

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

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**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 electronic data

related to a victim or witness, including:

- 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;
- requiring the prosecuting attorney to make available, to the defendant or the defendant's attorney, nonpublic electronic data related to a victim or witness that is in the possession of a law enforcement agency or prosecuting attorney;
- 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
- providing the requirements for a defendant's attorney to copy, photograph, or otherwise reproduce nonpublic electronic data related to a victim or witness; and
  - 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.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

30 **Utah Code Sections Affected:**

31 AMENDS:

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

33 ENACTS:

34 **77-4-202**, Utah Code Annotated 195335 

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36 *Be it enacted by the Legislature of the state of Utah:*37 Section 1. Section **77-4-202** 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  
41 state or a political subdivision of this state.42 (b) "Law enforcement agency" means a public or private agency having general police  
43 power and charged with making arrests in connection with enforcement of the  
44 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  
46 witness:47 (A) that is otherwise not available to the public; and48 (B) for which a reasonable person would believe that the victim or witness has a  
49 reasonable expectation of privacy.50 (ii) "Nonpublic victim or witness data" includes electronic data related to a victim or  
51 witness that is obtained by a law enforcement or prosecuting agency in the course  
52 of a criminal investigation.53 (d)(i) "Prosecuting agency" means:54 (A) the Office of the Attorney General;55 (B) the office of a county attorney or district attorney;56 (C) the office of a city or municipal attorney; or57 (D) a law firm contracted to provide prosecution services to a political subdivision  
58 of the state.59 (ii) "Prosecuting agency" includes an attorney on staff for an entity described in  
60 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

- 64 law enforcement agency or the prosecuting agency, the defendant may only obtain the  
65 nonpublic victim or witness data:
- 66 (a) as described in Rule 14(c) of the Utah Rules of Criminal Procedure; or  
67 (b) if the victim or witness voluntarily provides the nonpublic victim or witness data to  
68 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  
70 the prosecuting agency:
- 71 (a) the prosecuting attorney shall make the nonpublic victim or witness data available to  
72 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  
74 witness data at a governmental facility. or copy, photograph, or otherwise reproduce  
75 the nonpublic victim or witness data, in accordance with this section.
- 76 (4) The prosecuting attorney shall describe in the discovery disclosure to the defendant  
77 whether the prosecuting attorney has any nonpublic victim or witness data, including the  
78 source of the nonpublic victim or witness data.
- 79 (5) Any nonpublic victim or witness data related to a victim or witness that is in the  
80 possession of a law enforcement agency or the prosecuting agency shall remain in the  
81 care, custody, and control of:
- 82 (a) the law enforcement agency;  
83 (b) the prosecuting agency; or  
84 (c) the court.
- 85 (6) The prosecuting agency shall provide the defendant's attorney with, or permit the  
86 defendant's attorney to copy, photograph, or otherwise reproduce, nonpublic victim or  
87 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  
89 victim or witness to a law enforcement agency or prosecuting agency;
- 90 (b) the nonpublic victim or witness data was directly communicated to the defendant by  
91 the victim or witness;
- 92 (c) the nonpublic victim or witness data is direct evidence of an element of the offense  
93 for which the defendant is charged;
- 94 (d) the nonpublic victim or witness data has been submitted by the prosecuting agency  
95 as an exhibit at a hearing;
- 96 (e) the prosecuting attorney knows that the nonpublic victim or witness data is a  
97 communication that describes or explains the criminal conduct for which the

98 defendant is charged;

99 (f) the prosecuting attorney knows that the nonpublic victim or witness data is  
100 exculpatory evidence; or

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

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

106 (a) requires the defendant's attorney to inspect, view, or examine the nonpublic victim or  
107 witness data at a governmental facility upon a showing by the prosecuting attorney  
108 that making the nonpublic victim or witness data available at a governmental facility  
109 would not unreasonably interfere with access to the nonpublic victim or witness data  
110 by the defendant's attorney; or

111 (b) limits the ability of the defendant's attorney to copy, photograph, distribute, or  
112 otherwise reproduce the nonpublic victim or witness data upon a showing by the  
113 prosecuting attorney that copying, photographing, reproducing, or distributing of the  
114 nonpublic victim or witness data would violate the privacy interests of the victim or  
115 witness.

116 (8)(a) Subject to Subsections (9), a defendant's attorney may submit a request to the  
117 court for an order allowing the defendant's attorney to copy, photograph, or otherwise  
118 reproduce nonpublic victim or witness data 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  
121 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  
123 otherwise reproducing the nonpublic victim or witness data that outweighs the  
124 victim's or witness's right to privacy and right to be free from harassment as  
125 described in Section 77-37-3.

126 (b) The defendant's attorney shall serve the request described in Subsection (8)(a) on the  
127 prosecuting attorney and the victim or witness.

128 (c) The prosecuting attorney and the victim or witness may object to any request within  
129 21 days after the day on which the request is submitted to the court.

130 (9)(a) In issuing an order described in Subsection (8)(a), the court shall consider and  
131 limit, where appropriate, the use and further disclosure of the nonpublic victim or

- 132 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,
- 134 photograph, or otherwise reproduce nonpublic victim or witness data that is an
- 135 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
- 137 otherwise reproduce an intimate image, the court shall include in the order limitations
- 138 on:
- 139 (i) the number of copies, photographs, or reproductions that the defendant's attorney
- 140 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
- 144 prosecution against the defendant.
- 145 (10) At the request of a victim, witness, or a representative of a victim or witness, the court
- 146 may:
- 147 (a) conduct an ex parte in camera review of nonpublic victim or witness data that the
- 148 victim or witness does not believe should be made available to the defendant or the
- 149 defendant's attorney; and
- 150 (b) enter an order prohibiting the inspection, review, or examination of the nonpublic
- 151 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
- 154 Rule 412 of the Utah Rules of Evidence.
- 155 (11) A law enforcement agency and a prosecuting agency shall establish a policy that
- 156 ensures nonpublic victim or witness data is:
- 157 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
- 158 (b) maintained in a manner that protects the privacy of a victim or witness.
- 159 (12) This section does not:
- 160 (a) limit the rights of a defendant under the Constitution of the United States or the Utah
- 161 Constitution;
- 162 (b) create a right for a defendant that is beyond the rights created by the requirements of
- 163 Rule 16 of the Utah Rules of Criminal Procedure, the Utah Constitution, and the
- 164 United States Constitution; or
- 165 (c) prevent a law enforcement agency or prosecuting agency from providing information

166 to the Utah Office for Victims of Crime that is necessary to provide victim services to  
167 a victim.

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

169 **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  
172 intimidation and harm available to them, and from what sources, as they participate  
173 in criminal justice proceedings as designated by Section 76-8-508, regarding  
174 tampering with a witness, and Section 76-8-509, regarding extortion or bribery to  
175 dismiss a criminal proceeding. Law enforcement, prosecution, and corrections  
176 personnel have the duty to timely provide this information in a form which is useful  
177 to the victim.

178 (b) Victims and witnesses, including children and their guardians, have a right to be  
179 informed and assisted as to their role in the criminal justice process. All criminal  
180 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  
182 proceedings; these explanations shall be appropriate to the age of child victims and  
183 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  
185 to be in close proximity to defendants or the family and friends of defendants.  
186 Agencies controlling facilities shall, whenever possible, provide this area.

187 (e) Victims may seek restitution or reparations, including medical costs, as provided in  
188 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b,  
189 Crime Victims Restitution Act, and Section 80-6-710. State and local government  
190 agencies that serve victims have the duty to have a functional knowledge of the  
191 procedures established by the Crime Victim Reparations Board and to inform victims  
192 of these procedures.

193 (f) Victims and witnesses have a right to have any personal property returned as  
194 provided in Chapter 11a, Seizure of Property and Contraband, and Chapter 11d, Lost  
195 or Mislaid Property. Criminal justice agencies shall expeditiously return the property  
196 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,  
198 including pursuing employer cooperation in minimizing employees' loss of pay and  
199 other benefits resulting from their participation in the criminal justice process.

200 Officers of the court shall provide these services and shall consider victims' and  
201 witnesses' schedules so that activities which conflict can be avoided. Where conflicts  
202 cannot be avoided, the victim may request that the responsible agency intercede with  
203 employers or other parties.

204 (h) Victims and witnesses, particularly children, should have a speedy disposition of the  
205 entire criminal justice process. All involved public agencies shall establish policies  
206 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  
208 to attend and timely notice of cancellation of any proceedings. Criminal justice  
209 agencies have the duty to provide these notifications. Defense counsel and others  
210 have the duty to provide timely notice to prosecution of any continuances or other  
211 changes that may be required.

212 (j) A victim or a witness in a criminal proceeding has a right to privacy in nonpublic  
213 victim or witness data, as defined in Section 77-4-202, that is collected during the  
214 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  
216 offense has the right to:

217 (a) request voluntary testing for themselves for HIV infection as described in Section  
218 53-10-803;

219 (b) request mandatory testing of the alleged sexual offender for HIV infection as  
220 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,  
223 preserved for the time periods described in Title 77, Chapter 11c, Retention of  
224 Evidence, without any charge to the victim;

225 (e) be informed whether a DNA profile was obtained from the testing of the evidence in  
226 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  
228 kit, or from other crime scene evidence, has been entered into the Utah Combined  
229 DNA Index System;

230 (g) be informed of any result from a sexual assault kit or from other crime scene  
231 evidence if that disclosure would not impede or compromise an ongoing  
232 investigation, including:

233 (i) whether there is a match between a DNA profile developed from the evidence in a

- 234 sexual assault kit, or from other crime scene evidence, and a DNA profile  
235 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  
237 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  
239 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  
242 defined in Section 53-10-905, if the agency intends to destroy or dispose of evidence  
243 from a sexual assault kit;
- 244 (k) be granted further preservation of the sexual assault kit if the agency, as defined in  
245 Section 53-10-905, intends to destroy or dispose of evidence from a sexual assault kit  
246 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  
248 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  
251 communicate with the victim or the victim's designee regarding the status of DNA  
252 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  
255 of the victim of the sexual offense, or the victim's designee and is the designated  
256 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,  
259 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  
262 enforcement agency determines that DNA evidence will not be analyzed in a case  
263 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 (c) upon request of the victim or the victim's designee, advise the victim or the victim's  
266 designee of any significant changes in the information of which the law enforcement  
267 agency is aware.



268 (6) The law enforcement agency investigating the sexual offense is responsible for  
269 informing the victim of the sexual offense, or the victim's designee, of the rights  
270 established under this section.

271 (7) Informational rights of the victim under this chapter are based upon the victim  
272 providing the current name, address, telephone number, and email address, if an email  
273 address is available, of the person to whom the information should be provided to the  
274 criminal justice agencies involved in the case.

275 Section 3. **Effective date.**

276 This bill takes effect on May 7, 2025.