

## HB0053S01 compared with HB0053

~~{deleted text}~~ shows text that was in HB0053 but was deleted in HB0053S01.

Inserted text shows text that was not in HB0053 but was inserted into HB0053S01.

**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 V. Lowry Snow proposes the following substitute bill:

### VICTIM COMMUNICATIONS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: Todd Weiler

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#### LONG TITLE

##### ~~{Committee Note:~~

~~— The Victim Advocate Confidentiality Task Force recommended this bill.~~

~~— Membership: — 5 legislators — 4 non-legislators~~

~~— Legislative Vote: — 5 voting for — 0 voting against — 0 absent~~

##### ~~{General Description:~~

This bill enacts provisions related to victim communications.

#### Highlighted Provisions:

This bill:

- ▶ enacts the Privileged Communications with Victim Advocates Act, including:
  - providing a purpose statement;
  - defining terms;
  - outlining the scope of the part;

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- providing ~~{for}~~a privilege for confidential communications;
- addressing government records; and
- requiring certain notices;
- ▶ addresses examination of a victim advocate; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**78B-1-137**, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

**77-38-401**, 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

**77-38-405**, Utah Code Annotated 1953

~~{ **77-38-406**, Utah Code Annotated 1953~~

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

#### **Part 4. Privileged Communications with Victim Advocates Act.**

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

##### **77-38-401. Title.**

This part is known as the "Privileged Communications with Victim Advocates Act."

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

##### **77-38-402. Purpose.**

It is the purpose of this part to enhance and promote the mental, physical, and emotional recovery of victims by restricting the circumstances under which ~~{communications}~~a confidential communication with the victim may be disclosed.

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

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### 77-38-403. Definitions.

As used in this part:

(1) ~~{(a)}~~ "Advocacy services" means assistance provided that supports, supplements, intervenes, or links a victim or a victim's family with appropriate resources and services to address the wide range of potential impacts of being victimized.

~~{ (b) "Advocacy services" do not include the practice of mental health therapy as defined in Section 58-60-102.~~

~~{~~ (2) "Advocacy services provider" means an entity that has the primary focus of providing advocacy services in general or with specialization to a specific crime type or specific type of victimization.

(3) "~~{Communication}~~ Confidential communication" means ~~{the giving of information by}~~ a communication that is intended to be confidential between a victim ~~{to}~~ and a victim advocate ~~{, and includes a record created or maintained as a result of providing the information}~~ for the purpose of obtaining advocacy services.

(4) "Criminal justice system victim advocate" means an individual who:

(a) is employed or authorized to volunteer by a government agency that possesses a role or responsibility within the criminal justice system;

(b) has as a primary responsibility addressing the mental, physical, or emotional recovery of victims;

(c) completes a minimum 40 hours of trauma-informed training:

(i) in crisis response, the effects of crime and trauma on victims, victim advocacy services and ethics, informed consent, and this part regarding privileged confidential communication; and

(ii) that have been approved or provided by the Utah Office for Victims of Crime; and

(d) is under the supervision of the director or director's designee of the government agency.

(5) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(6) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

~~{5}~~ 7 "Nongovernment organization victim advocate" means an individual who:

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(a) is employed or authorized to volunteer by a nongovernment organization advocacy services provider;

(b) has as a primary responsibility addressing the mental, physical, or emotional recovery of victims;

(c) has a minimum 40 hours of trauma-informed training;

(i) in assisting victims specific to the specialization or focus of the nongovernment organization advocacy services provider and includes this part regarding privileged confidential communication; and

(ii) (A) that have been approved or provided by the Utah Office for Victims of Crime;

or

(B) that meets other minimally equivalent standards set forth by the nongovernment organization advocacy services provider; and

(d) is under the supervision of the director or the director's designee of the nongovernment organization advocacy services provider.

(~~f6~~8) "Record" means a book, letter, document, paper, map, plan, photograph, file, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics.

(~~f7~~9) "Victim" means:

(a) a "victim of a crime" as defined in Section 77-38-2;

(b) an individual who is a victim of domestic violence as defined in Section 77-36-1; or

(c) an individual who is a victim of dating violence as defined in Section 78B-7-402.

(~~f8~~10) "Victim advocate" means:

(a) a criminal justice system victim advocate;

(b) a nongovernment organization victim advocate; or

(c) an individual who is employed or authorized to volunteer by a public or private entity and is designated by the Utah Office for Victims of Crime as having the specific purpose of providing advocacy services to or for the clients of ~~that~~ the public or private entity.

(d) "Victim advocate" does not include an employee of a Children's Justice Center, unless the Children's Justice Center is under the control or supervision of a prosecutor's office or a law enforcement agency.

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

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### 77-38-404. Scope of part.

This part governs the disclosure of ~~communications~~ a confidential communication to a victim advocate, except that:

(1) if Title 53B, Chapter 28, Part 2, Confidential Communications for Institutional Advocacy Services Act, applies, that part governs; and

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

Section 5. Section ~~77-38-405~~ is enacted to read:

~~77-38-405. Disclosure of a communication given to a nongovernment organization~~ victim advocate.

~~In accordance with the Utah Rules of Evidence, a nongovernment organization~~ (1) (a) A victim advocate may not disclose communications a confidential communication with a victim, including communications in a group therapy session, except to the extent allowed by the Utah Rules of Evidence.

~~Section 6. Section 77-38-406 is enacted to read:~~

~~77-38-406. Disclosure of communications given to a criminal justice system victim advocate.~~

~~(1) (a) In accordance with the Utah Rules of Evidence, a criminal justice system victim advocate may not disclose communications with a victim, including communications a confidential communication in a group therapy session, except:~~

(i) ~~that the a criminal justice system victim advocate shall provide the communications confidential communication to a prosecutor who is responsible for determining whether the communications are confidential communication is exculpatory or goes to the credibility of a witness;~~

(ii) that a victim advocate may provide the confidential communication to a law enforcement officer, health care provider, mental health therapist, domestic violence shelter employee, or member of a multidisciplinary team assembled by a Children's Justice Center or a law enforcement agency for the purpose of providing advocacy services; or

~~(iii) to the extent allowed by the Utah Rules of Evidence.~~

(b) If a prosecutor determines that the confidential communication is exculpatory or goes to the credibility of a witness, after giving notice to the court notifies the victim and the

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defense attorney ~~and an~~ of the opportunity to be heard ~~as part of the~~ at an in camera ~~process~~ review, the prosecutor will present the confidential communication to the court for in camera review pursuant to the Utah Rules of Evidence.

(2) A record that contains information from a confidential communication between a ~~criminal justice system~~ victim advocate and a victim may not be disclosed under Title 63G, Chapter 2, Government Records Access and Management Act, to the extent that it includes the information about the confidential communication.

(3) A criminal justice ~~system~~ victim advocate, as soon as reasonably possible, shall notify a victim:

(a) ~~in writing that communications~~ whether a confidential communication with the ~~criminal justice system~~ victim advocate ~~may~~ will be disclosed to a prosecutor and ~~that~~ whether a statement relating to the incident that forms the basis for criminal charges or goes to the credibility of a witness ~~may~~ will also be disclosed to the defense attorney; and

(b) of the name, location, and contact information of one or more nongovernment organization advocacy services providers specializing in the victim's service needs, when a nongovernment organization advocacy services provider exists and is known to the ~~criminal justice system~~ victim advocate.

Section ~~7~~ 6. Section **78B-1-137** is amended to read:

### **78B-1-137. Witnesses -- Privileged communications.**

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(1) (a) Neither a wife nor a husband may either during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage.

(b) This exception does not apply:

(i) to a civil action or proceeding by one spouse against the other;

(ii) to a criminal action or proceeding for a crime committed by one spouse against the other;

(iii) to the crime of deserting or neglecting to support a spouse or child;

(iv) to any civil or criminal proceeding for abuse or neglect committed against the child

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of either spouse; or

(v) if otherwise specifically provided by law.

(2) An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any fact, the knowledge of which has been acquired as an employee.

(3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.

(4) A physician or surgeon cannot, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient. However, this privilege shall be waived by the patient in an action in which the patient places the patient's medical condition at issue as an element or factor of the claim or defense. Under those circumstances, a physician or surgeon who has prescribed for or treated that patient for the medical condition at issue may provide information, interviews, reports, records, statements, memoranda, or other data relating to the patient's medical condition and treatment which are placed at issue.

(5) A public officer cannot be examined as to communications made in official confidence when the public interests would suffer by the disclosure.

(6) (a) A sexual assault counselor as defined in Section 77-38-203 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section 77-38-203 made by the victim.

(b) A victim advocate as defined in Section 77-38-403 ~~cannot~~ may not, without the written consent of the victim, or the victim's guardian or conservator if the guardian or conservator is not the accused, be examined in a civil or criminal proceeding as to a ~~communication that is a privileged communication under the Utah Rules of Evidence~~ confidential communication, as defined in Section 78-38-403, unless the victim advocate is examined in camera to determine whether ~~it~~ the confidential communication is privileged under the Utah Rules of Evidence.