

1 **VICTIMS RIGHTS AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: LaVar Christensen**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the victim's bill of rights by amending provisions relating to victims,
10 witnesses, and victim advocates.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ asserts victims and witnesses are alleged roles until proven in trial;
- 14 ▶ describes the role of the victim advocate; and
- 15 ▶ requires victims, witnesses, and victim advocates to be advised of the consequences

16 of making false allegations.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **77-37-1**, as enacted by Laws of Utah 1987, Chapter 194

24 **77-37-3**, as last amended by Laws of Utah 2014, Chapter 232

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

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



28 **77-37-1. Legislative intent.**

29 (1) [~~The~~] Subject to the paramount rights and protections guaranteed to defendants by
30 the United States Constitution and the Utah Constitution, the Legislature recognizes the duty of
31 victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and
32 prosecutorial agencies, the essential nature of citizen cooperation to state and local law
33 enforcement efforts, and the general effectiveness and well-being of the criminal justice system
34 of this state. In this chapter, the Legislature declares its intent to ensure that all victims and
35 witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights
36 extended in this chapter to victims and witnesses of crime are honored and protected by law in
37 a manner no less vigorous than protections afforded criminal defendants.

38 (2) The Legislature finds it is necessary to provide child victims and child witnesses
39 with additional consideration and different treatment than that usually afforded to adults. The
40 treatment should ensure that children's participation in the criminal justice process be
41 conducted in the most effective and least traumatic, intrusive, or intimidating manner.

42 Section 2. Section **77-37-3** is amended to read:

43 **77-37-3. Bill of rights.**

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

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

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

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

57 (d) Victims and witnesses should have a secure waiting area that does not require them
58 to be in close proximity to defendants or the family and friends of defendants. Agencies

59 controlling facilities shall, whenever possible, provide this area.

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

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

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

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

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

82 (j) Victims of sexual offenses have the following rights:

83 (i) the right to request voluntary testing for themselves for HIV infection as provided in
84 Section 76-5-503 and to request mandatory testing of the alleged sexual offender for HIV
85 infection as provided in Section 76-5-502;

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

88 (iii) the right to be informed whether a DNA profile developed from the rape kit
89 evidence or other crime scene evidence has been entered into the Utah Combined DNA Index

90 System;

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

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

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

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

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

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

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

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

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

112 (b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence
113 or other crime scene evidence from an unsolved sexual assault case, the law enforcement
114 agency shall provide written notification of that intention and information on how to appeal the
115 decision to the victim or the victim's designee of that intention.

116 (ii) Written notification under this Subsection (3) shall be made not fewer than 60 days
117 prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

118 (c) A law enforcement agency responsible for providing information under Subsections
119 (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the
120 victim or the victim's designee, shall advise the victim or the victim's designee of any

121 significant changes in the information of which the law enforcement agency is aware.

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

129 (5) (a) All references to victims or witnesses in this chapter are only allegations until
130 proven at trial.

131 (b) All defendants are presumed innocent until proven guilty and are thus entitled at all
132 times to full due process of law.

133 (c) Fundamental constitutional rights and protections may not be diminished, interfered
134 with, undermined, or unfairly affected by this chapter.

135 (6) (a) Victim advocates are not part of a criminal prosecution and may not interfere
136 with or undermine a defendant's rights and constitutional protections.

137 (b) Victim advocates are only offered to a victim for the victim's support and assistance
138 in understanding the judicial process and the victim's potential role in the criminal proceeding
139 if called upon to testify.

140 (7) The appropriate law enforcement agency shall fully and properly advise all victims,
141 witnesses, and victim advocates of the applicable statutes and potential consequences relating
142 to false allegations.

Legislative Review Note
Office of Legislative Research and General Counsel