

VICTIM RIGHTS AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill adds parole and probation hearings to the hearings at which a victim or a victim's representative may be present.

Highlighted Provisions:

This bill:

- ▶ adds that a victim's representative may attend certain important criminal justice hearings in the victim's place; and

- ▶ adds probation and parole hearings to the list of hearings at which a victim or representative may be present and heard.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-38-4, as last amended by Laws of Utah 2008, Chapter 321

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

Section 1. Section **77-38-4** is amended to read:

77-38-4. Right to be present, to be heard, and to file an amicus brief on appeal -- Control of disruptive acts or irrelevant statements -- Statements from persons in custody.

(1) The victim of a crime, the representative of the victim, or both shall have the right:

30 (a) to be present at the important criminal or juvenile justice hearings provided in
31 ~~[Subsections]~~ Subsection 77-38-2(5)(a) through (f);

32 (b) to be heard at the important criminal or juvenile justice hearings provided in
33 Subsections 77-38-2(5)(b), (c), (d), ~~[and]~~ (f), and (g);

34 (c) to submit a written statement in any action on appeal related to that crime; and

35 (d) upon request to the judge hearing the matter, to be present and heard at the initial
36 appearance of the person suspected of committing the conduct or criminal offense against the
37 victim on issues relating to whether to release a defendant or minor and, if so, under what
38 conditions release may occur.

39 (2) This chapter shall not confer any right to the victim of a crime to be heard:

40 (a) at any criminal trial, including the sentencing phase of a capital trial under Section
41 76-3-207 or at any preliminary hearing, unless called as a witness; and

42 (b) at any delinquency trial or at any preliminary hearing in a minor's case, unless
43 called as a witness.

44 (3) The right of a victim or representative of a victim to be present at trial is subject to
45 Rule 615 of the Utah Rules of Evidence.

46 (4) Nothing in this chapter shall deprive the court of the right to prevent or punish
47 disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.

48 (5) The court shall have the right to limit any victim's statement to matters that are
49 relevant to the proceeding.

50 (6) In all cases where the number of victims exceeds five, the court may limit the
51 in-court oral statements it receives from victims in its discretion to a few representative
52 statements.

53 (7) Except as otherwise provided in this section, a victim's right to be heard may be
54 exercised at the victim's discretion in any appropriate fashion, including an oral, written,
55 audiotaped, or videotaped statement or direct or indirect information that has been provided to
56 be included in any presentence report.

57 (8) If the victim of a crime is a person who is in custody as a pretrial detainee, as a

58 prisoner following conviction for an offense, or as a juvenile who has committed an act that
59 would be an offense if committed by an adult, or who is in custody for mental or psychological
60 treatment, the right to be heard under this chapter shall be exercised by submitting a written
61 statement to the court.

62 (9) The court may exclude any oral statement from a victim on the grounds of the
63 victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.

64 (10) Except in juvenile court cases, the Constitution may not be construed as limiting
65 the existing rights of the prosecution to introduce evidence in support of a capital sentence.