

**VICTIM ADVOCATE CONFIDENTIALITY AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses confidentiality related to victim advocates.

**Highlighted Provisions:**

This bill:

▶ enacts the Confidential Communications with Crime Victim Advocates Act, including:

- defining terms;
- outlining the scope of the act;
- providing when communications or any other information is confidential;
- requiring training and supervision; and
- providing exceptions.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**77-38-401**, Utah Code Annotated 1953

**77-38-402**, Utah Code Annotated 1953

**77-38-403**, Utah Code Annotated 1953



28 [77-38-404](#), Utah Code Annotated 1953



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

31 Section 1. Section **77-38-401** is enacted to read:

32 **Part 4. Confidential Communications with Crime Victim Advocates Act**

33 **77-38-401. Title.**

34 This part is known as the "Confidential Communications with Crime Victim Advocates  
35 Act."

36 Section 2. Section **77-38-402** is enacted to read:

37 **77-38-402. Definitions.**

38 As used in this part:

39 (1) "Crime victim advocate" means a person, including a domestic violence victim  
40 advocate, who is employed or authorized by a public or private entity to provide counseling,  
41 treatment, or other supportive assistance to a victim.

42 (2) "Victim" means the same as "victim of a crime" as defined in Section [77-38-2](#).

43 Section 3. Section **77-38-403** is enacted to read:

44 **77-38-403. Scope of part.**

45 (1) If Title 53B, Chapter 28, Part 2, Confidential Communications for Institutional  
46 Advocacy Services Act, applies, that part governs.

47 (2) If Part 2, Confidential Communications for Sexual Assault Act, applies, that part  
48 governs.

49 Section 4. Section **77-38-404** is enacted to read:

50 **77-38-404. Confidentiality -- Exceptions.**

51 (1) Unless the victim consents in writing to the disclosure, a crime victim advocate  
52 may not disclose as a witness or otherwise any communication made by or with a victim,  
53 including any communication made to or in the presence of others.

54 (2) Unless the victim consents in writing to the disclosure, a crime victim advocate  
55 may not disclose a record, note, document, correspondence, report, or memorandum that  
56 contains an opinion, theory, or other information made while advising, counseling, or assisting  
57 the victim or that is based on communications made by or with the victim, including  
58 communications made to or in the presence of others.

59           (3) A communication or information described in Subsection (1) or (2) is not  
60 confidential if:

61           (a) the crime victim advocate knows that the victim will give or has given perjured  
62 testimony;

63           (b) the communication or information contains exculpatory evidence; or

64           (c) the crime victim advocate is under a duty to report a suspected case of child abuse  
65 or neglect under Section 62A-4a-403 or any other law other than this part.

66           (4) (a) A defendant may make a motion for disclosure of confidential information.

67           (b) If the court finds there is reasonable cause to believe that the communication or  
68 information is exculpatory or that the victim will give or has given perjured testimony, the  
69 court shall hold a hearing in camera.

70           (c) Communication or information that the court finds is exculpatory or reveals  
71 perjured testimony by the victim shall be disclosed to the defendant.

72           (5) If, with the written or oral consent of the victim, the crime victim advocate  
73 discloses to the prosecutor or a law enforcement agency a communication between the victim  
74 and the crime victim advocate or a record, note, document, correspondence, report, or  
75 memorandum, the prosecutor or law enforcement agency shall disclose the communication or  
76 information to the defendant's attorney only if the communication or information is otherwise  
77 exculpatory.

78           (6) Notwithstanding Subsections (1) and (2), if a victim consents either orally or in  
79 writing, a crime victim advocate may disclose information to other professionals and  
80 administrative support persons that the crime victim advocate works with for the purpose of  
81 assisting the crime victim advocate in providing services to the victim and to the court in  
82 furtherance of any victim's right pursuant to this chapter.

83           (7) (a) To qualify for the confidentiality prescribed in this section, a domestic violence  
84 victim advocate must have at least 30 hours of training in assisting victims. A portion of this  
85 training must include an explanation of this section.

86           (b) The training prescribed in this Subsection (7) may be provided by the entity for  
87 which the person provides victim services or by an outside agency that issues a certificate of  
88 completion. The records custodian of the entity for which the person provides victim services  
89 shall maintain the training documents.

90           (8) A crime victim advocate who is a volunteer shall perform all activities under  
91 qualified supervision.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**