

**CRIME VICTIM NOTIFICATION AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: \_\_\_\_\_

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**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



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.

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

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

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

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

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

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

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

81 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**  
82 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**  
83 **order.**

84 (1) (a) Before the release from custody of a suspect from a county jail or other adult  
85 correctional facility in the state, an alleged victim ~~is~~ → **who is a natural person and** ← ~~is~~ who has  
85a properly registered with the  
86 appropriate notification system shall be provided reasonable notice of the suspect's pending  
87 release.

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

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

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

96 ~~[(1)]~~ (2) Within seven days of the filing of felony criminal charges against a defendant,  
97 the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable  
98 victims of the crime contained in the charges, except as otherwise provided in this chapter.

99 ~~[(2)]~~ (3) The initial notice to the victim of a crime shall provide information about  
100 electing to receive notice of subsequent important criminal justice hearings listed in  
101 Subsections 77-38-2(5)(a) through (f) and rights under this chapter.

102 ~~[(3)]~~ (4) The prosecuting agency shall provide notice to a victim of a crime:

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

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

106 ~~[(4)]~~ (5) (a) The responsible prosecuting agency may provide initial and subsequent  
107 notices in any reasonable manner, including telephonically, electronically, orally, or by means  
108 of a letter or form prepared for this purpose.

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

113 ~~[(5)]~~ (6) (a) The court shall take reasonable measures to ensure that its scheduling  
114 practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an  
115 opportunity for victims of crimes to be notified.

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

119 ~~[(6)]~~ (7) A defendant or, if it is the moving party, Adult Probation and Parole, shall  
120 give notice to the responsible prosecuting agency of any motion for modification of any

121 determination made at any of the important criminal justice hearings provided in Subsections  
122 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the  
123 prosecuting agency may comply with its notification obligation.

124 ~~[(7)]~~ (8) (a) Notice to a victim of a crime shall be provided by the Board of Pardons  
125 and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

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

128 ~~[(8)]~~ (9) Prosecuting agencies and the Board of Pardons and Parole are required to give  
129 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through  
130 (f) only where the victim has responded to the initial notice, requested notice of subsequent  
131 proceedings, and provided a current address and telephone number if applicable.

132 ~~[(9)]~~ (10) (a) Law enforcement and criminal justice agencies shall refer any requests  
133 for notice or information about crime victim rights from victims to the responsible prosecuting  
134 agency.

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

138 ~~[(10)]~~ (11) In all cases where the number of victims exceeds 10, the responsible  
139 prosecuting agency may send any notices required under this chapter in its discretion to a  
140 representative sample of the victims.

141 ~~[(11)]~~ (12) (a) A victim's address, telephone number, and victim impact statement  
142 maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of  
143 Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for  
144 purposes of providing notice under this section, is classified as protected as provided in  
145 Subsection 63G-2-305(10).

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

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

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

155 [~~(12)~~] (13) The notice provisions as provided in this section do not apply to  
156 misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as  
157 provided in Section 77-38-2.

158 [~~(13)~~] (14) (a) When a defendant is charged with a felony crime under Sections  
159 76-5-301 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling;  
160 Sections 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306  
161 regarding aggravated exploitation of prostitution, the court may, during any court hearing  
162 where the defendant is present, issue a pretrial criminal no contact order:

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

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

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

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

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

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