**Todd Weiler** proposes the following substitute bill:

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,

10    including the nonpublic victim or witness data that the prosecutor must disclose to a

11    defendant's attorney;

12         ‣ addresses inspection of nonpublic victim or witness data by a defendant who is self

13    represented;

14         ‣ allows for a protective order to be issued by the court that would limit a defendant's

15    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

17    or witness data;

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

22    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

30

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

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

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

34          (1) As used in this section:

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

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

38                      power and charged with making arrests in connection with enforcement of the

39                      criminal statutes and ordinances 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

41                      witness:

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

43                          (B) for which a reasonable person would believe that the victim or witness has a

44                              reasonable expectation of privacy.

45                  (ii) "Nonpublic victim or witness data" includes electronic data related to a victim or

46                      witness that is obtained in the course of a criminal investigation.

47                  (e) "Prosecuting attorney" means:

48                      (i) the attorney general and an assistant attorney general;

49                      (ii) a district attorney or deputy district attorney;

50                      (iii) a county attorney or assistant county attorney; or

51                      (iv) an attorney authorized to commence an action on behalf of the state.

52                  (f) "Victim" means the same as that term is defined in Section 77-37-2.

53                  (g) "Witness" means the same as that term is defined in Section 77-37-2.

54          (2) If a defendant seeks nonpublic victim or witness data that is not in the possession of a

55              law enforcement agency or the prosecuting agency, the defendant may only obtain the

56              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

59                      the defendant or the defendant's attorney.

60          (3) If nonpublic victim or witness data is in the possession of a law enforcement agency or

61              the prosecuting agency, the prosecuting attorney shall disclose the nonpublic victim or

62              witness data to the defendant's attorney in accordance with Utah Rules of Criminal

63      Procedure, Rule 16.

64      (4)(a)  Upon a motion by the prosecuting attorney, the court shall issue a protective order

65           that restricts or regulates the defendant's access to, or use or dissemination of, the

66           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

70                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

73                data; or

74           (v)  impose any other appropriate restrictions to protect the privacy of the victim or

75                witness while allowing defense counsel meaningful access to the nonpublic victim

76                or witness data for purposes of preparing a defense.

77      (5)  The prosecuting attorney shall disclose nonpublic victim or witness data to the

78           defendant's attorney without an order from the court if:

79        (a)  the nonpublic victim or witness data was directly communicated to the defendant by

80           the victim or witness;

81        (b)  the nonpublic victim or witness data is direct evidence of an element of the offense

82           for which the defendant is charged;

83        (c)  the prosecuting attorney has introduced, or intends to introduce, the nonpublic victim

84           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

86           communication that describes or explains the criminal conduct for which the

87           defendant is charged; or

88        (e)  the prosecuting attorney knows that the nonpublic victim or witness data is

89           exculpatory evidence.

90      (6)(a)  If the nonpublic victim or witness data in the possession of a law enforcement

91           agency or the prosecuting agency contains an intimate image and the prosecuting

92           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

95                intimate image to the defendant's attorney.

96        (b)  If the prosecuting attorney discloses an intimate image that is contained in nonpublic

| 97  | victim or witness data, the intimate image is subject to the terms of a protective order |
| 98  | issued under Subsection (4). |
| 99  | (7)(a)  Upon a motion of the defendant, the court may modify the terms of a protective |
| 100 | order issued under Subsection (4) and grant the defendant direct access to nonpublic |
| 101 | victim or witness data if the protective order would impair the defendant's ability to |
| 102 | prepare an effective defense. |
| 103 | (b)  Notwithstanding Subsection (6)(a), a defendant who is self represented may not |
| 104 | inspect nonpublic victim or witness data but may request that the court appoint |
| 105 | counsel for the purpose of inspecting the nonpublic victim or witness data on behalf |
| 106 | of the defendant, unless the court determines prohibiting inspection by the defendant |
| 107 | would infringe on the rights of the defendant under the Utah Constitution or |
| 108 | Constitution of the United States. |
| 109 | (8)  A victim or witness has a right to: |
| 110 | (a)  receive notice of any motion for a protective order or motion to modify or dissolve a |
| 111 | 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, |
| 114 | witness, or a representative of a victim or witness, the court may conduct an ex parte |
| 115 | in camera review of nonpublic victim or witness data that the victim or witness does |
| 116 | not believe should be made directly available to the defendant. |
| 117 | (b)  After conducting an in camera review, the court may deny the defendant's motion to |
| 118 | modify or dissolve the protective order issued under Subsection (4) if the court |
| 119 | determines that the nonpublic victim or witness data is: |
| 120 | (i)  not relevant or material evidence in the criminal case; |
| 121 | (ii)  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 |
| 124 | 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. |
| 127 | (11)  A law enforcement agency and a prosecuting agency shall establish a policy that |
| 128 | ensures 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 |

131            victim or witness.
132        (12) This section does not:
133            (a) limit the rights of a defendant under the Utah Constitution or the Constitution of the
134                United States;
135            (b) create a right for a defendant that is beyond the rights created by the requirements of
136                Rule 16 of the Utah Rules of Criminal Procedure, the Utah Constitution, and the
137                Constitution of the United States; or
138            (c) prevent a law enforcement agency or prosecuting agency from providing information
139                to the Utah Office for Victims of Crime that is necessary to provide victim services to
140                a victim.
141        Section 2. **Effective Date.**
142    This bill takes effect on May 6, 2026.