

**VICTIM RIGHTS AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: Peter C. Knudson

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**LONG TITLE**

**General Description:**

This bill empowers the trial court judge hearing a criminal case to give the victim an appropriate remedy for a violation of a victim's rights.

**Highlighted Provisions:**

This bill:

- ▶ empowers the trial court judge hearing a criminal case to give the victim an appropriate remedy for a violation of a victim's rights.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-37-5**, as last amended by Laws of Utah 2008, Chapter 382

**77-38-11**, as last amended by Laws of Utah 1996, Chapter 79

**77-38-12**, as last amended by Laws of Utah 1995, Chapter 352

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

Section 1. Section **77-37-5** is amended to read:

**77-37-5. Remedies -- Victims' Rights Committee.**

(1) In each judicial district, the presiding district court judge shall appoint a person who shall establish and chair a victims' rights committee consisting of:

- 30 (a) a county attorney or district attorney;
- 31 (b) a sheriff;
- 32 (c) a corrections field services administrator;
- 33 (d) an appointed victim advocate;
- 34 (e) a municipal attorney;
- 35 (f) a municipal chief of police; and
- 36 (g) other representatives as appropriate.

37 (2) The committee shall meet at least semiannually to review progress and problems  
38 related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, and Utah  
39 Constitution Article I, Section 28. Victims and other interested parties may submit matters of  
40 concern to the victims' rights committee. The committee may hold a hearing open to the  
41 public on any appropriate matter of concern and may publish its findings. These matters shall  
42 also be considered at the meetings of the victims' rights committee. The committee shall  
43 forward minutes of all meetings to the Commission on Criminal and Juvenile Justice and the  
44 Office of Crime Victim Reparations for review and other appropriate action.

45 (3) If a victims' rights committee is unable to resolve a complaint, it may refer the  
46 complaint to the Utah Council on Victims of Crime, established in Section 63M-7-601, for  
47 further consideration.

48 (4) The Office of Crime Victim Reparations shall provide materials to local law  
49 enforcement to inform every victim of a sexual offense of the right to request testing of the  
50 convicted sexual offender and of the victim as provided in Section 76-5-502.

51 (5) (a) If a person acting under color of state law willfully or wantonly fails to perform  
52 duties so that the rights in this chapter are not provided, an action for injunctive relief may be  
53 brought against the individual and the government entity that employs the individual.

54 (b) For all other violations, if the committee finds a violation of a victim's right, it  
55 shall refer the matter to the appropriate court for further proceedings consistent with  
56 Subsection 77-38-11(2).

57 (c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of

58 Crime Victims Act, does not constitute cause for a judgment against the state or any  
 59 government entity, or any individual employed by the state or any government entity, for  
 60 monetary damages, ~~attorney's~~ attorney fees, or the costs of exercising any rights under this  
 61 chapter.

62 (6) The person accused of and subject to prosecution for the crime or the act which  
 63 would be a crime if committed by a competent adult, has no standing to make a claim  
 64 concerning any violation of the provisions of this chapter.

65 Section 2. Section **77-38-11** is amended to read:

66 **77-38-11. Enforcement -- Appellate Review -- No right to money damages.**

67 (1) If a person acting under color of state law willfully or wantonly fails to perform  
 68 duties so that the rights in this chapter are not provided, an action for injunctive relief,  
 69 including prospective injunctive relief, may be brought against the individual and the  
 70 governmental entity that employs the individual.

71 (2) ~~(a)~~ The victim of a crime or representative of a victim of a crime, including any  
 72 Victims' Rights Committee as defined in Section 77-37-5 may:

73 ~~(i)~~ (a) bring an action for declaratory relief or for a writ of mandamus defining or  
 74 enforcing the rights of victims and the obligations of government entities under this chapter;  
 75 ~~and~~

76 ~~(ii)~~ (b) petition to file an amicus brief in any court in any case affecting crime  
 77 victims~~[-]; and~~

78 (c) after giving notice to the prosecution and the defense, seek an appropriate remedy  
 79 for a violation of a victim's right from the judge assigned to the case involving the issue as  
 80 provided in Section 77-38-11.

81 ~~(b) Adverse rulings on these actions or on a motion or request brought by a victim of~~  
 82 ~~a crime or a representative of a victim of a crime may be appealed under the rules governing~~  
 83 ~~appellate actions, provided that no appeal shall constitute grounds for delaying any criminal or~~  
 84 ~~juvenile proceeding.]~~

85 ~~(c) An appellate court shall review all such properly presented issues, including issues~~

86 ~~that are capable of repetition but would otherwise evade review.]~~

87 (3) (a) Upon a showing that the victim has not unduly delayed in seeking to protect the  
88 victim's right, and after hearing from the prosecution and the defense, the judge shall  
89 determine whether a right of the victim has been violated.

90 (b) If the judge determines that a victim's right has been violated, the judge shall  
91 proceed to determine the appropriate remedy for the violation of the victim's right by hearing  
92 from the victim and the parties, considering all factors relevant to the issue, and then awarding  
93 an appropriate remedy to the victim. The court shall reconsider any judicial decision or  
94 judgment affected by a violation of the victim's right and determine whether, upon affording  
95 the victim the right and further hearing from the prosecution and the defense, the decision or  
96 judgment would have been different. If the court's decision or judgment would have been  
97 different, the court shall enter the new different decision or judgment as the appropriate  
98 remedy. If necessary to protect the victim's right, the new decision or judgment shall be  
99 entered nunc pro tunc to the time the first decision or judgment was reached. In no event shall  
100 the appropriate remedy be a new trial, damages, attorney fees, or costs.

101 (c) The appropriate remedy shall include only actions necessary to provide the victim  
102 the right to which the victim was entitled and may include reopening previously held  
103 proceedings. Subject to Subsection (3)(d), the court may reopen a sentence or a previously  
104 entered guilty or no contest plea only if doing so would not preclude continued prosecution or  
105 sentencing the defendant and would not otherwise permit the defendant to escape justice. Any  
106 remedy shall be tailored to provide the victim an appropriate remedy without violating any  
107 constitutional right of the defendant.

108 (d) If the court sets aside a previously entered plea of guilty or no contest, and  
109 thereafter continued prosecution of the charge is held to be prevented by the defendant's  
110 having been previously put in jeopardy, the order setting aside the plea is void and the plea is  
111 reinstated as of the date of its original entry.

112 (e) The court may not award as a remedy the dismissal of any criminal charge.

113 (f) The court may not award any remedy if the proceeding that the victim is

114 challenging occurred more than 90 days before the victim filed an action alleging the violation  
115 of the right.

116 [~~(3)~~] (4) The failure to provide the rights in this chapter or Title 77, Chapter 37,  
117 [~~Victims~~] Victims' Rights, shall not constitute cause for a judgment against the state or any  
118 government entity, or any individual employed by the state or any government entity, for  
119 monetary damages, [~~attorneys'~~] attorney fees, or the costs of exercising any rights under this  
120 chapter.

121 Section 3. Section **77-38-12** is amended to read:

122 **77-38-12. Construction of this chapter -- No right to set aside conviction,**  
123 **adjudication, admission, or plea -- Severability clause.**

124 (1) All of the provisions contained in this chapter shall be construed to assist the  
125 victims of crime.

126 (2) This chapter may not be construed as creating a basis for dismissing any criminal  
127 charge or delinquency petition, vacating any adjudication or conviction, admission or plea of  
128 guilty or no contest, or for a defendant to obtain appellate, habeas corpus, [~~except in juvenile~~  
129 ~~cases,~~] or other relief from a judgment in any criminal or delinquency case.

130 (3) This chapter may not be construed as creating any right of a victim to appointed  
131 counsel at state expense.

132 (4) All of the rights contained in this chapter shall be construed to conform to the  
133 Constitution of the United States.

134 (5) (a) In the event that any portion of this chapter is found to violate the Constitution  
135 of the United States, the remaining provisions of this chapter shall continue to operate in full  
136 force and effect.

137 (b) In the event that a particular application of any portion of this chapter is found to  
138 violate the Constitution of the United States, all other applications shall continue to operate in  
139 full force and effect.

140 (6) The enumeration of certain rights for crime victims in this chapter shall not be  
141 construed to deny or disparage other rights granted by the Utah Constitution or the Legislature

142 or retained by victims of crimes.