

HB0171S04 compared with HB0171

~~{Omitted text}~~ shows text that was in HB0171 but was omitted in HB0171S04

inserted text shows text that was not in HB0171 but was inserted into HB0171S04

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Victim ~~{and Witness}~~ Privacy ~~{Amendments}~~ Changes

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tyler Clancy

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines terms;
- addresses access by a defendant and a defendant's attorney to nonpublic ~~{information belonging~~ electronic data related to a victim ~~{or witness, including:}~~ ; and

- ~~{providing that a defendant may only obtain nonpublic information belonging 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;}~~

- ~~{requiring the prosecuting attorney to make available nonpublic information belonging 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 may only inspect, view, or examine the nonpublic information belonging to a victim or witness that is in the possession of a law enforcement agency at a governmental facility; and}~~

• ~~{providing the requirements for a defendant to copy, photograph, or otherwise reproduce nonpublic information belonging to a victim or witness; and}~~

▸ provides a victim ~~{or a witness}~~ in a criminal proceeding with a right to privacy in any nonpublic ~~{information belonging}~~ electronic data related to the victim ~~{or witness}~~ that is collected during the course of the criminal investigation or action.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

AMENDS:

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

ENACTS:

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

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

Section 1. Section 1 is enacted to read:

77-4-202. Production of nonpublic ~~{information belonging}~~ electronic data related to a victim ~~{or witness}~~.

(1) As used in this section:

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

~~{(b)}~~ (a) ~~{"Law enforcement agency"}~~ "Intimate image" means the same as that term is defined in Section ~~{53-10-102}~~ 76-5b-203.

(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.

(c)

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

(A) that is obtained from an electronic device possessed or used by a victim or from an electronic service provider;

~~{(e)}~~ (B) ~~"Nonpublic information" means information~~ that is otherwise not available to the public~~{:}~~
; and

~~{(d)}~~ ~~"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.}~~

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

(ii) "Nonpublic victim data" includes electronic data related to a victim that is obtained in the course of a criminal investigation.

(d) "Prosecuting attorney" means:

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

(ii) a district attorney or deputy district attorney;

(iii) a county attorney or assistant county attorney; or

(iv) an attorney authorized to commence an action on behalf of the state.

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

~~{(f)}~~

~~{(i)}~~ ~~"Victim or witness information" means nonpublic information related to a victim or witness.}~~

~~{(ii)}~~ ~~"Victim or witness information" includes nonpublic information obtained by a law enforcement or prosecuting agency in the course of a criminal investigation.}~~

~~{(iii)}~~ ~~"Victim or witness information" does not include nonpublic information in a verbal or written statement made to a law enforcement agency or a prosecuting agency.}~~

~~{(g)}~~ ~~"Witness" means the same as that term is defined in Section 77-37-2.}~~

~~{(2)}~~ ~~If a defendant seeks nonpublic information related to a victim or witness that is not in the possession of a law enforcement agency or the prosecuting agency, the defendant may only obtain the victim or witness information as described in Rule 14(c) of the Utah Rules of Criminal Procedure.}~~

~~{(3)}~~ ~~If victim or witness information is in the possession of a law enforcement agency or the prosecuting agency:}~~

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- {(a) {the prosecuting attorney shall make the victim or witness information available to the defendant in accordance with this section; and}-}
- 64 {(b) {the defendant may only inspect, view, or examine the victim or witness information at a governmental facility.-}}
- 66 ~~{(4)}~~ (2) {Any victim or witness information that is in the possession of a law enforcement agency or the prosecuting agency} In a criminal proceeding involving nonpublic victim data, the nonpublic victim data shall remain in the care, custody, and control of:
- 68 (a) ~~{the}~~ a law enforcement agency;
- 69 (b) ~~{the}~~ a prosecuting agency; or
- 70 (c) ~~{the}~~ a court.
- 51 (3)
- (a) In a criminal proceeding involving nonpublic victim data, a court shall deny a request by a defendant to copy, photograph, duplicate, or otherwise reproduce the nonpublic victim data if the court, the prosecuting agency, or a law enforcement agency provides the defendant's attorney, or an individual the defendant may seek to qualify as an expert, an adequate opportunity to view and examine the nonpublic victim data.
- 71 ~~{(5)}~~ (b) ~~{If victim or witness information is made available to a defendant as-}~~ An individual described in Subsection ~~{(2)}~~ (3)(a) may only view or ~~{(3)}~~ examine the nonpublic victim data at the law enforcement agency, the {defendant may only copy, photograph} prosecuting agency, or {otherwise reproduce} the court that has custody and control of the nonpublic victim {or witness information:} data.
- 60 (c) A defendant who is self represented:
- 74 ~~{(a)}~~ (i) ~~{upon written stipulation by-}~~ may not inspect the nonpublic victim ~~{or witness; or}~~ data; and
- 75 ~~{(b) {upon an order by the court as described in Subsection (6).-}}~~
- 76 ~~{(6)}~~ }
- 62 (ii) may request that the court appoint counsel for the purpose of inspecting the nonpublic victim data on behalf of the defendant.
- 64 (4)
- (a) Notwithstanding Subsection (3), if nonpublic victim data is relevant or material evidence in a criminal proceeding, the court may order the dissemination of the nonpublic victim data to a

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defendant's or a defendant's attorney in accordance with Rule 16 of the Utah Rules of Criminal Procedure.

- 68 (b) If the court orders the dissemination of nonpublic victim data under Subsection (4)(a), the court:
70 (i) may not order the entire contents of a device, or all nonpublic victim data, be given to a defendant or
the defendant's attorney; and
72 (ii) may only require the dissemination of the nonpublic victim data that is relevant or material.
74 (c) There is a rebuttable presumption against:
75 (i) disseminating to the defendant or the defendant's attorney nonpublic victim data that is an intimate
image; or
{(a)} (ii) {A court may issue an order} allowing a defendant or a defendant's attorney to copy,
photograph, or otherwise reproduce {victim or witness information if the court finds} nonpublic
victim data that{;} is an intimate image.
79 (d) If the court issues an order disseminating an intimate image, or allowing the defendant or the
defendant's attorney to copy, photograph, or otherwise reproduce an intimate image, the court shall
include in the order limitations on:
78 (i) the {victim} number of copies, photographs, or {witness information was directly
communicated to} reproductions that the defendant {by the victim or witness} or defendant's
attorney is permitted to make;
84 (ii) who may view the intimate image;
85 (iii) how the image may be stored; and
80 {(ii)} (iv) the {victim or witness information is direct evidence of an element} disposition of the
intimate image upon the completion of the {offense for which} criminal prosecution against the
defendant {is charged;} .
82 {(iii) {the victim or witness information has been submitted by the prosecuting agency as an exhibit
at a hearing;}} }
84 {(iv)} (5) {the} If a prosecuting attorney {intends to submit the} determines that nonpublic victim
{or witness information as an exhibit at trial; or} data is not relevant or material, the prosecuting
agency or the law enforcement agency shall:
86 {(v) }
{(A)} (a) {the} retain the nonpublic victim {or witness information is relevant and material evidence}
data;and

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- 87 { (B) { a review of the victim or witness information at a governmental facility is inadequate for the
defendant to prepare a defense for trial; and } }
- 89 { (C) { the defendant has a legitimate interest in copying, photographing, or otherwise reproducing the
victim or witness information 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. } }
- 93 { (7) } (b) { The court may only issue an order } make the nonpublic victim data available for review by
the defendant's attorney or appointed counsel as described in Subsection { (6) after: } (3).
- 94 { (a) { the prosecuting agency and the victim or witness have been given notice of the hearing and an
opportunity to be heard at the hearing; and } }
- 96 { (b) { the court has considered and limited, where appropriate, the use and further disclosure of the
victim and witness information in order to protect the privacy interests of the victim or witness. } }
- 93 (6)
- (a) If a prosecuting attorney fails to make nonpublic victim data reasonably available for review by a
defendant's attorney or appointed counsel, the court may order the dissemination of the nonpublic
victim data that is subject to a protective order or other restrictions as appropriate.
- 97 (b) A prosecuting attorney does not violate the prosecuting attorney's discovery obligation by making
nonpublic victim data available for review without disseminating that nonpublic victim data.
- 99 { (8) } (7) At the request of a victim { , witness, } or a representative of a victim { or witness } , the court
may:
- 101 (a) conduct an ex parte in camera review of nonpublic victim { or witness information } data that the
victim { or witness } does not believe should be made available to the defendant or the defendant's
attorney; and
- 103 (b) enter an order prohibiting the inspection, review, or examination of the { victim or witness
information } nonpublic victim data if the { victim or witness information } nonpublic victim data is:
- 105 (i) not relevant or material evidence in the criminal { case } proceeding; or
- 106 (ii) evidence of sexual behavior by the victim { or witness } that is inadmissible under Rule 412 of the
Utah Rules of Evidence.
- 108 { (9) } (8) A law enforcement agency and a prosecuting agency shall establish a policy that ensures
{ victim and witness information } nonpublic victim data is:
- 110 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
- 111

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(b) maintained in a controlled environment and in a manner that protects the privacy of a victim { or
witness } .

{ ~~(10)~~ } (9) This section does not:

(a) limit the rights of a defendant under the Constitution of the United States or the Utah Constitution;
{ or }

(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

(c) prevent a law enforcement agency or prosecuting agency from providing information to the Utah
Office for Victims of Crime that is necessary to provide victim services to a victim.

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 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.

(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, 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

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have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

- 143 (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.
- 147 (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.
- 154 (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.
- 157 (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.
- 162 (j) A victim {~~or a witness~~} in a criminal proceeding has a right to privacy in {~~any~~} ~~nonpublic~~ victim {~~or witness information~~} ~~data~~, as defined in Section 77-4-202, that is collected during the course of the criminal investigation or action.
- 165 (2) In addition to the rights of a victim described in Subsection (1), a victim of a sexual offense has the right to:
- 167 (a) request voluntary testing for themselves for HIV infection as described in Section 53-10-803;
- 169 (b) request mandatory testing of the alleged sexual offender for HIV infection as described in Section 53-10-802;
- 171 (c) not to be prevented from, or charged for, a medical forensic examination;
- 172 (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;

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- 175 (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;
- 177 (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;
- 180 (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:
- 183 (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
- 186 (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;
- 188 (h) be informed in writing of policies governing the collection and preservation of a sexual assault kit;
- 190 (i) be informed of the status and location of a sexual assault kit;
- 191 (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;
- 194 (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;
- 197 (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
- 199 (m) be informed of all the enumerated rights in this Subsection (2).
- 200 (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.
- 203 (4) A law enforcement agency investigating a sexual offense may:
- 204 (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;
- 207 (b) require that the victim's request be in writing; and
- 208 (c) respond to the victim's request with verbal communication, written communication, or by email if an
email address is available.

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- 210 (5) A law enforcement agency investigating a sexual offense shall:
- 211 (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;
- 214 (b) provide the information described in this section in a timely manner; and
- 215 (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.
- 218 (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.
- 221 (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.

229 Section 3. **Effective date.**

This bill takes effect on May 7, 2025.

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