

Representative R. Curt Webb proposes the following substitute bill:

VICTIM RIGHTS AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

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; and
- ▶ expands the definition of "important juvenile justice hearings" or "important criminal justice hearings" to include class A and B misdemeanors.

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

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

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



26 77-38-12, as last amended by Laws of Utah 1995, Chapter 352

27

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

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

30 **77-37-5. Remedies -- Victims' Rights Committee.**

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

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

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

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

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

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

57 **(b) For all other violations, if the committee finds a violation of a victim's right, it shall**
58 **refer the matter to the appropriate court for further proceedings consistent with Subsection**
59 **77-38-11(2).**

60 **(c)** The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of
61 Crime Victims Act, does not constitute cause for a judgment against the state or any
62 government entity, or any individual employed by the state or any government entity, for
63 monetary damages, ~~attorney's~~ **attorney** fees, or the costs of exercising any rights under this
64 chapter.

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

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

69 **77-38-2. Definitions.**

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

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

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

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

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

77 (5) "Important criminal justice hearings" or "important juvenile justice hearings" means
78 the following proceedings in [~~felony~~] criminal cases **involving a felony or class A or B**
79 **misdemeanor**, or cases involving a minor's conduct which would be a felony **or class A or B**
80 **misdemeanor** if committed by an adult:

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

82 (b) any court arraignment where practical;

83 (c) any court proceeding involving the disposition of charges against a defendant or
84 minor or the delay of a previously scheduled trial date but not including any unanticipated
85 proceeding to take an admission or a plea of guilty as charged to all charges previously filed or
86 any plea taken at an initial appearance;

87 (d) any court proceeding to determine whether to release a defendant or minor and, if

88 so, under what conditions release may occur, excluding any such release determination made at
89 an initial appearance;

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

92 (f) any court proceeding to determine the disposition of a minor or sentence, fine, or
93 restitution of a defendant or to modify any disposition of a minor or sentence, fine, or
94 restitution of a defendant; and

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

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

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

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

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

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

113 (c) For purposes of the right to be present and heard at a public hearing as provided in
114 Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a),
115 "victim of a crime" includes any victim originally named in the allegation of criminal conduct
116 who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

117 Section 3. Section **77-38-11** is amended to read:

118 **77-38-11. Enforcement -- Appellate Review -- No right to money damages.**

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

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

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

127 [~~and~~]

128 (ii) petition to file an amicus brief in any court in any case affecting crime victims[-];

129 and

130 (iii) after giving notice to the prosecution and the defense, seek an appropriate remedy
131 for a violation of a victim's right from the judge assigned to the case involving the issue as
132 provided in Section 77-38-3.

133 [~~(b) Adverse rulings on these actions or on a motion or request brought by a victim of a~~
134 ~~crime or a representative of a victim of a crime may be appealed under the rules governing~~
135 ~~appellate actions, provided that no appeal shall constitute grounds for delaying any criminal or~~
136 ~~juvenile proceeding-]~~

137 [~~(c) An appellate court shall review all such properly presented issues, including issues~~
138 ~~that are capable of repetition but would otherwise evade review.]~~

139 (3) (i) Upon a showing that the victim has not unduly delayed in seeking to protect the
140 victim's right and was not voluntarily absent from the relevant proceeding, and after hearing
141 from the prosecution and the defense, the judge shall determine whether a right of the victim
142 has been violated.

143 (ii) If the judge determines that a victim's right has been violated, the judge shall
144 proceed to determine the appropriate remedy for the violation of the victim's right by hearing
145 from the victim and the parties, considering all factors relevant to the issue, and then awarding
146 an appropriate remedy to the victim. The court shall reconsider any judicial decision or
147 judgment affected by a violation of the victim's right and determine whether, upon affording
148 the victim the right and further hearing from the prosecution and the defense, the decision or
149 judgment would have been different. If the court's decision or judgment would have been

150 different, the court shall enter the new different decision or judgment as the appropriate
151 remedy. If necessary to protect the victim's right, the new decision or judgment shall be
152 entered nunc pro tunc to the time the first decision or judgment was reached. In no event shall
153 the appropriate remedy be a new trial, damages, attorneys' fees, or costs.

154 (iii) The appropriate remedy shall include only actions necessary to provide the victim
155 the right to which the victim was entitled and may include reopening previously held
156 proceedings. As part of entering an appropriate remedy, the judge shall reopen a sentence, a
157 criminal judgment, or a previously entered guilty plea only if doing so would not preclude
158 reprosecuting or resentencing the defendant and would not otherwise permit the defendant to
159 escape justice. Any remedy shall be tailored to provide the victim an appropriate remedy
160 without violating any constitutional right of the defendant.

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

162 (v) The court may not award any remedy if the proceeding that the victim is
163 challenging occurred more than one year before the victim filed an action alleging the violation
164 of the right.

165 ~~[(3)]~~ (4) The failure to provide the rights in this chapter or Title 77, Chapter 37,
166 ~~[Victims]~~ Victims' Rights, shall not constitute cause for a judgment against the state or any
167 government entity, or any individual employed by the state or any government entity, for
168 monetary damages, ~~[attorneys']~~ attorney fees, or the costs of exercising any rights under this
169 chapter.

170 Section 4. Section **77-38-12** is amended to read:

171 **77-38-12. Construction of this chapter -- No right to set aside conviction,**
172 **adjudication, admission, or plea -- Severability clause.**

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

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

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

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

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

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

189 (6) The enumeration of certain rights for crime victims in this chapter shall not be
190 construed to deny or disparage other rights granted by the Utah Constitution or the Legislature
191 or retained by victims of crimes.