

HB0171S03 compared with HB0171S02

~~{Omitted text}~~ shows text that was in HB0171S02 but was omitted in HB0171S03
inserted text shows text that was not in HB0171S02 but was inserted into HB0171S03

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Victim and Witness Privacy Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tyler Clancy

Senate Sponsor: Michael K. McKell

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3 **LONG TITLE**

4 **General Description:**

5 This bill addresses the privacy of a victim and witness in a criminal investigation or action.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ defines terms;

9 ▶ addresses access by a defendant and a defendant's attorney to nonpublic electronic data related to a victim or witness, including:

11 • providing that a defendant may only obtain nonpublic electronic data related to a victim or witness that is not in the possession of a law enforcement agency or prosecuting attorney through a valid search warrant or a subpoena or voluntarily from the victim or witness;

15 • requiring the prosecuting attorney to make available, to the defendant or the defendant's attorney, certain nonpublic electronic data related to a victim or witness that is in the possession of a law enforcement agency or prosecuting attorney;

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providing that a defendant's attorney may only inspect, view, or examine the nonpublic electronic data related to a victim or witness that is in the possession of a law enforcement agency at a governmental facility; and

- 21 • providing the requirements for a defendant's attorney to copy, photograph, or otherwise reproduce nonpublic electronic data related to a victim or witness; and
- 23 ▸ provides a victim or a witness in a criminal proceeding with a right to privacy in any nonpublic electronic data related to the victim or witness that is collected during the course of the criminal investigation or action.

26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

31 **AMENDS:**

32 **77-37-3**, as last amended by Laws of Utah 2024, Chapters 96, 164, as last amended by Laws of Utah 2024, Chapters 96, 164

33 **ENACTS:**

34 **77-4-202**, Utah Code Annotated 1953, Utah Code Annotated 1953

35

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

37 Section 1. Section 1 is enacted to read:

38 **77-4-202. Production of nonpublic electronic data related to a victim or witness.**

39 (1) As used in this section:

40 (a) "Governmental facility" means a facility that is owned, leased, or operated by this state or a political subdivision of this state.

42 (b) "Law enforcement agency" means a public or private agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision of this state.

45 (c)

 (i) "Nonpublic victim or witness data" means electronic data related to a victim or witness:

47 (A) that is otherwise not available to the public; and

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(B) for which a reasonable person would believe that the victim or witness has a reasonable expectation of privacy.

50 (ii) "Nonpublic victim or witness data" includes electronic data related to a victim or witness that is obtained ~~{by a law enforcement or prosecuting agency}~~ in the course of a criminal investigation.

53 ~~{(d)}~~ }

~~{(i)}~~ (d) "Prosecuting {agency} attorney" means:

54 ~~{(A) {the Office of the Attorney General;}}~~

53 (i) the attorney general and an assistant attorney general;

55 ~~{(B)}~~ (ii) {the office of} a {county} district attorney or deputy district attorney;

56 ~~{(C)}~~ (iii) {the office of} a {city or municipal} county attorney or assistant county attorney; or

57 ~~{(D)}~~ (iv) {a law firm contracted to provide prosecution services to a political subdivision} an attorney authorized to commence an action on behalf of the state.

59 ~~{(ii) {"Prosecuting agency" includes an attorney on staff for an entity described in Subsection (1)(d)(i), whether acting in a civil or criminal capacity.}}~~

61 (e) "Victim" means the same as that term is defined in Section 77-37-2.

62 (f) "Witness" means the same as that term is defined in Section 77-37-2.

63 (2) If a defendant seeks nonpublic victim or witness data that is not in the possession of a law enforcement agency or the prosecuting agency, the defendant may only obtain the nonpublic victim or witness data:

66 (a) as described in Rule ~~{14(e)}~~ 14(b)(5) of the Utah Rules of Criminal Procedure; or

67 (b) if the victim or witness voluntarily provides the nonpublic victim or witness data to the defendant or the defendant's attorney.

69 (3) If nonpublic victim or witness data is in the possession of a law enforcement agency or the prosecuting agency:

71 (a) the prosecuting attorney shall make the nonpublic victim or witness data available to the defendant's attorney in accordance with this section; and

73 (b) the defendant's attorney may only inspect, view, or examine the nonpublic victim or witness data at a governmental facility~~{-}~~, or copy, photograph, or otherwise reproduce the nonpublic victim or witness data, in accordance with this section.

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~~{(4) {The prosecuting attorney shall describe in the discovery disclosure to the defendant whether the prosecuting attorney has any nonpublic victim or witness data, including the source of the nonpublic victim or witness data.}}~~

79 ~~{(5)}~~ (4) Any nonpublic victim or witness data related to a victim or witness that is in the possession of a law enforcement agency or the prosecuting agency shall remain in the care, custody, and control of:

82 (a) the law enforcement agency;

83 (b) the prosecuting agency; or

84 (c) the court.

85 ~~{(6)}~~ (5) The prosecuting agency shall provide the defendant's attorney with, or permit the defendant's attorney to copy, photograph, or otherwise reproduce, nonpublic victim or witness data without an order from the court if:

88 ~~{(a) {the nonpublic victim or witness data is an oral or written statement given by the victim or witness to a law enforcement agency or prosecuting agency.}}~~

90 ~~{(b)}~~ (a) the nonpublic victim or witness data was directly communicated to the defendant by the victim or witness;

92 ~~{(c)}~~ (b) the nonpublic victim or witness data is direct evidence of an element of the offense for which the defendant is charged;

94 ~~{(d)}~~ (c) the nonpublic victim or witness data has been submitted by the prosecuting agency as an exhibit at a hearing;

96 ~~{(e)}~~ (d) the prosecuting attorney knows that the nonpublic victim or witness data is a communication that describes or explains the criminal conduct for which the defendant is charged;

99 ~~{(f)}~~ (e) the prosecuting attorney knows that the nonpublic victim or witness data is exculpatory evidence; or

101 ~~{(g)}~~ (f) the prosecuting attorney intends to submit the nonpublic victim or witness data as an exhibit at trial.

94 (6)

103 ~~{(7)}~~ (a) Before a prosecuting attorney provides the nonpublic victim or witness data as described in Subsection (5), the prosecuting attorney may request an order from the court that:

106 ~~{(a)}~~ (i) requires the defendant's attorney to inspect, view, or examine the nonpublic victim or witness data at a governmental facility ~~{upon a showing by the prosecuting attorney that making the~~

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- nonpublic victim or witness data available at a governmental facility would not unreasonably interfere with access to the nonpublic victim or witness data by the defendant's attorney } ; {or} and
- 99 (ii) provides restrictions regarding the copying, photographing, distribution, reproduction, dissemination, viewing, or retention of the nonpublic victim or witness data.
- 102 (b) The court may grant a request described in Subsection (6)(a) upon a showing by the prosecuting attorney that the request would not unreasonably interfere with:
- 104 (i) the privacy of the victim or witness; and
- 111 ~~{(b)} (ii) {limits the ability of the defendant's attorney} access to {copy, photograph, distribute, or otherwise reproduce} the nonpublic victim or witness data {upon a showing} by the {prosecuting} defendant's attorney {that copying, photographing, reproducing, or distributing of the nonpublic victim or witness data would violate the privacy interests of the victim or witness} .~~
- 116 ~~{(8)} (7)~~
- (a) Subject to Subsections (8) and (9), a defendant's attorney may submit a request to the court for an order allowing the defendant's attorney to copy, photograph, or otherwise reproduce nonpublic victim or witness data that is not provided to the defendant's attorney under Subsection (5) or (6) if the court finds that:
- 119 (i) the nonpublic victim or witness data is relevant and material evidence;
- 120 (ii) a review of the nonpublic victim or witness data at a governmental facility is inadequate for the defendant to prepare a defense for trial; and
- 122 (iii) the defendant's attorney has a legitimate interest in copying, photographing, or otherwise reproducing the nonpublic victim or witness data that outweighs the victim's or witness's right to privacy and right to be free from harassment as described in Section 77-37-3.
- 126 (b) ~~{The} If a~~ defendant's attorney ~~{shall serve the}~~ submits a request ~~{described in}~~ under Subsection ~~{(8)(a)} (7)(a)~~, the victim or witness has a right to receive notice and be heard on the ~~{prosecuting attorney and}~~ request if the nonpublic victim or witness data is related to the victim or witness.
- 128 ~~{(c) {The prosecuting attorney and the victim or witness may object to any request within 21 days after the day on which the request is submitted to the court.} }~~
- 130 ~~{(9)} (8)~~

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- (a) In issuing an order described in Subsection ~~{(8)(a)}~~ (7)(a), the court shall consider and limit, where appropriate, the use and further disclosure of the nonpublic victim or witness data in order to protect the privacy interests of the victim or witness.
- 133 (b) There is a rebuttable presumption against allowing a defendant's attorney to copy, photograph, or otherwise reproduce nonpublic victim or witness data that is an intimate image, as that term is defined in Section 76-5b-203.
- 136 (c) If the court issues an order allowing the defendant's attorney to copy, photograph, or otherwise reproduce an intimate image, the court shall include in the order limitations on:
- 139 (i) the number of copies, photographs, or reproductions that the defendant's attorney is permitted to make;
- 141 (ii) who may view the intimate image;
- 142 (iii) how the image may be stored; and
- 143 (iv) the disposition of the intimate image upon the completion of the criminal prosecution against the defendant.
- 145 ~~{(10)}~~ (9) At the request of a victim, witness, or a representative of a victim or witness, the court may:
- 147 (a) conduct an ex parte in camera review of nonpublic victim or witness data that the victim or witness does not believe should be made available to the defendant or the defendant's attorney; and
- 150 (b) enter an order prohibiting the inspection, review, or examination of the nonpublic victim or witness data if the nonpublic victim or witness data is:
- 152 (i) not relevant or material evidence in the criminal case; or
- 153 (ii) evidence of sexual behavior by the victim or witness that is inadmissible under Rule 412 of the Utah Rules of Evidence.
- 155 ~~{(11)}~~ (10) A law enforcement agency and a prosecuting agency shall establish a policy that ensures nonpublic victim or witness data is:
- 157 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
- 158 (b) maintained in a controlled environment and in a manner that protects the privacy of a victim or witness.
- 159 ~~{(12)}~~ (11) This section does not:
- 160 (a) limit the rights of a defendant under the Constitution of the United States or the Utah Constitution;
- 162 (b) create a right for a defendant that is beyond the rights created by the requirements of Rule 16 of the Utah Rules of Criminal Procedure, the Utah Constitution, and the United States Constitution; or

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- 165 (c) prevent a law enforcement agency or prosecuting agency from providing information to the Utah
166 Office for Victims of Crime that is necessary to provide victim services to a victim.
- 159 Section 2. Section **77-37-3** is amended to read:
- 160 **77-37-3. Bill of rights.**
- 170 (1) The bill of rights for victims and witnesses is:
- 171 (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 tampering with a witness, and Section 76-8-509,
regarding extortion or bribery to dismiss a criminal proceeding. Law enforcement, prosecution, and
corrections personnel have the duty to timely provide this information in a form which is useful to
the victim.
- 178 (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.
- 181 (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.
- 184 (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.
- 187 (e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M,
Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b, Crime Victims Restitution
Act, and Section 80-6-710. 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.
- 193 (f) Victims and witnesses have a right to have any personal property returned as provided in Chapter
11a, Seizure of Property and Contraband, and Chapter 11d, Lost or Mislaid Property. Criminal
justice agencies shall expeditiously return the property when it is no longer needed for court law
enforcement or prosecution purposes.
- 197 (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

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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.

- 204 (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.
- 207 (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.
- 212 (j) A victim or a witness in a criminal proceeding has a right to privacy in nonpublic victim or witness data, as defined in Section 77-4-202, that is collected during the course of the criminal investigation or action.
- 215 (2) In addition to the rights of a victim described in Subsection (1), a victim of a sexual offense has the right to:
- 217 (a) request voluntary testing for themselves for HIV infection as described in Section 53-10-803;
- 219 (b) request mandatory testing of the alleged sexual offender for HIV infection as described in Section 53-10-802;
- 221 (c) not to be prevented from, or charged for, a medical forensic examination;
- 222 (d) have the evidence from a sexual assault kit, or the contents of the sexual assault kit, preserved for the time periods described in Title 77, Chapter 11c, Retention of Evidence, without any charge to the victim;
- 225 (e) be informed whether a DNA profile was obtained from the testing of the evidence in a sexual assault kit or from other crime scene evidence;
- 227 (f) be informed whether a DNA profile developed from the evidence in a sexual assault kit, or from other crime scene evidence, has been entered into the Utah Combined DNA Index System;
- 230 (g) be informed of any result from a sexual assault kit or from other crime scene evidence if that disclosure would not impede or compromise an ongoing investigation, including:

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- (i) whether there is a match between a DNA profile developed from the evidence in a sexual assault kit, or from other crime scene evidence, and a DNA profile contained in the Utah Combined DNA Index System; and
- 236 (ii) a toxicology result or other information that is collected from a sexual assault kit as part of a
medical forensic examination of the victim;
- 238 (h) be informed in writing of policies governing the collection and preservation of a sexual assault kit;
- 240 (i) be informed of the status and location of a sexual assault kit;
- 241 (j) upon written request by the victim, receive a notice of intent from an agency, as defined in Section
53-10-905, if the agency intends to destroy or dispose of evidence from a sexual assault kit;
- 244 (k) be granted further preservation of the sexual assault kit if the agency, as defined in Section
53-10-905, intends to destroy or dispose of evidence from a sexual assault kit and the victim submits
a written request as described in Section 53-10-905;
- 247 (l) designate a person of the victim's choosing to act as a recipient of the information provided under
this Subsection (2) or Subsections (3) and (4); and
- 249 (m) be informed of all the enumerated rights in this Subsection (2).
- 250 (3) Subsections (2)(e) through (g) 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.
- 253 (4) A law enforcement agency investigating a sexual offense may:
- 254 (a) release the information indicated in Subsections (2)(e) through (g) upon the request of the victim of
the sexual offense, or the victim's designee and is the designated agency to provide that information
to the victim or the victim's designee;
- 257 (b) require that the victim's request be in writing; and
- 258 (c) respond to the victim's request with verbal communication, written communication, or by email if an
email address is available.
- 260 (5) A law enforcement agency investigating a sexual offense shall:
- 261 (a) notify the victim of the sexual offense, or the victim's designee, if the law enforcement agency
determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator
has not be confirmed;
- 264 (b) provide the information described in this section in a timely manner; and
- 265

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- (c) upon request of the victim or the victim's designee, advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.
- 268 (6) The law enforcement agency investigating the sexual offense is responsible for informing the victim of the sexual offense, or the victim's designee, of the rights established under this section.
- 271 (7) 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.

266 Section 3. **Effective date.**

This bill takes effect on May 7, 2025.

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