

LIMITATIONS ON THE USE OF POLYGRAPHS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill limits the use of a polygraph on a victim of a sexual offense.

Highlighted Provisions:

This bill:

- ▶ renames a chapter to Title 77, Chapter 37, Victims and Witnesses of Crime;
- ▶ defines terms; and
- ▶ limits the use of a polygraph on a victim of a sexual offense.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

80-6-604, as last amended by Laws of Utah 2023, Chapter 237

ENACTS:

77-37-201, Utah Code Annotated 1953

77-37-301, Utah Code Annotated 1953

77-37-401, Utah Code Annotated 1953



28 [77-37-402](#), Utah Code Annotated 1953

29

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

31 Section 1. Section **77-37-2** is amended to read:

32 **CHAPTER 37. VICTIMS AND WITNESSES OF CRIME**

33 **Part 1. General Provisions**

34 **77-37-2. Definitions.**

35 [~~It~~] As used in this chapter:

36 (1) "Child" means [~~a person~~] an individual who is younger than 18 years [~~of age~~] ~~Ĥ~~→ [
 36a child] old ←~~Ĥ~~ ,

37 unless otherwise specified in statute. The rights to information as extended in this chapter also
 38 apply to the parents, custodian, or legal guardians of children.

39 (2) "Family member" means spouse, child, sibling, parent, grandparent, or legal
 40 guardian.

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

44 (3) "Law enforcement officer" means the same as that term is defined in Section
 45 [53-13-103](#).

46 (4) "Sexual offense" means any conduct described in:

47 (a) Title 76, Chapter 5, Part 4, Sexual Offenses;

48 (b) Title 76, Chapter 5b, Part 2, Sexual Exploitation;

49 (c) Section [76-7-102](#), incest;

50 (d) Section [76-9-702](#), lewdness; or

51 (e) Section [76-9-702.1](#), sexual battery.

52 (5) "Victim" means an individual, including a minor, against whom an offense has
 53 been allegedly committed.

54 [~~(4)~~] (6) "Witness" means [~~any person~~] an individual who has been subpoenaed or is
 55 expected to be summoned to testify for the prosecution or who by reason of having relevant
 56 information is subject to call or likely to be called as a witness for the prosecution, whether any
 57 action or proceeding has commenced.

58 Section 2. Section **77-37-201** is enacted to read:

59 **Part 2. Reserved**

60 77-37-201. Reserved.

61 New text.

62 Section 3. Section 77-37-301 is enacted to read:

63 **Part 3. Reserved**

64 77-37-301. Reserved.

65 Reserved.

66 Section 4. Section 77-37-401 is enacted to read:

67 **Part 4. Additional Protections for Victims**

68 77-37-401. Definitions.

69 As used in this part:

70 (1) "Polygraph examination" means a procedure involving the use of an instrument or
71 mechanical device that is:

72 (a) designed to detect and record changes in the physiological characteristics of an
73 individual, including the individual's pulse or breathing rate; and

74 (b) used to determine whether an individual is being truthful.

75 (2) "Polygraph examination" includes a lie detector test.

76 Section 5. Section 77-37-402 is enacted to read:

77 77-37-402. Prohibition on the use of a polygraph examination on a victim of a
78 **sexual offense.**

79 (1) A law enforcement officer, a prosecuting attorney, or other governmental official
80 may not:

81 (a) request or compel a victim of a sexual offense to submit to a polygraph examination
82 during the course of a criminal investigation or prosecution of a sexual offense; or

83 (b) use a polygraph examination as a condition of proceeding with a criminal
84 investigation or prosecution of a sexual offense.

85 (2) The refusal of a victim of a sexual offense to submit to a polygraph examination
86 may not prevent the investigation, charging, or prosecution of a sexual offense.

87 Section 6. Section 77-38-11 is amended to read:

88 **77-38-11. Enforcement -- Appellate review -- No right to money damages.**

89 (1) If a person acting under color of state law willfully or wantonly fails to perform

90 duties so that the rights in this chapter are not provided, an action for injunctive relief,
91 including prospective injunctive relief, may be brought against the individual and the
92 governmental entity that employs the individual.

93 (2) (a) The victim of a crime or representative of a victim of a crime, including any
94 Victims' Rights Committee as defined in Section 77-37-5 may:

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

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

98 (iii) after giving notice to the prosecution and the defense, seek an appropriate remedy
99 for a violation of a victim's right from the judge assigned to the case involving the issue as
100 provided in Section 77-38-11.

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

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

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

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

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

128 (d) If the court sets aside a previously entered plea of guilty or no contest, and
129 thereafter continued prosecution of the charge is held to be prevented by the defendant's having
130 been previously put in jeopardy, the order setting aside the plea is void and the plea is
131 reinstated as of the date of its original entry.

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

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

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

140 Section 7. Section **80-6-604** is amended to read:

141 **80-6-604. Victim's rights -- Access to juvenile court records.**

142 (1) (a) If a minor is charged in a petition or information under this chapter for an
143 offense that if committed by an adult would be a felony or a class A or class B misdemeanor, a
144 victim of any act charged in the petition or information shall, upon request, be afforded all
145 rights afforded to victims in:

146 (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

147 (ii) [~~Title 77, Chapter 37, Victims' Rights~~] Title 77, Chapter 37, Victims and Witnesses
148 of Crime;

149 (iii) Title 77, Chapter 38, Crime Victims; and

150 (iv) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

151 (b) The notice provisions in Section [77-38-3](#) do not apply to important juvenile justice

152 hearings as defined in Section [77-38-2](#).

153 (2) A victim, upon request to the appropriate juvenile court personnel, shall have the
154 right to inspect and duplicate juvenile court records related to the offense against the victim
155 that have not been expunged under Part 10, Juvenile Records and Expungement, concerning:

156 (a) the scheduling of any juvenile court hearings on a petition or information filed
157 under this chapter;

158 (b) any findings made by the juvenile court; and

159 (c) any order or disposition imposed by the juvenile court.

160 Section 8. **Effective date.**

161 This bill takes effect on May 1, 2024.