

SB0290S03 compared with SB0290

~~{Omitted text}~~ shows text that was in SB0290 but was omitted in SB0290S03

inserted text shows text that was not in SB0290 but was inserted into SB0290S03

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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 access by a defendant and a defendant's attorney to nonpublic electronic data related to a victim or witness, including:}~~

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;}~~

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;}~~

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~~{ 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 }~~ addresses the requirements for access to nonpublic electronic data or information from a victim or witness when a defendant, or a defendant's attorney, seeks to ~~{ copy, photograph, or otherwise reproduce }~~ obtain the nonpublic electronic data ~~{ related to a victim or a witness }~~ or information; 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. }~~
- 12 ▸ requires a law enforcement agency to enact a policy regarding nonpublic victim or witness data.

14 Money Appropriated in this Bill:

15 None

16 Other Special Clauses:

17 None

18 Utah Code Sections Affected:

19 ENACTS:

20 **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 }~~

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

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

24 **77-4-202. Production of nonpublic electronic data or information related to a victim or witness.**

39 (1) As used in this section:

27 (a) "Electronic evidence" means electronic data or information that is directly related to the case and must be disclosed in accordance with Utah Rules of Criminal Procedure, Rule 16, the Utah Constitution, and the Constitution of the United States.

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- (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} information:
- 35 (A) provided by or obtained from a victim or witness;
- 36 (B) that is not electronic evidence;
- 47 (A){(C)} that is otherwise not available to the public; and
- 48 (B){(D)} 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} information described in Subsection (1)(d)(i) that is provided or obtained in the course of a criminal investigation.
- 43 (e) "Pro se defendant" means a defendant in a criminal proceeding:
- 44 (i) who is not represented by an attorney and has elected to represent oneself; or
- 45 (ii) who has not yet retained or been appointed an attorney.
- 52 (d){(f)} "Prosecuting attorney" means:
- 53 (i) the attorney general {and} or 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) a city attorney or assistant city attorney; or
- (iv){(v)} an attorney authorized to commence an action on behalf of the state.
- 57 (e){(g)} "Victim" means the same as that term is defined in Section 77-37-2.
- 53 (h) "Virtual room" means a secure web-based platform that:
- 54 (i) is used for storing and sharing nonpublic victim or witness data; and
- 55 (ii) does not allow for any copying or duplication of nonpublic victim or witness data that is shared or viewed on the platform.

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- 58 (f){(i)} "Witness" means the same as that term is defined in Section 77-37-2.
- 58 (2)
- 60 (a) A prosecuting attorney shall disclose any electronic evidence in accordance with Utah Rules of Criminal Procedure, Rule 16.
- 62 (b) There is a rebuttable presumption that a prosecuting attorney may not disclose an intimate image that is contained within nonpublic victim or witness data.
- 62 (3) A law enforcement agency or prosecuting agency shall:
- 63 (a) reasonably ensure that electronic evidence is collected from a victim or witness during the course of a criminal investigation;
- 65 (b) make reasonable efforts to identify any electronic evidence and segregate the electronic evidence from nonpublic victim or witness data;
- 67 (c) work towards implementing a virtual room to facilitate review of nonpublic victim or witness data by a defendant's attorney in a manner that protects the privacy of a victim or witness and ensures adequate preparation by the defense; and
- 70 (d) make reasonable efforts to implement access to a virtual room when technically and operationally feasible.
- 72 (4) Upon disclosure of electronic evidence to a defendant in accordance with Utah Rules of Criminal Procedure, Rule 16, the prosecuting attorney shall inform the defendant:
- 74 (a) of any device that has been received, searched, or downloaded by a law enforcement agency in the course of the criminal investigation of the offense for which the defendant is charged;
- 77 (b) whether any electronic evidence was obtained from the device; and
- 78 (c) of the origin of the device.
- 59 (2){(5)} 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:}}~~

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- {(a) {the prosecuting attorney shall make the nonpublic victim or witness data available to 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 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){(6)} {Any} Except as otherwise provided in this section, 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;-} }
- 85 {(e) {the nonpublic victim or witness data has been submitted by the prosecuting agency as an exhibit at a hearing;-} }
- 91 (7)
- 87 (d){(a)} {~~the prosecuting~~-} If a defendant's attorney {~~knows that the~~-} is seeking to search nonpublic victim or witness data that is {~~a communication that describes or explains the criminal conduct for which~~-} in the possession of a law enforcement agency or prosecuting agency, the defendant {is charged;-} may:
- 90 {(e) {the prosecuting attorney knows that the nonpublic victim or witness data is exculpatory evidence; or-} }
- 94 (i) request that the law enforcement agency or prosecuting attorney:
- 92 (f){(A)} subject to Subsection (7)(b), provide the {~~prosecuting~~-} defendant's attorney {~~intends to submit~~-} with a copy or duplicate of the nonpublic victim or witness data {~~as an exhibit at trial.~~-} ;
- 94 {(6) }

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- {(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) ~~{(B) }~~ {requires} allow the defendant's attorney to ~~{inspect, view, or examine}~~ search or view
the nonpublic victim or witness data ~~{at}~~ in a ~~{governmental facility}~~ virtual room; ~~{and}~~ or
- 99 (C) allow the defendant's attorney to search or view the nonpublic victim or witness data at the facility
where the nonpublic victim or witness data is held with reasonable accommodations for searching or
viewing the nonpublic victim or witness data; or
- 99 (ii) ~~{provides restrictions regarding the copying, photographing, distribution, reproduction,~~
dissemination, viewing} bring a motion under Utah Rules of Criminal Procedure, Rule 16(a)(4),
that demonstrates good cause for allowing the defendant's attorney to view, or {retention of}
obtain a copy or duplicate 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) }~~ }
- 106 (b) If a prosecuting attorney provides a defendant's attorney with a copy or duplicate of some or
all portions of nonpublic victim or witness data under Subsection (7)(a)(i)(A), the prosecuting
attorney shall provide the copy or duplicate with a stipulated protective order that governs the use,
dissemination, and return or disposal of the copy or duplicate.
- (a) ~~{(c) }~~ {Subject to Subsections (8) and (9), a} A defendant's attorney may ~~{submit a request to~~
~~the court for an order allowing the defendant's attorney to}~~ not copy, photograph, or otherwise
reproduce nonpublic victim or witness data ~~{that is not provided to}~~ during the ~~{defendant's~~
~~attorney}~~ viewing or search of nonpublic victim or witness data under Subsection ~~{(5)}~~ (7)(a)(i)
(B) or {(6) if the court finds that:} (C).
- 114 (d) If a defendant's attorney believes that some or all of the nonpublic victim or witness data is
electronic evidence during the viewing or search of nonpublic victim or witness data under
Subsection (7)(a)(i)(B) or (C), the defendant's attorney may request a copy or duplicate of any
portion of the nonpublic victim or witness data that the defendant's attorney believes is electronic
evidence.
- 119 (8)

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- 112 (a) The court may grant a motion under Subsection (7)(a)(ii) and enter an order for a defendant's attorney to be:
- 121 (i) allowed to view some or all portions of nonpublic victim or witness data if a law enforcement agency or prosecuting attorney has not granted a request under Subsection (7)(a)(i) or (d) and the defendant shows good cause under Utah Rules of Criminal Procedure, Rule 16(a)(4); or
- 110 (i){(ii)} ~~{the}~~ subject to Subsection (8)(c), given a copy or duplicate of some or all portions of nonpublic victim or witness data {is relevant and material evidence;} if the defendant shows good cause under Utah Rules of Criminal Procedure, Rule 16(a)(4).
- 128 (b) In making a determination as to whether there is good cause under Subsection (8)(a)(ii), the court shall consider:
- 111 (ii){(i)} whether there is a {review of} reasonable likelihood the nonpublic victim or witness data {at a governmental facility} contains electronic evidence that is {inadequate for the defendant} necessary to adequately prepare a defense or for trial; {and}
- 133 (ii) whether requiring a search of the nonpublic victim or witness data at a facility where the nonpublic victim or witness data is held or in a virtual room is an undue burden for adequate preparation of a defense or preparation for trial;
- 113 (iii) whether the defendant's {attorney has a legitimate} due process rights and interest in {copying, photographing, or otherwise reproducing} receiving a copy or duplicate of the nonpublic victim or witness data {that} outweighs the {victim's or witness's right to} privacy {and} rights and interests of the victim or witness, including a victim's right to be free from harassment {as described in} under Utah Constitution, Article I, Section {77-37-3} 28; and
- 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){(iv)} {There is a rebuttable presumption against} any other factor that demonstrates good cause for allowing {a} the defendant's attorney to obtain a copy{, photograph,} or {otherwise reproduce}

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duplicate of the 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}~~ grants a motion to copy ~~{~~
129 photograph, or otherwise reproduce an intimate image} or duplicate nonpublic victim or witness
data under Subsection (8)(a)(ii), the ~~{court}~~ order shall include ~~{in the order}~~ limitations on:
131 (i) the number of copies, photographs, or {reproductions} duplicates of the nonpublic victim or witness
data that the defendant's attorney is permitted to make;
132 (ii) who may view the {intimate image} nonpublic victim or witness data;
133 (iii) how the {image may be} nonpublic victim or witness data is stored; and
137 (iv) the {disposition} procedures for disposing of the {intimate image} nonpublic victim or witness
data upon the completion of the criminal prosecution against the defendant.
- 150 (9)
135 (9){(a)} ~~{At the request of a victim}~~ A pro se defendant may not access, {witness} view, search, or {a
representative of a} copy nonpublic victim or witness ~~{, the court may:}~~ data.
- 137 (a){(b)} ~~{conduct an ex parte in camera review}~~ Upon a motion by the pro se defendant or the court,
the court shall appoint an attorney for a pro se defendant for the limited purpose of searching some
or all portions of nonpublic victim or witness data ~~{that the}~~ for electronic evidence in accordance
with Subsection (7), or obtaining a copy or duplicate of some or all portions of nonpublic victim or
witness ~~{does not believe should be made available to the defendant or the defendant's attorney:}~~
data that is electronic evidence in accordance with Subsections (7) and(8), if:
- 140 (b){(i)} ~~{enter an order prohibiting}~~ the ~~{inspection}~~ pro se defendant seeks to access, {review} view,
search, or {examination of the nonpublic victim} obtain a copy or {witness data if the} duplicate
nonpublic victim or witness data ~~{is:}~~ ; and
- 142 {(i)} ~~{not relevant or material evidence in the criminal case; or}~~
143 (ii) ~~{evidence}~~ the court determines that a search of {sexual behavior by} the nonpublic victim or
witness ~~{that}~~ data for electronic evidence is ~~{inadmissible under Rule 412 of the Utah Rules of~~
Evidence} necessary to ensure a fair proceeding.
- 162 (c) An attorney appointed under this Subsection (9) shall be compensated for any representation under
this section in accordance with Title 78B, Chapter 22, Indigent Defense Act, regardless of whether
the defendant qualifies for the appointment of counsel under Title 78B, Chapter 22, Indigent
Defense Act.

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- 166 (d) The appointment of an attorney under this Subsection (9) does not:
167 (i) constitute a general appearance on behalf of the defendant; or
168 (ii) obligate the appointed attorney to represent the defendant in the criminal prosecution unless the
attorney is retained or appointed to represent the defendant.
- 145 (10) 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) 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 or the Board of Pardons and Parole that is necessary to provide victim
services or notification 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.
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- (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 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.

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- 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;
- 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).
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- (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;
- 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.

184 Section 2. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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