

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 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, certain 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

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 in the course of a criminal investigation.52 (d) "Prosecuting attorney" means:53 (i) the attorney general and an assistant attorney general;54 (ii) a district attorney or deputy district attorney;55 (iii) a county attorney or assistant county attorney; or56 (iv) an attorney authorized to commence an action on behalf of the state.57 (e) "Victim" means the same as that term is defined in Section 77-37-2.58 (f) "Witness" means the same as that term is defined in Section 77-37-2.59 (2) If a defendant seeks nonpublic victim or witness data that is not in the possession of a
60 law enforcement agency or the prosecuting agency, the defendant may only obtain the
61 nonpublic victim or witness data:62 (a) as described in Rule 14(b)(5) of the Utah Rules of Criminal Procedure; or63 (b) if the victim or witness voluntarily provides the nonpublic victim or witness data to

- 64 the defendant or the defendant's attorney.
- 65 (3) If nonpublic victim or witness data is in the possession of a law enforcement agency or
66 the prosecuting agency:
- 67 (a) the prosecuting attorney shall make the nonpublic victim or witness data available to
68 the defendant's attorney in accordance with this section; and
- 69 (b) the defendant's attorney may only inspect, view, or examine the nonpublic victim or
70 witness data at a governmental facility, or copy, photograph, or otherwise reproduce
71 the nonpublic victim or witness data, in accordance with this section.
- 72 (4) Any nonpublic victim or witness data related to a victim or witness that is in the
73 possession of a law enforcement agency or the prosecuting agency shall remain in the
74 care, custody, and control of:
- 75 (a) the law enforcement agency;
- 76 (b) the prosecuting agency; or
- 77 (c) the court.
- 78 (5) The prosecuting agency shall provide the defendant's attorney with, or permit the
79 defendant's attorney to copy, photograph, or otherwise reproduce, nonpublic victim or
80 witness data without an order from the court if:
- 81 (a) the nonpublic victim or witness data was directly communicated to the defendant by
82 the victim or witness;
- 83 (b) the nonpublic victim or witness data is direct evidence of an element of the offense
84 for which the defendant is charged;
- 85 (c) the nonpublic victim or witness data has been submitted by the prosecuting agency as
86 an exhibit at a hearing;
- 87 (d) the prosecuting attorney knows that the nonpublic victim or witness data is a
88 communication that describes or explains the criminal conduct for which the
89 defendant is charged;
- 90 (e) the prosecuting attorney knows that the nonpublic victim or witness data is
91 exculpatory evidence; or
- 92 (f) the prosecuting attorney intends to submit the nonpublic victim or witness data as an
93 exhibit at trial.
- 94 (6)(a) Before a prosecuting attorney provides the nonpublic victim or witness data as
95 described in Subsection (5), the prosecuting attorney may request an order from the
96 court that:
- 97 (i) requires the defendant's attorney to inspect, view, or examine the nonpublic victim

- 98 or witness data at a governmental facility; and
- 99 (ii) provides restrictions regarding the copying, photographing, distribution,
- 100 reproduction, dissemination, viewing, or retention of the nonpublic victim or
- 101 witness data.
- 102 (b) The court may grant a request described in Subsection (6)(a) upon a showing by the
- 103 prosecuting attorney that the request would not unreasonably interfere with:
- 104 (i) the privacy of the victim or witness; and
- 105 (ii) access to the nonpublic victim or witness data by the defendant's attorney.
- 106 (7)(a) Subject to Subsections (8) and (9), a defendant's attorney may submit a request to
- 107 the court for an order allowing the defendant's attorney to copy, photograph, or
- 108 otherwise reproduce nonpublic victim or witness data that is not provided to the
- 109 defendant's attorney under Subsection (5) or (6) if the court finds that:
- 110 (i) the nonpublic victim or witness data is relevant and material evidence;
- 111 (ii) a review of the nonpublic victim or witness data at a governmental facility is
- 112 inadequate for the defendant to prepare a defense for trial; and
- 113 (iii) the defendant's attorney has a legitimate interest in copying, photographing, or
- 114 otherwise reproducing the nonpublic victim or witness data that outweighs the
- 115 victim's or witness's right to privacy and right to be free from harassment as
- 116 described in Section 77-37-3.
- 117 (b) If a defendant's attorney submits a request under Subsection (7)(a), the victim or
- 118 witness has a right to receive notice and be heard on the request if the nonpublic
- 119 victim or witness data is related to the victim or witness.
- 120 (8)(a) In issuing an order described in Subsection (7)(a), the court shall consider and
- 121 limit, where appropriate, the use and further disclosure of the nonpublic victim or
- 122 witness data in order to protect the privacy interests of the victim or witness.
- 123 (b) There is a rebuttable presumption against allowing a defendant's attorney to copy,
- 124 photograph, or otherwise reproduce nonpublic victim or witness data that is an
- 125 intimate image, as that term is defined in Section 76-5b-203.
- 126 (c) If the court issues an order allowing the defendant's attorney to copy, photograph, or
- 127 otherwise reproduce an intimate image, the court shall include in the order limitations
- 128 on:
- 129 (i) the number of copies, photographs, or reproductions that the defendant's attorney
- 130 is permitted to make;
- 131 (ii) who may view the intimate image;

- 132 (iii) how the image may be stored; and
133 (iv) the disposition of the intimate image upon the completion of the criminal
134 prosecution against the defendant.
- 135 (9) At the request of a victim, witness, or a representative of a victim or witness, the court
136 may:
- 137 (a) conduct an ex parte in camera review of nonpublic victim or witness data that the
138 victim or witness does not believe should be made available to the defendant or the
139 defendant's attorney; and
- 140 (b) enter an order prohibiting the inspection, review, or examination of the nonpublic
141 victim or witness data if the nonpublic victim or witness data is:
- 142 (i) not relevant or material evidence in the criminal case; or
143 (ii) evidence of sexual behavior by the victim or witness that is inadmissible under
144 Rule 412 of the Utah Rules of Evidence.
- 145 (10) A law enforcement agency and a prosecuting agency shall establish a policy that
146 ensures nonpublic victim or witness data is:
- 147 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
148 (b) maintained in a controlled environment and in a manner that protects the privacy of a
149 victim or witness.
- 150 (11) This section does not:
- 151 (a) limit the rights of a defendant under the Constitution of the United States or the Utah
152 Constitution;
- 153 (b) create a right for a defendant that is beyond the rights created by the requirements of
154 Rule 16 of the Utah Rules of Criminal Procedure, the Utah Constitution, and the
155 United States Constitution; or
- 156 (c) prevent a law enforcement agency or prosecuting agency from providing information
157 to the Utah Office for Victims of Crime that is necessary to provide victim services to
158 a victim.
- 159 Section 2. Section **77-37-3** is amended to read:
- 160 **77-37-3 . Bill of rights.**
- 161 (1) The bill of rights for victims and witnesses is:
- 162 (a) Victims and witnesses have a right to be informed as to the level of protection from
163 intimidation and harm available to them, and from what sources, as they participate
164 in criminal justice proceedings as designated by Section 76-8-508, regarding
165 tampering with a witness, and Section 76-8-509, regarding extortion or bribery to

- 166 dismiss a criminal proceeding. Law enforcement, prosecution, and corrections
167 personnel have the duty to timely provide this information in a form which is useful
168 to the victim.
- 169 (b) Victims and witnesses, including children and their guardians, have a right to be
170 informed and assisted as to their role in the criminal justice process. All criminal
171 justice agencies have the duty to provide this information and assistance.
- 172 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
173 proceedings; these explanations shall be appropriate to the age of child victims and
174 witnesses. All criminal justice agencies have the duty to provide these explanations.
- 175 (d) Victims and witnesses should have a secure waiting area that does not require them
176 to be in close proximity to defendants or the family and friends of defendants.
177 Agencies controlling facilities shall, whenever possible, provide this area.
- 178 (e) Victims may seek restitution or reparations, including medical costs, as provided in
179 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b,
180 Crime Victims Restitution Act, and Section 80-6-710. State and local government
181 agencies that serve victims have the duty to have a functional knowledge of the
182 procedures established by the Crime Victim Reparations Board and to inform victims
183 of these procedures.
- 184 (f) Victims and witnesses have a right to have any personal property returned as
185 provided in Chapter 11a, Seizure of Property and Contraband, and Chapter 11d, Lost
186 or Mislaid Property. Criminal justice agencies shall expeditiously return the property
187 when it is no longer needed for court law enforcement or prosecution purposes.
- 188 (g) Victims and witnesses have the right to reasonable employer intercession services,
189 including pursuing employer cooperation in minimizing employees' loss of pay and
190 other benefits resulting from their participation in the criminal justice process.
191 Officers of the court shall provide these services and shall consider victims' and
192 witnesses' schedules so that activities which conflict can be avoided. Where conflicts
193 cannot be avoided, the victim may request that the responsible agency intercede with
194 employers or other parties.
- 195 (h) Victims and witnesses, particularly children, should have a speedy disposition of the
196 entire criminal justice process. All involved public agencies shall establish policies
197 and procedures to encourage speedy disposition of criminal cases.
- 198 (i) Victims and witnesses have the right to timely notice of judicial proceedings they are
199 to attend and timely notice of cancellation of any proceedings. Criminal justice

- 200 agencies have the duty to provide these notifications. Defense counsel and others
201 have the duty to provide timely notice to prosecution of any continuances or other
202 changes that may be required.
- 203 (j) A victim or a witness in a criminal proceeding has a right to privacy in nonpublic
204 victim or witness data, as defined in Section 77-4-202, that is collected during the
205 course of the criminal investigation or action.
- 206 (2) In addition to the rights of a victim described in Subsection (1), a victim of a sexual
207 offense has the right to:
- 208 (a) request voluntary testing for themselves for HIV infection as described in Section
209 53-10-803;
- 210 (b) request mandatory testing of the alleged sexual offender for HIV infection as
211 described in Section 53-10-802;
- 212 (c) not to be prevented from, or charged for, a medical forensic examination;
- 213 (d) have the evidence from a sexual assault kit, or the contents of the sexual assault kit,
214 preserved for the time periods described in Title 77, Chapter 11c, Retention of
215 Evidence, without any charge to the victim;
- 216 (e) be informed whether a DNA profile was obtained from the testing of the evidence in
217 a sexual assault kit or from other crime scene evidence;
- 218 (f) be informed whether a DNA profile developed from the evidence in a sexual assault
219 kit, or from other crime scene evidence, has been entered into the Utah Combined
220 DNA Index System;
- 221 (g) be informed of any result from a sexual assault kit or from other crime scene
222 evidence if that disclosure would not impede or compromise an ongoing
223 investigation, including:
- 224 (i) whether there is a match between a DNA profile developed from the evidence in a
225 sexual assault kit, or from other crime scene evidence, and a DNA profile
226 contained in the Utah Combined DNA Index System; and
- 227 (ii) a toxicology result or other information that is collected from a sexual assault kit
228 as part of a medical forensic examination of the victim;
- 229 (h) be informed in writing of policies governing the collection and preservation of a
230 sexual assault kit;
- 231 (i) be informed of the status and location of a sexual assault kit;
- 232 (j) upon written request by the victim, receive a notice of intent from an agency, as
233 defined in Section 53-10-905, if the agency intends to destroy or dispose of evidence

- 234 from a sexual assault kit;
- 235 (k) be granted further preservation of the sexual assault kit if the agency, as defined in
236 Section 53-10-905, intends to destroy or dispose of evidence from a sexual assault kit
237 and the victim submits a written request as described in Section 53-10-905;
- 238 (l) designate a person of the victim's choosing to act as a recipient of the information
239 provided under this Subsection (2) or Subsections (3) and (4); and
- 240 (m) be informed of all the enumerated rights in this Subsection (2).
- 241 (3) Subsections (2)(e) through (g) do not require that the law enforcement agency
242 communicate with the victim or the victim's designee regarding the status of DNA
243 testing, absent a specific request received from the victim or the victim's designee.
- 244 (4) A law enforcement agency investigating a sexual offense may:
- 245 (a) release the information indicated in Subsections (2)(e) through (g) upon the request
246 of the victim of the sexual offense, or the victim's designee and is the designated
247 agency to provide that information to the victim or the victim's designee;
- 248 (b) require that the victim's request be in writing; and
- 249 (c) respond to the victim's request with verbal communication, written communication,
250 or by email if an email address is available.
- 251 (5) A law enforcement agency investigating a sexual offense shall:
- 252 (a) notify the victim of the sexual offense, or the victim's designee, if the law
253 enforcement agency determines that DNA evidence will not be analyzed in a case
254 where the identity of the perpetrator has not be confirmed;
- 255 (b) provide the information described in this section in a timely manner; and
- 256 (c) upon request of the victim or the victim's designee, advise the victim or the victim's
257 designee of any significant changes in the information of which the law enforcement
258 agency is aware.
- 259 (6) The law enforcement agency investigating the sexual offense is responsible for
260 informing the victim of the sexual offense, or the victim's designee, of the rights
261 established under this section.
- 262 (7) Informational rights of the victim under this chapter are based upon the victim
263 providing the current name, address, telephone number, and email address, if an email
264 address is available, of the person to whom the information should be provided to the
265 criminal justice agencies involved in the case.

266 Section 3. **Effective date.**

267 This bill takes effect on May 7, 2025.