

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 or information from a victim or witness when a defendant, or a defendant's attorney, seeks to obtain the nonpublic electronic data or information; and
- requires a law enforcement agency to enact a policy regarding nonpublic victim or witness data.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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 or information related to a victim or witness.

(1) As used in this section:

- (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.

- 30 (b) "Intimate image" means the same as that term is defined in Section 76-5b-203.
- 31 (c) "Law enforcement agency" means a public or private agency having general police
32 power and charged with making arrests in connection with enforcement of the
33 criminal statutes and ordinances of this state or any political subdivision of this state.
- 34 (d)(i) "Nonpublic victim or witness data" means electronic data or information:
35 (A) provided by or obtained from a victim or witness;
36 (B) that is not electronic evidence;
37 (C) that is otherwise not available to the public; and
38 (D) for which a reasonable person would believe that the victim or witness has a
39 reasonable expectation of privacy.
- 40 (ii) "Nonpublic victim or witness data" includes electronic data or information
41 described in Subsection (1)(d)(i) that is provided or obtained in the course of a
42 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.
- 46 (f) "Prosecuting attorney" means:
47 (i) the attorney general or an assistant attorney general;
48 (ii) a district attorney or deputy district attorney;
49 (iii) a county attorney or assistant county attorney;
50 (iv) a city attorney or assistant city attorney; or
51 (v) an attorney authorized to commence an action on behalf of the state.
- 52 (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
56 that is shared or viewed on the platform.
- 57 (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
59 Utah Rules of Criminal Procedure, Rule 16.
- 60 (b) There is a rebuttable presumption that a prosecuting attorney may not disclose an
61 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

- 64 during the course of a criminal investigation;
- 65 (b) make reasonable efforts to identify any electronic evidence and segregate the
- 66 electronic evidence from nonpublic victim or witness data;
- 67 (c) work towards implementing a virtual room to facilitate review of nonpublic victim or
- 68 witness data by a defendant's attorney in a manner that protects the privacy of a
- 69 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
- 71 operationally feasible.
- 72 (4) Upon disclosure of electronic evidence to a defendant in accordance with Utah Rules of
- 73 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
- 75 agency in the course of the criminal investigation of the offense for which the
- 76 defendant is charged;
- 77 (b) whether any electronic evidence was obtained from the device; and
- 78 (c) of the origin of the device.
- 79 (5) If a defendant seeks nonpublic victim or witness data that is not in the possession of a
- 80 law enforcement agency or the prosecuting agency, the defendant may only obtain the
- 81 nonpublic victim or witness data:
- 82 (a) as described in Utah Rules of Criminal Procedure, Rule 14(b)(5); or
- 83 (b) if the victim or witness voluntarily provides the nonpublic victim or witness data to
- 84 the defendant or the defendant's attorney.
- 85 (6) Except as otherwise provided in this section, any nonpublic victim or witness data
- 86 related to a victim or witness that is in the possession of a law enforcement agency or
- 87 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
- 92 is in the possession of a law enforcement agency or prosecuting agency, the
- 93 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
- 96 duplicate of the nonpublic victim or witness data;
- 97 (B) allow the defendant's attorney to search or view the nonpublic victim or

- 98 witness data in a virtual room; or
- 99 (C) allow the defendant's attorney to search or view the nonpublic victim or
- 100 witness data at the facility where the nonpublic victim or witness data is held
- 101 with reasonable accommodations for searching or viewing the nonpublic
- 102 victim or witness data; or
- 103 (ii) bring a motion under Utah Rules of Criminal Procedure, Rule 16(a)(4), that
- 104 demonstrates good cause for allowing the defendant's attorney to view, or obtain a
- 105 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
- 107 some or all portions of nonpublic victim or witness data under Subsection (7)(a)(i)(A),
- 108 the prosecuting attorney shall provide the copy or duplicate with a stipulated
- 109 protective order that governs the use, dissemination, and return or disposal of the
- 110 copy or duplicate.
- 111 (c) A defendant's attorney may not copy, photograph, or otherwise reproduce nonpublic
- 112 victim or witness data during the viewing or search of nonpublic victim or witness
- 113 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
- 115 data is electronic evidence during the viewing or search of nonpublic victim or
- 116 witness data under Subsection (7)(a)(i)(B) or (C), the defendant's attorney may
- 117 request a copy or duplicate of any portion of the nonpublic victim or witness data that
- 118 the defendant's attorney believes is electronic evidence.
- 119 (8)(a) The court may grant a motion under Subsection (7)(a)(ii) and enter an order for a
- 120 defendant's attorney to be:
- 121 (i) allowed to view some or all portions of nonpublic victim or witness data if a law
- 122 enforcement agency or prosecuting attorney has not granted a request under
- 123 Subsection (7)(a)(i) or (d) and the defendant shows good cause under Utah Rules
- 124 of Criminal Procedure, Rule 16(a)(4); or
- 125 (ii) subject to Subsection (8)(c), given a copy or duplicate of some or all portions of
- 126 nonpublic victim or witness data if the defendant shows good cause under Utah
- 127 Rules of Criminal Procedure, Rule 16(a)(4).
- 128 (b) In making a determination as to whether there is good cause under Subsection
- 129 (8)(a)(ii), the court shall consider:
- 130 (i) whether there is a reasonable likelihood the nonpublic victim or witness data
- 131 contains electronic evidence that is necessary to adequately prepare a defense or

- 132 for trial;
- 133 (ii) whether requiring a search of the nonpublic victim or witness data at a facility
- 134 where the nonpublic victim or witness data is held or in a virtual room is an undue
- 135 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
- 137 duplicate of the nonpublic victim or witness data outweighs the privacy rights and
- 138 interests of the victim or witness, including a victim's right to be free from
- 139 harassment under Utah Constitution, Article I, Section 28; and
- 140 (iv) any other factor that demonstrates good cause for allowing the defendant's
- 141 attorney to obtain a copy or duplicate of the nonpublic victim or witness data.
- 142 (c) If the court grants a motion to copy or duplicate nonpublic victim or witness data
- 143 under Subsection (8)(a)(ii), the order shall include limitations on:
- 144 (i) the number of copies, photographs, or duplicates of the nonpublic victim or
- 145 witness data that the defendant's attorney is permitted to make;
- 146 (ii) who may view the nonpublic victim or witness data;
- 147 (iii) how the nonpublic victim or witness data is stored; and
- 148 (iv) the procedures for disposing of the nonpublic victim or witness data upon the
- 149 completion of the criminal prosecution against the defendant.
- 150 (9)(a) A pro se defendant may not access, view, search, or copy nonpublic victim or
- 151 witness data.
- 152 (b) Upon a motion by the pro se defendant or the court, the court shall appoint an
- 153 attorney for a pro se defendant for the limited purpose of searching some or all
- 154 portions of nonpublic victim or witness data for electronic evidence in accordance
- 155 with Subsection (7), or obtaining a copy or duplicate of some or all portions of
- 156 nonpublic victim or witness data that is electronic evidence in accordance with
- 157 Subsections (7) and (8), if:
- 158 (i) the pro se defendant seeks to access, view, search, or obtain a copy or duplicate
- 159 nonpublic victim or witness data; and
- 160 (ii) the court determines that a search of the nonpublic victim or witness data for
- 161 electronic evidence is necessary to ensure a fair proceeding.
- 162 (c) An attorney appointed under this Subsection (9) shall be compensated for any
- 163 representation under this section in accordance with Title 78B, Chapter 22, Indigent
- 164 Defense Act, regardless of whether the defendant qualifies for the appointment of
- 165 counsel under Title 78B, Chapter 22, Indigent Defense Act.

- 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
169 prosecution unless the attorney is retained or appointed to represent the defendant.
- 170 (10) A law enforcement agency and a prosecuting agency shall establish a policy that
171 ensures nonpublic victim or witness data is:
172 (a) used solely for legitimate law enforcement and prosecutorial purposes; and
173 (b) maintained in a controlled environment and in a manner that protects the privacy of a
174 victim or witness.
- 175 (11) This section does not:
176 (a) limit the rights of a defendant under the Utah Constitution or the Constitution of the
177 United States;
178 (b) create a right for a defendant that is beyond the rights created by the requirements of
179 Rule 16 of the Utah Rules of Criminal Procedure, the Utah Constitution, and the
180 Constitution of the United States; or
181 (c) prevent a law enforcement agency or prosecuting agency from providing information
182 to the Utah Office for Victims of Crime or the Board of Pardons and Parole that is
183 necessary to provide victim services or notification to a victim.

184 Section 2. **Effective Date.**

185 This bill takes effect on May 6, 2026.