

SB0290S02 compared with SB0290

~~{Omitted text}~~ shows text that was in SB0290 but was omitted in SB0290S02

inserted text shows text that was not in SB0290 but was inserted into SB0290S02

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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 ▶ addresses the requirements for access ~~{by a defendant and a defendant's attorney}~~ to nonpublic electronic data related to a victim or witness when a defendant, ~~{including:}~~ or a defendant's attorney, seeks to obtain the nonpublic electronic data;

11 • ~~{providing that}~~ requires 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}~~ to enact a ~~{subpoena or voluntarily from the}~~ policy regarding nonpublic victim or witness ~~{;}~~ data; and

15 • ~~{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;}~~

SB0290 compared with SB0290S02

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 for a defendant's attorney to copy, photograph, or otherwise reproduce nonpublic electronic data related to a victim or a witness; and~~}

23 ▸ 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.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **77-37-3** , as last amended by Laws of Utah 2025, First Special Session, Chapter 11

24 ENACTS:

25 **77-4-202** , Utah Code Annotated 1953

26

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

28 Section 1. Section **1** is enacted to read:

29 **77-4-202. Production of nonpublic electronic data related to a victim or witness.**

39 (1) As used in this section:

31 (a) "Evidence" means any data or information that is relevant and reasonably related to an element of the crime for which a defendant is charged.

40 (a){(b)} "Governmental facility" means a facility that is owned, leased, or operated by this state or a political subdivision of this state.

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)}

SB0290 compared with SB0290S02

(i) "Nonpublic victim or witness data" means electronic information or data related to a victim or witness:

40 (A) that is not evidence;

47 (A){(B)} that is otherwise not available to the public; and

48 (B){(C)} 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.

53 (2)

59 (2){(a)} 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){(i)} as described in {~~Rule 14(b)(5) of the~~} Utah Rules of Criminal Procedure, Rule 14(b)(5); or

63 (b){(ii)} if the victim or witness voluntarily provides the nonpublic victim or witness data to the defendant or the defendant's attorney.

65 (3){(b)} {~~If~~} Any request for nonpublic victim or witness data {~~is in the possession of a law enforcement agency or the prosecuting agency:~~} under Subsection (2)(a) shall be limited to evidence.

61 (3) When investigating an offense, a law enforcement agency shall make reasonable efforts to identify evidence and segregate the evidence from any nonpublic victim or witness data.

64 (4)

67 (a) {~~the~~} A prosecuting attorney shall make {~~the nonpublic victim or witness data~~} evidence available to {~~the~~} a defendant, or a defendant's attorney, in accordance with {~~this section; and~~} Utah Rules of Criminal Procedure, Rule 16.

SB0290 compared with SB0290S02

- 69 (b) ~~{ the defendant's }~~ To the extent practicable, the prosecuting attorney may ~~{ only inspect, view, or~~
examine the } not provide nonpublic victim or witness data ~~{ at a governmental facility, or copy,~~
72 (4){ (5) } 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.
74 (6)
- (a) If a defendant's attorney is seeking to inspect or search nonpublic victim or witness data that is in the
possession of a law enforcement agency or a prosecuting agency, the defendant's attorney may only
inspect or search the nonpublic victim or witness data for evidence upon a good cause determination
by the court under Utah Rules of Criminal Procedure, Rule 16(a)(4).
- 79 (b) For a court to grant a good cause determination as described in Subsection (6)(a):
80 (i) the defendant's attorney shall establish that there is reasonable certainty that the nonpublic victim or
witness data contains undisclosed evidence; and
82 (ii) the court must order reasonable limitations on the scope of the search, including the type, location,
time frame, or category of nonpublic victim or witness data that may be inspected or searched for
evidence.
- 78 (5){ (c) } ~~{ prosecuting agency shall provide }~~ court may only permit the defendant's attorney
~~{ with }~~ , or ~~{ permit }~~ a designee of the defendant's attorney , to receive a copy ~~{ , photograph, }~~ or
~~{ otherwise reproduce, }~~ reproduction of nonpublic victim or witness data ~~{ without an order from~~
the court } if:
- 81 (a){ (i) } ~~{ nonpublic victim or witness data was directly communicated to the }~~ defendant shows, by
~~{ the victim or witness; }~~ clear and convincing evidence, that:
- 83 ~~{ (b) { the nonpublic victim or witness data is direct evidence of an element of the offense for which the~~
defendant is charged; }
- 85 ~~{ (c) { the nonpublic victim or witness data has been submitted by the prosecuting agency as an exhibit~~
at a hearing; }

SB0290 compared with SB0290S02

- 87 ~~{(d) {the prosecuting attorney knows that the nonpublic victim or witness data is a communication that describes or explains the criminal conduct for which the defendant is charged;}}~~
- 90 (e){(A)} ~~{the prosecuting attorney knows}~~ there is reasonable certainty that the nonpublic victim or witness data ~~{is exculpatory}~~ contains evidence; ~~{or}~~
- 92 ~~{(f) {the prosecuting attorney intends to submit the nonpublic victim or witness data as an exhibit at trial.}}~~
- 94 ~~{(6) }~~
- (a) ~~{Before a prosecuting attorney provides the nonpublic victim or witness data as described in Subsection (5), the prosecuting attorney may request an order from the court that:}}~~
- 97 ~~{(i) {requires the defendant's attorney to inspect, view, or examine the nonpublic victim or witness data at a governmental facility; and}}~~
- 99 ~~{(ii) {provides restrictions regarding the copying, photographing, distribution, reproduction, dissemination, viewing, or retention of the nonpublic victim or witness data.}}~~
- 102 ~~{(b) {The court may grant a request described in Subsection (6)(a) upon a showing by the 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 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){(B)} ~~{a review}~~ requiring an inspection or search of the nonpublic victim or witness data at a governmental facility is inadequate ~~{for}~~ to permit the ~~{defendant}~~ defendant's attorney to prepare a defense or prepare for trial; and
- 113 (iii){(C)} the ~~{defendant's attorney has a legitimate}~~ interest of the defendant in ~~{copying, photographing, or otherwise reproducing}~~ receiving a copy or reproduction of the nonpublic victim or witness data ~~{that}~~ outweighs the interest of the victim's or witness's right to privacy and right to be free from harassment as described in Section 77-37-3{-} ; and
- 117

SB0290 compared with SB0290S02

{(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){(ii) {If the court issues an the order allowing the defendant's attorney to receive a copy{; photograph, or otherwise reproduce an intimate image, the court shall include in the order } or reproduction of nonpublic victim or witness data includes limitations on:

129 (i){(A) } the number of copies, photographs, or reproductions of the nonpublic victim or witness data that the defendant's attorney is permitted to make;

131 (ii){(B) } who may view the {intimate image} nonpublic victim or witness data;

132 {(iii) {how the image may be stored; and}}

102 (C) how the nonpublic victim or witness data is stored, including requirements ensuring that only individuals described in Subsection (6)(d)(ii)(B) can access the nonpublic victim or witness data; and

133 (iv){(D) } the {disposition} procedures for disposing of the {intimate image} nonpublic victim or witness data upon the completion of the criminal prosecution against the defendant.

135 (9){(7) } At the request of a victim, witness, or a representative of a victim or witness, the court may:

137 (a) conduct an ex parte in camera review of nonpublic victim or witness data that the victim or witness does not believe should be made available to the defendant or the defendant's attorney; and

140 (b) enter an order prohibiting the inspection{, review,} or {examination} search of the nonpublic 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 Rule 412 of the Utah Rules of Evidence.

145

SB0290 compared with SB0290S02

(10){(8)} 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){(9)} This section does not:

151 (a) limit the rights of a defendant under the Utah Constitution or the Constitution of the United States;

153 (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.

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

132 **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

SB0290 compared with SB0290S02

- (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 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;

SB0290 compared with SB0290S02

- 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;
- 221 (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

SB0290 compared with SB0290S02

- 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;
- 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.

238 Section 3. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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