

HB0276S01 compared with HB0276

~~text~~ shows text that was in HB0276 but was deleted in HB0276S01.

text shows text that was not in HB0276 but was inserted into HB0276S01.

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Representative Melissa G. Ballard proposes the following substitute bill:

CRIME VICTIMS ~~REPARATIONS~~ RESTITUTION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: ~~}~~ **Melissa G. Ballard**

Senate Sponsor: ~~_____~~ Todd D. Weiler

LONG TITLE

General Description:

This bill modifies provisions related to victim reparations and the Utah Office for Victims of Crimes.

Highlighted Provisions:

This bill:

~~} → permits the Utah Office for Victims of Crimes to establish the option to award a lump-sum payment for a crime-related death or disability through administrative rule;~~

- ~~}~~ ▶ requires law enforcement agencies to provide copies of investigative reports to the Utah Office for Victims of Crimes to assist the office in performing its official duties;
- ▶ establishes timelines, procedures, and sharing restrictions in relation to the request

HB0276S01 compared with HB0276

and provision of documents;

- ▶ establishes a criminal penalty for unauthorized use or distribution of an investigative report; and
- ▶ makes conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-7-502, as last amended by Laws of Utah 2022, Chapters 148, 185 and 430

~~{ **63M-7-511**, as last amended by Laws of Utah 2023, Chapter 158~~

~~‡ **77-37-4**, as last amended by Laws of Utah 2022, Chapter 335~~

ENACTS:

63M-7-527, Utah Code Annotated 1953

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

Section 1. Section **63M-7-502** is amended to read:

63M-7-502. Definitions.

As used in this part:

- (1) "Accomplice" means an individual who has engaged in criminal conduct as described in Section 76-2-202.
- (2) "Advocacy services provider" means the same as that term is defined in Section 77-38-403.
- (3) "Board" means the Crime Victim Reparations and Assistance Board created under Section 63M-7-504.
- (4) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- (5) "Claimant" means any of the following claiming reparations under this part:
 - (a) a victim;
 - (b) a dependent of a deceased victim; or

HB0276S01 compared with HB0276

(c) an individual or representative who files a reparations claim on behalf of a victim.

(6) "Child" means an unemancipated individual who is under 18 years old.

(7) "Collateral source" means any source of benefits or advantages for economic loss otherwise reparable under this part that the victim or claimant has received, or that is readily available to the victim from:

(a) the offender;

(b) the insurance of the offender or the victim;

(c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs;

(d) social security, Medicare, and Medicaid;

(e) state-required temporary nonoccupational income replacement insurance or disability income insurance;

(f) workers' compensation;

(g) wage continuation programs of any employer;

(h) proceeds of a contract of insurance payable to the victim for the loss the victim sustained because of the criminally injurious conduct;

(i) a contract providing prepaid hospital and other health care services or benefits for disability; or

(j) veteran's benefits, including veteran's hospitalization benefits.

(8) "Criminal justice system victim advocate" means the same as that term is defined in Section 77-38-403.

(9) (a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:

(i) is or would be subject to prosecution in this state under Section 76-1-201;

(ii) occurs or is attempted;

(iii) causes, or poses a substantial threat of causing, bodily injury or death;

(iv) is punishable by fine, imprisonment, or death if the individual engaging in the conduct possessed the capacity to commit the conduct; and

(v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is:

HB0276S01 compared with HB0276

(A) intended to cause bodily injury or death;

(B) punishable under Title 76, Chapter 5, Offenses Against the Individual; or

(C) chargeable as an offense for driving under the influence of alcohol or drugs.

(b) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and other conduct leading to the psychological injury of an individual resulting from living in a setting that involves a bigamous relationship.

(10) (a) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support.

(b) "Dependent" includes a child of the victim born after the victim's death.

(11) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

(12) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.

(13) "Director" means the director of the office.

(14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon an individual:

(a) convicted of a crime;

(b) found delinquent; or

(c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.

(15) (a) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss.

(b) "Economic loss" includes economic detriment even if caused by pain and suffering or physical impairment.

(c) "Economic loss" does not include noneconomic detriment.

HB0276S01 compared with HB0276

(16) "Elderly victim" means an individual who is 60 years old or older and who is a victim.

(17) "Fraudulent claim" means a filed reparations based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible.

(18) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.

(19) (a) "Interpersonal violence" means an act involving violence, physical harm, or a threat of violence or physical harm, that is committed by an individual who is or has been in a domestic, dating, sexual, or intimate relationship with the victim.

(b) "Interpersonal violence" includes any attempt, conspiracy, or solicitation of an act described in Subsection (19)(a).

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

~~[(20)]~~ (21) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

~~[(21)]~~ (22) (a) "Medical examination" means a physical examination necessary to document criminally injurious conduct.

(b) "Medical examination" does not include mental health evaluations for the prosecution and investigation of a crime.

~~[(22)]~~ (23) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct, is subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(23)]~~ (24) "Misconduct" means conduct by the victim that was attributable to the injury or death of the victim as provided by rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(24)]~~ (25) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this part.

~~[(25)]~~ (26) "Nongovernment organization victim advocate" means the same as that term is defined in Section 77-38-403.

~~[(26)]~~ (27) "Pecuniary loss" does not include loss attributable to pain and suffering

HB0276S01 compared with HB0276

except as otherwise provided in this part.

~~[(27)]~~ (28) "Offender" means an individual who has violated Title 76, Utah Criminal Code, through criminally injurious conduct regardless of whether the individual is arrested, prosecuted, or convicted.

~~[(28)]~~ (29) "Offense" means a violation of Title 76, Utah Criminal Code.

~~[(29)]~~ (30) "Office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this part.

~~[(30)]~~ (31) "Perpetrator" means the individual who actually participated in the criminally injurious conduct.

~~[(31)]~~ (32) "Reparations award" means money or other benefits provided to a claimant or to another on behalf of a claimant after the day on which a reparations claim is approved by the office.

~~[(32)]~~ (33) "Reparations claim" means a claimant's request or application made to the office for a reparations award.

~~[(33)]~~ (34) (a) "Reparations officer" means an individual employed by the office to investigate claims of victims and award reparations under this part.

(b) "Reparations officer" includes the director when the director is acting as a reparations officer.

~~[(34)]~~ (35) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured individual would have performed, not for income but the benefit of the injured individual or the injured individual's dependents if the injured individual had not been injured.

~~[(35)]~~ (36) (a) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of an individual.

(b) "Representative" does not include a service provider or collateral source.

~~[(36)]~~ (37) "Restitution" means the same as that term is defined in Section 77-38b-102.

~~[(37)]~~ (38) "Secondary victim" means an individual who is traumatically affected by the criminally injurious conduct subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(38)]~~ (39) "Service provider" means an individual or agency who provides a service to a victim for a monetary fee, except attorneys as provided in Section 63M-7-524.

HB0276S01 compared with HB0276

~~[(39)]~~ (40) "Serious bodily injury" means the same as that term is defined in Section 76-1-101.5.

~~[(40)]~~ (41) "Sexual assault" means any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.

~~[(41)]~~ (42) "Strangulation" means any act involving the use of unlawful force or violence that:

- (a) impedes breathing or the circulation of blood; and
- (b) is likely to produce a loss of consciousness by:
 - (i) applying pressure to the neck or throat of an individual; or
 - (ii) obstructing the nose, mouth, or airway of an individual.

~~[(42)]~~ (43) "Substantial bodily injury" means the same as that term is defined in Section 76-1-101.5.

~~[(43)]~~ (44) (a) "Victim" means an individual who suffers bodily or psychological injury or death as a direct result of:

- (i) criminally injurious conduct; or
- (ii) the production of pornography in violation of Section 76-5b-201 or 76-5b-201.1 if the individual is a minor.

(b) "Victim" does not include an individual who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(44)]~~ (45) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake.

Section 2. Section ~~{63M-7-511}~~; 63M-7-527 is ~~{amended to read:~~
~~—— 63M-7-511. Compensable losses and amounts.~~
~~—— A reparations award under this part may be made if:~~
~~—— (1) the reparations officer finds the reparations claim satisfies the requirements for the reparations award under the provisions of this part and the rules of the board;~~
~~—— (2) money is available in the fund;~~

HB0276S01 compared with HB0276

- ~~—— (3) the individual for whom the reparations award is to be paid is otherwise eligible under this part; and~~
- ~~—— (4) the reparations claim is for an allowable expense incurred by the victim, as follows:~~
- ~~—— (a) reasonable and necessary charges incurred for products, services, and accommodations;~~
- ~~—— (b) inpatient and outpatient medical treatment and physical therapy, subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
- ~~—— (c) mental health counseling that:~~
- ~~—— (i) is set forth in a mental health treatment plan that is approved before any payment is made by a reparations officer; and~~
- ~~—— (ii) qualifies within any further rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
- ~~—— (d) actual loss of past earnings and anticipated loss of future earnings because of a death or disability resulting from the personal injury at a rate not to exceed 66-2/3% of the individual's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation statute;~~
- ~~—— (e) a lump sum award in the event of a crime-related death or disability, as established by the board in administrative rule;~~
- ~~—— [(c)] (f) care of minor children enabling a victim or spouse of a victim, but not both, to continue gainful employment at a rate per child per week as determined under rules established by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
- ~~—— [(f)] (g) funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
- ~~—— [(g)] (h) loss of support to a dependent not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the individual's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute, whichever is less;~~
- ~~—— [(h)] (i) personal property necessary and essential to the health or safety of the victim as defined by rules made by the board in accordance with Title 63G, Chapter 3, Utah~~

HB0276S01 compared with HB0276

~~Administrative Rulemaking Act;~~

~~—— [(i)] (j) medical examinations, subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may allow for exemptions from Sections 63M-7-509, 63M-7-512, and 63M-7-513; and~~

~~—— [(j)] (k) for a victim of sexual assault who becomes pregnant from the sexual assault, health care:~~

~~—— (i) for the victim during the duration of the victim's pregnancy if the health care is related to or resulting from the sexual assault or the pregnancy; and~~

~~—— (ii) for the victim and the victim's child for one year after the day on which the victim's child is born.~~

~~—— Section 3. Section 63M-7-527 is enacted to read:~~

~~enacted to read:~~

63M-7-527. Determination of eligibility for victim reparations -- Law enforcement agency to provide investigative reports -- Restrictions on usage -- Criminal penalty.

(1) (a) Notwithstanding Section 63G-2-206, and subject to Subsection (1)(c), a law enforcement agency shall provide a ~~complete~~ copy of an investigative report ~~to~~ that describes the ~~office~~ facts and circumstances of a criminal episode within ~~five~~ 10 business days of the date the law enforcement agency receives a request for that information from the office.

(b) Before releasing an investigative report, the law enforcement agency may redact the following information:

(i) the name of:

(A) an undercover officer; or

(B) a confidential informant; and

(ii) any information that would:

(A) jeopardize the investigation; or

(B) disclose law enforcement techniques not generally known to the public.

(c) If a criminal episode remains under investigation when the office requests ~~a copy~~ of the report:

~~(b) The~~ an investigative report and the law enforcement agency determines that release of an investigative report at that time would jeopardize the investigation, a law enforcement

HB0276S01 compared with HB0276

agency may provide a detailed description of the following information, instead of providing an investigative report, within 10 business days of the date the law enforcement agency received the original request from the office:

- (i) the law enforcement agency's case number;
- (ii) the location where the criminal episode occurred;
- (iii) the criminal conduct under investigation;
- (iv) a summary of the criminal episode;
- (v) verification that the claimant is a victim of the criminal conduct;
- (vi) any information regarding whether the claimant's conduct may have contributed to

the criminal conduct; and

- (vii) whether the claimant was and continues to be cooperative with law enforcement.

(d) An investigative report provided ~~to the office shall:~~

~~— (i) provide;~~ under Subsection (1)(a), or information provided under Subsection (1)(c), shall contain sufficient information for the office to determine whether a ~~victim~~ claimant is eligible for a reparations award ~~;~~ and

~~— (ii) include all supplemental or follow-up reports written as of the date of production of the report.~~

~~— (c) under Sections 63M-7-509 and 63M-7-510.~~

(e) If an investigative report or information provided to the office by a law enforcement agency is not sufficient for the office to determine whether a claimant is eligible for a reparations award, the office may contact the law enforcement agency for additional information.

(f) (i) A law enforcement agency may ~~not refuse to release an investigative report on the grounds that the matter is under investigation~~; give written notice that a request may take up to an additional 10 business days to process if exigent circumstances exist, which include:

- (A) a circumstance where another agency is using relevant documents;
- (B) the request requires review of a voluminous amount of documents;
- (C) the request requires legal review;
- (D) the request requires extensive redaction;
- (E) the law enforcement agency is currently processing multiple requests; or
- (F) other exigent circumstances.

HB0276S01 compared with HB0276

(ii) Notice of an extended response time shall include the type of exigent circumstances involved and the new due date for the response.

(2) (a) An investigative report provided under this section may only be used for the purpose of carrying out the provisions of this part.

(b) An investigative report received under this section:

(i) may only be viewed by the office, the board, and legal counsel for the office; and

(ii) may not be further disclosed or disseminated for any reason.

(3) The office shall dispose of or retain an investigative report received under this section in a secure manner.

(4) An investigative report provided to the office under this section is not subject to the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) A public employee or other person who knowingly or intentionally uses or distributes an investigative report, or information received from an investigative report, in violation of the requirements of Subsection (2) is guilty of a class B misdemeanor.

Section ~~{4}~~3. Section 77-37-4 is amended to read:

77-37-4. Additional rights -- Children.

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

(1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.

(2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.

(3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.

(4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the

HB0276S01 compared with HB0276

criminal justice process.

(5) (a) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings. Except as provided in Subsection (6), recordings and transcripts of interviews may not be distributed, released, or displayed to anyone without a court order.

(b) A court order described in Subsection (5)(a):

(i) shall describe with particularity to whom the recording or transcript of the interview may be released and prohibit further distribution or viewing by anyone not named in the order; and

(ii) may impose restrictions on access to the materials considered reasonable to protect the privacy of the child victim.

(c) A parent or guardian of the child victim may petition a juvenile or district court for an order allowing the parent or guardian to view a recording or transcript upon a finding of good cause. The order shall designate the agency that is required to display the recording or transcript to the parent or guardian and shall prohibit viewing by anyone not named in the order.

(d) Following the conclusion of any legal proceedings in which the recordings or transcripts are used, the court shall order the recordings and transcripts in the court's file sealed and preserved.

(6) (a) The following offices and their designated employees may distribute and receive a recording or transcript to and from one another without a court order:

- (i) the Division of Child and Family Services;
- (ii) administrative law judges employed by the Department of Human Services;
- (iii) Department of Human Services investigators investigating the Division of Child and Family Services or investigators authorized to investigate under Section 80-2-703;
- (iv) an office of the city attorney, county attorney, district attorney, or attorney general;
- (v) a law enforcement agency;
- (vi) a Children's Justice Center established under Section 67-5b-102; or
- (vii) the attorney for the child who is the subject of the interview.

HB0276S01 compared with HB0276

(b) In a criminal case or in a juvenile court in which the state is a party:

(i) the parties may display and enter into evidence a recording or transcript in the course of a prosecution;

(ii) the state's attorney may distribute a recording or transcript to the attorney for the defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for discovery;

(iii) the attorney for the defendant or respondent may do one or both of the following:

(A) release the recording or transcript to an expert retained by the attorney for the defendant or respondent if the expert agrees in writing that the expert will not distribute, release, or display the recording or transcript to anyone without prior authorization from the court; or

(B) permit the defendant or respondent to view the recording or transcript, but may not distribute or release the recording or transcript to the defendant or respondent; and

(iv) the court shall advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be distributed, released, or displayed without prior authorization from the court.

(c) A court's failure to advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be used as a defense to prosecution for a violation of the disclosure rule.

(d) In an administrative case, pursuant to a written request, the Division of Child and Family Services may display, but may not distribute or release, a recording or transcript to the respondent or to the respondent's designated representative.

(e) (i) Within two business days of a request from a parent or guardian of a child victim, an investigative agency shall allow the parent or guardian to view a recording after the conclusion of an interview, unless:

(A) the suspect is a parent or guardian of the child victim;

(B) the suspect resides in the home with the child victim; or

(C) the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation.

(ii) If the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation, the parent or guardian may

HB0276S01 compared with HB0276

petition a juvenile or district court for an expedited hearing on whether there is good cause for the court to enter an order allowing the parent or guardian to view the recording in accordance with Subsection (5)(c).

(iii) A Children's Justice Center shall coordinate the viewing of the recording described in this Subsection (6)(e).

(f) A multidisciplinary team assembled by a Children's Justice Center or an interdisciplinary team assembled by the Division of Child and Family Services may view a recording or transcript, but may not receive a recording or transcript.

(g) A Children's Justice Center:

(i) may distribute or display a recording or transcript to an authorized trainer or evaluator for purposes of training or evaluation; and

(ii) may display, but may not distribute, a recording or transcript to an authorized trainee.

(h) An authorized trainer or instructor may display a recording or transcript according to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center or according to the authorized trainer's or instructor's scope of employment.

(i) (i) In an investigation under Section 53E-6-506, in which a child victim who is the subject of the recording or transcript has alleged criminal conduct against an educator, a law enforcement agency may distribute or release the recording or transcript to an investigator operating under State Board of Education authorization, upon the investigator's written request.

(ii) If the respondent in a case investigated under Section 53E-6-506 requests a hearing authorized under that section, the investigator operating under State Board of Education authorization may display, release, or distribute the recording or transcript to the prosecutor operating under State Board of Education authorization or to an expert retained by an investigator.

(iii) Upon request for a hearing under Section 53E-6-506, a prosecutor operating under State Board of Education authorization may display the recording or transcript to a pro se respondent, to an attorney retained by the respondent, or to an expert retained by the respondent.

(iv) The parties to a hearing authorized under Section 53E-6-506 may display and enter into evidence a recording or transcript in the course of a prosecution.

HB0276S01 compared with HB0276

(j) Notwithstanding any other provision in this section, a law enforcement agency shall provide an investigative report to the Utah Office for Victims of Crime as provided under Section 63M-7-527.

(7) Except as otherwise provided in this section, it is a class B misdemeanor for any individual to distribute, release, or display any recording or transcript of an interview of a child victim conducted at a Children's Justice Center.

Section ~~{5}~~4. **Effective date.**

This bill takes effect on May 1, 2024.