

HB0440S01 compared with HB0440

~~{deleted text}~~ shows text that was in HB0440 but was deleted in HB0440S01.

Inserted text shows text that was not in HB0440 but was inserted into HB0440S01.

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Representative Eric K. Hutchings proposes the following substitute bill:

COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to the membership and duties of certain committees and councils.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the membership of ~~{certain committees and councils;~~
- ▶ ~~modifies the duties of certain committees and councils;~~ the Commission on Criminal and Juvenile Justice; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-7-202, as last amended by Laws of Utah 2017, Chapter 163

~~{ **63M-7-601**, as last amended by Laws of Utah 2016, Chapter 32~~

~~— **63M-7-603**, as last amended by Laws of Utah 2010, Chapter 82~~

~~— **77-37-2**, as enacted by Laws of Utah 1987, Chapter 194~~

~~— **77-37-5**, as last amended by Laws of Utah 2011, Chapter 131~~

~~— **77-38-11**, as last amended by Laws of Utah 2010, Chapter 331~~

ENACTS:

~~— **63M-7-601.5**, Utah Code Annotated 1953~~

~~— **63M-7-605.1**, Utah Code Annotated 1953~~

REPEALS:

~~— **63M-7-605**, as renumbered and amended by Laws of Utah 2008, Chapter 382~~

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

Section 1. Section **63M-7-202** is amended to read:

63M-7-202. Composition -- Appointments -- Ex officio members -- Terms --

United States Attorney as nonvoting member.

(1) The commission on criminal and juvenile justice shall be composed of [21] ~~(24)~~ 25 voting members as follows:

(a) the chief justice of the supreme court, as the presiding officer of the judicial council, or a judge designated by the chief justice;

(b) the state court administrator or the state court administrator's designee;

(c) the executive director of the Department of Corrections or the executive director's designee;

~~[(d) the director of the Division of Juvenile Justice Services;]~~

(d) the executive director of the Department of Human Services or the executive

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director's designee;

(e) the commissioner of the Department of Public Safety or the commissioner's designee;

(f) the attorney general or an attorney designated by the attorney general;

(g) the president of the chiefs of police association or a chief of police designated by the association's president;

(h) the president of the sheriffs' association or a sheriff designated by the association's president;

(i) the chair of the Board of Pardons and Parole or a member of the Board of Pardons and Parole designated by the chair;

(j) the chair of the Utah Sentencing Commission or a member of the Utah Sentencing Commission designated by the chair;

(k) the chair of the Utah Substance Use and Mental Health Advisory Council or a member of the Utah Substance Use and Mental Health Advisory Council designated by the chair;

(l) the chair of the Utah Board of Juvenile Justice or a member of the Utah Board of Juvenile Justice designated by the chair;

(m) the chair of the Utah Council on Victims of Crime or the chair's designee or a member of the Utah Council on Victims of Crime designated by the chair;

~~[(n) the director of the Division of Substance Abuse and Mental Health; and]~~

(n) the executive director of the Salt Lake Legal Defender Association or an attorney designated by the executive director;

(o) the chair of the Utah Indigent Defense Commission or a member of the Indigent Defense Commission designated by the chair;

(p) the Salt Lake County District Attorney or an attorney designated by the district attorney; and

~~[(q)]~~ (q) the following members designated to serve four-year terms:

(i) a juvenile court judge, appointed by the chief justice, as presiding officer of the Judicial Council;

(ii) a representative of the statewide association of public attorneys designated by the association's officers;

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(iii) one member of the House of Representatives who is appointed by the speaker of the House of Representatives; and

(iv) one member of the Senate who is appointed by the president of the Senate.

(2) The governor shall appoint the remaining three members to four-year staggered terms as follows:

(a) one criminal defense attorney appointed from a list of three nominees submitted by the Utah State Bar Association;

(b) one attorney who primarily represents juveniles in delinquency matters appointed from a list of three nominees submitted by the Utah Bar Association;

~~[(b)]~~ (c) one representative of public education; ~~[and]~~

~~[(c)]~~ (d) one citizen representative~~[-]; and~~

(e) a representative from a local faith.

(3) In addition to the members designated under Subsections (1) and (2), the United States Attorney for the district of Utah or an attorney designated by the United States Attorney may serve as a nonvoting member.

(4) In appointing the members under Subsection (2), the governor shall take into account the geographical makeup of the commission.

~~{ Section 2. Section 63M-7-601 is amended to read:~~

~~63M-7-601. Creation -- Members -- Chair.~~

~~(1) There is created within the governor's office the Utah Council on Victims of Crime.~~

~~(2) The Utah Council on Victims of Crime shall be composed of [25 voting members as follows] the following members:~~

~~(a) a representative of the Commission on Criminal and Juvenile Justice appointed by the executive director;~~

~~(b) a representative of the Department of Corrections appointed by the executive director;~~

~~(c) a representative of the Board of Pardons and Parole appointed by the chair;~~

~~(d) a representative of the Department of Public Safety appointed by the commissioner;~~

~~(e) a representative of the Division of Juvenile Justice Services appointed by the director;~~

~~(f) a representative of the Utah Office for Victims of Crime appointed by the director;~~

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~~—— (g) a representative of the Office of the Attorney General appointed by the attorney general;~~

~~—— (h) a representative of the United States Attorney for the district of Utah appointed by the United States Attorney;~~

~~—— (i) a representative of Utah's Native American community appointed by the director of the Division of Indian Affairs after input from federally recognized tribes in Utah;~~

~~—— [(j) a professional or volunteer working in the area of violence against women and families appointed by the governor;]~~

~~—— (j) a representative of the Utah Department of Health's, Violence and Injury Prevention Program appointed by the program manager;~~

~~—— (k) the chair of each [judicial district's victims' rights] committee appointed by the council;~~

~~—— (l) the following members appointed to serve four-year terms:~~

~~—— (i) a representative of the Statewide Association of Public Attorneys appointed by [that] the association;~~

~~—— (ii) a representative of the Utah Chiefs of Police Association appointed by the president of that association;~~

~~—— (iii) a representative of the Utah Sheriffs' Association appointed by the president of that association; and~~

~~—— (iv) a representative of a Children's Justice Center appointed by the Advisory Board on Children's Justice; [and]~~

~~—— [(v) a citizen representative appointed by the governor; and]~~

~~—— (m) the following members appointed by the members in Subsections (2)(a) through (2)(k) to serve four-year terms:~~

~~—— [(i) an individual who works professionally with victims of crime; and]~~

~~—— [(ii) a victim of crime.]~~

~~—— (i) a professional or volunteer who works with victims of crime;~~

~~—— (ii) a citizen who has been a victim of crime; and~~

~~—— (iii) a professional who provides legal or clinical services to offenders; and~~

~~—— (n) the director of the council, appointed under Section 63M-7-605.~~

~~—— (3) The council shall annually elect one member to serve as chair and one member to~~

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~~serve as vice-chair.~~

~~Section 3. Section **63M-7-601.5** is enacted to read:~~

~~**63M-7-601.5. Definitions.**~~

~~As used in this chapter:~~

~~(1) "Committee" means a judicial district victims' rights committee established in Section 77-37-5.~~

~~(2) "Council" means the Utah Council on Victims of Crime established in Section 63M-7-601.~~

~~(3) "Director" means the director of the council appointed under Section 63M-7-605.~~

~~Section 4. Section **63M-7-603** is amended to read:~~

~~**63M-7-603. Duties of the council.**~~

~~(1) The council shall:~~

~~(a) make recommendations to the Legislature, the governor, and the Judicial Council on the following:~~

~~(i) enforcing existing rights of victims of crime;~~

~~(ii) enhancing rights of victims of crime;~~

~~(iii) the role of victims of crime in the criminal justice system;~~

~~(iv) victim restitution;~~

~~(v) educating and training criminal justice professionals on the rights of victims of crime; and~~

~~(vi) enhancing services to victims of crimes;~~

~~(b) provide training on the rights of victims of crime; [and]~~

~~[(c) establish a subcommittee to consider complaints not resolved by the Victims' Rights Committee established in Section 77-37-5.]~~

~~[(2) The council:]~~

~~[(a) shall advocate the adoption, repeal, or modification of laws or proposed legislation in the interest of victims of crime;]~~

~~[(b) may establish additional subcommittees to assist in accomplishing its duties; and]~~

~~[(c) shall select and appoint persons pursuant to the provisions of Section 77-37-5 to act as chairpersons of the judicial district victims' rights committees and provide assistance to the committees in their operations.]~~

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~~— (c) advocate the adoption, repeal, or modification of laws or proposed legislation in the interest of victims of crime;~~

~~— (d) in accordance with Section 77-37-5:~~

~~— (i) select a chair of each committee;~~

~~— (ii) appoint additional members to serve on a committee;~~

~~— (iii) review the minutes of all committee meetings for any appropriate action; and~~

~~— (iv) hear complaints not resolved by a committee;~~

~~— (e) provide local law enforcement with materials to inform a victim of a sexual offense of the right to request testing of the convicted sexual offender and of the victim as provided in Section 76-5-502; and~~

~~— (f) establish subcommittees to:~~

~~— (i) evaluate the most effective methods for eliminating victimization;~~

~~— (ii) identify and disseminate best practices for the evaluation, treatment, and monitoring of offenders;~~

~~— (iii) establish an application and review process for treatment providers who provide services for victims and offenders;~~

~~— (iv) promote evidence-based practices and trauma informed care to enhance the quality and continuity of treatment;~~

~~— (v) focus on issues related to:~~

~~— (A) rape and sexual assault; and~~

~~— (B) intimate partner and domestic violence; and~~

~~— (vi) accomplish the duties of the committee.~~

~~— Section 5. Section 63M-7-605.1 is enacted to read:~~

~~— **63M-7-605.1. Director -- Appointment and duties:**~~

~~— (1) The executive director of the Commission on Criminal and Juvenile Justice shall appoint a director to carry out the provisions of this chapter.~~

~~— (2) The director shall:~~

~~— (a) have an understanding of the issues faced by crime victims in the criminal justice system; and~~

~~— (b) perform the following duties:~~

~~— (i) serve as a liaison between the council and the organizations or individuals who~~

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~~work with victims in the community;~~

~~—— (ii) provide assistance to the council, committees, and subcommittees;~~

~~—— (iii) receive complaints of violations from victims and other interested parties under:~~

~~—— (A) Title 77, Chapter 38, Rights of Crime Victims Act;~~

~~—— (B) Title 77, Chapter 38a, Crime Victims Restitution Act; and~~

~~—— (C) Utah Constitution, Article I, Section 28;~~

~~—— (iv) ensure complaints under Subsection (2)(b)(iii) are forwarded to the appropriate committee to be addressed; and~~

~~—— (v) act in any other capacity or perform any other acts necessary for the council to successfully fulfill the council's statutory duties and objectives.~~

~~—— Section 6. Section 77-37-2 is amended to read:~~

~~—— 77-37-2. **Definitions.**~~

~~—— [In] As used in this chapter:~~

~~—— (1) "Child" means a person who is younger than 18 years of age, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.~~

~~—— (2) "Committee" means a judicial victims' rights committee described in Section 77-37-5.~~

~~—— (3) "Council" means the Utah Council on Victims of Crime created in Section 63M-7-601.~~

~~—— [(2)] (4) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.~~

~~—— [(3)] (5) "Victim" means a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.~~

~~—— [(4)] (6) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.~~

~~—— Section 7. Section 77-37-5 is amended to read:~~

~~—— 77-37-5. **Remedies -- Judicial District Victims' Rights Committee.**~~

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~~—— (1) In each judicial district, [the Utah Council on Victims of Crime, established in Section 63M-7-601, shall appoint a person who shall chair a] there is created a judicial district victims' rights committee consisting of:~~

~~—— (a) a county [attorney] or district attorney;~~

~~—— (b) a sheriff;~~

~~—— (c) a corrections field services administrator;~~

~~—— (d) an appointed victim advocate;~~

~~—— (e) a municipal attorney;~~

~~—— (f) a municipal chief of police; [and]~~

~~—— (g) another individual, appointed by the council to serve as the committee chair; and~~

~~—— [(g)] (h) other representatives [as appropriate] appointed by the council.~~

~~—— [(2) The committee shall meet at least semiannually to review progress and problems related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, Title 77, Chapter 38a, Crime Victims Restitution Act, and Utah Constitution Article I, Section 28. Victims and other interested parties may submit matters of concern to the victims' rights committee. The committee may hold a hearing open to the public on any appropriate matter of concern and may publish its findings. These matters shall also be considered at the meetings of the victims' rights committee. The committee shall forward minutes of all meetings to the Utah Council on Victims of Crime for review and other appropriate action.]~~

~~—— [(3) If a victims' rights committee is unable to resolve a complaint, it may refer the complaint to the Utah Council on Victims of Crime.]~~

~~—— [(4) The Utah Office for Victims of Crime shall provide materials to local law enforcement to inform every victim of a sexual offense of the right to request testing of the convicted sexual offender and of the victim as provided in Section 76-5-502.]~~

~~—— (2) (a) Each committee shall hold meetings, in compliance with Title 52, Chapter 4, Open and Public Meetings Act, at least twice each year to review progress and problems related to:~~

~~—— (i) this chapter;~~

~~—— (ii) Title 77, Chapter 38, Rights of Crime Victims Act;~~

~~—— (iii) Title 77, Chapter 38a, Crime Victims Restitution Act; and~~

~~—— (iv) Utah Constitution, Article I, Section 28.~~

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~~—— (b) A committee may schedule additional meetings to consider a complaint referred to the committee by the director of the council.~~

~~—— (c) If a committee is unable to resolve a complaint, the committee shall refer the complaint to the council.~~

~~—— [(5)] (3) (a) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual.~~

~~—— (b) For all other violations, if the committee or council finds a violation of a victim's right, it shall refer the matter to the appropriate court for further proceedings consistent with Subsection 77-38-11(2).~~

~~—— (c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of Crime Victims Act, does not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.~~

~~—— [(6)] (4) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.~~

~~—— Section 8. Section 77-38-11 is amended to read:~~

~~—— **77-38-11. Enforcement -- Appellate review -- No right to money damages.**~~

~~—— (1) If [a person] an individual acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief, including prospective injunctive relief, may be brought against the individual and the governmental entity that employs the individual.~~

~~—— (2) (a) The victim of a crime or representative of a victim of a crime, including any [Victims' Rights Committee as] judicial district victims' rights committee, defined in Section 77-37-5, or the Utah Council on Victims of Crime, created in Section 63M-7-601, may:~~

~~—— (i) bring an action for declaratory relief or for a writ of mandamus defining or enforcing the rights of victims and the obligations of government entities under this chapter;~~

~~—— (ii) petition to file an amicus brief in any court in any case affecting crime victims; and~~

~~—— (iii) after giving notice to the prosecution and the defense, seek an appropriate remedy for a violation of a victim's right from the judge assigned to the case involving the issue as~~

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~~provided in Section 77-38-11.~~

~~—— (b) Adverse rulings on these actions or on a motion or request brought by a victim of a crime or a representative of a victim of a crime may be appealed under the rules governing appellate actions, provided that an appeal may not constitute grounds for delaying any criminal or juvenile proceeding.~~

~~—— (c) An appellate court shall review all properly presented issues, including issues that are capable of repetition but would otherwise evade review.~~

~~—— (3) (a) Upon a showing that the victim has not unduly delayed in seeking to protect the victim's right, and after hearing from the prosecution and the defense, the judge shall determine whether a right of the victim has been violated.~~

~~—— (b) If the judge determines that a victim's right has been violated, the judge shall proceed to determine the appropriate remedy for the violation of the victim's right by hearing from the victim and the parties, considering all factors relevant to the issue, and then awarding an appropriate remedy to the victim. The court shall reconsider any judicial decision or judgment affected by a violation of the victim's right and determine whether, upon affording the victim the right and further hearing from the prosecution and the defense, the decision or judgment would have been different. If the court's decision or judgment would have been different, the court shall enter the new different decision or judgment as the appropriate remedy. If necessary to protect the victim's right, the new decision or judgment shall be entered nunc pro tunc to the time the first decision or judgment was reached. In no event shall the appropriate remedy be a new trial, damages, attorney fees, or costs.~~

~~—— (c) The appropriate remedy shall include only actions necessary to provide the victim the right to which the victim was entitled and may include reopening previously held proceedings. Subject to Subsection (3)(d), the court may reopen a sentence or a previously entered guilty or no contest plea only if doing so would not preclude continued prosecution or sentencing the defendant and would not otherwise permit the defendant to escape justice. Any remedy shall be tailored to provide the victim an appropriate remedy without violating any constitutional right of the defendant.~~

~~—— (d) If the court sets aside a previously entered plea of guilty or no contest, and thereafter continued prosecution of the charge is held to be prevented by the defendant's having been previously put in jeopardy, the order setting aside the plea is void and the plea is~~

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~~reinstated as of the date of its original entry.~~

~~—— (e) The court may not award as a remedy the dismissal of any criminal charge.~~

~~—— (f) The court may not award any remedy if the proceeding that the victim is challenging occurred more than 90 days before the victim filed an action alleging the violation of the right.~~

~~—— (4) The failure to provide the rights in this chapter or Title 77, Chapter 37, Victims' Rights, shall not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.~~

~~—— Section 9. **Repealer.**~~

~~—— This bill repeals:~~

~~—— Section **63M-7-605, Staffing.**~~

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