

RIGHTS OF CHILD VICTIM AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides that a child victim may have a parent present during interviews.

Highlighted Provisions:

This bill:

► provides a child victim the right to have a parent that is not the subject of the investigation present during interviews.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-37-4, as last amended by Laws of Utah 2014, Chapter 90

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

Section 1. Section **77-37-4** is amended to read:

77-37-4. Additional rights -- Children.

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

(1) Children have the right to protection from physical and emotional abuse during



28 their involvement with the criminal justice process.

29 (2) Children are not responsible for inappropriate behavior adults commit against them
30 and have the right not to be questioned, in any manner, nor to have allegations made, implying
31 this responsibility. Those who interview children have the responsibility to consider the
32 interests of the child in this regard.

33 (3) Child victims and witnesses have the right to have interviews relating to a criminal
34 prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they
35 are conducted by persons sensitive to the needs of children.

36 (4) Child victims have the right to be informed of available community resources that
37 might assist them and how to gain access to those resources. Law enforcement and prosecutors
38 have the duty to ensure that child victims are informed of community resources, including
39 counseling prior to the court proceeding, and have those services available throughout the
40 criminal justice process.

41 (5) [~~(a)~~] Child victims have the right, once an investigation has been initiated by law
42 enforcement or the Division of Child and Family Services, to:

43 (a) the presence of a parent at all interviews, provided the parent is not a suspect in the
44 investigation; and

45 (b) keep confidential their interviews that are conducted at a Children's Justice Center,
46 including video and audio recordings, and transcripts of those recordings.

47 (6) (a) Except as provided in Subsection [~~(6)~~] (7), recordings and transcripts of
48 interviews may not be distributed, released, or displayed to anyone without a court order.

49 (b) A court order described in Subsection [~~(5)~~] (6)(a):

50 (i) shall describe with particularity to whom the recording or transcript of the interview
51 may be released and prohibit further distribution or viewing by anyone not named in the order;
52 and

53 (ii) may impose restrictions on access to the materials considered reasonable to protect
54 the privacy of the child victim.

55 (c) A parent or guardian of the child victim may petition a juvenile or district court for
56 an order allowing the parent or guardian to view a recording or transcript upon a finding of
57 good cause. The order shall designate the agency that is required to display the recording or
58 transcript to the parent or guardian and shall prohibit viewing by anyone not named in the

59 order.

60 (d) Following the conclusion of any legal proceedings in which the recordings or
61 transcripts are used, the court shall order the recordings and transcripts in the court's file sealed
62 and preserved.

63 ~~[(6)]~~ (7) (a) The following offices and their designated employees may distribute and
64 receive a recording or transcript to and from one another without a court order:

65 (i) the Division of Child and Family Services;

66 (ii) administrative law judges employed by the Department of Human Services;

67 (iii) Department of Human Services investigators investigating the Division of Child
68 and Family Services or investigators authorized to investigate under Section 62A-4a-202.6;

69 (iv) an office of the city attorney, county attorney, district attorney, or attorney general;

70 (v) a law enforcement agency;

71 (vi) a Children's Justice Center established under Section 67-5b-102; or

72 (vii) the attorney for the child who is the subject of the interview.

73 (b) In a criminal case or in a juvenile court in which the state is a party:

74 (i) the parties may display and enter into evidence a recording or transcript in the
75 course of a prosecution;

76 (ii) the state's attorney may distribute a recording or transcript to the attorney for the
77 defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for
78 discovery;

79 (iii) the attorney for the defendant or respondent may do one or both of the following:

80 (A) release the recording or transcript to an expert retained by the attorney for the
81 defendant or respondent if the expert agrees in writing that the expert will not distribute,
82 release, or display the recording or transcript to anyone without prior authorization from the
83 court; or

84 (B) permit the defendant or respondent to view the recording or transcript, but may not
85 distribute or release the recording or transcript to the defendant or respondent; and

86 (iv) the court shall advise a pro se defendant or respondent that a recording or
87 transcript received as part of discovery is confidential and may not be distributed, released, or
88 displayed without prior authorization from the court.

89 (c) A court's failure to advise a pro se defendant or respondent that a recording or

90 transcript received as part of discovery is confidential and may not be used as a defense to
91 prosecution for a violation of the disclosure rule.

92 (d) In an administrative case, pursuant to a written request, the Division of Child and
93 Family Services may display, but may not distribute or release, a recording or transcript to the
94 respondent or to the respondent's designated representative.

95 (e) (i) Within two business days of a request from a parent or guardian of a child
96 victim, an investigative agency shall allow the parent or guardian to view a recording after the
97 conclusion of an interview, unless:

98 (A) the suspect is a parent or guardian of the child victim;

99 (B) the suspect resides in the home with the child victim; or

100 (C) the investigative agency determines that allowing the parent or guardian to view
101 the recording would likely compromise or impede the investigation.

102 (ii) If the investigative agency determines that allowing the parent or guardian to view
103 the recording would likely compromise or impede the investigation, the parent or guardian may
104 petition a juvenile or district court for an expedited hearing on whether there is good cause for
105 the court to enter an order allowing the parent or guardian to view the recording in accordance
106 with Subsection [~~(5)~~] (6)(c).

107 (iii) A Children's Justice Center shall coordinate the viewing of the recording described
108 in this Subsection [~~(6)~~] (7)(e).

109 (f) A multidisciplinary team assembled by a Children's Justice Center or an
110 interdisciplinary team assembled by the Division of Child and Family Services may view a
111 recording or transcript, but may not receive a recording or transcript.

112 (g) A Children's Justice Center:

113 (i) may distribute or display a recording or transcript to an authorized trainer or
114 evaluator for purposes of training or evaluation; and

115 (ii) may display, but may not distribute, a recording or transcript to an authorized
116 trainee.

117 (h) An authorized trainer or instructor may display a recording or transcript according
118 to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center
119 or according to the authorized trainer's or instructor's scope of employment.

120 (i) (i) In an investigation under Section 53A-6-306, in which a child victim who is the

121 subject of the recording or transcript has alleged criminal conduct against an educator, a law
122 enforcement agency may distribute or release the recording or transcript to an investigator
123 operating under UPPAC authorization, upon the investigator's written request.

124 (ii) If the respondent in a case investigated under Section 53A-6-306 requests a hearing
125 authorized under that section, the investigator operating under UPPAC authorization may
126 display, release, or distribute the recording or transcript to the prosecutor operating under
127 UPPAC authorization or to an expert retained by an investigator.

128 (iii) Upon request for a hearing under Section 53A-6-306, a prosecutor operating under
129 UPPAC authorization may display the recording or transcript to a pro se respondent, to an
130 attorney retained by the respondent, or to an expert retained by the respondent.

131 (iv) The parties to a hearing authorized under Section 53A-6-306 may display and enter
132 into evidence a recording or transcript in the course of a prosecution.

133 [(7)] (8) Except as otherwise provided in this section, it is a class B misdemeanor for
134 any individual to distribute, release, or display any recording or transcript of an interview of a
135 child victim conducted at a Children's Justice Center.

Legislative Review Note
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Office of Legislative Research and General Counsel