

Chapter 37

Victims' Rights

77-37-1 Legislative intent.

- (1) The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.
- (2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

Enacted by Chapter 194, 1987 General Session

77-37-2 Definitions.

As used in this chapter:

- (1) "Alleged sexual offender" means the same as that term is defined in Section 53-10-801.
- (2) "Child" means a person who is younger than 18 years old, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.
- (3) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.
- (4) "HIV infection" means the same as that term is defined in Section 53-10-801.
- (5) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.
- (6) "Sexual offense" means any conduct described in:
 - (a) Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (b) Title 76, Chapter 5b, Sexual Exploitation Act;
 - (c) Section 76-7-102, incest;
 - (d) Section 76-9-702, lewdness; or
 - (e) Section 76-9-702.1, sexual battery.
- (7) "Victim" means an individual, including a minor, against whom an offense has been allegedly committed.
- (8) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.

Amended by Chapter 164, 2024 General Session

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 Crime Victim Reparations Board 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.
- (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 Title 77, 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
 - (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;
 - (h) be informed in writing of policies governing the collection and preservation of a sexual assault kit;
 - (i) be informed of the status and location of a sexual assault kit;
 - (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;
 - (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;
 - (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
 - (m) be informed of all the enumerated rights in this Subsection (2).
- (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.
- (4) A law enforcement agency investigating a sexual offense may:
- (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;
 - (b) require that the victim's request be in writing; and
 - (c) respond to the victim's request with verbal communication, written communication, or by email if an email address is available.
- (5) A law enforcement agency investigating a sexual offense shall:
- (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 confirmed;
 - (b) provide the information described in this section in a timely manner; and
 - (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.
- (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.
- (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.

Amended by Chapter 96, 2024 General Session

Amended by Chapter 164, 2024 General Session

77-37-4 Additional rights -- Children.

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

- (1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.
- (2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.
- (3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.
- (4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.
- (5)
 - (a) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings. Except as provided in Subsection (6), recordings and transcripts of interviews may not be distributed, released, or displayed to anyone without a court order.
 - (b) A court order described in Subsection (5)(a):
 - (i) shall describe with particularity to whom the recording or transcript of the interview may be released and prohibit further distribution or viewing by anyone not named in the order; and
 - (ii) may impose restrictions on access to the materials considered reasonable to protect the privacy of the child victim.
 - (c) A parent or guardian of the child victim may petition a juvenile or district court for an order allowing the parent or guardian to view a recording or transcript upon a finding of good cause. The order shall designate the agency that is required to display the recording or transcript to the parent or guardian and shall prohibit viewing by anyone not named in the order.
 - (d) Following the conclusion of any legal proceedings in which the recordings or transcripts are used, the court shall order the recordings and transcripts in the court's file sealed and preserved.
- (6)
 - (a) The following offices and their designated employees may distribute and receive a recording or transcript to and from one another without a court order:
 - (i) the Division of Child and Family Services;
 - (ii) administrative law judges employed by the Department of Human Services;
 - (iii) Department of Human Services investigators investigating the Division of Child and Family Services or investigators authorized to investigate under Section 80-2-703;
 - (iv) an office of the city attorney, county attorney, district attorney, or attorney general;
 - (v) a law enforcement agency;
 - (vi) a Children's Justice Center established under Section 67-5b-102; or

- (vii) the attorney for the child who is the subject of the interview.
- (b) In a criminal case or in a juvenile court in which the state is a party:
 - (i) the parties may display and enter into evidence a recording or transcript in the course of a prosecution;
 - (ii) the state's attorney may distribute a recording or transcript to the attorney for the defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for discovery;
 - (iii) the attorney for the defendant or respondent may do one or both of the following:
 - (A) release the recording or transcript to an expert retained by the attorney for the defendant or respondent if the expert agrees in writing that the expert will not distribute, release, or display the recording or transcript to anyone without prior authorization from the court; or
 - (B) permit the defendant or respondent to view the recording or transcript, but may not distribute or release the recording or transcript to the defendant or respondent; and
 - (iv) the court shall advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be distributed, released, or displayed without prior authorization from the court.
- (c) A court's failure to advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be used as a defense to prosecution for a violation of the disclosure rule.
- (d) In an administrative case, pursuant to a written request, the Division of Child and Family Services may display, but may not distribute or release, a recording or transcript to the respondent or to the respondent's designated representative.
- (e)
 - (i) Within two business days of a request from a parent or guardian of a child victim, an investigative agency shall allow the parent or guardian to view a recording after the conclusion of an interview, unless:
 - (A) the suspect is a parent or guardian of the child victim;
 - (B) the suspect resides in the home with the child victim; or
 - (C) the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation.
 - (ii) If the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation, the parent or guardian may petition a juvenile or district court for an expedited hearing on whether there is good cause for the court to enter an order allowing the parent or guardian to view the recording in accordance with Subsection (5)(c).
 - (iii) A Children's Justice Center shall coordinate the viewing of the recording described in this Subsection (6)(e).
- (f) A multidisciplinary team assembled by a Children's Justice Center or an interdisciplinary team assembled by the Division of Child and Family Services may view a recording or transcript, but may not receive a recording or transcript.
- (g) A Children's Justice Center:
 - (i) may distribute or display a recording or transcript to an authorized trainer or evaluator for purposes of training or evaluation; and
 - (ii) may display, but may not distribute, a recording or transcript to an authorized trainee.
- (h) An authorized trainer or instructor may display a recording or transcript according to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center or according to the authorized trainer's or instructor's scope of employment.
- (i)

- (i) In an investigation under Section 53E-6-506, in which a child victim who is the subject of the recording or transcript has alleged criminal conduct against an educator, a law enforcement agency may distribute or release the recording or transcript to an investigator operating under State Board of Education authorization, upon the investigator's written request.
 - (ii) If the respondent in a case investigated under Section 53E-6-506 requests a hearing authorized under that section, the investigator operating under State Board of Education authorization may display, release, or distribute the recording or transcript to the prosecutor operating under State Board of Education authorization or to an expert retained by an investigator.
 - (iii) Upon request for a hearing under Section 53E-6-506, a prosecutor operating under State Board of Education authorization may display the recording or transcript to a pro se respondent, to an attorney retained by the respondent, or to an expert retained by the respondent.
 - (iv) The parties to a hearing authorized under Section 53E-6-506 may display and enter into evidence a recording or transcript in the course of a prosecution.
 - (j) Notwithstanding any other provision in this section, a law enforcement agency shall provide an investigative report to the Utah Office for Victims of Crime as provided under Section 63M-7-529.
- (7) Except as otherwise provided in this section, it is a class B misdemeanor for any individual to distribute, release, or display any recording or transcript of an interview of a child victim conducted at a Children's Justice Center.

Amended by Chapter 156, 2024 General Session