

Representative Melissa G. Ballard proposes the following substitute bill:

CRIME VICTIMS 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:

- ▶ 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 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:



26 AMENDS:

27 **63M-7-502**, as last amended by Laws of Utah 2022, Chapters 148, 185 and 430

28 **77-37-4**, as last amended by Laws of Utah 2022, Chapter 335

29 ENACTS:

30 **63M-7-527**, Utah Code Annotated 1953

31

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

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

34 **63M-7-502. Definitions.**

35 As used in this part:

36 (1) "Accomplice" means an individual who has engaged in criminal conduct as
37 described in Section **76-2-202**.

38 (2) "Advocacy services provider" means the same as that term is defined in Section
39 **77-38-403**.

40 (3) "Board" means the Crime Victim Reparations and Assistance Board created under
41 Section **63M-7-504**.

42 (4) "Bodily injury" means physical pain, illness, or any impairment of physical
43 condition.

44 (5) "Claimant" means any of the following claiming reparations under this part:

45 (a) a victim;

46 (b) a dependent of a deceased victim; or

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

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

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

52 (a) the offender;

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

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

- 57 (d) social security, Medicare, and Medicaid;
- 58 (e) state-required temporary nonoccupational income replacement insurance or
- 59 disability income insurance;
- 60 (f) workers' compensation;
- 61 (g) wage continuation programs of any employer;
- 62 (h) proceeds of a contract of insurance payable to the victim for the loss the victim
- 63 sustained because of the criminally injurious conduct;
- 64 (i) a contract providing prepaid hospital and other health care services or benefits for
- 65 disability; or
- 66 (j) veteran's benefits, including veteran's hospitalization benefits.
- 67 (8) "Criminal justice system victim advocate" means the same as that term is defined in
- 68 Section [77-38-403](#).
- 69 (9) (a) "Criminally injurious conduct" other than acts of war declared or not declared
- 70 means conduct that:
- 71 (i) is or would be subject to prosecution in this state under Section [76-1-201](#);
- 72 (ii) occurs or is attempted;
- 73 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- 74 (iv) is punishable by fine, imprisonment, or death if the individual engaging in the
- 75 conduct possessed the capacity to commit the conduct; and
- 76 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
- 77 aircraft, or water craft, unless the conduct is:
- 78 (A) intended to cause bodily injury or death;
- 79 (B) punishable under Title 76, Chapter 5, Offenses Against the Individual; or
- 80 (C) chargeable as an offense for driving under the influence of alcohol or drugs.
- 81 (b) "Criminally injurious conduct" includes a felony violation of Section [76-7-101](#) and
- 82 other conduct leading to the psychological injury of an individual resulting from living in a
- 83 setting that involves a bigamous relationship.
- 84 (10) (a) "Dependent" means a natural person to whom the victim is wholly or partially
- 85 legally responsible for care or support.
- 86 (b) "Dependent" includes a child of the victim born after the victim's death.
- 87 (11) "Dependent's economic loss" means loss after the victim's death of contributions

88 of things of economic value to the victim's dependent, not including services the dependent
89 would have received from the victim if the victim had not suffered the fatal injury, less
90 expenses of the dependent avoided by reason of victim's death.

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

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

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

99 (a) convicted of a crime;

100 (b) found delinquent; or

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

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

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

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

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

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

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

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

118 (b) "Interpersonal violence" includes any attempt, conspiracy, or solicitation of an act

119 described in Subsection (19)(a).

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

123 [~~(20)~~] (21) "Law enforcement officer" means the same as that term is defined in
124 Section 53-13-103.

125 [~~(21)~~] (22) (a) "Medical examination" means a physical examination necessary to
126 document criminally injurious conduct.

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

129 [~~(22)~~] (23) "Mental health counseling" means outpatient and inpatient counseling
130 necessitated as a result of criminally injurious conduct, is subject to rules made by the board in
131 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

132 [~~(23)~~] (24) "Misconduct" means conduct by the victim that was attributable to the
133 injury or death of the victim as provided by rules made by the board in accordance with Title
134 63G, Chapter 3, Utah Administrative Rulemaking Act.

135 [~~(24)~~] (25) "Noneconomic detriment" means pain, suffering, inconvenience, physical
136 impairment, and other nonpecuniary damage, except as provided in this part.

137 [~~(25)~~] (26) "Nongovernment organization victim advocate" means the same as that
138 term is defined in Section 77-38-403.

139 [~~(26)~~] (27) "Pecuniary loss" does not include loss attributable to pain and suffering
140 except as otherwise provided in this part.

141 [~~(27)~~] (28) "Offender" means an individual who has violated Title 76, Utah Criminal
142 Code, through criminally injurious conduct regardless of whether the individual is arrested,
143 prosecuted, or convicted.

144 [~~(28)~~] (29) "Offense" means a violation of Title 76, Utah Criminal Code.

145 [~~(29)~~] (30) "Office" means the director, the reparations and assistance officers, and any
146 other staff employed for the purpose of carrying out the provisions of this part.

147 [~~(30)~~] (31) "Perpetrator" means the individual who actually participated in the
148 criminally injurious conduct.

149 [~~(31)~~] (32) "Reparations award" means money or other benefits provided to a claimant

150 or to another on behalf of a claimant after the day on which a reparations claim is approved by
151 the office.

152 ~~[(32)]~~ (33) "Reparations claim" means a claimant's request or application made to the
153 office for a reparations award.

154 ~~[(33)]~~ (34) (a) "Reparations officer" means an individual employed by the office to
155 investigate claims of victims and award reparations under this part.

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

158 ~~[(34)]~~ (35) "Replacement service loss" means expenses reasonably and necessarily
159 incurred in obtaining ordinary and necessary services in lieu of those the injured individual
160 would have performed, not for income but the benefit of the injured individual or the injured
161 individual's dependents if the injured individual had not been injured.

162 ~~[(35)]~~ (36) (a) "Representative" means the victim, immediate family member, legal
163 guardian, attorney, conservator, executor, or an heir of an individual.

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

165 ~~[(36)]~~ (37) "Restitution" means the same as that term is defined in Section [77-38b-102](#).

166 ~~[(37)]~~ (38) "Secondary victim" means an individual who is traumatically affected by
167 the criminally injurious conduct subject to rules made by the board in accordance with Title
168 63G, Chapter 3, Utah Administrative Rulemaking Act.

169 ~~[(38)]~~ (39) "Service provider" means an individual or agency who provides a service to
170 a victim for a monetary fee, except attorneys as provided in Section [63M-7-524](#).

171 ~~[(39)]~~ (40) "Serious bodily injury" means the same as that term is defined in Section
172 [76-1-101.5](#).

173 ~~[(40)]~~ (41) "Sexual assault" means any criminal conduct described in Title 76, Chapter
174 5, Part 4, Sexual Offenses.

175 ~~[(41)]~~ (42) "Strangulation" means any act involving the use of unlawful force or
176 violence that:

177 (a) impedes breathing or the circulation of blood; and

178 (b) is likely to produce a loss of consciousness by:

179 (i) applying pressure to the neck or throat of an individual; or

180 (ii) obstructing the nose, mouth, or airway of an individual.

181 ~~[(42)]~~ (43) "Substantial bodily injury" means the same as that term is defined in
182 Section [76-1-101.5](#).

183 ~~[(43)]~~ (44) (a) "Victim" means an individual who suffers bodily or psychological injury
184 or death as a direct result of:

185 (i) criminally injurious conduct; or

186 (ii) the production of pornography in violation of Section [76-5b-201](#) or [76-5b-201.1](#) if
187 the individual is a minor.

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

191 ~~[(44)]~~ (45) "Work loss" means loss of income from work the injured victim would
192 have performed if the injured victim had not been injured and expenses reasonably incurred by
193 the injured victim in obtaining services in lieu of those the injured victim would have
194 performed for income, reduced by any income from substitute work the injured victim was
195 capable of performing but unreasonably failed to undertake.

196 Section 2. Section [63M-7-527](#) is enacted to read:

197 **[63M-7-527](#). Determination of eligibility for victim reparations -- Law enforcement**
198 **agency to provide investigative reports -- Restrictions on usage -- Criminal penalty.**

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

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

205 (i) the name of:

206 (A) an undercover officer; or

207 (B) a confidential informant; and

208 (ii) any information that would:

209 (A) jeopardize the investigation; or

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

211 (c) If a criminal episode remains under investigation when the office requests an

212 investigative report and the law enforcement agency determines that release of an investigative
213 report at that time would jeopardize the investigation, a law enforcement agency may provide a
214 detailed description of the following information, instead of providing an investigative report,
215 within 10 business days of the date the law enforcement agency received the original request
216 from the office:

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

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

225 (d) An investigative report provided under Subsection (1)(a), or information provided
226 under Subsection (1)(c), shall contain sufficient information for the office to determine whether
227 a claimant is eligible for a reparations award under Sections [63M-7-509](#) and [63M-7-510](#).

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

232 (f) (i) A law enforcement agency may give written notice that a request may take up to
233 an additional 10 business days to process if exigent circumstances exist, which include:

234 (A) a circumstance where another agency is using relevant documents;

235 (B) the request requires review of a voluminous amount of documents;

236 (C) the request requires legal review;

237 (D) the request requires extensive redaction;

238 (E) the law enforcement agency is currently processing multiple requests; or

239 (F) other exigent circumstances.

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

242 (2) (a) An investigative report provided under this section may only be used for the

243 purpose of carrying out the provisions of this part.

244 (b) An investigative report received under this section:

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

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

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

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

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

254 Section 3. Section **77-37-4** is amended to read:

255 **77-37-4. Additional rights -- Children.**

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

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

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

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

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

272 (5) (a) Child victims have the right, once an investigation has been initiated by law
273 enforcement or the Division of Child and Family Services, to keep confidential their interviews

274 that are conducted at a Children's Justice Center, including video and audio recordings, and
275 transcripts of those recordings. Except as provided in Subsection (6), recordings and
276 transcripts of interviews may not be distributed, released, or displayed to anyone without a
277 court order.

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

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

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

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

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

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

294 (i) the Division of Child and Family Services;

295 (ii) administrative law judges employed by the Department of Human Services;

296 (iii) Department of Human Services investigators investigating the Division of Child
297 and Family Services or investigators authorized to investigate under Section [80-2-703](#);

298 (iv) an office of the city attorney, county attorney, district attorney, or attorney general;

299 (v) a law enforcement agency;

300 (vi) a Children's Justice Center established under Section [67-5b-102](#); or

301 (vii) the attorney for the child who is the subject of the interview.

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

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

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

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

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

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

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

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

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

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

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

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

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

331 (ii) If the investigative agency determines that allowing the parent or guardian to view
332 the recording would likely compromise or impede the investigation, the parent or guardian may
333 petition a juvenile or district court for an expedited hearing on whether there is good cause for
334 the court to enter an order allowing the parent or guardian to view the recording in accordance
335 with Subsection (5)(c).

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

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

341 (g) A Children's Justice Center:

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

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

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

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

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

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

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

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

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

370 Section 4. **Effective date.**

371 This bill takes effect on May 1, 2024.