

1 **VICTIM RIGHTS AMENDMENTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Gary F. Cox**

5 AN ACT RELATING TO THE CODE OF CRIMINAL PROCEDURE; DEFINING A VICTIM
6 COUNSELOR; AND PROVIDING THAT THE COUNSELOR MAY NOT BE SEQUESTERED
7 FROM PROCEEDINGS UNLESS HE IS A MATERIAL WITNESS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **77-38-2**, as last amended by Chapter 103, Laws of Utah 1997

11 **77-38-9**, as last amended by Chapter 352, Laws of Utah 1995

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

13 Section 1. Section **77-38-2** is amended to read:

14 **77-38-2. Definitions.**

15 For the purposes of this chapter and the Utah Constitution:

16 (1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or
17 disparage.

18 (2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.

19 (3) "Fairness" means treating the crime victim reasonably, even-handedly, and impartially.

20 (4) "Harassment" means treating the crime victim in a persistently annoying manner.

21 (5) "Important criminal justice hearings" or "important juvenile justice hearings" means
22 the following proceedings in felony criminal cases or cases involving a minor's conduct which
23 would be a felony if committed by an adult:

24 (a) any preliminary hearing to determine probable cause;

25 (b) any court arraignment where practical;

26 (c) any court proceeding involving the disposition of charges against a defendant or minor
27 or the delay of a previously scheduled trial date but not including any unanticipated proceeding to

28 take an admission or a plea of guilty as charged to all charges previously filed or any plea taken
29 at an initial appearance;

30 (d) any court proceeding to determine whether to release a defendant or minor and, if so,
31 under what conditions release may occur, excluding any such release determination made at an
32 initial appearance;

33 (e) any criminal or delinquency trial, excluding any actions at the trial that a court might
34 take in camera, in chambers, or at a sidebar conference;

35 (f) any court proceeding to determine the disposition of a minor or sentence, fine, or
36 restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution
37 of a defendant; and

38 (g) any public hearing concerning whether to grant a defendant or minor parole or other
39 form of discretionary release from confinement.

40 (6) "Reliable information" means information worthy of confidence, including any
41 information whose use at sentencing is permitted by the United States Constitution.

42 (7) "Representative of a victim" means a person who is designated by the victim or
43 designated by the court and who represents the victim in the best interests of the victim.

44 (8) "Respect" means treating the crime victim with regard and value.

45 (9) (a) "Victim of a crime" means any natural person against whom the charged crime or
46 conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or
47 as a party to the offense or conduct or, in the discretion of the court, against whom a related crime
48 or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or
49 appears to be accountable or otherwise criminally responsible for or criminally involved in the
50 crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the
51 crime is defined under the laws of this state.

52 (b) For purposes of the right to be present, "victim of a crime" does not mean any person
53 who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a
54 juvenile who has committed an act that would be an offense if committed by an adult, or who is
55 in custody for mental or psychological treatment.

56 (c) For purposes of the right to be present and heard at a public hearing as provided in
57 Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a), "victim
58 of a crime" includes any victim originally named in the allegation of criminal conduct who is not

59 a victim of the offense to which the defendant entered a negotiated plea of guilty.

60 (10) "Victim counselor" means a person who is employed by or volunteers at any office,
61 institution, or center assisting victims of crimes and their families which offers crisis intervention
62 or support, medical or legal services, or counseling, including a "sexual assault counselor" as
63 defined in Section 78-3c-3.

64 Section 2. Section **77-38-9** is amended to read:

65 **77-38-9. Representative of victim -- Court designation -- Representation in cases**
66 **involving minors -- Photographs in homicide cases.**

67 (1) (a) A victim of a crime may designate, with the approval of the court, a representative
68 who may exercise the same rights that the victim is entitled to exercise under this chapter.

69 (b) Except as otherwise provided in this section, the victim may revoke the designation
70 at any time.

71 (c) In cases where the designation is in question, the court may require that the designation
72 of the representative be made in writing by the victim.

73 (2) In cases in which the victim is deceased or incapacitated, upon request from the
74 victim's spouse, parent, child, or close friend, the court shall designate a representative or
75 representatives of the victim to exercise the rights of a victim under this chapter on behalf of the
76 victim. The responsible prosecuting agency may request a designation to the court.

77 (3) (a) If the victim is a minor, the court in its discretion may allow the minor to exercise
78 the rights of a victim under this chapter or may allow the victim's parent or other immediate family
79 member to act as a representative of the victim.

80 (b) The court may also, in its discretion, designate a person who is not a member of the
81 immediate family to represent the interests of the minor.

82 (4) The representative of a victim of a crime shall not be:

83 (a) the accused or a person who appears to be accountable or otherwise criminally
84 responsible for or criminally involved in the crime or conduct, a related crime or conduct, or a
85 crime or act arising from the same conduct, criminal episode, or plan as the crime or conduct is
86 defined under the laws of this state;

87 (b) a person in the custody of or under detention of federal, state, or local authorities; or

88 (c) a person whom the court in its discretion considers to be otherwise inappropriate.

89 (5) Any notices that are to be provided to a victim pursuant to this chapter shall be sent

90 to the victim or the victim's lawful representative.

91 (6) On behalf of the victim, the prosecutor may assert any right to which the victim is
92 entitled under this chapter, unless the victim requests otherwise or exercises his own rights.

93 (7) In any homicide prosecution, the prosecution may introduce a photograph of the victim
94 taken before the homicide to establish that the victim was a human being, the identity of the
95 victim, and for other relevant purposes.

96 (8) A victim counselor may not be sequestered from public court proceedings unless the
97 defendant establishes that the counselor is a material witness whose testimony would be materially
98 affected by hearing the testimony of other witnesses at the proceeding.

Legislative Review Note
as of 2-1-99 1:49 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel