

VICTIMS' RIGHTS AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill adds back in subsections inadvertently deleted in a previous bill that apply to appellate rights for victims.

Highlighted Provisions:

This bill:

► adds back in two subsections deleted in a previous bill which apply to appellate rights for victims.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-38-11, as last amended by Laws of Utah 2009, Chapter 120

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

Section 1. 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.

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

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

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

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

39 (b) Adverse rulings on these actions or on a motion or request brought by a victim of a
40 crime or a representative of a victim of a crime may be appealed under the rules governing
41 appellate actions, provided that an appeal may not constitute grounds for delaying any
42 criminal or juvenile proceeding.

43 (c) An appellate court shall review all properly presented issues, including issues that
44 are capable of repetition but would otherwise evade review.

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

48 (b) If the judge determines that a victim's right has been violated, the judge shall
49 proceed to determine the appropriate remedy for the violation of the victim's right by hearing
50 from the victim and the parties, considering all factors relevant to the issue, and then awarding
51 an appropriate remedy to the victim. The court shall reconsider any judicial decision or
52 judgment affected by a violation of the victim's right and determine whether, upon affording
53 the victim the right and further hearing from the prosecution and the defense, the decision or
54 judgment would have been different. If the court's decision or judgment would have been
55 different, the court shall enter the new different decision or judgment as the appropriate
56 remedy. If necessary to protect the victim's right, the new decision or judgment shall be
57 entered nunc pro tunc to the time the first decision or judgment was reached. In no event shall

58 the appropriate remedy be a new trial, damages, attorney fees, or costs.

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

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

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

71 (f) The court may not award any remedy if the proceeding that the victim is
72 challenging occurred more than 90 days before the victim filed an action alleging the violation
73 of the right.

74 (4) The failure to provide the rights in this chapter or Title 77, Chapter 37, Victims'
75 Rights, shall not constitute cause for a judgment against the state or any government entity, or
76 any individual employed by the state or any government entity, for monetary damages,
77 attorney fees, or the costs of exercising any rights under this chapter.