

RAPE KIT PROCESSING AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the provisions of the Utah Code of Criminal Procedure regarding the victim's bill of rights.

Highlighted Provisions:

This bill:

▶ provides that a victim of a sexual offense has the following rights:

- to be informed whether the DNA profile of the assailant was obtained;
- to be informed whether the DNA profile of the assailant has been entered into

the Utah Combined DNA Index System;

- to be informed if there is a match between the DNA profile of the assailant and a DNA profile contained in the Utah Combined DNA Index System, provided

the disclosure of this information would not impede or compromise an ongoing investigation; and

- to designate a person to receive information provided by law enforcement;

▶ provides that a law enforcement agency that chooses not to analyze DNA evidence in a case where the identity of the perpetrator is in doubt shall inform the victim of that decision;

▶ provides that a law enforcement agency shall provide written notification to a victim or the victim's designee 60 days before destroying or disposing of evidence from an unsolved sexual assault case;



28 ▶ provides that the law enforcement office where the sexual offense is reported shall
29 have the responsibility to inform the victim of these rights; and

30 ▶ provides that a victim may designate a person of the victim's choosing to receive
31 any information from the law enforcement agency.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 77-37-3, as last amended by Laws of Utah 2011, Chapter 177



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

41 Section 1. Section 77-37-3 is amended to read:

42 **77-37-3. Bill of rights.**

43 (1) The bill of rights for victims and witnesses is:

44 (a) Victims and witnesses have a right to be informed as to the level of protection from
45 intimidation and harm available to them, and from what sources, as they participate in criminal
46 justice proceedings as designated by Section 76-8-508, regarding witness tampering, and
47 Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and
48 corrections personnel have the duty to timely provide this information in a form which is useful
49 to the victim.

50 (b) Victims and witnesses, including children and their guardians, have a right to be
51 informed and assisted as to their role in the criminal justice process. All criminal justice
52 agencies have the duty to provide this information and assistance.

53 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
54 proceedings; these explanations shall be appropriate to the age of child victims and witnesses.
55 All criminal justice agencies have the duty to provide these explanations.

56 (d) Victims and witnesses should have a secure waiting area that does not require them
57 to be in close proximity to defendants or the family and friends of defendants. Agencies
58 controlling facilities shall, whenever possible, provide this area.

59 (e) Victims may seek restitution or reparations, including medical costs, as provided in
60 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections 62A-7-109.5,
61 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty
62 to have a functional knowledge of the procedures established by the Crime Victim Reparations
63 Board and to inform victims of these procedures.

64 (f) Victims and witnesses have a right to have any personal property returned as
65 provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously
66 return the property when it is no longer needed for court law enforcement or prosecution
67 purposes.

68 (g) Victims and witnesses have the right to reasonable employer intercession services,
69 including pursuing employer cooperation in minimizing employees' loss of pay and other
70 benefits resulting from their participation in the criminal justice process. Officers of the court
71 shall provide these services and shall consider victims' and witnesses' schedules so that
72 activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may
73 request that the responsible agency intercede with employers or other parties.

74 (h) Victims and witnesses, particularly children, should have a speedy disposition of
75 the entire criminal justice process. All involved public agencies shall establish policies and
76 procedures to encourage speedy disposition of criminal cases.

77 (i) Victims and witnesses have the right to timely notice of judicial proceedings they
78 are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies
79 have the duty to provide these notifications. Defense counsel and others have the duty to
80 provide timely notice to prosecution of any continuances or other changes that may be required.

81 (j) Victims of sexual offenses have ~~[a]~~ the following rights:

82 (i) the right to [be informed of their right to] request voluntary testing for themselves
83 for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the
84 alleged sexual offender for HIV infection as provided in Section 76-5-502[. The law
85 enforcement office where the sexual offense is reported shall have the responsibility to inform
86 victims of this right.];

87 (ii) the right to be informed whether the DNA profile of the assailant was obtained
88 from the testing of the rape kit evidence or from other crime scene evidence;

89 (iii) the right to be informed whether the DNA profile of the assailant developed from

90 the rape kit evidence or other crime scene evidence has been entered into the Utah Combined
91 DNA Index System;

92 (iv) the right to be informed whether there is a match between the DNA profile of the
93 assailant developed from the rape kit evidence or other crime scene evidence and a DNA
94 profile contained in the Utah Combined DNA Index System, provided that disclosure would
95 not impede or compromise an ongoing investigation; and

96 (v) the right to designate a person of the victim's choosing to act as a recipient of the
97 information provided under this Subsection (1)(j) and under Subsections (2) and (3).

98 (2) The law enforcement agency investigating a sexual offense may:

99 (a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the
100 request of a victim or the victim's designee and is the designated agency to provide that
101 information to the victim or the victim's designee;

102 (b) require that the victim's request be in writing; and

103 (c) respond to the victim's request with verbal communication, written communication,
104 or by email, if an email address is available.

105 (3) The law enforcement agency investigating a sexual offense has the following
106 authority and responsibilities:

107 (a) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency
108 communicate with the victim or the victim's designee regarding the status of DNA testing,
109 absent a specific request received from the victim or the victim's designee.

110 (b) If the law enforcement agency determines that DNA evidence will not be analyzed
111 in a case where the identity of the perpetrator has not been confirmed, the law enforcement
112 agency shall notify the victim or the victim's designee.

113 (c) A law enforcement agency responsible for providing information under Subsections
114 (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the
115 victim or the victim's designee, shall advise the victim or the victim's designee of any
116 significant changes in the information of which the law enforcement agency is aware.

117 (d) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence
118 or other crime scene evidence from an unsolved sexual assault case, the law enforcement
119 agency shall provide written notification to the victim or the victim's designee of that intention.

120 (ii) Written notification under this Subsection (3) shall be made not fewer than 60 days

121 prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

122 (e) The law enforcement agency investigating the sexual offense is responsible for
123 informing the victim or the victim's designee of the rights established under Subsections
124 (1)(j)(ii) through (iv) and (2), and this Subsection (3).

125 [(2)] (4) Informational rights of the victim under this chapter are based upon the victim
126 providing the [victim's] current [address and telephone number] name, address, telephone
127 number, and email address, if an email address is available, of the person to whom the
128 information should be provided to the criminal justice agencies involved in the case.

Legislative Review Note
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Office of Legislative Research and General Counsel