

# SB0290S01 compared with SB0290

~~{Omitted text}~~ shows text that was in SB0290 but was omitted in SB0290S01

inserted text shows text that was not in SB0290 but was inserted into SB0290S01

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1 **Victim and Witness Privacy Amendments**  
2026 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Heidi Balderree**  
House Sponsor:Ariel Defay



2  
3 **LONG TITLE**

4 **General Description:**

5 This bill addresses the privacy of a victim and witness in a criminal investigation or action.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▶ defines terms;
- 9 ▶ provides the requirements for disclosing nonpublic victim or witness data to a defendant, including the nonpublic victim or witness data that the prosecutor must disclose to a defendant's attorney;

9 ▶ addresses ~~{access by a defendant and a defendant's attorney to}~~ inspection of nonpublic ~~{electronic data related to a}~~ victim or witness ~~{, including:}~~ data by a defendant who is self represented;

- 11 • ~~{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;}~~

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~~{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;}~~

18           • ~~{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 }~~

21           • ~~{providing the requirements }~~ allows for a protective order to be issued by the court that would limit a defendant's ~~{attorney }~~ access to ~~{copy }~~ , ~~{photograph, }~~ or use or ~~{otherwise reproduce }~~ dissemination of, nonpublic ~~{electronic data related to a }~~ victim or ~~{a }~~ witness data; ~~{and }~~

16           ▶ grants a victim or witness certain rights with regard to the disclosure of nonpublic victim or witness data;

23           ▶ ~~{provides }~~ allows a victim or ~~{a }~~ witness ~~{in a criminal proceeding with a right }~~ to ~~{privacy }~~ request an ex parte in ~~{any nonpublic electronic data related to the }~~ camera review of nonpublic victim or witness ~~{that is collected during the course of the criminal investigation }~~ data before disclosure to a defendant or ~~{action. }~~ a defendant's attorney;

20           ▶ addresses a violation of a protective order for nonpublic victim or witness data; and

21           ▶ requires a law enforcement agency to enact a policy regarding nonpublic victim or witness data.

## 23 Money Appropriated in this Bill:

24           None

## 25 Other Special Clauses:

26           None

## 27 Utah Code Sections Affected:

28 ENACTS:

29           77-4-202 , Utah Code Annotated 1953

AMENDS:

32           ~~{77-37-3 , as last amended by Laws of Utah 2025, First Special Session, Chapter 11}~~

30

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

32           Section 1. Section 1 is enacted to read:

33           77-4-202. Production of nonpublic electronic data related to a victim or witness.

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- 39 (1) As used in this section:
- 35 (a) "Defense counsel" means the defendant's attorney and any staff for the attorney.
- 40 (a){(b)} "Governmental facility" "Intimate image" means {a facility} the same as that term is  
{owned, leased, or operated by this state or a political subdivision of this state} defined in Section  
76-5b-203.
- 42 (b){(c)} "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.
- 45 (c){(d)}
- (i) "Nonpublic victim or witness data" means electronic data related to a victim or witness:
- 47 (A) that is otherwise not available to the public; and
- 48 (B) for which a reasonable person would believe that the victim or witness has a reasonable  
expectation of privacy.
- 50 (ii) "Nonpublic victim or witness data" includes electronic data related to a victim or witness that is  
obtained in the course of a criminal investigation.
- 52 (d){(e)} "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; or
- 56 (iv) an attorney authorized to commence an action on behalf of the state.
- 57 (e){(f)} "Victim" means the same as that term is defined in Section 77-37-2.
- 58 (f){(g)} "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 law  
enforcement agency or the prosecuting agency, the defendant may only obtain the nonpublic victim  
or witness data:
- 62 (a) as described in {Rule 14(b)(5) of the} Utah Rules of Criminal Procedure, Rule 14(b)(5); or
- 63 (b) if the victim or witness voluntarily provides the nonpublic victim or witness data to 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 the  
prosecuting agency{ }, the prosecuting attorney shall disclose the nonpublic victim or witness data  
to the defendant's attorney in accordance with Utah Rules of Criminal Procedure, Rule 16.

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- 64 (4)
- 65 (a) Upon a motion by the prosecuting attorney, the court shall issue a protective order that restricts or  
regulates the defendant's access to, or use or dissemination of, the nonpublic victim or witness data.
- 67 (b) A protective order described in Subsection (4)(a) may:
- 68 (i) prohibit disclosure of the nonpublic victim or witness data to the defendant;
- 69 (ii) limit defense counsel from copying, photographing, or reproducing the nonpublic victim or witness  
data;
- 71 (iii) restrict further dissemination of the nonpublic victim or witness data;
- 72 (iv) regulate the storage and security of copies of the nonpublic victim or witness data; or
- 74 (v) impose any other appropriate restrictions to protect the privacy of the victim or witness while  
allowing defense counsel meaningful access to the nonpublic victim or witness data for purposes of  
preparing a defense.
- 67 (a) ~~(5)~~ ~~{the}~~ The prosecuting attorney shall ~~{make the}~~ disclose nonpublic victim or witness data  
~~{available}~~ to the defendant's attorney ~~{in accordance with this section; and}~~ without an order from  
the court if:
- 69 ~~{(b) {the defendant's attorney may only inspect, view, or examine the nonpublic victim or witness data~~  
~~at a governmental facility, or copy, photograph, or otherwise reproduce 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 possession of~~  
~~a law enforcement agency or the prosecuting agency shall remain in the 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 defendant's~~  
~~attorney to copy, photograph, or otherwise reproduce, nonpublic victim or witness data without an~~  
~~order from the court if:}}~~
- 81 (a) the nonpublic victim or witness data was directly communicated to the defendant by the victim or  
witness;
- 83 (b) the nonpublic victim or witness data is direct evidence of an element of the offense for which the  
defendant is charged;

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- 85 (c) the prosecuting attorney has introduced, or intends to introduce, the nonpublic victim or witness data  
86 {has been submitted by the prosecuting agency} as an exhibit at {a} any hearing or trial;
- 87 (d) the prosecuting attorney knows that the nonpublic victim or witness data is a communication that  
88 describes or explains the criminal conduct for which the defendant is charged; or
- 89 (e) the prosecuting attorney knows that the nonpublic victim or witness data is exculpatory evidence{  
90 or}.
- 90 (6)
- 91 (a) If the nonpublic victim or witness data in the possession of a law enforcement agency or the  
92 prosecuting agency contains an intimate image and the prosecuting attorney is not required to  
93 disclose the intimate image under Subsection (5):
- 93 (i) the prosecuting agency may redact or withhold the intimate image; and
- 92 (f) (ii) the prosecuting attorney {intends} shall provide a description of the redacted or withheld  
94 intimate image to {submit} the {nonpublic victim or witness data as an exhibit at trial} defendant's  
95 attorney.
- 94 ~~{(6)}~~
- 96 (a) (b) {Before a} If the prosecuting attorney {provides the} discloses an intimate image that is  
97 contained in nonpublic victim or witness data {as described in Subsection (5)}, the {prosecuting  
98 attorney may request an order from the court that} intimate image is subject to the terms of a  
99 protective order issued under Subsection (4).
- 97 {(i) {requires the defendant's attorney to inspect, view, or examine the nonpublic victim or witness  
98 data at a governmental facility; and} }
- 99 (7)
- 99 (ii) (a) {provides restrictions regarding} Upon a motion of the {copying} defendant,  
100 {photographing, distribution, reproduction, dissemination, viewing, or retention} the court  
101 may modify the terms of {the} a protective order issued under Subsection (4) and grant the  
102 defendant direct access to nonpublic victim or witness data if the protective order would impair  
103 the defendant's ability to prepare an effective defense.
- 102 (b) {The court may grant a request described in Subsection (6)(a) upon a showing by the prosecuting  
103 attorney that the request would not unreasonably interfere with:} }
- 103 (b) Notwithstanding Subsection (6)(a), a defendant who is self represented may not inspect nonpublic  
104 victim or witness data but may request that the court appoint counsel for the purpose of inspecting

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the nonpublic victim or witness data on behalf of the defendant, unless the court determines prohibiting inspection by the defendant would infringe on the rights of the defendant under the Utah Constitution or Constitution of the United States.

- 104 (i){~~(8)~~} ~~{the privacy of the}~~ A victim or witness~~{; and}~~ has a right to:
- 110 (a) receive notice of any motion for a protective order or motion to modify or dissolve a protective  
order; and
- 105 (ii){~~(b)~~} ~~{access to the nonpublic victim or witness data by the}~~ be heard on a defendant's ~~{attorney}~~  
motion described in Subsection (7)(a).
- 106 ~~(7){(9)}~~
- {(a) ~~{Subject to Subsections (8) and (9), a defendant's attorney may submit a request to the court for an order allowing the defendant's attorney to copy, photograph, or otherwise reproduce nonpublic victim or witness data that is not provided to the 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 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 otherwise reproducing the nonpublic victim or witness data that outweighs the victim's or witness's right to privacy and right to be free from harassment as described in Section 77-37-3.}}~~}
- 117 ~~{(b) {If a defendant's attorney submits a request under Subsection (7)(a), the victim or witness has a right to receive notice and be heard on the request if the nonpublic 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 limit, where appropriate, the use and further disclosure of the nonpublic victim or 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, photograph, or otherwise reproduce nonpublic victim or witness data that is an 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 otherwise reproduce an intimate image, the court shall include in the order limitations on:}}~~}

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- 129 { (i)  ~~{ the number of copies, photographs, or reproductions that the defendant's attorney 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 prosecution against the~~  
defendant. } }
- 135 { (9)  ~~{ At the request of a victim, witness, or a representative of a victim or witness, the court may; } }~~
- 137 (a) Upon a defendant's motion under Subsection (7), and at the request of a victim, witness, or a  
representative of a victim or witness, the court may conduct an ex parte in camera review of  
nonpublic victim or witness data that the victim or witness does not believe should be made directly  
available to the defendant  ~~{ or the defendant's attorney; and }~~ .
- 140 (b)  ~~{ enter }~~  After conducting an  ~~{ order prohibiting the inspection, }~~  in camera review, the court  
may deny the defendant's motion to modify or  ~~{ examination of }~~  dissolve the  ~~{ nonpublic victim~~  
 ~~or witness data if }~~  protective order issued under Subsection (4) if the court determines that 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 Rule 412 of the  
Utah Rules of Evidence  ~~{ ; }~~ ; or
- 122 (iii) subject to exclusion under another rule or law.
- 123 (10) If the court finds that an individual has intentionally or knowingly violated the conditions of a  
protective order issued under this section, the court shall:
- 125 (a) hold the individual in contempt; and
- 126 (b) impose any sanction that the court determines is appropriate.
- 145 (10){(11)} A law enforcement agency and a prosecuting agency shall establish a policy that 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 victim or  
witness.
- 150 (11){(12)} This section does not:
- 151 (a) limit the rights of a defendant under the Utah Constitution or the Constitution of the United States;
- 153

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(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 Constitution of the United States;  
or

156 (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.

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 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.

169 (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.

172 (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.

175 (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.

178 (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 Utah Office for Victims of Crime and to inform victims of these procedures.

184 (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

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justice agencies shall expeditiously return the property 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, 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.
- 195 (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.
- 198 (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.
- 203 (j) A victim or a witness in a criminal proceeding has a right to privacy of the victim's or witness's nonpublic victim or witness data, as defined in Section 77-4-202, that is collected during the 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 offense has the right to:
- 208 (a) request voluntary testing for themselves for HIV infection as described in Section 53-10-803;
- 210 (b) request mandatory testing of the alleged sexual offender for HIV infection as 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, preserved for the time periods described in Chapter 11c, Retention of Evidence, without any charge to the victim;
- 216 (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;
- 218 (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;

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- (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:
- 224 (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
- 227 (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;
- 229 (h) be informed in writing of policies governing the collection and preservation of a 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 defined in Section 53-10-905, if the agency intends to destroy or dispose of evidence from a sexual assault kit;
- 235 (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 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 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 communicate with the victim or the victim's designee regarding the status of DNA 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 of the victim of the sexual offense, or the victim's designee and is the designated 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, 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 enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not [~~be~~] been confirmed;

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- 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 designee of any significant changes in the information of which the law enforcement agency is aware.
- 259 (6) The law enforcement agency investigating the sexual offense is responsible for informing the victim of the sexual offense, or the victim's designee, of the rights established under this section.
- 262 (7) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

141 Section 2. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

2-20-26 8:38 AM