

Tyler Clancy proposes the following substitute bill:

Victim Privacy 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 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; and

- provides a victim in a criminal proceeding with a right to privacy in any nonpublic electronic data related to the victim 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:

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

ENACTS:

77-4-202, Utah Code Annotated 1953

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

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

77-4-202 . Production of nonpublic electronic data related to a victim.

(1) As used in this section:

(a) "Intimate image" means the same as that term is defined in Section 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)(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;

(B) that is otherwise not available to the public; and

(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.

(2) In a criminal proceeding involving nonpublic victim data, the nonpublic victim data shall remain in the care, custody, and control of:

(a) a law enforcement agency;

(b) a prosecuting agency; or

(c) a court.

(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.

(b) An individual described in Subsection (3)(a) may only view or examine the nonpublic victim data at the law enforcement agency, the prosecuting agency, or the court that has custody and control of the nonpublic victim data.

(c) A defendant who is self represented:

(i) may not inspect the nonpublic victim data; and

(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
65 evidence in a criminal proceeding, the court may order the dissemination of the
66 nonpublic victim data to a defendant's or a defendant's attorney in accordance with
67 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),
69 the court:
- 70 (i) may not order the entire contents of a device, or all nonpublic victim data, be
71 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
73 material.
- 74 (c) There is a rebuttable presumption against:
- 75 (i) disseminating to the defendant or the defendant's attorney nonpublic victim data
76 that is an intimate image; or
- 77 (ii) allowing a defendant or a defendant's attorney to copy, photograph, or otherwise
78 reproduce nonpublic victim data that is an intimate image.
- 79 (d) If the court issues an order disseminating an intimate image, or allowing the
80 defendant or the defendant's attorney to copy, photograph, or otherwise reproduce an
81 intimate image, the court shall include in the order limitations on:
- 82 (i) the number of copies, photographs, or reproductions that the defendant or
83 defendant's attorney is permitted to make;
- 84 (ii) who may view the intimate image;
- 85 (iii) how the image may be stored; and
- 86 (iv) the disposition of the intimate image upon the completion of the criminal
87 prosecution against the defendant.
- 88 (5) If a prosecuting attorney determines that nonpublic victim data is not relevant or
89 material, the prosecuting agency or the law enforcement agency shall:
- 90 (a) retain the nonpublic victim data; and
- 91 (b) make the nonpublic victim data available for review by the defendant's attorney or
92 appointed counsel as described in Subsection (3).
- 93 (6)(a) If a prosecuting attorney fails to make nonpublic victim data reasonably available
94 for review by a defendant's attorney or appointed counsel, the court may order the
95 dissemination of the nonpublic victim data that is subject to a protective order or
96 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.

(7) At the request of a victim or a representative of a victim, the court may:

- (a) conduct an ex parte in camera review of nonpublic victim data that the victim does not believe should be made available to the defendant or the defendant's attorney; and
- (b) enter an order prohibiting the inspection, review, or examination of the nonpublic victim data if the nonpublic victim data is:
 - (i) not relevant or material evidence in the criminal proceeding; or
 - (ii) evidence of sexual behavior by the victim that is inadmissible under Rule 412 of the Utah Rules of Evidence.

(8) A law enforcement agency and a prosecuting agency shall establish a policy that ensures nonpublic victim data is:

- (a) used solely for legitimate law enforcement and prosecutorial purposes; and
- (b) maintained in a controlled environment and in a manner that protects the privacy of a victim.

(9) This section does not:

- (a) limit the rights of a defendant under the Constitution of the United States or the Utah Constitution;
- (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 have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.
- (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.
- (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.
- (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.
- (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.

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

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

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

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

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

(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;

(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;

(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;

(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:

(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

(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;

(h) be informed in writing of policies governing the collection and preservation of a sexual assault kit;

(i) be informed of the status and location of a sexual assault kit;

(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;

(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

- 200 and the victim submits a written request as described in Section 53-10-905;
- 201 (l) designate a person of the victim's choosing to act as a recipient of the information
- 202 provided under this Subsection (2) or Subsections (3) and (4); and
- 203 (m) be informed of all the enumerated rights in this Subsection (2).
- 204 (3) Subsections (2)(e) through (g) do not require that the law enforcement agency
- 205 communicate with the victim or the victim's designee regarding the status of DNA
- 206 testing, absent a specific request received from the victim or the victim's designee.
- 207 (4) A law enforcement agency investigating a sexual offense may:
- 208 (a) release the information indicated in Subsections (2)(e) through (g) upon the request
- 209 of the victim of the sexual offense, or the victim's designee and is the designated
- 210 agency to provide that information to the victim or the victim's designee;
- 211 (b) require that the victim's request be in writing; and
- 212 (c) respond to the victim's request with verbal communication, written communication,
- 213 or by email if an email address is available.
- 214 (5) A law enforcement agency investigating a sexual offense shall:
- 215 (a) notify the victim of the sexual offense, or the victim's designee, if the law
- 216 enforcement agency determines that DNA evidence will not be analyzed in a case
- 217 where the identity of the perpetrator has not be confirmed;
- 218 (b) provide the information described in this section in a timely manner; and
- 219 (c) upon request of the victim or the victim's designee, advise the victim or the victim's
- 220 designee of any significant changes in the information of which the law enforcement
- 221 agency is aware.
- 222 (6) The law enforcement agency investigating the sexual offense is responsible for
- 223 informing the victim of the sexual offense, or the victim's designee, of the rights
- 224 established under this section.
- 225 (7) Informational rights of the victim under this chapter are based upon the victim
- 226 providing the current name, address, telephone number, and email address, if an email
- 227 address is available, of the person to whom the information should be provided to the
- 228 criminal justice agencies involved in the case.

229 **Section 3. Effective date.**

230 This bill takes effect on May 7, 2025.