

# HB0298S01 compared with HB0298

~~{deleted text}~~ shows text that was in HB0298 but was deleted in HB0298S01.

Inserted text shows text that was not in HB0298 but was inserted into HB0298S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Michael K. McKell proposes the following substitute bill:

## 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}~~ creates a task force.

#### Highlighted Provisions:

This bill:

- ▶ ~~{enacts}~~ creates the ~~{Confidential Communications with Crime}~~ Victim ~~{Advocates Act}~~ Advocate Confidentiality Task Force, including:

- ~~{defining terms;}~~ addressing membership;
- providing quorum requirements;
- addressing compensation; and
- outlining ~~{the scope of the act;~~

~~• providing when communications or any other information is confidential;~~

~~• requiring training and supervision; and~~

## HB0298S01 compared with HB0298

~~providing exceptions}~~ task force duties.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~None}~~ This bill provides a repeal date.

### Utah Code Sections Affected:

ENACTS:

~~77-38-401}~~ 36-29-103, Utah Code Annotated 1953

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

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

~~77-38-404~~, Utah Code Annotated 1953

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

Section 1. Section ~~77-38-401}~~ 36-29-103 is enacted to read:

~~Part 4. Confidential Communications with Crime Victim Advocates Act~~

~~77-38-401. Title:~~

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

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

~~77-38-402. Definitions:~~

~~As used in this part:~~

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

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

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

~~77-38-403. Scope of part:~~

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

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

## HB0298S01 compared with HB0298

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

~~77-38-404. Confidentiality -- Exceptions:~~

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

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

~~(3) A} 36-29-103. Victim Advocate Confidentiality Task Force.~~

~~(1) There is created a task force known as the "Victim Advocate Confidentiality Task Force."~~

~~(2) The task force shall consist of the following members:~~

~~(a) two members of the Senate appointed by the president of the Senate, no more than one of whom may be from the same political party;~~

~~(b) three members of the House of Representatives appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party;~~

~~(c) the executive director of the State Commission on Criminal and Juvenile Justice or the executive director's designee;~~

~~(d) the state court administrator or the state court administrator's designee;~~

~~(e) the director of the Utah Office for Victims of Crime or the director's designee; and~~

~~(f) the attorney general or the attorney general's designee.~~

~~(3) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(a) as a cochair of the task force.~~

~~(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(b) as a cochair of the task force.~~

~~(4) (a) A majority of the members of the task force constitutes a quorum.~~

~~(b) The action of a majority of a quorum constitutes an action of the task force.~~

~~(5) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative~~

## HB0298S01 compared with HB0298

### Compensation and Expenses.

(b) A member of the task force who is not a legislator:

(i) may not receive compensation for the member's work associated with the task force;

and

(ii) may receive per diem and reimbursement for travel expenses incurred as a member of the task force at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 and rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

(7) The task force shall study when and how communication or information {described in Subsection (1) or (2) is not confidential if:

—— (a) the crime;} provided to an individual who advocates for victims should be kept confidential, including:

(a) defining relevant terms such as "victim advocate" and what qualifications a victim advocate should have to have any confidentiality protections;

(b) what types of communication or information, if any, should be kept confidential;

(c) how to address issues such as:

(i) a victim advocate {knows} knowing that the victim will give or has given perjured testimony;

(fb}ii) the communication or information {contains} containing exculpatory or inculpatory evidence; {or

—— (c) the crime victim advocate is under a duty to report a suspected case} and

(iii) duties to disclose suspected cases of child abuse or neglect {under Section 62A-4a-403 or any other law other than this part.

—— (4) (a) A defendant may make a motion for disclosure of confidential information:

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

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

## HB0298S01 compared with HB0298

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

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

~~—— (7) (a) To qualify for};~~

~~(d) whether the confidentiality {prescribed in this section, a domestic violence victim advocate must have at least 30 hours of training in assisting victims. A portion of this training must include an explanation of this section.~~

~~—— (b) The training prescribed in} requirements should be enacted by statute or court rules of procedure and evidence; and~~

~~(e) any other issue related to this Subsection (7) { may be provided by the entity for which the person provides victim services or by an outside agency that issues a certificate of completion. The records custodian of the entity for which the person provides victim services shall maintain the training documents.~~

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

### Legislative Review Note

~~Office of Legislative Research and General Counsel};~~

~~(8) On or before the November 2018 Interim the task force shall report to the Judiciary Interim Committee, including presenting proposed legislation, if any.~~

**HB0298S01 compared with HB0298**

**Section 2. Repeal date.**

**Section 36-29-103 is repealed on November 31, 2018.**