

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:

This bill provides an immediate effective date.

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.

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

(c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of Crime Victims Act, does 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's~~ attorney fees, or the costs of exercising any rights under this chapter.

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

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

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 involving a felony or class A or B misdemeanor, or cases involving a minor's conduct which would be a felony or class A or B misdemeanor 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.

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

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)]~~ (a) 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; ~~[and]~~

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

(c) 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 no appeal shall constitute grounds for delaying any criminal or juvenile proceeding.]~~

~~[(c) An appellate court shall review all such 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, attorneys' 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 one year before the victim filed an action alleging the violation of the right.

~~[(3)]~~ (4) The failure to provide the rights in this chapter or Title 77, Chapter 37, ~~[Victims]~~ 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, ~~[attorneys']~~ attorney fees, or the costs of exercising any rights under this chapter.

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

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]~~ a defendant to dismiss 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, ~~[except in juvenile cases,]~~ or other relief from a judgment in any criminal or delinquency case.

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

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

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

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

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

194 Section 5. **Effective date.**

195 If approved by two-thirds of all the members elected to each house, this bill takes effect
196 upon approval by the governor, or the day following the constitutional time limit of Utah
197 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
198 the date of veto override.