

CRIME VICTIM NOTIFICATION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill provides alleged victims with reasonable notice of a suspect's pending release from custody.

Highlighted Provisions:

This bill:

- ▶ provides notice of a suspect's pending release from custody to alleged victims who have properly registered with the appropriate notification system;
- ▶ lists the forms of communication that may be used to provide notice to an alleged victim;
- ▶ requires the arresting agency to inform an alleged victim of the right to register with the notification system and provide guidance on how to register;
- ▶ addresses application of other statutes; and
- ▶ makes technical changes.

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



28 **77-38-3**, as last amended by Laws of Utah 2016, Chapter 223

29
30 *Be it enacted by the Legislature of the state of Utah:*

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

32 **77-38-2. Definitions.**

33 For the purposes of this chapter and the Utah Constitution:

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

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

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

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

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

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

44 (b) any court arraignment where practical;

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

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

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

54 (f) any court proceeding to determine the disposition of a minor or sentence, fine, or
55 restitution of a defendant or to modify any disposition of a minor or sentence, fine, or
56 restitution of a defendant; and

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

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

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

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

(9) (a) "Victim of a crime" means any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

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

(c) For purposes of the right to be present and heard at a public hearing as provided in Subsection [77-38-2] (5)(g) and the right to notice as provided in Subsection 77-38-3[(7)](8)(a), "victim of a crime" includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

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

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

(1) (a) Before the release from custody of a suspect from a county jail or other adult correctional facility in the state, an alleged victim who has properly registered with the appropriate notification system shall be provided reasonable notice of the suspect's pending release.

(b) Notification may be provided in person, via telephone, text, email, or other electronic message communication.

(c) The arresting agency, at the time of arrest, or as soon as reasonably possible, shall inform the alleged victim of the alleged victim's right to register for notification of the suspect's pending release from custody and provide the alleged victim with reasonable guidance on how to register to receive notification.

(d) Notice under this Subsection (1) is in addition to and does not replace other notification requirements under other statutes.

~~[(1)]~~ (2) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.

~~[(2)]~~ (3) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.

~~[(3)]~~ (4) The prosecuting agency shall provide notice to a victim of a crime:

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

(b) for restitution requests to be submitted as provided in Subsection 77-38a-302(5)(d).

~~[(4)]~~ (5) (a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

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

~~[(5)]~~ (6) (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.

(b) The court shall also consider whether any notification system it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.

~~[(6)]~~ (7) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any

determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.

~~[(7)]~~ (8) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

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

~~[(8)]~~ (9) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.

~~[(9)]~~ (10) (a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.

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

~~[(10)]~~ (11) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.

~~[(11)]~~ (12) (a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63G-2-305(10).

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

- (i) a law enforcement agency, including the prosecuting agency;
- (ii) a victims' right committee as provided in Section 77-37-5;
- (iii) a governmentally sponsored victim or witness program;
- (iv) the Department of Corrections;

- (v) the Utah Office for Victims of Crime;
(vi) the Commission on Criminal and Juvenile Justice; and
(vii) the Board of Pardons and Parole.

~~[(12)]~~ (13) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

~~[(13)]~~ (14) (a) When a defendant is charged with a felony crime under Sections 76-5-301 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:

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

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

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

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel