

Heidi Balderree proposes the following substitute bill:

Victim and Witness Privacy Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Heidi Balderree

House Sponsor: Ariel Defay

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines terms;
- addresses the requirements for access to nonpublic electronic data related to a victim or witness when a defendant, or a defendant's attorney, seeks to obtain the nonpublic electronic data;
- requires a law enforcement agency to enact a policy regarding nonpublic victim or witness data; and
- 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

77-4-202, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

- (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.
- (b) "Governmental facility" means a facility that is owned, leased, or operated by this state or a political subdivision of this state.
- (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.
- (d)(i) "Nonpublic victim or witness data" means electronic information or data related to a victim or witness:
 - (A) that is not evidence;
 - (B) that is otherwise not available to the public; and
 - (C) for which a reasonable person would believe that the victim or witness has a reasonable expectation of privacy.
- (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.
- (e) "Prosecuting attorney" means:
 - (i) the attorney general and an assistant attorney general;
 - (ii) a district attorney or deputy district attorney;
 - (iii) a county attorney or assistant county attorney; or
 - (iv) an attorney authorized to commence an action on behalf of the state.
- (f) "Victim" means the same as that term is defined in Section 77-37-2.
- (g) "Witness" means the same as that term is defined in Section 77-37-2.

(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:

- (i) as described in Utah Rules of Criminal Procedure, Rule 14(b)(5); or
- (ii) if the victim or witness voluntarily provides the nonpublic victim or witness data to the defendant or the defendant's attorney.

(b) Any request for nonpublic victim or witness data under Subsection (2)(a) shall be limited to evidence.

(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

63 data.

64 (4)(a) A prosecuting attorney shall make evidence available to a defendant, or a
65 defendant's attorney, in accordance with Utah Rules of Criminal Procedure, Rule 16.

66 (b) To the extent practicable, the prosecuting attorney may not provide nonpublic victim
67 or witness data to a defendant, or a defendant's attorney, under Subsection (4)(a).

68 (5) Any nonpublic victim or witness data related to a victim or witness that is in the
69 possession of a law enforcement agency or the prosecuting agency shall remain in the
70 care, custody, and control of:

71 (a) the law enforcement agency;

72 (b) the prosecuting agency; or

73 (c) the court.

74 (6)(a) If a defendant's attorney is seeking to inspect or search nonpublic victim or
75 witness data that is in the possession of a law enforcement agency or a prosecuting
76 agency, the defendant's attorney may only inspect or search the nonpublic victim or
77 witness data for evidence upon a good cause determination by the court under Utah
78 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
81 nonpublic victim or witness data contains undisclosed evidence; and

82 (ii) the court must order reasonable limitations on the scope of the search, including
83 the type, location, time frame, or category of nonpublic victim or witness data that
84 may be inspected or searched for evidence.

85 (c) The court may only permit the defendant's attorney, or a designee of the defendant's
86 attorney, to receive a copy or reproduction of nonpublic victim or witness data if:

87 (i) the defendant shows, by clear and convincing evidence, that:

88 (A) there is reasonable certainty that the nonpublic victim or witness data contains
89 evidence;

90 (B) requiring an inspection or search of the nonpublic victim or witness data at a
91 governmental facility is inadequate to permit the defendant's attorney to
92 prepare a defense or prepare for trial; and

93 (C) the interest of the defendant in receiving a copy or reproduction of the
94 nonpublic victim or witness data outweighs the interest of the victim's or
95 witness's right to privacy and right to be free from harassment as described in
96 Section 77-37-3; and

- 97 (ii) the order allowing the defendant's attorney to receive a copy or reproduction of
98 nonpublic victim or witness data includes limitations on:
- 99 (A) the number of copies, photographs, or reproductions of the nonpublic victim
100 or witness data that the defendant's attorney is permitted to make;
101 (B) who may view the nonpublic victim or witness data;
102 (C) how the nonpublic victim or witness data is stored, including requirements
103 ensuring that only individuals described in Subsection (6)(d)(ii)(B) can access
104 the nonpublic victim or witness data; and
105 (D) the procedures for disposing of the nonpublic victim or witness data upon the
106 completion of the criminal prosecution against the defendant.
- 107 (7) At the request of a victim, witness, or a representative of a victim or witness, the court
108 may:
- 109 (a) conduct an ex parte in camera review of nonpublic victim or witness data that the
110 victim or witness does not believe should be made available to the defendant or the
111 defendant's attorney; and
- 112 (b) enter an order prohibiting the inspection or search of the nonpublic victim or witness
113 data if the nonpublic victim or witness data is:
- 114 (i) not relevant or material evidence in the criminal case; or
115 (ii) evidence of sexual behavior by the victim or witness that is inadmissible under
116 Rule 412 of the Utah Rules of Evidence.
- 117 (8) A law enforcement agency and a prosecuting agency shall establish a policy that
118 ensures nonpublic victim or witness data is:
- 119 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
120 (b) maintained in a controlled environment and in a manner that protects the privacy of a
121 victim or witness.
- 122 (9) This section does not:
- 123 (a) limit the rights of a defendant under the Utah Constitution or the Constitution of the
124 United States;
- 125 (b) create a right for a defendant that is beyond the rights created by the requirements of
126 Rule 16 of the Utah Rules of Criminal Procedure, the Utah Constitution, and the
127 Constitution of the United States; or
- 128 (c) prevent a law enforcement agency or prosecuting agency from providing information
129 to the Utah Office for Victims of Crime that is necessary to provide victim services to
130 a victim.

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

77-37-3 . Bill of rights.

(1) The bill of rights for victims and witnesses is:

- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.

(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.

(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.

(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.

(2) In addition to the rights of a victim described in Subsection (1), a victim of a sexual offense has the right to:

(a) request voluntary testing for themselves for HIV infection as described in Section 53-10-803;

(b) request mandatory testing of the alleged sexual offender for HIV infection as described in Section 53-10-802;

(c) not to be prevented from, or charged for, a medical forensic examination;

(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;

(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;

(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;

(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:

(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

- 199 (ii) a toxicology result or other information that is collected from a sexual assault kit
200 as part of a medical forensic examination of the victim;
- 201 (h) be informed in writing of policies governing the collection and preservation of a
202 sexual assault kit;
- 203 (i) be informed of the status and location of a sexual assault kit;
- 204 (j) upon written request by the victim, receive a notice of intent from an agency, as
205 defined in Section 53-10-905, if the agency intends to destroy or dispose of evidence
206 from a sexual assault kit;
- 207 (k) be granted further preservation of the sexual assault kit if the agency, as defined in
208 Section 53-10-905, intends to destroy or dispose of evidence from a sexual assault kit
209 and the victim submits a written request as described in Section 53-10-905;
- 210 (l) designate a person of the victim's choosing to act as a recipient of the information
211 provided under this Subsection (2) or Subsections (3) and (4); and
- 212 (m) be informed of all the enumerated rights in this Subsection (2).
- 213 (3) Subsections (2)(e) through (g) do not require that the law enforcement agency
214 communicate with the victim or the victim's designee regarding the status of DNA
215 testing, absent a specific request received from the victim or the victim's designee.
- 216 (4) A law enforcement agency investigating a sexual offense may:
- 217 (a) release the information indicated in Subsections (2)(e) through (g) upon the request
218 of the victim of the sexual offense, or the victim's designee and is the designated
219 agency to provide that information to the victim or the victim's designee;
- 220 (b) require that the victim's request be in writing; and
- 221 (c) respond to the victim's request with verbal communication, written communication,
222 or by email if an email address is available.
- 223 (5) A law enforcement agency investigating a sexual offense shall:
- 224 (a) notify the victim of the sexual offense, or the victim's designee, if the law
225 enforcement agency determines that DNA evidence will not be analyzed in a case
226 where the identity of the perpetrator has not ~~[be]~~ been confirmed;
- 227 (b) provide the information described in this section in a timely manner; and
- 228 (c) upon request of the victim or the victim's designee, advise the victim or the victim's
229 designee of any significant changes in the information of which the law enforcement
230 agency is aware.
- 231 (6) The law enforcement agency investigating the sexual offense is responsible for
232 informing the victim of the sexual offense, or the victim's designee, of the rights

233 established under this section.

234 (7) Informational rights of the victim under this chapter are based upon the victim
235 providing the current name, address, telephone number, and email address, if an email
236 address is available, of the person to whom the information should be provided to the
237 criminal justice agencies involved in the case.

238 Section 3. **Effective Date.**

239 This bill takes effect on May 6, 2026.