

1 **VICTIM COMMUNICATIONS AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: Todd Weiler

7 **LONG TITLE**

8 **Committee Note:**

9 The Victim Advocate Confidentiality Task Force recommended this bill.

10 **General Description:**

11 This bill enacts provisions related to victim communications.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ enacts the Privileged Communications with Victim Advocates Act, including:
 - 15 • providing a purpose statement;
 - 16 • defining terms;
 - 17 • outlining the scope of the part;
 - 18 • providing for privilege for communications;
 - 19 • addressing government records; and
 - 20 • requiring certain notices;
- 21 ▶ addresses examination of victim advocate; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 [78B-1-137](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

30 ENACTS:

31 [77-38-401](#), Utah Code Annotated 1953

32 [77-38-402](#), Utah Code Annotated 1953

33 [77-38-403](#), Utah Code Annotated 1953

34 [77-38-404](#), Utah Code Annotated 1953

35 [77-38-405](#), Utah Code Annotated 1953

36 [77-38-406](#), Utah Code Annotated 1953



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

39 Section 1. Section [77-38-401](#) is enacted to read:

40 **Part 4. Privileged Communications with Victim Advocates Act.**

41 **[77-38-401](#). Title.**

42 This part is known as the "Privileged Communications with Victim Advocates Act."

43 Section 2. Section [77-38-402](#) is enacted to read:

44 **[77-38-402](#). Purpose.**

45 It is the purpose of this part to enhance and promote the mental, physical, and emotional
46 recovery of victims by restricting the circumstances under which communications with the
47 victim may be disclosed.

48 Section 3. Section [77-38-403](#) is enacted to read:

49 **[77-38-403](#). Definitions.**

50 As used in this part:

51 (1) (a) "Advocacy services" means assistance provided that supports, supplements,
52 intervenes, or links a victim or a victim's family with appropriate resources and services to
53 address the wide range of potential impacts of being victimized.

54 (b) "Advocacy services" do not include the practice of mental health therapy as defined
55 in Section [58-60-102](#).

56 (2) "Advocacy services provider" means an entity that has the primary focus of
57 providing advocacy services in general or with specialization to a specific crime type or
58 specific type of victimization.

59 (3) "Communication" means the giving of information by a victim to a victim
60 advocate, and includes a record created or maintained as a result of providing the information.

61 (4) "Criminal justice system victim advocate" means an individual who:

62 (a) is employed or authorized to volunteer by a government agency that possesses a
63 role or responsibility within the criminal justice system;

64 (b) has as a primary responsibility addressing the mental, physical, or emotional
65 recovery of victims;

66 (c) completes a minimum 40 hours of trauma-informed training:

67 (i) in crisis response, the effects of crime and trauma on victims, victim advocacy
68 services and ethics, informed consent, and this part regarding privileged communication; and

69 (ii) that have been approved or provided by the Utah Office for Victims of Crime; and

70 (d) is under the supervision of the director or director's designee of the government
71 agency.

72 (5) "Nongovernment organization victim advocate" means an individual who:

73 (a) is employed or authorized to volunteer by an nongovernment organization advocacy
74 services provider;

75 (b) has as a primary responsibility addressing the mental, physical, or emotional
76 recovery of victims;

77 (c) has a minimum 40 hours of trauma-informed training:

78 (i) in assisting victims specific to the specialization or focus of the nongovernment
79 organization advocacy services provider and includes this part regarding privileged
80 communication; and

81 (ii) (A) that have been approved or provided by the Utah Office for Victims of Crime;
82 or

83 (B) that meets other minimally equivalent standards set forth by the nongovernment
84 organization advocacy services provider; and

85 (d) is under the supervision of the director or the director's designee of the
86 nongovernment organization advocacy services provider.

87 (6) "Record" means a book, letter, document, paper, map, plan, photograph, file, card,
88 tape, recording, electronic data, or other documentary material regardless of physical form or
89 characteristics.

- 90 (7) "Victim" means:
- 91 (a) a "victim of a crime" as defined in Section [77-38-2](#);
- 92 (b) an individual who is a victim of domestic violence as defined in Section [77-36-1](#); or
- 93 (c) an individual who is a victim of dating violence as defined in Section [78B-7-402](#).
- 94 (8) "Victim advocate" means:
- 95 (a) a criminal justice system victim advocate;
- 96 (b) a nongovernment organization victim advocate; or
- 97 (c) an individual who is employed or authorized to volunteer by a public or private
- 98 entity and is designated by the Utah Office for Victims of Crime as having the specific purpose
- 99 of providing advocacy services to or for the clients of that entity.

100 Section 4. Section **77-38-404** is enacted to read:

101 **77-38-404. Scope of part.**

102 This part governs the disclosure of communications to a victim advocate, except that:

- 103 (1) if Title 53B, Chapter 28, Part 2, Confidential Communications for Institutional
- 104 Advocacy Services Act, applies, that part governs; and
- 105 (2) if Part 2, Confidential Communications for Sexual Assault Act, applies, that part
- 106 governs.

107 Section 5. Section **77-38-405** is enacted to read:

108 **77-38-405. Disclosure of communication given to a nongovernment organization**

109 **victim advocate.**

110 In accordance with the Utah Rules of Evidence, a nongovernment organization victim

111 advocate may not disclose communications with a victim, including communications in a

112 group therapy session, except to the extent allowed by the Utah Rules of Evidence.

113 Section 6. Section **77-38-406** is enacted to read:

114 **77-38-406. Disclosure of communications given to a criminal justice system victim**

115 **advocate.**

116 (1) (a) In accordance with the Utah Rules of Evidence, a criminal justice system victim

117 advocate may not disclose communications with a victim, including communications in a

118 group therapy session, except:

- 119 (i) that the criminal justice system victim advocate shall provide the communications
- 120 to a prosecutor who is responsible for determining whether the communications are

121 exculpatory or go to the credibility of a witness; or

122 (ii) to the extent allowed by the Utah Rules of Evidence.

123 (b) If a prosecutor determines that the communication is exculpatory or goes to the

124 credibility of a witness, after giving notice to the victim and the defense attorney and an

125 opportunity to be heard as part of the in camera process, the prosecutor will present the

126 communication to the court for in camera review pursuant to the Utah Rules of Evidence.

127 (2) A record that contains information from a communication between a criminal

128 justice system victim advocate and a victim may not be disclosed under Title 63G, Chapter 2,

129 Government Records Access and Management Act, to the extent that it includes the

130 information about the communication.

131 (3) A criminal justice system victim advocate, as soon as reasonably possible, shall

132 notify a victim:

133 (a) in writing that communications with the criminal justice system victim advocate

134 may be disclosed to a prosecutor and that a statement relating to the incident that forms the

135 basis for criminal charges or goes to the credibility of a witness may also be disclosed to the

136 defense attorney; and

137 (b) of the name, location, and contact information of one or more nongovernment

138 organization advocacy services providers specializing in the victim's service needs, when a

139 nongovernment organization advocacy services provider exists and is known to the criminal

140 justice system victim advocate.

141 Section 7. Section **78B-1-137** is amended to read:

142 **78B-1-137. Witnesses -- Privileged communications.**

143 There are particular relations in which it is the policy of the law to encourage

144 confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in

145 the following cases:

146 (1) (a) Neither a wife nor a husband may either during the marriage or afterwards be,

147 without the consent of the other, examined as to any communication made by one to the other

148 during the marriage.

149 (b) This exception does not apply:

150 (i) to a civil action or proceeding by one spouse against the other;

151 (ii) to a criminal action or proceeding for a crime committed by one spouse against the

152 other;

153 (iii) to the crime of deserting or neglecting to support a spouse or child;

154 (iv) to any civil or criminal proceeding for abuse or neglect committed against the child
155 of either spouse; or

156 (v) if otherwise specifically provided by law.

157 (2) An attorney cannot, without the consent of the client, be examined as to any
158 communication made by the client to the attorney or any advice given regarding the
159 communication in the course of the professional employment. An attorney's secretary,
160 stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any
161 fact, the knowledge of which has been acquired as an employee.

162 (3) A member of the clergy or priest cannot, without the consent of the person making
163 the confession, be examined as to any confession made to either of them in their professional
164 character in the course of discipline enjoined by the church to which they belong.

165 (4) A physician or surgeon cannot, without the consent of the patient, be examined in a
166 civil action as to any information acquired in attending the patient which was necessary to
167 enable the physician or surgeon to prescribe or act for the patient. However, this privilege shall
168 be waived by the patient in an action in which the patient places the patient's medical condition
169 at issue as an element or factor of the claim or defense. Under those circumstances, a physician
170 or surgeon who has prescribed for or treated that patient for the medical condition at issue may
171 provide information, interviews, reports, records, statements, memoranda, or other data relating
172 to the patient's medical condition and treatment which are placed at issue.

173 (5) A public officer cannot be examined as to communications made in official
174 confidence when the public interests would suffer by the disclosure.

175 (6) (a) A sexual assault counselor as defined in Section 77-38-203 cannot, without the
176 consent of the victim, be examined in a civil or criminal proceeding as to any confidential
177 communication as defined in Section 77-38-203 made by the victim.

178 (b) A victim advocate as defined in Section 77-38-403 cannot, without the consent of
179 the victim, be examined in a civil or criminal proceeding as to a communication that is a
180 privileged communication under the Utah Rules of Evidence, unless the victim advocate is
181 examined in camera to determine whether a communication is privileged under the Utah Rules
182 of Evidence.