

VICTIMS' RIGHTS REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Judy Weeks Rohner

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends victims' rights requirements.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ in certain circumstances, requires a prosecuting entity to provide notice of a plea bargain to a victim.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-38-2, as last amended by Laws of Utah 1997, Chapter 103

77-38-3, as last amended by Laws of Utah 2021, Chapter 260

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

Section 1. Section **77-38-2** is amended to read:

77-38-2. Definitions.

[For the purposes of] As used in this chapter and the Utah Constitution:



28 (1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or
29 disparage.

30 (2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.

31 (3) "Fairness" means treating the crime victim reasonably, even-handedly, and
32 impartially.

33 (4) "Harassment" means treating the crime victim in a persistently annoying manner.

34 (5) "Important criminal justice hearings" or "important juvenile justice hearings" means
35 the following proceedings in felony criminal cases or cases involving a minor's conduct which
36 would be a felony if committed by an adult:

37 (a) any preliminary hearing to determine probable cause;

38 (b) any court arraignment where practical;

39 (c) any court proceeding involving the disposition of charges against a defendant or
40 minor or the delay of a previously scheduled trial date but not including any unanticipated
41 proceeding to take an admission or a plea of guilty as charged to all charges previously filed or
42 any plea taken at an initial appearance;

43 (d) any court proceeding to determine whether to release a defendant or minor and, if
44 so, under what conditions release may occur, excluding any such release determination made at
45 an initial appearance;

46 (e) any criminal or delinquency trial, excluding any actions at the trial that a court
47 might take in camera, in chambers, or at a sidebar conference;

48 (f) any court proceeding to determine the disposition of a minor or sentence, fine, or
49 restitution of a defendant or to modify any disposition of a minor or sentence, fine, or
50 restitution of a defendant; and

51 (g) any public hearing concerning whether to grant a defendant or minor parole or other
52 form of discretionary release from confinement.

53 (6) "Reliable information" means information worthy of confidence, including any
54 information whose use at sentencing is permitted by the United States Constitution.

55 (7) "Representative of a victim" means a person who is designated by the victim or
56 designated by the court and who represents the victim in the best interests of the victim.

57 (8) "Respect" means treating the crime victim with regard and value.

58 (9) (a) "Victim of a crime" means any natural person against whom the charged crime

59 or conduct is alleged to have been perpetrated or attempted by the defendant or minor
60 personally or as a party to the offense or conduct or, in the discretion of the court, against
61 whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural
62 person is the accused or appears to be accountable or otherwise criminally responsible for or
63 criminally involved in the crime or conduct or a crime or act arising from the same conduct,
64 criminal episode, or plan as the crime is defined under the laws of this state.

65 (b) For purposes of the right to be present, "victim of a crime" does not mean any
66 person who is in custody as a pretrial detainee, as a prisoner following conviction for an
67 offense, or as a juvenile who has committed an act that would be an offense if committed by an
68 adult, or who is in custody for mental or psychological treatment.

69 (c) For purposes of the right to be present and heard at a public hearing as provided in
70 Subsection [77-38-2\(5\)\(g\)](#) and the right to notice as provided in Subsection [77-38-3\(7\)\(a\)](#),
71 "victim of a crime" includes any victim originally named in the allegation of criminal conduct
72 who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

73 (10) (a) "Violent criminal offense" means a criminal offense involving violence or
74 physical harm, or threat of violence or physical harm, or an attempt to commit a criminal
75 offense involving violence or physical harm.

76 (b) "Violent criminal offense" includes the commission or the attempt to commit:

77 (i) any sexual offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or Title
78 76, Chapter 5b, Part 2, Sexual Exploitation;

79 (ii) human trafficking for sexual exploitation under Section [76-5-308](#); or

80 (iii) aggravated human trafficking for forced sexual exploitation under Section
81 [76-5-310](#).

82 Section 2. Section **77-38-3** is amended to read:

83 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
84 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**
85 **order.**

86 (1) Within seven days after the day on which felony criminal charges are filed against a
87 defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and
88 locatable victims of the crime contained in the charges, except as otherwise provided in this
89 chapter.

90 (2) The initial notice to the victim of a crime shall provide information about electing
91 to receive notice of subsequent important criminal justice hearings listed in Subsections
92 77-38-2(5)(a) through (f) and rights under this chapter.

93 (3) The prosecuting agency shall provide notice to a victim of a crime:

94 (a) for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a)
95 through (f), which the victim has requested; and

96 (b) for a restitution request to be submitted in accordance with Section 77-38b-202.

97 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices
98 in any reasonable manner, including telephonically, electronically, orally, or by means of a
99 letter or form prepared for this purpose.

100 (b) In the event of an unforeseen important criminal justice hearing, listed in
101 Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith
102 attempt to contact the victim by telephone shall be considered sufficient notice, provided that
103 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

104 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices
105 for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for
106 victims of crimes to be notified.

107 (b) The court shall consider whether any notification system that the court might use to
108 provide notice of judicial proceedings to defendants could be used to provide notice of judicial
109 proceedings to victims of crimes.

110 (6) A defendant or, if it is the moving party, the Division of Adult Probation and
111 Parole, shall give notice to the responsible prosecuting agency of any motion for modification
112 of any determination made at any of the important criminal justice hearings provided in
113 Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so
114 that the prosecuting agency may comply with the prosecuting agency's notification obligation.

115 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and
116 Parole for the important criminal justice hearing under Subsection 77-38-2(5)(g).

117 (b) The board may provide notice in any reasonable manner, including telephonically,
118 electronically, orally, or by means of a letter or form prepared for this purpose.

119 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give
120 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through

121 (f) only where the victim has responded to the initial notice, requested notice of subsequent
122 proceedings, and provided a current address and telephone number if applicable.

123 (9) To facilitate the payment of restitution and the notice of hearings regarding
124 restitution, a victim who seeks restitution and notice of restitution hearings shall provide the
125 court with the victim's current address and telephone number.

126 (10) (a) Law enforcement and criminal justice agencies shall refer any requests for
127 notice or information about crime victim rights from victims to the responsible prosecuting
128 agency.

129 (b) In a case in which the Board of Pardons and Parole is involved, the responsible
130 prosecuting agency shall forward any request for notice the prosecuting agency has received
131 from a victim to the Board of Pardons and Parole.

132 (11) In all cases where the number of victims exceeds 10, the responsible prosecuting
133 agency may send any notices required under this chapter in the prosecuting agency's discretion
134 to a representative sample of the victims.

135 (12) (a) A victim's address, telephone number, and victim impact statement maintained
136 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
137 Services, Department of Corrections, Utah State Courts, and Board of Pardons and Parole, for
138 purposes of providing notice under this section, are classified as protected under Subsection
139 [63G-2-305](#)(10).

140 (b) The victim's address, telephone number, and victim impact statement is available
141 only to the following persons or entities in the performance of their duties:

142 (i) a law enforcement agency, including the prosecuting agency;

143 (ii) a victims' right committee as provided in Section [77-37-5](#);

144 (iii) a governmentally sponsored victim or witness program;

145 (iv) the Department of Corrections;

146 (v) the Utah Office for Victims of Crime;

147 (vi) the Commission on Criminal and Juvenile Justice;

148 (vii) the Utah State Courts; and

149 (viii) the Board of Pardons and Parole.

150 (13) ~~[The]~~ Except as provided in Subsection (15), the notice provisions as provided in
151 this section do not apply to misdemeanors as provided in Section [77-38-5](#) and to important

152 juvenile justice hearings as provided in Section 77-38-2.

153 (14) (a) When a defendant is charged with a felony crime under Sections 76-5-301
154 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections
155 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding
156 aggravated exploitation of prostitution, the court may, during any court hearing where the
157 defendant is present, issue a pretrial criminal no contact order:

158 (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise
159 communicating with the victim directly or through a third party;

160 (ii) ordering the defendant to stay away from the residence, school, place of
161 employment of the victim, and the premises of any of these, or any specified place frequented
162 by the victim or any designated family member of the victim directly or through a third party;
163 and

164 (iii) ordering any other relief that the court considers necessary to protect and provide
165 for the safety of the victim and any designated family or household member of the victim.

166 (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a
167 third degree felony.

168 (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no
169 contact order that has been issued if the victim can be located with reasonable effort.

170 (ii) The court shall also transmit the pretrial criminal no contact order to the statewide
171 domestic violence network in accordance with Section 78B-7-113.

172 (15) A prosecuting entity shall, within seven days after the day on which the
173 prosecuting entity offers a plea bargain to a defendant charged with a violent criminal offense,
174 provide to each victim who elects to receive notice under Subsection (2), notice of the terms of
175 the offer made.