

**VICTIM COMMUNICATIONS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**Committee Note:**

The Victim Advocate Confidentiality Task Force recommended this bill.

Membership: 5 legislators 4 non-legislators

Legislative Vote: 5 voting for 0 voting against 0 absent

**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 for privilege for communications;
  - addressing government records; and
  - requiring certain notices;
- ▶ addresses examination of victim advocate; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **78B-1-137**, as renumbered and amended by Laws of Utah 2008, Chapter 3

32 ENACTS:

33 **77-38-401**, Utah Code Annotated 1953

34 **77-38-402**, Utah Code Annotated 1953

35 **77-38-403**, Utah Code Annotated 1953

36 **77-38-404**, Utah Code Annotated 1953

37 **77-38-405**, Utah Code Annotated 1953

38 **77-38-406**, Utah Code Annotated 1953



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

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

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

43 **77-38-401. Title.**

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

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

46 **77-38-402. Purpose.**

47 It is the purpose of this part to enhance and promote the mental, physical, and emotional  
48 recovery of victims by restricting the circumstances under which communications with the  
49 victim may be disclosed.

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

51 **77-38-403. Definitions.**

52 As used in this part:

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

56 (b) "Advocacy services" do not include the practice of mental health therapy as defined  
57 in Section **58-60-102**.

58 (2) "Advocacy services provider" means an entity that has the primary focus of

59 providing advocacy services in general or with specialization to a specific crime type or  
60 specific type of victimization.

61 (3) "Communication" means the giving of information by a victim to a victim  
62 advocate, and includes a record created or maintained as a result of providing the information.

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

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

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

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

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

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

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

74 (5) "Nongovernment organization victim advocate" means an individual who:

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

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

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

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

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

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

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

89 (6) "Record" means a book, letter, document, paper, map, plan, photograph, file, card,

90 tape, recording, electronic data, or other documentary material regardless of physical form or  
91 characteristics.

92 (7) "Victim" means:

93 (a) a "victim of a crime" as defined in Section 77-38-2;

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

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

96 (8) "Victim advocate" means:

97 (a) a criminal justice system victim advocate;

98 (b) a nongovernment organization victim advocate; or

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

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

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

103 **77-38-404. Scope of part.**

104 This part governs the disclosure of communications to a victim advocate, except that:

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

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

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

110 **77-38-405. Disclosure of communication given to a nongovernment organization**  
111 **victim advocate.**

112 In accordance with the Utah Rules of Evidence, a nongovernment organization victim  
113 advocate may not disclose communications with a victim, including communications in a  
114 group therapy session, except to the extent allowed by the Utah Rules of Evidence.

115 Section 6. Section 77-38-406 is enacted to read:

116 **77-38-406. Disclosure of communications given to a criminal justice system victim**  
117 **advocate.**

118 (1) (a) In accordance with the Utah Rules of Evidence, a criminal justice system victim  
119 advocate may not disclose communications with a victim, including communications in a  
120 group therapy session, except:

121 (i) that the criminal justice system victim advocate shall provide the communications  
122 to a prosecutor who is responsible for determining whether the communications are  
123 exculpatory or go to the credibility of a witness; or

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

125 (b) If a prosecutor determines that the communication is exculpatory or goes to the  
126 credibility of a witness, after giving notice to the victim and the defense attorney and an  
127 opportunity to be heard as part of the in camera process, the prosecutor will present the  
128 communication to the court for in camera review pursuant to the Utah Rules of Evidence.

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

133 (3) A criminal justice system victim advocate, as soon as reasonably possible, shall  
134 notify a victim:

135 (a) in writing that communications with the criminal justice system victim advocate  
136 may be disclosed to a prosecutor and that a statement relating to the incident that forms the  
137 basis for criminal charges or goes to the credibility of a witness may also be disclosed to the  
138 defense attorney; and

139 (b) of the name, location, and contact information of one or more nongovernment  
140 organization advocacy services providers specializing in the victim's service needs, when a  
141 nongovernment organization advocacy services provider exists and is known to the criminal  
142 justice system victim advocate.

143 Section 7. Section **78B-1-137** is amended to read:

144 **78B-1-137. Witnesses -- Privileged communications.**

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

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

151 (b) This exception does not apply:

- 152 (i) to a civil action or proceeding by one spouse against the other;
- 153 (ii) to a criminal action or proceeding for a crime committed by one spouse against the
- 154 other;
- 155 (iii) to the crime of deserting or neglecting to support a spouse or child;
- 156 (iv) to any civil or criminal proceeding for abuse or neglect committed against the child
- 157 of either spouse; or
- 158 (v) if otherwise specifically provided by law.

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

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

167 (4) A physician or surgeon cannot, without the consent of the patient, be examined in a  
168 civil action as to any information acquired in attending the patient which was necessary to  
169 enable the physician or surgeon to prescribe or act for the patient. However, this privilege shall  
170 be waived by the patient in an action in which the patient places the patient's medical condition  
171 at issue as an element or factor of the claim or defense. Under those circumstances, a physician  
172 or surgeon who has prescribed for or treated that patient for the medical condition at issue may  
173 provide information, interviews, reports, records, statements, memoranda, or other data relating  
174 to the patient's medical condition and treatment which are placed at issue.

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

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

180 (b) A victim advocate as defined in Section 77-38-403 cannot, without the consent of  
181 the victim, be examined in a civil or criminal proceeding as to a communication that is a  
182 privileged communication under the Utah Rules of Evidence, unless the victim advocate is

183 examined in camera to determine whether a communication is privileged under the Utah Rules  
184 of Evidence.