

# SB0290S03 compared with SB0290S01

~~{Omitted text}~~ shows text that was in SB0290S01 but was omitted in SB0290S03

inserted text shows text that was not in SB0290S01 but was inserted into SB0290S03

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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}~~ addresses the requirements for ~~{disclosing}~~ access to nonpublic electronic data or information from a victim or witness ~~{data to}~~ when a defendant, ~~{including the nonpublic victim or witness data that the prosecutor must disclose to}~~ or a defendant's attorney~~{;}~~ , seeks to obtain the nonpublic electronic data or information; and

12 ▶ ~~{addresses inspection of nonpublic victim or witness data by a defendant who is self represented;}~~

14 ▶ ~~{allows for a protective order to be issued by the court that would limit a defendant's access to, or use or dissemination of, nonpublic victim or witness data;}~~

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

## SB0290S01 compared with SB0290S03

- 18       ▶ ~~{ allows a victim or witness to request an ex parte in camera review of nonpublic victim or~~  
19       ~~witness data before disclosure to a defendant or 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.

### 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

21

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**  
25       **witness.**

34 (1) As used in this section:

35 ~~{(a) {"Defense counsel" means the defendant's attorney and any staff for the attorney.} }~~

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

36 (b) "Intimate image" means the same as that term is defined in Section 76-5b-203.

37 (c) "Law enforcement agency" means a public or private agency having general police power and  
38 charged with making arrests in connection with enforcement of the criminal statutes and ordinances  
39 of this state or any political subdivision of this state.

40 (d)

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

35 (A) ~~provided by or obtained from a victim or witness;~~

36 (B) ~~that is not electronic evidence;~~

42 (A){(C)} ~~that is otherwise not available to the public; and~~

## SB0290S01 compared with SB0290S03

- 43 (B){(D)} for which a reasonable person would believe that the victim or witness has a reasonable  
expectation of privacy.
- 45 (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.
- 47 (e){(f)} "Prosecuting attorney" means:
- 48 (i) the attorney general {and-} or an assistant attorney general;
- 49 (ii) a district attorney or deputy district attorney;
- 50 (iii) a county attorney or assistant county attorney; {or}
- 50 (iv) a city attorney or assistant city attorney; or
- 51 (iv){(v)} an attorney authorized to commence an action on behalf of the state.
- 52 (f){(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.
- 53 (g){(i)} "Witness" means the same as that term is defined in Section 77-37-2.
- 58 (2)
- (a) A prosecuting attorney shall disclose any electronic evidence in accordance with Utah Rules of  
Criminal Procedure, Rule 16.
- 60 (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

## SB0290S01 compared with SB0290S03

- (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.
- 54 (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:
- 57 (a) as described in Utah Rules of Criminal Procedure, Rule 14(b)(5); or
- 58 (b) if the victim or witness voluntarily provides the nonpublic victim or witness data to the defendant or  
the defendant's attorney.
- 85 (6) 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 prosecuting agency shall  
remain in the care, custody, and control of:
- 88 (a) the law enforcement agency;
- 89 (b) the prosecuting agency; or
- 90 (c) the court.
- 91 (7)
- (a) If a defendant's attorney is seeking to search nonpublic victim or witness data that is in the  
possession of a law enforcement agency or prosecuting agency, the defendant may:
- 94 (i) request that the law enforcement agency or prosecuting attorney:
- 95 (A) subject to Subsection (7)(b), provide the defendant's attorney with a copy or duplicate of the  
nonpublic victim or witness data;
- 97 (B) allow the defendant's attorney to search or view the nonpublic victim or witness data in a virtual  
room; or

## SB0290S01 compared with SB0290S03

- 99 (C) allow the defendant's attorney to search or view the nonpublic victim or witness data at the facility  
103 where the nonpublic victim or witness data is held with reasonable accommodations for searching or  
106 viewing the nonpublic victim or witness data; or
- 103 (ii) 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 obtain a copy or duplicate of, the  
nonpublic victim or witness data.
- 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.
- 111 (c) A defendant's attorney may not copy, photograph, or otherwise reproduce nonpublic victim or  
witness data during the viewing or search of nonpublic victim or witness data under Subsection (7)  
(a)(i)(B) or (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)
- 119 (a) The court may grant a motion under Subsection (7)(a)(ii) and enter an order for a defendant's  
attorney to be:
- 60 (3){(i)} ~~{If}~~ allowed to view some or all portions of nonpublic victim or witness data ~~{is in the~~  
possession of} if a law enforcement agency or ~~{the}~~ prosecuting ~~{agency, the prosecuting}~~  
attorney ~~{shall disclose the nonpublic victim}~~ has not granted a request under Subsection (7)(a)(i)  
or ~~{witness data to}~~ (d) and the ~~{defendant's attorney in accordance with}~~ defendant shows good  
cause under Utah Rules of Criminal Procedure, Rule ~~{16.}~~ 16(a)(4); or
- 64 {(4) }
- 125 (ii) subject to Subsection (8)(c), given a copy or duplicate of some or all portions of nonpublic  
victim or witness data if the defendant shows good cause under Utah Rules of Criminal  
Procedure, Rule 16(a)(4).
- 128

## SB0290S01 compared with SB0290S03

- (b) In making a determination as to whether there is good cause under Subsection (8)(a)(ii), the court shall consider:
- 130 (i) whether there is a reasonable likelihood the nonpublic victim or witness data contains electronic evidence that is necessary to adequately prepare a defense or for trial;
- 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;
- 136 (iii) whether the defendant's due process rights and interest in receiving a copy or duplicate of the nonpublic victim or witness data outweighs the privacy rights and interests of the victim or witness, including a victim's right to be free from harassment under Utah Constitution, Article I, Section 28; and
- (a) ~~(iv) { Upon a motion by the prosecuting attorney, the court shall issue a protective order } any other factor that { restricts or regulates } demonstrates good cause for allowing the defendant's { access } attorney to { - } obtain a copy or { use or dissemination of, - } duplicate of the nonpublic victim or witness data.~~
- 67 ~~(b) { A protective order described in Subsection (4)(a) may: } }~~
- 142 (c) If the court grants a motion to copy or duplicate nonpublic victim or witness data under Subsection (8)(a)(ii), the order shall include limitations on:
- 68 (i) { prohibit disclosure } the number of copies, photographs, or duplicates of the nonpublic victim or witness data { to } that the { defendant } defendant's attorney is permitted to make;
- 69 ~~{ (ii) { limit defense counsel from copying, photographing, or reproducing the nonpublic victim or witness data; } }~~
- 71 ~~{ (iii) { (ii) } { restrict further dissemination of } who may view the nonpublic victim or witness data;~~
- 72 ~~{ (iv) { (iii) } { regulate } how the { storage and security of copies of the } nonpublic victim or witness data { -or } is stored; and~~
- 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. } }~~
- 77 ~~{ (5) { The prosecuting attorney shall disclose nonpublic victim or witness data to the defendant's attorney without an order from the court if: } }~~
- 79

## SB0290S01 compared with SB0290S03

- {(a) {the nonpublic victim or witness data was directly communicated to the defendant by the victim or witness;}-}
- 81 (b){(iv)} the procedures for disposing of the nonpublic victim or witness data {is direct evidence of an element} upon the completion of the {offense for which} criminal prosecution against the defendant {is charged}; .
- 83 {(e) {the prosecuting attorney has introduced, or intends to introduce, the nonpublic victim or witness data as an exhibit at any hearing or trial;}-}
- 85 {(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; or}-}
- 150 (9)
- 88 (e){(a)} {the prosecuting attorney knows that the} A pro se defendant may not access, view, search, or copy nonpublic victim or witness data {is exculpatory evidence} .
- 90 {(6) }
- {(a) {If the nonpublic victim or witness data in the possession of a law enforcement agency or the prosecuting agency contains an intimate image and the prosecuting attorney is not required to disclose the intimate image under Subsection (5);}-}
- 93 {(i) {the prosecuting agency may redact or withhold the intimate image; and}-}
- 94 {(ii) {the prosecuting attorney shall provide a description of the redacted or withheld intimate image to the defendant's attorney.}-}
- 96 {(b) {If the prosecuting attorney discloses an intimate image that is contained in nonpublic victim or witness data, the intimate image is subject to the terms of a protective order issued under Subsection (4).}-}
- 99 {(7) }
- {(a) {Upon a motion of the defendant, the court may modify the terms of a protective order issued under Subsection (4) and grant the defendant direct access to nonpublic victim or witness data if the protective order would impair the defendant's ability to prepare an effective defense.}-}
- 103 (b) {Notwithstanding Subsection (6)(a), Upon a motion by the pro se defendant {who is self represented may not inspect nonpublic victim or witness data but may request that} or the court, the court shall appoint {counsel} an attorney for a pro se defendant for the limited purpose of {inspecting the} searching some or all portions of nonpublic victim or witness data {on behalf of the defendant} for electronic evidence in accordance with Subsection (7), {unless the court

## SB0290S01 compared with SB0290S03

determines prohibiting inspection by the defendant would infringe on the rights- } or obtaining a copy or duplicate of {the defendant under the Utah Constitution- } some or {Constitution of the United States- } all portions of nonpublic victim or witness data that is electronic evidence in accordance with Subsections (7) and (8), if:

- 109 (8){(i) } {A- } the pro se defendant seeks to access, view, search, or obtain a copy or duplicate nonpublic  
victim or witness {has a right to- } data; and
- 110 {(a) {receive notice of any motion for a protective order or motion to modify or dissolve a protective  
order; and- } }
- 112 {(b) {be heard on a defendant's motion described in Subsection (7)(a)- } }
- 113 {(9) }
- {(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.- } }
- 117 (b){(ii) } {After conducting an in camera review,- } the court {may deny the defendant's motion to  
modify or dissolve the protective order issued under Subsection (4) if the court } determines that a  
search of the nonpublic victim or witness data {is- } for electronic evidence is necessary to ensure a  
fair proceeding.
- 120 {(i) {not relevant or material evidence in the criminal case;- } }
- 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.
- 166 (d) The appointment of an attorney under this Subsection (9) does not:
- 121 (ii){(i) } {inadmissible under Rule 412- } constitute a general appearance on behalf of the {Utah Rules of  
Evidence } defendant; 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.- } }

## SB0290S01 compared with SB0290S03

- 168 (ii) obligate the appointed attorney to represent the defendant in the criminal prosecution unless the  
169 attorney is retained or appointed to represent the defendant.
- 127 (11){(10)} A law enforcement agency and a prosecuting agency shall establish a policy that ensures  
128 nonpublic victim or witness data is:
- 129 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
- 130 (b) maintained in a controlled environment and in a manner that protects the privacy of a victim or  
131 witness.
- 132 (12){(11)} This section does not:
- 133 (a) limit the rights of a defendant under the Utah Constitution or the Constitution of the United States;
- 135 (b) create a right for a defendant that is beyond the rights created by the requirements of Rule 16 of the  
136 Utah Rules of Criminal Procedure, the Utah Constitution, and the Constitution of the United States;  
137 or
- 138 (c) prevent a law enforcement agency or prosecuting agency from providing information to the Utah  
139 Office for Victims of Crime or the Board of Pardons and Parole that is necessary to provide victim  
140 services or notification to a victim.

184 Section 2. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

3-2-26 6:09 PM