

Victim and Witness Privacy Amendments

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 to nonpublic information belonging to a victim or

witness, including:

- 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;
- 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 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

Utah Code Sections Affected:

AMENDS:

31 **77-37-3**, as last amended by Laws of Utah 2024, Chapters 96, 164

32 ENACTS:

33 **77-4-202**, Utah Code Annotated 1953

34

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

36 Section 1. Section **77-4-202** is enacted to read:

37 **77-4-202 . Production of nonpublic information belonging to a victim or witness.**

38 (1) As used in this section:

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

41 (b) "Law enforcement agency" means the same as that term is defined in Section
42 53-10-102.

43 (c) "Nonpublic information" means information that is otherwise not available to the
44 public.

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

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

48 (f)(i) "Victim or witness information" means nonpublic information related to a
49 victim or witness.

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

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

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

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

60 (3) If victim or witness information is in the possession of a law enforcement agency or the
61 prosecuting agency:

62 (a) the prosecuting attorney shall make the victim or witness information available to the
63 defendant in accordance with this section; and

64 (b) the defendant may only inspect, view, or examine the victim or witness information

- 65 at a governmental facility.
- 66 (4) Any victim or witness information that is in the possession of a law enforcement agency
67 or the prosecuting agency shall remain in the care, custody, and control of:
- 68 (a) the law enforcement agency;
69 (b) the prosecuting agency; or
70 (c) the court.
- 71 (5) If victim or witness information is made available to a defendant as described in
72 Subsection (2) or (3), the defendant may only copy, photograph, or otherwise reproduce
73 the victim or witness information:
- 74 (a) upon written stipulation by the victim or witness; or
75 (b) upon an order by the court as described in Subsection (6).
- 76 (6)(a) A court may issue an order allowing a defendant to copy, photograph, or
77 otherwise reproduce victim or witness information if the court finds that:
- 78 (i) the victim or witness information was directly communicated to the defendant by
79 the victim or witness;
- 80 (ii) the victim or witness information is direct evidence of an element of the offense
81 for which the defendant is charged;
- 82 (iii) the victim or witness information has been submitted by the prosecuting agency
83 as an exhibit at a hearing;
- 84 (iv) the prosecuting attorney intends to submit the victim or witness information as an
85 exhibit at trial; or
- 86 (v)(A) the victim or witness information is relevant and material evidence;
87 (B) a review of the victim or witness information at a governmental facility is
88 inadequate for the defendant to prepare a defense for trial; and
89 (C) the defendant has a legitimate interest in copying, photographing, or otherwise
90 reproducing the victim or witness information that outweighs the victim's or
91 witness's right to privacy and right to be free from harassment as described in
92 Section 77-37-3.
- 93 (7) The court may only issue an order described in Subsection (6) after:
- 94 (a) the prosecuting agency and the victim or witness have been given notice of the
95 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
97 disclosure of the victim and witness information in order to protect the privacy
98 interests of the victim or witness.

- 99 (8) At the request of a victim, witness, or a representative of a victim or witness, the court
100 may:
- 101 (a) conduct an ex parte in camera review of victim or witness information that the victim
102 or witness does not believe should be made available to the defendant; and
- 103 (b) enter an order prohibiting the inspection, review, or examination of the victim or
104 witness information if the victim or witness information is:
- 105 (i) not relevant or material evidence in the criminal case; or
106 (ii) evidence of sexual behavior by the victim or witness that is inadmissible under
107 Rule 412 of the Utah Rules of Evidence.
- 108 (9) A law enforcement agency and a prosecuting agency shall establish a policy that
109 ensures victim and witness information is:
- 110 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
111 (b) maintained in a manner that protects the privacy of a victim or witness.
- 112 (10) This section does not:
- 113 (a) limit the rights of a defendant under the Constitution of the United States or the Utah
114 Constitution; or
- 115 (b) create a right for a defendant that is beyond the rights created by the requirements of
116 Rule 16 of the Utah Rules of Criminal Procedure, the Utah Constitution, and the
117 United States Constitution.
- 118 Section 2. Section **77-37-3** is amended to read:
119 **77-37-3 . Bill of rights.**
- 120 (1) The bill of rights for victims and witnesses is:
- 121 (a) Victims and witnesses have a right to be informed as to the level of protection from
122 intimidation and harm available to them, and from what sources, as they participate
123 in criminal justice proceedings as designated by Section 76-8-508, regarding
124 tampering with a witness, and Section 76-8-509, regarding extortion or bribery to
125 dismiss a criminal proceeding. Law enforcement, prosecution, and corrections
126 personnel have the duty to timely provide this information in a form which is useful
127 to the victim.
- 128 (b) Victims and witnesses, including children and their guardians, have a right to be
129 informed and assisted as to their role in the criminal justice process. All criminal
130 justice agencies have the duty to provide this information and assistance.
- 131 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
132 proceedings; these explanations shall be appropriate to the age of child victims and

- 133 witnesses. All criminal justice agencies have the duty to provide these explanations.
- 134 (d) Victims and witnesses should have a secure waiting area that does not require them
135 to be in close proximity to defendants or the family and friends of defendants.
136 Agencies controlling facilities shall, whenever possible, provide this area.
- 137 (e) Victims may seek restitution or reparations, including medical costs, as provided in
138 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b,
139 Crime Victims Restitution Act, and Section 80-6-710. State and local government
140 agencies that serve victims have the duty to have a functional knowledge of the
141 procedures established by the Crime Victim Reparations Board and to inform victims
142 of these procedures.
- 143 (f) Victims and witnesses have a right to have any personal property returned as
144 provided in Chapter 11a, Seizure of Property and Contraband, and Chapter 11d, Lost
145 or Mislaid Property. Criminal justice agencies shall expeditiously return the property
146 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,
148 including pursuing employer cooperation in minimizing employees' loss of pay and
149 other benefits resulting from their participation in the criminal justice process.
150 Officers of the court shall provide these services and shall consider victims' and
151 witnesses' schedules so that activities which conflict can be avoided. Where conflicts
152 cannot be avoided, the victim may request that the responsible agency intercede with
153 employers or other parties.
- 154 (h) Victims and witnesses, particularly children, should have a speedy disposition of the
155 entire criminal justice process. All involved public agencies shall establish policies
156 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
158 to attend and timely notice of cancellation of any proceedings. Criminal justice
159 agencies have the duty to provide these notifications. Defense counsel and others
160 have the duty to provide timely notice to prosecution of any continuances or other
161 changes that may be required.
- 162 (j) A victim or a witness in a criminal proceeding has a right to privacy in any victim or
163 witness information, as defined in Section 77-4-202, that is collected during the
164 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
166 offense has the right to:

- 167 (a) request voluntary testing for themselves for HIV infection as described in Section
168 53-10-803;
- 169 (b) request mandatory testing of the alleged sexual offender for HIV infection as
170 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,
173 preserved for the time periods described in Title 77, Chapter 11c, Retention of
174 Evidence, without any charge to the victim;
- 175 (e) be informed whether a DNA profile was obtained from the testing of the evidence in
176 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
178 kit, or from other crime scene evidence, has been entered into the Utah Combined
179 DNA Index System;
- 180 (g) be informed of any result from a sexual assault kit or from other crime scene
181 evidence if that disclosure would not impede or compromise an ongoing
182 investigation, including:
- 183 (i) whether there is a match between a DNA profile developed from the evidence in a
184 sexual assault kit, or from other crime scene evidence, and a DNA profile
185 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
187 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
189 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
192 defined in Section 53-10-905, if the agency intends to destroy or dispose of evidence
193 from a sexual assault kit;
- 194 (k) be granted further preservation of the sexual assault kit if the agency, as defined in
195 Section 53-10-905, intends to destroy or dispose of evidence from a sexual assault kit
196 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
198 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

- 201 communicate with the victim or the victim's designee regarding the status of DNA
202 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
205 of the victim of the sexual offense, or the victim's designee and is the designated
206 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,
209 or by email if an email address is available.
- 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
212 enforcement agency determines that DNA evidence will not be analyzed in a case
213 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
216 designee of any significant changes in the information of which the law enforcement
217 agency is aware.
- 218 (6) The law enforcement agency investigating the sexual offense is responsible for
219 informing the victim of the sexual offense, or the victim's designee, of the rights
220 established under this section.
- 221 (7) Informational rights of the victim under this chapter are based upon the victim
222 providing the current name, address, telephone number, and email address, if an email
223 address is available, of the person to whom the information should be provided to the
224 criminal justice agencies involved in the case.

225 **Section 3. Effective date.**

226 This bill takes effect on May 7, 2025.