an employee of the Utah Office for Victims of  
102 Crime.

103 Section 4. Section **77-38-404** is enacted to read:

104 **77-38-404. Scope of part.**

105 This part governs the disclosure of a confidential communication to a victim advocate,  
106 except that:

107 (1) if Title 53B, Chapter 28, Part 2, Confidential Communications for Institutional  
108 Advocacy Services Act, applies, that part governs; and

109 (2) if Part 2, Confidential Communications for Sexual Assault Act, applies, that part  
110 governs.

111 Section 5. Section **77-38-405** is enacted to read:

112 **77-38-405. Disclosure of a communication given to a victim advocate.**

113 (1) (a) A victim advocate may not disclose a confidential communication with a

114 victim, including a confidential communication in a group therapy session, except:

115 (i) that a criminal justice system victim advocate shall provide the confidential  
116 communication to a prosecutor who is responsible for determining whether the confidential  
117 communication is exculpatory or goes to the credibility of a witness;

118 (ii) that a criminal justice system victim advocate may provide the confidential  
119 communication to a parent or guardian of a victim if the victim is a minor and the parent or  
120 guardian is not the accused, or a law enforcement officer, health care provider, mental health  
121 therapist, domestic violence shelter employee, an employee of the Utah Office for Victims of  
122 Crime, or member of a multidisciplinary team assembled by a Children's Justice Center or a  
123 law enforcement agency for the purpose of providing advocacy services; or

124 (iii) to the extent allowed by the Utah Rules of Evidence.

125 (b) If a prosecutor determines that the confidential communication is exculpatory or  
126 goes to the credibility of a witness, after the court notifies the victim and the defense attorney  
127 of the opportunity to be heard at an in camera review, the prosecutor will present the  
128 confidential communication to the victim, defense attorney, and the court for in camera review  
129 in accordance with the Utah Rules of Evidence.

130 (2) A record that contains information from a confidential communication between a  
131 victim advocate and a victim may not be disclosed under Title 63G, Chapter 2, Government  
132 Records Access and Management Act, to the extent that it includes the information about the  
133 confidential communication.

134 (3) A criminal justice system victim advocate, as soon as reasonably possible, shall  
135 notify a victim, or a parent or guardian of the victim if the victim is a minor and the parent or  
136 guardian is not the accused:

137 (a) whether a confidential communication with the criminal justice system victim  
138 advocate will be disclosed to a prosecutor and whether a statement relating to the incident that  
139 forms the basis for criminal charges or goes to the credibility of a witness will also be disclosed  
140 to the defense attorney; and

141 (b) of the name, location, and contact information of one or more nongovernment

142 organization advocacy services providers specializing in the victim's service needs, when a  
143 nongovernment organization advocacy services provider exists and is known to the criminal  
144 justice system victim advocate.

145 Section 6. Section **78B-1-137** is amended to read:

146 **78B-1-137. Witnesses -- Privileged communications.**

147 There are particular relations in which it is the policy of the law to encourage  
148 confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in  
149 the following cases:

150 (1) (a) Neither a wife nor a husband may either during the marriage or afterwards be,  
151 without the consent of the other, examined as to any communication made by one to the other  
152 during the marriage.

153 (b) This exception does not apply:

154 (i) to a civil action or proceeding by one spouse against the other;

155 (ii) to a criminal action or proceeding for a crime committed by one spouse against the  
156 other;

157 (iii) to the crime of deserting or neglecting to support a spouse or child;

158 (iv) to any civil or criminal proceeding for abuse or neglect committed against the child  
159 of either spouse; or

160 (v) if otherwise specifically provided by law.

161 (2) An attorney cannot, without the consent of the client, be examined as to any  
162 communication made by the client to the attorney or any advice given regarding the  
163 communication in the course of the professional employment. An attorney's secretary,  
164 stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any  
165 fact, the knowledge of which has been acquired as an employee.

166 (3) A member of the clergy or priest cannot, without the consent of the person making  
167 the confession, be examined as to any confession made to either of them in their professional  
168 character in the course of discipline enjoined by the church to which they belong.

169 (4) A physician or surgeon cannot, without the consent of the patient, be examined in a

170 civil action as to any information acquired in attending the patient which was necessary to  
171 enable the physician or surgeon to prescribe or act for the patient. However, this privilege shall  
172 be waived by the patient in an action in which the patient places the patient's medical condition  
173 at issue as an element or factor of the claim or defense. Under those circumstances, a physician  
174 or surgeon who has prescribed for or treated that patient for the medical condition at issue may  
175 provide information, interviews, reports, records, statements, memoranda, or other data relating  
176 to the patient's medical condition and treatment which are placed at issue.

177 (5) A public officer cannot be examined as to communications made in official  
178 confidence when the public interests would suffer by the disclosure.

179 (6) (a) A sexual assault counselor as defined in Section 77-38-203 cannot, without the  
180 consent of the victim, be examined in a civil or criminal proceeding as to any confidential  
181 communication as defined in Section 77-38-203 made by the victim.

182 (b) A victim advocate as defined in Section 77-38-403 may not, without the written  
183 consent of the victim, or the victim's guardian or conservator if the guardian or conservator is  
184 not the accused, be examined in a civil or criminal proceeding as to a confidential  
185 communication, as defined in Section 77-38-403, unless the victim advocate is a criminal  
186 justice system victim advocate, as defined in Section 77-38-403, and is examined in camera by  
187 a court to determine whether the confidential communication is privileged.