

## Chapter 38 Rights of Crime Victims Act

### Part 1 General Provisions

#### 77-38-1 Title.

This act shall be known and may be cited as the "Rights of Crime Victims Act."

Enacted by Chapter 198, 1994 General Session

#### 77-38-2 Definitions.

For the purposes of this chapter and the Utah Constitution:

- (1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or disparage.
- (2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.
- (3) "Fairness" means treating the crime victim reasonably, even-handedly, and impartially.
- (4) "Harassment" means treating the crime victim in a persistently annoying manner.
- (5) "Important criminal justice hearings" or "important juvenile justice hearings" means the following proceedings in felony criminal cases or cases involving a minor's conduct which would be a felony if committed by an adult:
  - (a) any preliminary hearing to determine probable cause;
  - (b) any court arraignment where practical;
  - (c) any court proceeding involving the disposition of charges against a defendant or minor or the delay of a previously scheduled trial date but not including any unanticipated proceeding to take an admission or a plea of guilty as charged to all charges previously filed or any plea taken at an initial appearance;
  - (d) any court proceeding to determine whether to release a defendant or minor and, if so, under what conditions release may occur, excluding any such release determination made at an initial appearance;
  - (e) any criminal or delinquency trial, excluding any actions at the trial that a court might take in camera, in chambers, or at a sidebar conference;
  - (f) any court proceeding to determine the disposition of a minor or sentence, fine, or restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution of a defendant; and
  - (g) any public hearing concerning whether to grant a defendant or minor parole or other form of discretionary release from confinement.
- (6) "Reliable information" means information worthy of confidence, including any information whose use at sentencing is permitted by the United States Constitution.
- (7) "Representative of a victim" means a person who is designated by the victim or designated by the court and who represents the victim in the best interests of the victim.
- (8) "Respect" means treating the crime victim with regard and value.
- (9)
  - (a) "Victim of a crime" means any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally

involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

- (b) For purposes of the right to be present, "victim of a crime" does not mean any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment.
- (c) For purposes of the right to be present and heard at a public hearing as provided in Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a), "victim of a crime" includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

Amended by Chapter 103, 1997 General Session

**77-38-3 Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact order.**

- (1) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.
- (2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.
- (3) The prosecuting agency shall provide notice to a victim of a crime:
  - (a) for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f), which the victim has requested; and
  - (b) for restitution requests to be submitted as provided in Subsection 77-38a-302(5)(d).
- (4)
  - (a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.
  - (b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.
- (5)
  - (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.
  - (b) The court shall also consider whether any notification system it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.
- (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.
- (7)
  - (a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

- (b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.
- (8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.
- (9)
  - (a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.
  - (b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice it has received from a victim to the Board of Pardons and Parole.
- (10) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.
- (11)
  - (a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63G-2-305(10).
  - (b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:
    - (i) a law enforcement agency, including the prosecuting agency;
    - (ii) a victims' right committee as provided in Section 77-37-5;
    - (iii) a governmentally sponsored victim or witness program;
    - (iv) the Department of Corrections;
    - (v) the Utah Office for Victims of Crime;
    - (vi) the Commission on Criminal and Juvenile Justice; and
    - (vii) the Board of Pardons and Parole.
- (12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.
- (13)
  - (a) When a defendant is charged with a felony crime under Sections 76-5-301 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:
    - (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;
    - (ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and
    - (iii) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member of the victim.
  - (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a third degree felony.
  - (c)

- (i) The court shall provide to the victim a certified copy of any pretrial criminal no contact order that has been issued if the victim can be located with reasonable effort.
- (ii) The court shall also transmit the pretrial criminal no contact order to the statewide domestic violence network in accordance with Section 78B-7-113.

Amended by Chapter 223, 2016 General Session

**77-38-4 Right to be present, to be heard, and to file an amicus brief on appeal -- Control of disruptive acts or irrelevant statements -- Statements from persons in custody.**

- (1) The victim of a crime, the representative of the victim, or both shall have the right:
  - (a) to be present at the important criminal or juvenile justice hearings provided in Subsection 77-38-2(5);
  - (b) to be heard at the important criminal or juvenile justice hearings provided in Subsections 77-38-2(5)(b), (c), (d), (f), and (g);
  - (c) to submit a written statement in any action on appeal related to that crime; and
  - (d) upon request to the judge hearing the matter, to be present and heard at the initial appearance of the person suspected of committing the conduct or criminal offense against the victim on issues relating to whether to release a defendant or minor and, if so, under what conditions release may occur.
- (2) This chapter shall not confer any right to the victim of a crime to be heard:
  - (a) at any criminal trial, including the sentencing phase of a capital trial under Section 76-3-207 or at any preliminary hearing, unless called as a witness; and
  - (b) at any delinquency trial or at any preliminary hearing in a minor's case, unless called as a witness.
- (3) The right of a victim or representative of a victim to be present at trial is subject to Rule 615 of the Utah Rules of Evidence.
- (4) Nothing in this chapter shall deprive the court of the right to prevent or punish disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.
- (5) The court shall have the right to limit any victim's statement to matters that are relevant to the proceeding.
- (6) In all cases where the number of victims exceeds five, the court may limit the in-court oral statements it receives from victims in its discretion to a few representative statements.
- (7) Except as otherwise provided in this section, a victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement or direct or indirect information that has been provided to be included in any presentence report.
- (8) If the victim of a crime is a person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment, the right to be heard under this chapter shall be exercised by submitting a written statement to the court.
- (9) The court may exclude any oral statement from a victim on the grounds of the victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.
- (10) Except in juvenile court cases, the Constitution may not be construed as limiting the existing rights of the prosecution to introduce evidence in support of a capital sentence.

Amended by Chapter 28, 2011 General Session

**77-38-5 Application to felonies and misdemeanors of the declaration of the rights of crime victims.**

The provisions of this chapter shall apply to:

- (1) any felony filed in the courts of the state;
- (2) to any class A and class B misdemeanor filed in the courts of the state; and
- (3) to cases in the juvenile court as provided in Section 78A-6-114.

Amended by Chapter 3, 2008 General Session

**77-38-6 Victim's right to privacy.**

- (1) The victim of a crime has the right, at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court orders disclosure on finding that a compelling need exists to disclose the information. A court proceeding on whether to order disclosure shall be in camera.
- (2) A defendant may not compel any witness to a crime, at any court proceeding, including any juvenile court proceeding, to testify regarding the witness's address, telephone number, place of employment, or other locating information unless the witness specifically consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on whether to order disclosure shall be in camera.

Amended by Chapter 352, 1995 General Session

**77-38-7 Victim's right to a speedy trial.**

- (1) In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to a speedy trial.
- (2) The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusion of all collateral attacks on dispositions or criminal judgments.
- (3)
  - (a) In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy disposition of the case.
  - (b) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

Amended by Chapter 352, 1995 General Session

**77-38-8 Age-appropriate language at judicial proceedings -- Advisor.**

- (1) In any criminal proceeding or juvenile court proceeding regarding or involving a child, examination and cross-examination of a victim or witness 13 years of age or younger shall be conducted in age-appropriate language.
- (2)
  - (a) The court may appoint an advisor to assist a witness 13 years of age or younger in understanding questions asked by counsel.

- (b) The advisor is not required to be an attorney.

Amended by Chapter 352, 1995 General Session

**77-38-9 Representative of victim -- Court designation -- Representation in cases involving minors -- Photographs in homicide cases.**

- (1)
  - (a) A victim of a crime may designate, with the approval of the court, a representative who may exercise the same rights that the victim is entitled to exercise under this chapter, including pursuing restitution.
  - (b) Except as otherwise provided in this section, the victim may revoke the designation at any time.
  - (c) In cases where the designation is in question, the court may require that the designation of the representative be made in writing by the victim.
- (2) In cases in which the victim is deceased or incapacitated, upon request from the victim's spouse, parent, child, or close friend, the court shall designate a representative or representatives of the victim to exercise the rights of a victim under this chapter on behalf of the victim. The responsible prosecuting agency may request a designation to the court.
- (3)
  - (a) If the victim is a minor, the court in its discretion may allow the minor to exercise the rights of a victim under this chapter or may allow the victim's parent or other immediate family member to act as a representative of the victim.
  - (b) The court may also, in its discretion, designate a person who is not a member of the immediate family to represent the interests of the minor.
- (4) The representative of a victim of a crime shall not be:
  - (a) the accused or a person who appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct, a related crime or conduct, or a crime or act arising from the same conduct, criminal episode, or plan as the crime or conduct is defined under the laws of this state;
  - (b) a person in the custody of or under detention of federal, state, or local authorities; or
  - (c) a person whom the court in its discretion considers to be otherwise inappropriate.
- (5) Any notices that are to be provided to a victim pursuant to this chapter shall be sent to the victim or the victim's lawful representative.
- (6) On behalf of the victim, the prosecutor may assert any right to which the victim is entitled under this chapter, unless the victim requests otherwise or exercises his own rights.
- (7) In any homicide prosecution, the prosecution may introduce a photograph of the victim taken before the homicide to establish that the victim was a human being, the identity of the victim, and for other relevant purposes.

Amended by Chapter 244, 2014 General Session

**77-38-10 Victim's discretion.**

- (1)
  - (a) The victim may exercise any rights under this chapter at his discretion to be present and to be heard at a court proceeding, including a juvenile delinquency proceeding.
  - (b) The absence of the victim at the court proceeding does not preclude the court from conducting the proceeding.
- (2) A victim shall not refuse to comply with an otherwise lawful subpoena under this chapter.

- (3) A victim shall not prevent the prosecution from complying with requests for information within a prosecutor's possession and control under this chapter.

Amended by Chapter 352, 1995 General Session

**77-38-11 Enforcement -- Appellate review -- No right to money damages.**

- (1) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief, including prospective injunctive relief, may be brought against the individual and the governmental entity that employs the individual.
- (2)
  - (a) The victim of a crime or representative of a victim of a crime, including any Victims' Rights Committee as defined in Section 77-37-5 may:
    - (i) bring an action for declaratory relief or for a writ of mandamus defining or enforcing the rights of victims and the obligations of government entities under this chapter;
    - (ii) petition to file an amicus brief in any court in any case affecting crime victims; and
    - (iii) after giving notice to the prosecution and the defense, seek an appropriate remedy for a violation of a victim's right from the judge assigned to the case involving the issue as provided in Section 77-38-11.
  - (b) Adverse rulings on these actions or on a motion or request brought by a victim of a crime or a representative of a victim of a crime may be appealed under the rules governing appellate actions, provided that an appeal may not constitute grounds for delaying any criminal or juvenile proceeding.
  - (c) An appellate court shall review all properly presented issues, including issues that are capable of repetition but would otherwise evade review.
- (3)
  - (a) Upon a showing that the victim has not unduly delayed in seeking to protect the victim's right, and after hearing from the prosecution and the defense, the judge shall determine whether a right of the victim has been violated.
  - (b) If the judge determines that a victim's right has been violated, the judge shall proceed to determine the appropriate remedy for the violation of the victim's right by hearing from the victim and the parties, considering all factors relevant to the issue, and then awarding an appropriate remedy to the victim. The court shall reconsider any judicial decision or judgment affected by a violation of the victim's right and determine whether, upon affording the victim the right and further hearing from the prosecution and the defense, the decision or judgment would have been different. If the court's decision or judgment would have been different, the court shall enter the new different decision or judgment as the appropriate remedy. If necessary to protect the victim's right, the new decision or judgment shall be entered nunc pro tunc to the time the first decision or judgment was reached. In no event shall the appropriate remedy be a new trial, damages, attorney fees, or costs.
  - (c) The appropriate remedy shall include only actions necessary to provide the victim the right to which the victim was entitled and may include reopening previously held proceedings. Subject to Subsection (3)(d), the court may reopen a sentence or a previously entered guilty or no contest plea only if doing so would not preclude continued prosecution or sentencing the defendant and would not otherwise permit the defendant to escape justice. Any remedy shall be tailored to provide the victim an appropriate remedy without violating any constitutional right of the defendant.

- (d) If the court sets aside a previously entered plea of guilty or no contest, and thereafter continued prosecution of the charge is held to be prevented by the defendant's having been previously put in jeopardy, the order setting aside the plea is void and the plea is reinstated as of the date of its original entry.
  - (e) The court may not award as a remedy the dismissal of any criminal charge.
  - (f) The court may not award any remedy if the proceeding that the victim is challenging occurred more than 90 days before the victim filed an action alleging the violation of the right.
- (4) The failure to provide the rights in this chapter or Title 77, Chapter 37, Victims' Rights, shall not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

Amended by Chapter 331, 2010 General Session

**77-38-12 Construction of this chapter -- No right to set aside conviction, adjudication, admission, or plea -- Severability clause.**

- (1) All of the provisions contained in this chapter shall be construed to assist the victims of crime.
- (2) This chapter may not be construed as creating a basis for dismissing any criminal charge or delinquency petition, vacating any adjudication or conviction, admission or plea of guilty or no contest, or for a defendant to obtain appellate, habeas corpus, or other relief from a judgment in any criminal or delinquency case.
- (3) This chapter may not be construed as creating any right of a victim to appointed counsel at state expense.
- (4) All of the rights contained in this chapter shall be construed to conform to the Constitution of the United States.
- (5)
  - (a) In the event that any portion of this chapter is found to violate the Constitution of the United States, the remaining provisions of this chapter shall continue to operate in full force and effect.
  - (b) In the event that a particular application of any portion of this chapter is found to violate the Constitution of the United States, all other applications shall continue to operate in full force and effect.
- (6) The enumeration of certain rights for crime victims in this chapter shall not be construed to deny or disparage other rights granted by the Utah Constitution or the Legislature or retained by victims of crimes.

Amended by Chapter 120, 2009 General Session

**77-38-13 Declaration of legislative authority.**

It is the view of the Legislature that the provisions of this chapter, and other provisions enacted simultaneously with it, are substantive provisions within inherent legislative authority. In the event that any of the provisions of this chapter, and other provisions enacted simultaneously with it, are interpreted to be procedural in nature, the Legislature also intends to invoke its powers to modify procedural rules under the Utah Constitution.

Enacted by Chapter 198, 1994 General Session

**77-38-14 Notice of expungement petition -- Victim's right to object.**

- (1) The Department of Corrections or the Juvenile Probation Department shall prepare a document explaining the right of a victim or a victim's representative to object to a petition for expungement under Section 77-40-107 or 78A-6-1105 and the procedures for obtaining notice of any such petition. The department or division shall also provide each trial court a copy of the document which has jurisdiction over delinquencies or criminal offenses subject to expungement.
- (2) The prosecuting attorney in any case leading to a conviction or an adjudication subject to expungement shall provide a copy of the document to each person who would be entitled to notice of a petition for expungement under Sections 77-40-107 and 78A-6-1105.

Amended by Chapter 283, 2010 General Session

**77-38-15 Civil action against human traffickers and human smugglers.**

- (1) A victim of a person that commits the offense of human trafficking or human smuggling under Section 76-5-308, or aggravated human trafficking or aggravated human smuggling under Section 76-5-310, may bring a civil action against that person.
- (2)
  - (a) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.
  - (b) The court may award treble damages on proof of actual damages if the court finds that the person's acts were willful and malicious.
- (3) In an action under this section, the court shall award a prevailing victim reasonable attorney fees and costs.
- (4) An action under this section shall be commenced no later than 10 years after the later of:
  - (a) the day on which the victim was freed from the human trafficking or human smuggling situation;
  - (b) the day on which the victim attains 18 years of age; or
  - (c) if the victim was unable to bring an action due to a disability, the day on which the victim's disability ends.
- (5) The time period described in Subsection (4) is tolled during a period of time when the victim fails to bring an action due to the person:
  - (a) inducing the victim to delay filing the action;
  - (b) preventing the victim from filing the action; or
  - (c) threatening and causing duress upon the victim in order to prevent the victim from filing the action.
- (6) The court shall offset damages awarded to the victim under this section by any restitution paid to the victim under Title 77, Chapter 38a, Crime Victims Restitution Act.
- (7) A victim may bring an action described in this section in any court of competent jurisdiction where:
  - (a) a violation described in Subsection (1) occurred;
  - (b) the victim resides; or
  - (c) the person that commits the offense resides or has a place of business.
- (8) If the victim is deceased or otherwise unable to represent the victim's own interests in court, a legal guardian, family member, representative of the victim, or court appointee may bring an action under this section on behalf of the victim.
- (9) This section does not preclude any other remedy available to the victim under the laws of this state or under federal law.

Enacted by Chapter 140, 2014 General Session

## **Part 2**

### **Confidential Communications for Sexual Assault Act**

#### **77-38-201 Title.**

This part is known and cited as the "Confidential Communications for Sexual Assault Act."

Renumbered and Amended by Chapter 3, 2008 General Session

#### **77-38-202 Purpose.**

It is the purpose of this act to enhance and promote the mental, physical and emotional recovery of victims of sexual assault and to protect the information given by victims to sexual assault counselors from being disclosed.

Renumbered and Amended by Chapter 3, 2008 General Session

#### **77-38-203 Definitions.**

As used in this part:

- (1) "Confidential communication" means information given to a sexual assault counselor by a victim and includes reports or working papers made in the course of the counseling relationship.
- (2) "Rape crisis center" means any office, institution, or center assisting victims of sexual assault and their families which offers crisis intervention, medical, and legal services, and counseling.
- (3) "Sexual assault counselor" means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.
- (4) "Victim" means a person who has experienced a sexual assault of whatever nature including incest and rape and requests counseling or assistance regarding the mental, physical, and emotional consequences of the sexual assault.

Renumbered and Amended by Chapter 3, 2008 General Session

#### **77-38-204 Disclosure of confidential communications.**

The confidential communication between a victim and a sexual assault counselor is available to a third person only when:

- (1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;
- (2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;
- (3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or
- (4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication.

Renumbered and Amended by Chapter 3, 2008 General Session

### **Part 3**

## **Profits from Notorious Criminal Activity Act**

#### **77-38-301 Title.**

This part is known as the "Profits from Notorious Criminal Activity Act."

Amended by Chapter 260, 2012 General Session

#### **77-38-302 Definitions.**

As used in this part:

- (1) "Convicted person" means a person who has been convicted of a crime.
- (2) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but having a mental illness regardless of whether the sentence was imposed or suspended.
- (3) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.
- (4) "Memorabilia" means any tangible property of a convicted person or a representative or assignee of a convicted person, the value of which is enhanced by the notoriety gained from the criminal activity for which the person was convicted.
- (5) "Notoriety of crimes contract" means a contract or other agreement with a convicted person, or a representative or assignee of a convicted person, with respect to:
  - (a) the reenactment of a crime in any manner including a movie, book, magazine article, Internet website, recording, phonograph record, radio or television presentation, or live entertainment of any kind;
  - (b) the expression of the convicted person's thoughts, feelings, opinions, or emotions regarding a crime involving or causing personal injury, death, or property loss as a direct result of the crime; or
  - (c) the payment or exchange of any money or other consideration or the proceeds or profits that directly or indirectly result from the notoriety of the crime.
- (6) "Office" means the Utah Office for Victims of Crime.
- (7) "Profit" means any income or benefit:
  - (a) over and above the fair market value of tangible property that is received upon the sale or transfer of memorabilia; or
  - (b) any money, negotiable instruments, securities, or other consideration received or contracted for gain which is traceable to a notoriety of crimes contract.

Amended by Chapter 278, 2013 General Session

#### **77-38-303 Profit from sale of memorabilia or notoriety of crimes contract -- Deposit in Crime Victim Reparations Fund -- Penalty.**

- (1) Any convicted person or a representative or assignee of a convicted person who receives a profit from the sale or transfer of memorabilia shall remit to the fund:
  - (a) a complete, itemized accounting of the transaction, including:
    - (i) a description of each item sold;

- (ii) the amount received for each item;
  - (iii) the estimated fair market value of each item; and
  - (iv) the name and address of the purchaser of each item; and
- (b) a check or money order for the amount of the profit, which shall be the difference between the amount received for the item and the estimated fair market value of the item.
- (2) Any person who willfully violates Subsection (1) may be assessed a civil penalty of up to \$1,000 per item sold or transferred or three times the amount of the unremitted profit, whichever is greater.
- (3)
- (a) Any person or entity who enters into a notoriety of crime contract with a convicted person or with a representative or assignee of a convicted person shall pay to the fund any profit which by the terms of the contract would otherwise be owing to the convicted person or representative or assignee of the convicted person.
  - (b) A convicted person or a representative or assignee of a convicted person who has received any profit from a notoriety of crime contract shall remit the profit to the fund. Any future profit which, by the terms of the contract, would otherwise be owing to the convicted person or a representative or assignee of a convicted person shall be paid to the fund as required under Subsection (3)(a).
- (4) Upon receipt of money under Subsection (3), the office shall distribute the amounts to the victim of the crime from which the profits are derived if any restitution remains outstanding. If no restitution is outstanding, the money shall be deposited into the fund.
- (5)
- (a) Any person or entity who willfully violates Subsection (3) may be assessed a civil penalty of up to \$1,000,000.00, or up to three times the total value of the original notoriety of crime contract, whichever is greater.
  - (b) Any civil penalty ordered under this Subsection shall be paid to the fund.
- (6) The prosecuting agency or the attorney general may bring an action to enforce the provisions of this chapter in the court of conviction.
- (7) A court shall enter an order to remit funds as provided in this chapter if it finds by a preponderance of the evidence any violation of Subsection (1) or (3).

Amended by Chapter 278, 2013 General Session