

CRIMINAL PROSECUTION MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses criminal prosecutions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies the rights of a defendant in a criminal prosecution;
- ▶ provides a defendant with a right to depose a witness in a criminal prosecution if the defendant is charged by information with a class A misdemeanor or a felony;
- ▶ provides exceptions to a defendant's right to depose a witness in a criminal prosecution;
- ▶ addresses a deposition by a self-represented defendant in a criminal prosecution;
- ▶ grants a defendant with a right to subpoena a witness to testify at a hearing in certain circumstances;
- ▶ addresses the conduct for a criminal deposition and the examination of a witness at a hearing when a defendant has been unable to depose a witness or the witness terminates the deposition;
- ▶ addresses reliable hearsay in preliminary hearings;
- ▶ requires a prosecuting attorney to provide certain recordings to a defendant regarding witness statements in preliminary hearings;
- ▶ repeals a statute regarding the title of a chapter; and



28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 77-1-6, as enacted by Laws of Utah 1980, Chapter 15

36 77-7a-103, as enacted by Laws of Utah 2016, Chapter 410

37 ENACTS:

38 77-7a-201, Utah Code Annotated 1953

39 77-7a-202, Utah Code Annotated 1953

40 REPEALS:

41 77-7a-101, as enacted by Laws of Utah 2016, Chapter 410



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

44 Section 1. Section 77-1-6 is amended to read:

45 **77-1-6. Rights of defendant in criminal prosecution -- Depositions.**

46 ~~[(1) In criminal prosecutions the defendant is entitled]~~

47 (1) As used in this section:

48 (a) "Victim advocate" means the same as that term is defined in Section 77-38-403.

49 (b) (i) "Witness" means any individual who by reason of having relevant information is
50 called or is likely to be called to testify at trial.

51 (ii) "Witness" includes any alleged victim of an offense for which the defendant is
52 charged.

53 (2) In a criminal prosecution, a defendant has a right:

54 (a) [~~to~~] to appear in person and defend in person or by counsel;

55 (b) [~~to~~] to receive a copy of the accusation filed against [him] the defendant;

56 (c) [~~to~~] to testify in [his] the defendant's own behalf;

57 (d) [~~To be confronted by the witnesses against him;] to confront a witness testifying~~
58 against the defendant;

59 (e) ~~[To]~~ to have compulsory process to [insure] ensure the attendance of [witnesses in
 60 his] a witness on the defendant's behalf;

61 (f) if the defendant is charged by information with a class A misdemeanor or a felony,
 62 to depose a witness by oral examination on any matter that is reasonably related to the offense
 63 charged or will aid the defense of the defendant, including the credibility of the witness;

64 ~~[(f)]~~ (g) [To] to a speedy public trial by an impartial jury of the county or district where
 65 the offense is alleged to have been committed;

66 ~~[(g)]~~ (h) [To] to the right of appeal in all cases; and

67 ~~[(h)]~~ (i) [To] to be admitted to bail in accordance with [provisions of law, or be entitled
 68 to a trial within 30 days after arraignment if unable to post bail and if the business of the court
 69 permits.] Chapter 20, Bail.

70 ~~[(2)]~~ (3) In addition to the rights described in Subsection (2):

71 (a) ~~[No person shall]~~ an individual may not be put twice in jeopardy for the same
 72 offense;

73 (b) ~~[No accused person shall]~~ an accused individual may not, before final judgment, be
 74 compelled to:

75 (i) advance money or fees to secure rights guaranteed by the [Constitution]
 76 constitution or the laws of Utah[, or to]; or

77 (ii) pay the costs of those rights when received;

78 (c) ~~[No person shall]~~ an individual may not be compelled to give evidence against
 79 [himself] oneself;

80 (d) ~~[A wife shall not be compelled to testify against her husband nor a husband against~~
 81 his wife] a spouse may not be compelled to testify against the other spouse; and

82 (e) ~~[No person shall]~~ an individual may not be convicted unless:

83 (i) by verdict of a jury[, or];

84 (ii) upon a plea of guilty or no contest[, or];

85 (iii) upon a judgment of a court when trial by jury has been waived [or]; or

86 (iv) in case of an infraction, upon a judgment by a magistrate.

87 (4) (a) Notwithstanding Subsection (2)(f), a defendant does not have a right:

88 (i) to depose a witness that is younger than 14 years old at the time of the deposition;

89 (ii) to depose a witness more than once; or

90 (iii) to be physically present for the deposition of a witness who is an alleged victim of
91 the offense for which the defendant is charged.

92 (b) A defendant may not depose a witness who is 14 years old or older but younger
93 than 18 years old, unless the defendant demonstrates to the court that there are reasonable
94 protections in place to protect the witness, including the presence of the witness's parent or
95 guardian or a victim advocate at the deposition.

96 (c) If a defendant is representing oneself, the defendant may not directly depose a
97 witness who is an alleged victim of the offense but the defendant may request that the court
98 appoint counsel for the purpose of conducting a deposition of the witness on behalf of the
99 defendant.

100 (d) A deposition of a witness must be conducted:

101 (i) in a manner in which the witness is treated with fairness, respect, and dignity, and is
102 free from harassment and abuse; and

103 (ii) in accordance with Rule 16 of the Utah Rules of Criminal Procedure.

104 (e) A witness, who is an alleged victim of the offense for which the defendant is
105 charged, may terminate a deposition only if a reasonable individual would conclude that the
106 deposition is not being conducted in accordance with Subsection (4)(d)(i).

107 (5) (a) A defendant has a right to subpoena a witness to testify at an evidentiary hearing
108 on any matter that is reasonably relevant to the offense charged or will aid the defense of the
109 defendant, including the credibility of the witness, if:

110 (i) the witness refuses or declines to be deposed; or

111 (ii) the witness terminates a deposition before the defendant or the defendant's attorney
112 is finished deposing the witness, unless the deposition is terminated in accordance with
113 Subsection (4)(e).

114 (b) A defendant does not have a right:

115 (i) to subpoena a witness under Subsection (5)(a) if the witness is younger than 14
116 years old at the time of the hearing;

117 (ii) to subpoena a witness under Subsection (5)(a) more than once; or

118 (iii) to be physically present for the testimony of a witness at an evidentiary hearing
119 described in Subsection (5)(a) if the witness is an alleged victim of the offense for which the
120 defendant is charged.

121 (c) A subpoena shall comply with the requirements of Rule 14 of the Utah Rules of
122 Criminal Procedure.

123 (6) (a) If a defendant is representing oneself, the defendant may not directly examine a
124 witness, who is an alleged victim of the offense, at an evidentiary hearing described in
125 Subsection (5)(a) but the defendant may request that the court appoint counsel for the purpose
126 of examining the witness on behalf of the defendant.

127 (b) An examination of a witness at an evidentiary hearing described Subsection (5)(a)
128 must be conducted:

129 (i) in a manner in which the witness is treated with fairness, respect, and dignity, and is
130 free from harassment and abuse; and

131 (ii) in accordance with the Utah Rules of Evidence.

132 Section 2. Section 77-7a-103 is amended to read:

133 **CHAPTER 7a. CRIMINAL INVESTIGATION RECORDINGS**

134 **Part 1. Law Enforcement Use of Body-worn Cameras**

135 **77-7a-103. Definitions.**

136 ~~[(+)]~~ As used in this part:

137 (1) (a) "Body-worn camera" means a video recording device that is carried by, or worn
138 on the body of, a law enforcement officer and that is capable of recording the operations of the
139 officer.

140 (b) "Body-worn camera" does not include a dashboard mounted camera or a camera
141 intended to record clandestine investigation activities.

142 (2) "Law enforcement agency" means any public agency having general police power
143 and charged with making arrests in connection with enforcement of the criminal statutes and
144 ordinances of this state or any political subdivision.

145 (3) "Law enforcement encounter" means:

146 (a) an enforcement stop;

147 (b) a dispatched call;

148 (c) a field interrogation or interview;

149 (d) use of force;

150 (e) execution of a warrant;

151 (f) a traffic stop, including:

- 152 (i) a traffic violation;
- 153 (ii) stranded motorist assistance; and
- 154 (iii) any crime interdiction stop; or
- 155 (g) any other contact that becomes adversarial after the initial contact in a situation that
- 156 would not otherwise require recording.

157 Section 3. Section **77-7a-201** is enacted to read:

158 **Part 2. Recording Communications for Preliminary Hearings**

159 **77-7a-201. Definitions.**

160 As used in this part:

161 (1) "Communication" means any transmission of information between or among two or
162 more persons by written, oral, electronic, or any other means.

163 (2) "Law enforcement agency" means the same as that term is defined in Section
164 [77-7a-103](#).

165 (3) "Prosecuting agency" means the office of the prosecuting attorney, including the
166 prosecuting attorney and any staff for the office.

167 (4) "Witness" means the same as that term is defined in Section [77-1-6](#).

168 Section 4. Section **77-7a-202** is enacted to read:

169 **77-7a-202. Recording communications for preliminary hearing -- Reliable**
170 **hearsay evidence.**

171 (1) If a prosecuting attorney seeks to admit a written statement of a witness as reliable
172 hearsay in a preliminary hearing, the prosecuting attorney shall provide the defendant with all
173 communications between the witness and the prosecuting agency or law enforcement agency
174 regarding the drafting or completion of the written statement.

175 (2) The prosecuting agency shall provide the defendant with an audio or visual
176 recording of any oral communication under Subsection (1).

177 (3) A written statement is not reliable hearsay if the prosecuting attorney does not
178 provide the defendant with all communications described in Subsection (1) at least 48 hours
179 before the day on which the preliminary hearing is held.

180 Section 5. **Repealer.**

181 This bill repeals:

182 Section **[77-7a-101](#), Title.**