

Tyler Clancy proposes the following substitute bill:

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, to the defendant, 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:

30 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



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

44 (c) "Nonpublic information" means information that:

45 (i) is otherwise not available to the public; and

46 (ii) a reasonable person would believe that there is a reasonable expectation of
47 privacy.

48 (d)(i) "Prosecuting agency" means:

49 (A) the Office of the Attorney General;

50 (B) the office of a county attorney or district attorney;

51 (C) the office of a city or municipal attorney; or

52 (D) a law firm contracted to provide prosecution services to a political subdivision
53 of the state.

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

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

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

59 (g)(i) "Victim or witness information" means nonpublic information related to a
60 victim or witness.

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

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

- 64 (2) If a defendant seeks nonpublic information related to a victim or witness that is not in
65 the possession of a law enforcement agency or the prosecuting agency, the defendant
66 may only obtain the victim or witness information as described in Rule 14(c) of the Utah
67 Rules of Criminal Procedure.
- 68 (3) If victim or witness information is in the possession of a law enforcement agency or the
69 prosecuting agency:
- 70 (a) the prosecuting attorney shall make the victim or witness information available to the
71 defendant in accordance with this section; and
- 72 (b) the defendant may only inspect, view, or examine the victim or witness information
73 at a governmental facility.
- 74 (4) Any victim or witness information that is in the possession of a law enforcement agency
75 or the prosecuting agency shall remain in the care, custody, and control of:
- 76 (a) the law enforcement agency;
- 77 (b) the prosecuting agency; or
- 78 (c) the court.
- 79 (5) The prosecuting agency may provide the defendant with, or permit the defendant to
80 copy, photograph, or otherwise reproduce, victim or witness information without an
81 order from the court if:
- 82 (a) the victim or witness information is an oral or written statement given by the victim
83 or witness to a law enforcement agency or prosecuting agency;
- 84 (b) the victim or witness information was directly communicated to the defendant by the
85 victim or witness;
- 86 (c) the victim or witness information is direct evidence of an element of the offense for
87 which the defendant is charged;
- 88 (d) the victim or witness information has been submitted by the prosecuting agency as
89 an exhibit at a hearing; or
- 90 (e) the prosecuting attorney intends to submit the victim or witness information as an
91 exhibit at trial.
- 92 (6) Subject to Subsections (7) and (8), a court may issue an order allowing a defendant to
93 copy, photograph, or otherwise reproduce victim or witness information if the court
94 finds that:
- 95 (a) the victim or witness information is relevant and material evidence;
- 96 (b) a review of the victim or witness information at a governmental facility is inadequate
97 for the defendant to prepare a defense for trial; and

- 98 (c) the defendant has a legitimate interest in copying, photographing, or otherwise
99 reproducing the victim or witness information that outweighs the victim's or witness's
100 right to privacy and right to be free from harassment as described in Section 77-37-3.
- 101 (7) The court may only issue an order described in Subsection (6) after:
- 102 (a) the prosecuting agency and the victim or witness have been given notice of the
103 hearing and an opportunity to be heard at the hearing; and
- 104 (b) the court has considered and limited, where appropriate, the use and further
105 disclosure of the victim and witness information in order to protect the privacy
106 interests of the victim or witness.
- 107 (8)(a) There is a rebuttable presumption against allowing a defendant to copy,
108 photograph, or otherwise reproduce victim or witness information that is an intimate
109 image, as that term is defined in Section 76-5b-203.
- 110 (b) If the court issues an order allowing the defendant to copy, photograph, or otherwise
111 reproduce an intimate image, the court shall include in the order limitations on:
- 112 (i) the number of copies, photographs, or reproductions that the defendant is
113 permitted to make;
- 114 (ii) who may view the intimate image;
- 115 (iii) how the image may be stored; and
- 116 (iv) the disposition of the intimate image upon the completion of the criminal
117 prosecution against the defendant.
- 118 (9) At the request of a victim, witness, or a representative of a victim or witness, the court
119 may:
- 120 (a) conduct an ex parte in camera review of victim or witness information that the victim
121 or witness does not believe should be made available to the defendant; and
- 122 (b) enter an order prohibiting the inspection, review, or examination of the victim or
123 witness information if the victim or witness information is:
- 124 (i) not relevant or material evidence in the criminal case; or
- 125 (ii) evidence of sexual behavior by the victim or witness that is inadmissible under
126 Rule 412 of the Utah Rules of Evidence.
- 127 (10) A law enforcement agency and a prosecuting agency shall establish a policy that
128 ensures victim and witness information is:
- 129 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
- 130 (b) maintained in a manner that protects the privacy of a victim or witness.
- 131 (11) This section does not:

- 132 (a) limit the rights of a defendant under the Constitution of the United States or the Utah
133 Constitution;
- 134 (b) create a right for a defendant that is beyond the rights created by the requirements of
135 Rule 16 of the Utah Rules of Criminal Procedure, the Utah Constitution, and the
136 United States Constitution; or
- 137 (c) prevent a law enforcement agency or prosecuting agency from providing information
138 to the Utah Office for Victims of Crime that is necessary to provide victim services to
139 a victim.

140 Section 2. Section **77-37-3** is amended to read:

141 **77-37-3 . Bill of rights.**

- 142 (1) The bill of rights for victims and witnesses is:
- 143 (a) Victims and witnesses have a right to be informed as to the level of protection from
144 intimidation and harm available to them, and from what sources, as they participate
145 in criminal justice proceedings as designated by Section 76-8-508, regarding
146 tampering with a witness, and Section 76-8-509, regarding extortion or bribery to
147 dismiss a criminal proceeding. Law enforcement, prosecution, and corrections
148 personnel have the duty to timely provide this information in a form which is useful
149 to the victim.
- 150 (b) Victims and witnesses, including children and their guardians, have a right to be
151 informed and assisted as to their role in the criminal justice process. All criminal
152 justice agencies have the duty to provide this information and assistance.
- 153 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
154 proceedings; these explanations shall be appropriate to the age of child victims and
155 witnesses. All criminal justice agencies have the duty to provide these explanations.
- 156 (d) Victims and witnesses should have a secure waiting area that does not require them
157 to be in close proximity to defendants or the family and friends of defendants.
158 Agencies controlling facilities shall, whenever possible, provide this area.
- 159 (e) Victims may seek restitution or reparations, including medical costs, as provided in
160 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b,
161 Crime Victims Restitution Act, and Section 80-6-710. State and local government
162 agencies that serve victims have the duty to have a functional knowledge of the
163 procedures established by the Crime Victim Reparations Board and to inform victims
164 of these procedures.
- 165 (f) Victims and witnesses have a right to have any personal property returned as

166 provided in Chapter 11a, Seizure of Property and Contraband, and Chapter 11d, Lost
167 or Mislaid Property. Criminal justice agencies shall expeditiously return the property
168 when it is no longer needed for court law enforcement or prosecution purposes.

169 (g) Victims and witnesses have the right to reasonable employer intercession services,
170 including pursuing employer cooperation in minimizing employees' loss of pay and
171 other benefits resulting from their participation in the criminal justice process.
172 Officers of the court shall provide these services and shall consider victims' and
173 witnesses' schedules so that activities which conflict can be avoided. Where conflicts
174 cannot be avoided, the victim may request that the responsible agency intercede with
175 employers or other parties.

176 (h) Victims and witnesses, particularly children, should have a speedy disposition of the
177 entire criminal justice process. All involved public agencies shall establish policies
178 and procedures to encourage speedy disposition of criminal cases.

179 (i) Victims and witnesses have the right to timely notice of judicial proceedings they are
180 to attend and timely notice of cancellation of any proceedings. Criminal justice
181 agencies have the duty to provide these notifications. Defense counsel and others
182 have the duty to provide timely notice to prosecution of any continuances or other
183 changes that may be required.

184 (j) A victim or a witness in a criminal proceeding has a right to privacy in any victim or
185 witness information, as defined in Section 77-4-202, that is collected during the
186 course of the criminal investigation or action.

187 (2) In addition to the rights of a victim described in Subsection (1), a victim of a sexual
188 offense has the right to:

189 (a) request voluntary testing for themselves for HIV infection as described in Section
190 53-10-803;

191 (b) request mandatory testing of the alleged sexual offender for HIV infection as
192 described in Section 53-10-802;

193 (c) not to be prevented from, or charged for, a medical forensic examination;

194 (d) have the evidence from a sexual assault kit, or the contents of the sexual assault kit,
195 preserved for the time periods described in Title 77, Chapter 11c, Retention of
196 Evidence, without any charge to the victim;

197 (e) be informed whether a DNA profile was obtained from the testing of the evidence in
198 a sexual assault kit or from other crime scene evidence;

199 (f) be informed whether a DNA profile developed from the evidence in a sexual assault

- 200 kit, or from other crime scene evidence, has been entered into the Utah Combined
201 DNA Index System;
- 202 (g) be informed of any result from a sexual assault kit or from other crime scene
203 evidence if that disclosure would not impede or compromise an ongoing
204 investigation, including:
- 205 (i) whether there is a match between a DNA profile developed from the evidence in a
206 sexual assault kit, or from other crime scene evidence, and a DNA profile
207 contained in the Utah Combined DNA Index System; and
- 208 (ii) a toxicology result or other information that is collected from a sexual assault kit
209 as part of a medical forensic examination of the victim;
- 210 (h) be informed in writing of policies governing the collection and preservation of a
211 sexual assault kit;
- 212 (i) be informed of the status and location of a sexual assault kit;
- 213 (j) upon written request by the victim, receive a notice of intent from an agency, as
214 defined in Section 53-10-905, if the agency intends to destroy or dispose of evidence
215 from a sexual assault kit;
- 216 (k) be granted further preservation of the sexual assault kit if the agency, as defined in
217 Section 53-10-905, intends to destroy or dispose of evidence from a sexual assault kit
218 and the victim submits a written request as described in Section 53-10-905;
- 219 (l) designate a person of the victim's choosing to act as a recipient of the information
220 provided under this Subsection (2) or Subsections (3) and (4); and
- 221 (m) be informed of all the enumerated rights in this Subsection (2).
- 222 (3) Subsections (2)(e) through (g) do not require that the law enforcement agency
223 communicate with the victim or the victim's designee regarding the status of DNA
224 testing, absent a specific request received from the victim or the victim's designee.
- 225 (4) A law enforcement agency investigating a sexual offense may:
- 226 (a) release the information indicated in Subsections (2)(e) through (g) upon the request
227 of the victim of the sexual offense, or the victim's designee and is the designated
228 agency to provide that information to the victim or the victim's designee;
- 229 (b) require that the victim's request be in writing; and
- 230 (c) respond to the victim's request with verbal communication, written communication,
231 or by email if an email address is available.
- 232 (5) A law enforcement agency investigating a sexual offense shall:
- 233 (a) notify the victim of the sexual offense, or the victim's designee, if the law

- 234 enforcement agency determines that DNA evidence will not be analyzed in a case
235 where the identity of the perpetrator has not be confirmed;
- 236 (b) provide the information described in this section in a timely manner; and
- 237 (c) upon request of the victim or the victim's designee, advise the victim or the victim's
238 designee of any significant changes in the information of which the law enforcement
239 agency is aware.
- 240 (6) The law enforcement agency investigating the sexual offense is responsible for
241 informing the victim of the sexual offense, or the victim's designee, of the rights
242 established under this section.
- 243 (7) Informational rights of the victim under this chapter are based upon the victim
244 providing the current name, address, telephone number, and email address, if an email
245 address is available, of the person to whom the information should be provided to the
246 criminal justice agencies involved in the case.

247 Section 3. **Effective date.**

248 This bill takes effect on May 7, 2025.