

SJ Quinney College of Law, University of Utah

Utah Law Digital Commons

Utah Code Annotated 1943-1995

1-19-1995

Title 77: Criminal Procedure Chapter 31-39 Enforcement to Tobacco - 1995 Replacement Volume

Utah Code Annotated

Follow this and additional works at: <https://dc.law.utah.edu/uca>

The Utah Code Annotated digital collection, hosted by Digital Commons, is brought to you for free and open access by the James E. Faust Law Library at the S.J. Quinney College of Law. Funds for this project have been provided by the Institute of Museum and Library Services through the Library Services and Technology Act and are administered by the Utah State Library Division. For more information, please contact valeri.craigle@law.utah.edu. Reprinted with permission. Copyright 2020 LexisNexis. All rights reserved.

Recommended Citation

Utah Code Annotated Title 77-31 to 39 (Michie, 1995)

This Book is brought to you for free and open access by Utah Law Digital Commons. It has been accepted for inclusion in Utah Code Annotated 1943-1995 by an authorized administrator of Utah Law Digital Commons. For more information, please contact valeri.craigle@law.utah.edu.

CHAPTER 31

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

Section		Section	
77-31-1.	Purposes.	77-31-23.	Rules of evidence.
77-31-2.	Definitions.	77-31-24.	Order of support.
77-31-3.	Remedies additional to those now existing.	77-31-25.	Court of this state as responding state to transmit copies to initiating state.
77-31-4.	Extent of duties of support.	77-31-26.	Additional powers of court of this state as responding state.
77-31-5.	Interstate rendition.	77-31-27.	Additional duties of court of this state as responding state.
77-31-6.	Conditions of interstate rendition.	77-31-28.	Duty of department acting as initiating state to receive and disburse payments.
77-31-7.	Choice of law.	77-31-29.	Proceedings not to be stayed.
77-31-8.	Remedies of state or political subdivision furnishing support.	77-31-30.	Application of payments.
77-31-9.	How duties of support enforced.	77-31-31.	Effect of participation in proceeding.
77-31-10.	Jurisdiction.	77-31-32.	Foreign support orders — Additional remedies.
77-31-11.	Contents of petition for support.	77-31-33.	Registration of foreign support orders.
77-31-12.	County attorney to represent petitioner.	77-31-34.	Registry of foreign support orders maintained by clerk.
77-31-13.	Petition for a minor.	77-31-35.	Petition for registration of foreign support order.
77-31-14.	Duty of court of this state as initiating state.	77-31-36.	Jurisdiction and procedure.
77-31-15.	Costs and fees.	77-31-37.	Effect of registration — Enforcement procedure.
77-31-16.	Jurisdiction by arrest.	77-31-38.	Uniformity of interpretation.
77-31-17.	State information agency.	77-31-39.	Citation — Uniform Reciprocal Enforcement of Support Act.
77-31-18.	Duty of court and county attorney of this state as responding state.		
77-31-19.	Further duties of court and county attorney of this state as the responding state.		
77-31-20.	Procedure.		
77-31-21.	Petitioner absent from responding state — Continuance.		
77-31-22.	Evidence of husband and wife.		

77-31-1. Purposes.

The purposes of this act are to improve and extend by reciprocal legislation and enforcement of duties of support and to make uniform the law with respect thereto.

History: C. 1953, 77-31-1, enacted by L. 1980, ch. 15, § 2.

Meaning of "this act." — The phrase "this act" literally means Laws 1980, ch. 15, which enacted this title. As the phrase is used

throughout this chapter, however, and in light of § 77-31-39, it probably means "this chapter."

Cross-References. — Uniform Civil Liability for Support Act, Title 78, Chapter 45.

COLLATERAL REFERENCES

Utah Law Review. — *Nordgren v. Mitchell*: Indigent Paternity Defendants' Right to Counsel, 1982 Utah L. Rev. 933.

Am. Jur. 2d. — 23 Am. Jur. 2d Desertion and Nonsupport § 117 et seq.

C.J.S. — 67A C.J.S. Parent and Child §§ 73 to 89.

A.L.R. — Determination of paternity of child as within scope of proceeding under Uniform Reciprocal Enforcement of Support Act, 81 A.L.R.3d 1175.

Key Numbers. — Parent and Child ⇐ 3 to 3.4.

77-31-2. Definitions.

As used in this act:

(1) "State" includes any state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any foreign jurisdiction in which this or a substantially similar reciprocal law or procedure is in effect.

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "Court" means the district court of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) "Law" includes both common and statutory law.

(6) "Duty of support" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise.

(7) "Obligor" means any person owing a duty of support.

(8) "Obligee" means any person to whom a duty of support is owed and a state or political subdivision thereof.

(9) "Governor" includes any person performing the functions of governor or the executive authority of any territory covered by the provisions of this act.

(10) "Support order" means any judgment, decree or order of support, whether temporary or final, whether subject to modification, revocation or remission regardless of the kind of action in which it is entered.

(11) "Rendering state" means any state in which a support order is originally entered.

(12) "Registering court" means any district court of this state in which the support order of the rendering state is registered.

(13) "Register" means to file in the registry of foreign support orders.

(14) "Certification" shall be in accordance with the laws of the certifying state.

(15) "Department" means the Department of Human Services.

(16) "Title IV-D Agency" means the single and separate agency designated to enforce child support under an approved state plan pursuant to Title IV-D of the Social Security Act and authorized to reimburse costs and pay incentive under that title.

History: C. 1953, 77-31-2, enacted by L. 1980, ch. 15, § 2; 1981, ch. 66, § 1; 1990, ch. 183, § 51.

Federal Law. — Title IV-D of the Social Security Act, cited in Subsection (16), is codified as 42 U.S.C. § 651 et seq.

Cross-References. — Assignment of support to Department of Human Services, § 62A-9-121.

Department of Human Services, § 62A-1-102.

77-31-3. Remedies additional to those now existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

History: C. 1953, 77-31-3, enacted by L. 1980, ch. 15, § 2.

77-31-4. Extent of duties of support.

Duties of support arising under the law of this state when applicable under Section 77-31-7 bind the obligor, present in this state, regardless of the presence or residence of the obligee.

History: C. 1953, 77-31-4, enacted by L. 1980, ch. 15, § 2.

77-31-5. Interstate rendition.

The governor of this state (1) may demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state and (2) may surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of any person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

History: C. 1953, 77-31-5, enacted by L. 1980, ch. 15, § 2.

Cross-References. — Extradition, § 77-30-1 et seq.

77-31-6. Conditions of interstate rendition.

(1) Before making the demand on the governor of any other state for the surrender of a person charged in this state with the crime of failing to provide for the support of any person, the governor of this state may require a county attorney or district attorney to satisfy him that at least sixty days prior thereto the obligee brought an action for the support under this act, or that the bringing of an action would be of no avail.

(2) When under this or a substantially similar act, a demand is made upon the governor of this state by the governor of another state for the surrender of a person charged in the other state with the crime of failing to provide support, the governor may call upon any county attorney or district attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this act or would be effective.

(3) If an action for the support would be effective and no action has been brought, the governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(4) If an action for support has been brought and the person demanded has prevailed in that action, the governor may decline to honor the demand.

(5) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the governor may decline to

honor the demand so long as the person demanded is complying with the support order.

History: C. 1953, 77-31-6, enacted by L. 1980, ch. 15, § 2; 1993, ch. 38, § 103.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted “a

county attorney or district attorney” for “any county attorney of this state” in Subsection (1) and inserted “or district attorney” near the middle of Subsection (2).

77-31-7. Choice of law.

Duties of support applicable under this act are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: C. 1953, 77-31-7, enacted by L. 1980, ch. 15, § 2.

NOTES TO DECISIONS

Law of forum state applies.

It was correct for trial court to determine the existence and extent of Utah resident's duty of support under the laws of Utah, rather than

Texas, where the divorce decree was entered. *Lamberth v. Lamberth*, 550 P.2d 200 (Utah 1976).

77-31-8. Remedies of state or political subdivision furnishing support.

Whenever the state or a political subdivision thereof furnishes support to an obligee, or whenever an individual not receiving support from the state or a political subdivision makes an application for child support collection or paternity determination services and pays an application fee, the state or political subdivision has the same right to invoke the provisions hereof as the obligee for the purposes of securing reimbursement of support expenditures, collecting child support, and establishing paternity.

History: C. 1953, 77-31-8, enacted by L. 1980, ch. 15, § 2.

NOTES TO DECISIONS

Cited in *Charlesworth v. California*, 793 P.2d 411 (Utah Ct. App. 1990).

77-31-9. How duties of support enforced.

All duties of support, including arrearages, and arrearages reimbursable to the state or a political subdivision thereof are enforceable by action irrespective of the relationship between the obligor and the obligee. Actions authorized under this act include establishment of paternity, wage assignments, garnishment, liens, execution of liens, contempt proceedings and any other collection or enforcement procedure.

History: C. 1953, 77-31-9, enacted by L. 1980, ch. 15, § 2.

NOTES TO DECISIONS

Child support.

—Visitation rights.

The district court erred in its order conditioning child support upon the affording of visitation rights, because it lacked subject matter

jurisdiction to enter an order regarding any matters other than the support obligation. *Charlesworth v. California*, 793 P.2d 411 (Utah Ct. App. 1990).

COLLATERAL REFERENCES

A.L.R. — Paternity proceedings: right to jury trial, 51 A.L.R.4th 565.

77-31-10. Jurisdiction.

Jurisdiction of all proceedings hereunder is vested in the district court.

History: C. 1953, 77-31-10, enacted by L. 1980, ch. 15, § 2.

78, Chapter 3; Chapter 6, Rules of Judicial Administration.

Cross-References. — District courts, Title

77-31-11. Contents of petition for support.

The petition shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the respondent and his dependants for whom support is sought, and all other pertinent information. The petitioner may include in, or attach to, the petition any information which may help in locating or identifying the respondent, such as a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number.

History: C. 1953, 77-31-11, enacted by L. 1980, ch. 15, § 2.

77-31-12. County attorney to represent petitioner.

The county attorney, upon the request of the court or the director of the Department of Human Services or his appointed representative, shall represent the petitioner in the initiation of any proceedings under this act.

History: C. 1953, 77-31-12, enacted by L. 1980, ch. 15, § 2; 1990, ch. 183, § 52.

77-31-13. Petition for a minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

History: C. 1953, 77-31-33 enacted by L. 1980, ch. 15, § 2.

77-31-14. Duty of court of this state as initiating state.

If the court of this state, acting as an initiating state, finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and may cause three copies of (1) the petition (2) its certificate and (3) this act to be transmitted to the court and Title IV-D Agency in the responding state. If the name and address of such court is unknown or if the IV-D agencies in the initiating state and responding state have so agreed, it shall cause such copies to be transmitted to the Title IV-D Agency of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

History: C. 1953, 77-31-14, enacted by L. 1980, ch. 15, § 2.

Cross-References. — "Title IV-D Agency" defined, § 77-31-2.

77-31-15. Costs and fees.

There shall be no filing fee or other costs taxable to the obligee, but a court of this state acting either as an initiating or responding state may in its discretion direct that any part of or all fees and costs incurred in this state, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both petitioner and respondent or either, be paid by the obligor.

History: C. 1953, 77-31-15, enacted by L. 1980, ch. 15, § 2.

77-31-16. Jurisdiction by arrest.

When the court of this state, acting either as an initiating or responding state, has reason to believe that the respondent may flee the jurisdiction it may (1) as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible under the law of the responding state; or (2) as a responding state, obtain the body of the respondent by appropriate process.

History: C. 1953, 77-31-16, enacted by L. 1980, ch. 15, § 2.

77-31-17. State information agency.

The department is hereby designated as the state information agency under this act, and it shall:

(1) Compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit the same to the state information agency of every other state which has adopted this or a substantially similar act; and

(2) Maintain a register of such lists received from other states and transmit copies thereof as soon as possible after receipt to every court in this state having jurisdiction under this act.

History: C. 1953, 77-31-17, enacted by L.
1980, ch. 15, § 2.

77-31-18. Duty of court and county attorney of this state as responding state.

(1) After the court of this state acting as a responding state has received from the court of the initiating state the aforesaid copies, the clerk of the court shall docket the case and notify the county attorney of his action.

(2) It shall be the duty of the county attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this state to give the court jurisdiction of the respondent or his property and shall request the court to set a time and place for a hearing.

History: C. 1953, 77-31-18, enacted by L.
1980, ch. 15, § 2.

77-31-19. Further duties of court and county attorney of this state as the responding state.

(1) The county attorney shall, on his own initiative, use all means at his disposal to trace the respondent or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the county attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating state.

(2) If the respondent or his property is not found in the county and the county attorney discovers by any means that the respondent or his property may be found in another county of this state or in another state, he shall so inform the court and thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that it forward the documents to the proper court. Thereupon both the court of the other county and any court of this state receiving the documents and the county attorney have the same powers and duties under this act as if the documents had been originally addressed to them. When the clerk of a court of this state retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(3) If the county attorney has no information as to the whereabouts of the obligor or his property, he shall so inform the initiating court.

History: C. 1953, 77-31-19, enacted by L.
1980, ch. 15, § 2.

77-31-20. Procedure.

The court shall conduct proceedings under this act in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

History: C. 1953, 77-31-20, enacted by L.
1980, ch. 15, § 2.

77-31-21. Petitioner absent from responding state — Continuance.

If the petitioner is absent from the responding state and the respondent presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

History: C. 1953, 77-31-21, enacted by L. 1980, ch. 15, § 2.

77-31-22. Evidence of husband and wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History: C. 1953, 77-31-22, enacted by L. 1980, ch. 15, § 2.

77-31-23. Rules of evidence.

In any hearing under this law, the court shall be bound by the same rules of evidence that bind the district court.

History: C. 1953, 77-31-23, enacted by L. 1980, ch. 15, § 2.

77-31-24. Order of support.

If the court of the responding state finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order. The court and county attorney of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where it was first issued. If enforcement is impossible or cannot be completed in the county where the order was issued, the county attorney shall transmit a certified copy of the order to the county attorney of any county where it appears that procedures to enforce payment of the amount due would be effective. The county attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

History: C. 1953, 77-31-24, enacted by L. 1980, ch. 15, § 2.

77-31-25. Court of this state as responding state to transmit copies to initiating state.

The court of this state when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

History: C. 1953, 77-31-25, enacted by L.
1980, ch. 15, § 2.

77-31-26. Additional powers of court of this state as responding state.

In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its order and in particular:

- (1) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent.
- (2) To require the respondent to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary.
- (3) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

History: C. 1953, 77-31-26, enacted by L.
1980, ch. 15, § 2.

77-31-27. Additional duties of court of this state as responding state.

The courts of this state, when acting as a responding state, shall have the following duties which may be carried out through the clerk of the court:

- (1) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the department if the obligee is receiving child support enforcement services under Title IV-D of the Social Security Act or otherwise to the court of the initiating state; and
- (2) Upon request, to furnish to the department or the court of the initiating state a certified statement of all payments made by the respondent.

History: C. 1953, 77-31-27, enacted by L.
1980, ch. 15, § 2.
Federal Law. — Title IV-D of the Social

Security Act, cited in Subsection (1), is codified
as 42 U.S.C. § 651 et seq.

77-31-28. Duty of department acting as initiating state to receive and disburse payments.

The department, when acting as an initiating state, shall have the duty to receive and disburse forthwith all payments made by the respondent or transmitted by the court or the Title IV-D agency of the responding state, if the obligee is receiving child support enforcement services under Title IV-D of the Social Security Act. If not, the court shall assume this duty which may be carried out through the clerk of the court.

History: C. 1953, 77-31-28, enacted by L. 1980, ch. 15, § 2.
Federal Law. — Title IV-D of the Social

Security Act is codified as 42 U.S.C. § 651 et seq.

77-31-29. Proceedings not to be stayed.

No proceeding under this act shall be stayed because of the existence of a pending action for divorce, separation, annulment, dissolution or custody proceeding.

History: C. 1953, 77-31-29, enacted by L. 1980, ch. 15, § 2.

NOTES TO DECISIONS

Divorce decree.

Divorced wife living in California was not required to seek modification of Utah divorce decree that did not include provision for payment of alimony or support before initiating proceedings to compel support; this section creates an exception to general rule that second

case involving same parties and subject matter as a prior case will be stayed; thus trial court should have determined alimony and support issue upon forwarding of petition by California court. *Maskil v. Green*, 25 Utah 2d 187, 479 P.2d 343 (1971).

77-31-30. Application of payments.

No order of support issued by a court of this state when acting as a responding state shall supersede any other order of support but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

History: C. 1953, 77-31-30, enacted by L. 1980, ch. 15, § 2.

NOTES TO DECISIONS

Conflicting support orders.

Utah court's order that defendant pay \$200 per month child support was neither modified, vacated, reformed, nor eliminated by subse-

quent order of Washington court that defendant pay \$160 per month; and he owed difference upon his return to Utah. *Oglesby v. Oglesby*, 29 Utah 2d 419, 510 P.2d 1106 (1973).

77-31-31. Effect of participation in proceeding.

Participation in any proceedings under this act shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

History: C. 1953, 77-31-31, enacted by L. 1980, ch. 15, § 2.

NOTES TO DECISIONS

Visitation rights.

The district court erred in its order conditioning child support upon the affording of visitation rights, because it lacked subject matter

jurisdiction to enter an order regarding any matters other than the support obligation. *Charlesworth v. California*, 793 P.2d 411 (Utah Ct. App. 1990).

77-31-32. Foreign support orders — Additional remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections [Sections 77-31-33 to 77-31-37].

History: C. 1953, 77-31-32, enacted by L.
1980, ch. 15, § 2.

77-31-33. Registration of foreign support orders.

The obligee may register the foreign support order in a court of this state in the manner, with the effect and for the purposes herein provided.

History: C. 1953, 77-31-33, enacted by L.
1980, ch. 15, § 2.

77-31-34. Registry of foreign support orders maintained by clerk.

The clerk of the court shall maintain a registry of foreign support orders in which he shall record foreign support orders.

History: C. 1953, 77-31-34, enacted by L.
1980, ch. 15, § 2.

77-31-35. Petition for registration of foreign support order.

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other states in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

History: C. 1953, 77-31-35, enacted by L.
1980, ch. 15, § 2.

77-31-36. Jurisdiction and procedure.

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

History: C. 1953, 77-31-36, enacted by L.
1980, ch. 15, § 2.

77-31-37. Effect of registration — Enforcement procedure.

The support orders as confirmed shall have the same effect and may be enforced as if originally entered in the court of this state. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the respondent for contempt as in the case of other orders for payment of alimony, maintenance or support entered in this state.

History: C. 1953, 77-31-37, enacted by L. 1980, ch. 15, § 2.

77-31-38. Uniformity of interpretation.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: C. 1953, 77-31-38, enacted by L. 1980, ch. 15, § 2.

77-31-39. Citation — Uniform Reciprocal Enforcement of Support Act.

This act may be cited as the Uniform Reciprocal Enforcement of Support Act.

History: C. 1953, 77-31-39, enacted by L. 1980, ch. 15, § 2.

CHAPTER 32

COUNSEL FOR INDIGENT DEFENDANTS

Section		Section	
77-32-1.	Minimum standards provided by county for defense of indigent defendants.	77-32-5.	Expenses of printing briefs, depositions, and transcripts.
77-32-2.	Assignment of counsel on request of defendant or order of court.	77-32-6.	Governing bodies of counties or municipalities to appoint counsel or provide through legal aid associations.
77-32-2.1.	Hearing — Court to consider authorization or designation of facilities — Standard.	77-32-7.	Expenditures of county or municipal funds declared proper — Tax levy authorized.
77-32-3.	Duties of assigned counsel — Compensation.	77-32-8.	Pro bono criminal representation — Liability limits.
77-32-4.	Time for determination of indigency.		

77-32-1. Minimum standards provided by county for defense of indigent defendants.

The following are minimum standards to be provided by each county, city and town for the defense of indigent persons in criminal cases in the courts and various administrative bodies of the state:

- (1) Provide counsel for every indigent person who faces the substantial probability of the deprivation of his liberty;
- (2) Afford timely representation by competent legal counsel;
- (3) Provide the investigatory and other facilities necessary for a complete defense;
- (4) Assure undivided loyalty of defense counsel to the client; and
- (5) Include the taking of a first appeal of right and the prosecuting of other remedies before or after a conviction, considered by the defending counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

History: C. 1953, 77-32-1, enacted by L. 1980, ch. 15, § 2; 1981, ch. 67, § 1; 1983, ch. 52, § 1.

Cross-References. — Criminal lineup, right to have attorney present, § 77-8-2.

NOTES TO DECISIONS

ANALYSIS

Appointment of counsel.

—Client's sanity.

—Judicial act.

—Prosecutors.

Appointment of psychiatrist.

City ordinance violations.

Compensation.

Denial of counsel in city court.

Federal court intervention.

Federal court proceedings.

Inapplicable to hearing for parole revocation.

Necessity for investigator.

Payment of investigator by county.

Cited.

Appointment of counsel.

—Client's sanity.

An attorney appointed by court to represent allegedly insane person, under separate statute providing that court appoint counsel to represent patient in involuntary proceeding to determine sanity, was not entitled to recover claim against county. *Bedford v. Salt Lake County*, 22 Utah 2d 12, 447 P.2d 193 (1968).

—Judicial act.

The placement of this section in Title 77 rather than Title 78 indicates that it is not designed to change the inherently judicial act of appointing counsel. *Edwards v. Hare*, 682 F. Supp. 1528 (D. Utah 1988).

A judge's actions in carrying out the power to appoint counsel and set bail, including the mechanics of obtaining counsel, are judicial; thus where the court was unable to locate counsel, its decision to accept accused's plea without his having counsel was judicial, and any purported failure to carry out a responsibility to obtain counsel and set appropriate bail was protected by absolute immunity. *Edwards v. Hare*, 682 F. Supp. 1528 (D. Utah 1988).

—Prosecutors.

Counsel with concurrent prosecutorial obligations may not be appointed to defend indigent persons. This is a *per se* rule requiring reversal of the conviction when such a conflict occurs. *State v. Brown*, 853 P.2d 851 (Utah 1992).

Appointment of psychiatrist.

Appointment of a psychiatrist to testify as to the effect of defendant's voluntary intoxication on his ability to form the requisite intent for the crimes charged would have been unavailing because of the lack of a sufficient foundation as to the amount of alcohol defendant consumed before the crime. *State v. Cabututan*, 861 P.2d 408 (Utah 1993).

City ordinance violations.

County did not have duty to pay for legal counsel assigned by city courts to represent persons charged with city ordinance violations. *Salt Lake City Corp. v. Salt Lake County*, 520 P.2d 211 (Utah 1974).

Person convicted of violations of city code was properly denied preparation of transcripts at public expense because, while she may have faced "the mere threat of imprisonment," she did not at any time face actual imprisonment. *Murray City v. Robinson*, 848 P.2d 161 (Utah Ct. App. 1993).

Compensation.

Statute was mandatory but if county made no arrangements for representation of indigent defendants in criminal cases, court could appoint counsel but court had no authority to order county to pay attorney so appointed. *Washington County v. Day*, 22 Utah 2d 6, 447 P.2d 189 (1968).

Denial of counsel in city court.

Where indigent was not provided with counsel in city court hearing on Nevada extradition

request, but was subsequently provided with counsel in order to make application to the district court for writ of habeas corpus, his rights were not prejudiced since he had full opportunity, with the aid of counsel, to present any matter relating to his extradition at the district court habeas corpus hearing. *Myers v. Hadley*, 16 Utah 2d 405, 402 P.2d 701 (1965).

Federal court intervention.

Parolee who was charged in city court with misdemeanor, conviction on which could have resulted in his imprisonment for as long as seventeen years and five months, was not entitled to federal court injunction against his prosecution without appointed counsel since he had an adequate remedy under state law, parole was a matter of grace, the claimed injury was not great, immediate and irreparable, and injunction would not satisfactorily eliminate danger to parole status. *Sweeten v. Sneddon*, 463 F.2d 713 (10th Cir. 1972).

Federal court proceedings.

Counties of Utah were obligated to provide counsel for indigent defendants only in connection with proceedings in state courts and were not obligated to pay for counsel for indigents in subsequent actions in federal court. *Lamoreaux v. Grand County*, 28 Utah 2d 92, 498 P.2d 659 (1972).

Inapplicable to hearing for parole revocation.

Parolee was not entitled to be provided counsel at hearing on revocation of his parole since intent of legislature was to limit right of counsel in matters subsequent to conviction and sentence to appeals, applications for writs of habeas corpus, and for writs of coram nobis — matters affecting guilt or innocence and fair-

ness of trials by which those ends were accomplished; it did not refer to revocation of paroles. *Beal v. Turner*, 22 Utah 2d 418, 454 P.2d 624 (1969).

Necessity for investigator.

District court order authorizing court-appointed counsel for defendant to employ investigator and requiring county to pay therefor could not be enforced because there was no reasonable basis on which to justify appointment of investigator. *Washington County v. Day*, 22 Utah 2d 6, 447 P.2d 189 (1968).

Denial of defendant's application for an investigator at public expense was not prejudicial in the absence of a showing that an investigation would have helped to establish that he did not commit the homicide or that information gained from an investigation of the defendant's childhood would have aided physicians in their psychiatric examination of the defendant. *State v. Cote*, 27 Utah 2d 24, 492 P.2d 986 (1972).

Court's conditioning appointment of investigator on requirement that defendant exhaust all police records and interview all witnesses the police had named, given the nature of the case, was reasonable. *State v. Hancock*, 874 P.2d 132 (Utah Ct. App. 1994).

Payment of investigator by county.

Once investigator had been properly appointed under statute and rendered services to, and incurred expenses in behalf of, accused indigent, he was entitled to be paid therefor by county and should have filed his claim under statutes providing for presentation of claims against county. *Washington County v. Day*, 22 Utah 2d 6, 447 P.2d 189 (1968).

Cited in *State v. Vincent*, 845 P.2d 254 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

Utah Law Review. — *Nordgren v. Mitchell*: Indigent Paternity Defendants' Right to Counsel, 1982 Utah L. Rev. 933.

Judicial Jabberwocky or Uniform Constitutional Protection? *Strickland v. Washington* and National Standards for Ineffective Assistance of Counsel Claims, 1985 Utah L. Rev. 723.

Am. Jur. 2d. — 21A Am. Jur. 2d Criminal Law §§ 732 to 769, 809, 810, 976 to 997.

C.J.S. — 22 C.J.S. Criminal Law § 277 et seq.

A.L.R. — Accused's right to assistance of counsel at or prior to arraignment, 5 A.L.R.3d 1269.

Circumstance giving rise to conflict of interest between or among criminal codefendants precluding representation by same counsel, 34 A.L.R.3d 470.

Attorney's refusal to accept appointment to defend indigent, or to proceed in such defense, as contempt, 36 A.L.R.3d 1221.

Right to assistance of counsel at proceedings to revoke probation, 44 A.L.R.3d 306.

Determination of indigency of accused entitling him to appointment of counsel, 51 A.L.R.3d 1108.

Accused's right to choose particular counsel appointed to assist him, 66 A.L.R.3d 996.

Relief available for violation of right to counsel at sentencing in state criminal trial, 65 A.L.R.4th 183.

Right of indigent defendant in state criminal case to assistance of ballistics experts, 71 A.L.R.4th 638.

Right of indigent defendant in state criminal case to assistance of fingerprint expert, 72 A.L.R.4th 874.

Right of indigent defendant in state criminal case to assistance of investigators, 81 A.L.R.4th 259.

Key Numbers. — Criminal Law ⇌ 641 to 641.13.

77-32-2. Assignment of counsel on request of defendant or order of court.

(1) Counsel shall be assigned to represent each indigent person who is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:

(a) the defendant requests it; or

(b) the court on its own motion or otherwise so orders and the defendant does not affirmatively waive or reject on the record the opportunity to be represented.

(2) (a) If the county, city, or town responsible to provide for the legal defense of an indigent defendant has arranged by contract to provide those services and the court has received notice or a copy of such contract, the court shall appoint the contracting attorney as legal counsel to represent that defendant.

(b) The court shall select and appoint the attorney or attorneys if:

(i) the contract for indigent legal services is with multiple attorneys; or

(ii) the contract is with an additional attorney or attorneys in the event of a conflict of interest.

(c) If the court considers the appointment of a noncontracting attorney to provide legal services to an indigent defendant despite the existence of an indigent legal services contract and the court has a copy or notice of such contract, before the court may make the appointment, it shall:

(i) set the matter for a hearing;

(ii) give proper notice to the attorney of the responsible county, city, or town of the hearing; and

(iii) make findings that there is a compelling reason to appoint a noncontracting attorney.

(d) The indigent defendant's mere preference for other counsel shall not be considered a compelling reason justifying the appointment of a noncontracting attorney.

History: C. 1953, 77-32-2, enacted by L. 1980, ch. 15, § 2; 1983, ch. 52, § 2; 1992, ch. 161, § 1.

Amendment Notes. — The 1992 amend-

ment, effective April 27, 1992, designated the provisions of this section as Subsection (1), made related designation and stylistic changes in that subsection, and added Subsection (2).

NOTES TO DECISIONS

ANALYSIS

City ordinance violations.
Misdemeanor charge.
Cited.

City ordinance violations.

A criminal defendant charged with violating a city ordinance where there was a substantial probability that the penalty imposed would

include a jail term was entitled to appointed counsel at public expense. *City of St. George v. Smith*, 828 P.2d 504 (Utah Ct. App. 1992).

Misdemeanor charge.

Parolee who was charged in court with misdemeanor, conviction on which could have resulted in his imprisonment for as long as seventeen years and five months, was not entitled to federal court injunction against his prosecu-

tion without appointed counsel since he had an adequate remedy under state law, parole was a matter of grace, the claimed injury was not great, immediate and irreparable, and injunction would not satisfactorily eliminate danger to parole status. *Sweeten v. Sneddon*, 463 F.2d 713 (10th Cir. 1972).

While indigent accused in municipal court of misdemeanor with maximum six-month sen-

tence had right to counsel, he did not have constitutional right to counsel at public expense. *Hortencio v. Fillis*, 25 Utah 2d 73, 475 P.2d 1011 (1970), cert. denied, 402 U.S. 966, 91 S. Ct. 1636, 29 L. Ed. 2d 130 (1971).

Cited in *Sandy City v. Brown*, 827 P.2d 953 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

A.L.R. — What constitutes assertion of right to counsel following *Miranda* warnings — federal cases, 80 A.L.R. Fed. 622.

77-32-2.1. Hearing — Court to consider authorization or designation of facilities — Standard.

(1) If a county, city, or town has contracted for or otherwise made arrangements for the appropriate facilities necessary for a complete defense of an indigent defendant, including a competent investigator or investigators, the court shall conduct a hearing with proper notice to the responsible entity to consider the authorization or designation of noncontract facilities.

(2) The court shall make findings that there is a compelling reason to authorize or designate a noncontracting facility for the indigent defendant before it may authorize or designate the same.

History: C. 1953, 77-32-2.1, enacted by L. 1992, ch. 161, § 2.

became effective on April 27, 1992, pursuant to Utah Const., Art. VI, § 25.

Effective Dates. — Laws 1992, ch. 161

77-32-3. Duties of assigned counsel — Compensation.

(1) When representing an indigent person the assigned counsel shall:

(a) Counsel and defend him at every stage of the proceeding following assignment; and

(b) Prosecute any first appeal of right or other remedies before or after conviction that he considers to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

(2) An assigned counsel shall not have the duty or power under this section to represent an indigent defendant in any discretionary appeal or action for a discretionary writ, other than in a meaningful first appeal of right to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the appellate process of this state.

(3) An assigned counsel for an indigent defendant shall be entitled to compensation upon the approval of the district court where the original trial was held, upon a showing that the defendant has been denied a constitutional right or that there was newly discovered evidence that would show the defendant's innocence and that the legal services rendered by counsel were other than that required under this act or under a separate fee arrangement and were necessary for the indigent defendant and not for the purpose of delaying the judgment of the original trier of fact.

History: C. 1953, 77-32-3, enacted by L. 1980, ch. 15, § 2; 1981, ch. 67, § 2.

NOTES TO DECISIONS

Merits of appeal.

It is for the appellate court, not counsel, to decide whether a case is wholly frivolous; thus, it was error to allow withdrawal of appointed

counsel or to refuse to appoint counsel on the basis that appointed counsel did not believe a proposed appeal had merit. *Sandy City v. Brown*, 827 P.2d 953 (Utah Ct. App. 1992).

77-32-4. Time for determination of indigency.

The determination of indigency may be made by the court at any time.

History: C. 1953, 77-32-4, enacted by L. 1980, ch. 15, § 2.

77-32-5. Expenses of printing briefs, depositions, and transcripts.

The expenses of printing or typewriting briefs on first appeals of right on behalf of an indigent defendant, as well as depositions and other transcripts shall be paid by the state, county, or municipal agency that prosecuted the defendant at trial.

History: C. 1953, 77-32-5, enacted by L. 1980, ch. 15, § 2; 1981, ch. 67, § 3; 1988, ch. 248, § 2.

NOTES TO DECISIONS

Cited in *Murray City v. Robinson*, 848 P.2d 161 (Utah Ct. App. 1993).

77-32-6. Governing bodies of counties or municipalities to appoint counsel or provide through legal aid associations.

Governing bodies of counties, cities, and towns shall either:

(1) authorize the court to provide the services prescribed by this chapter by appointing a qualified attorney in each case and awarding him reasonable compensation and expenses to be paid by the appropriate governing body; or

(2) arrange by contract to provide those services through nonprofit legal aid, other associations, or attorneys.

History: C. 1953, 77-32-6, enacted by L. 1980, ch. 15, § 2; 1992, ch. 161, § 3.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, inserted a comma in the introductory language, and inserted "by contract" and substituted "legal aid,

other associations, or attorneys" for "legal aid or other associations" in Subsection (2).

Cross-References. — Claims against cities, § 10-6-139.

Claims against counties, § 17-15-10.

Claims against towns, § 10-5-123.

NOTES TO DECISIONS

ANALYSIS

Attorneys' claims for compensation.
Reasonable compensation.
Cited.

Attorneys' claims for compensation.

Attorneys' claim for services rendered in representing indigent criminal defendants should have been filed with the county, and appealed to a court if rejected by the county but should not have been filed directly in a district court. *State v. Dixon*, 22 Utah 2d 58, 448 P.2d 716 (1968).

County could not avoid its statutory duty to compensate attorneys appointed to represent

indigent criminal defendant on appeal on ground that claim was not filed in strict accordance with § 17-15-10. *Hatch v. Weber County*, 23 Utah 2d 144, 459 P.2d 436 (1969).

Reasonable compensation.

Schedule allowing attorney \$15 per hour for in-court work and \$10 per hour for out-of-court work plus reasonable expenses for representing indigent defendants was not arbitrary, capricious, or unreasonable. *Bennett v. Davis County*, 26 Utah 2d 225, 487 P.2d 1271 (1971).

Cited in *Edwards v. Hare*, 682 F. Supp. 1528 (D. Utah 1988).

COLLATERAL REFERENCES

Utah Law Review. — Attorney's Fees in Utah, 1984 Utah L. Rev. 553.

A.L.R. — Construction of state statutes pro-

viding for compensation of attorney for services under appointment by court in defending indigent accused, 18 A.L.R.3d 1074.

77-32-7. Expenditures of county or municipal funds declared proper — Tax levy authorized.

All expenditures by the counties and the incorporated cities or towns which are necessary and proper to carry out the purposes defined in this chapter including donations to non-profit legal aid or other associations charged with the duty to provide the services are declared to be proper uses of public funds and the counties and incorporated areas of the state are authorized to levy and collect taxes for such purposes.

History: C. 1953, 77-32-7, enacted by L. 1980, ch. 15, § 2.

77-32-8. Pro bono criminal representation — Liability limits.

Counsel assigned by a court to represent a person found indigent in criminal, post-conviction, or habeas corpus proceedings is immune from suit if he provides the legal services:

- (1) at no cost or for only a substantially reduced cost that is applied to but does not cover expenses of the service; and
- (2) without gross negligence or willful misconduct.

History: C. 1953, 77-32-8, enacted by L. 1989, ch. 99, § 1.

CHAPTER 32a

DEFENSE COSTS

Section		Section	
77-32a-1.	Restitution and costs — Convicted defendant may be required to pay.	77-32a-9.	Costs imposed on corporation or association — Duty to pay — Contempt.
77-32a-2.	Costs — What constitute.	77-32a-10.	Imprisonment for contempt — Limitations.
77-32a-3.	Ability to pay considered.	77-32a-11.	Default not constituting contempt — Relief allowed.
77-32a-4.	Petition for remission of payment of costs.	77-32a-12.	Collection of payment in default — Execution.
77-32a-5.	Time and method of payment.	77-32a-13.	Docketing judgment for costs.
77-32a-6.	Payment as condition of probation or suspended sentence.	77-32a-14.	Verified statement of time and expenses of counsel for indigent defendants.
77-32a-7.	Default in payment as contempt — Order to show cause — Warrant of arrest.		
77-32a-8.	Default in payment as contempt — What constitutes contempt — Imprisonment.		

77-32a-1. Restitution and costs — Convicted defendant may be required to pay.

In a criminal action the court may require a convicted defendant to make restitution and pay costs.

History: C. 1953, 77-32a-1, enacted by L. 1980, ch. 15, § 2.

Cross-References. — Restitution to victims of crime, § 76-3-201.

COLLATERAL REFERENCES

Brigham Young Law Review. — Testing the Limits of the Court's Exclusive Jurisdiction in Fraud Cases: Discharge vs. Criminal Restitution, 1984 B.Y.U. L. Rev. 61.

Am. Jur. 2d. — 20 Am. Jur. 2d Costs §§ 100 to 112; 21A Am. Jur. 2d Criminal Law §§ 1036 to 1050.

A.L.R. — Restitutional sentencing under Victim and Witness Protection Act § 5 (18 USCS §§ 3579, 3580), 79 A.L.R. Fed. 724.

Key Numbers. — Costs ⇌ 284 to 325.

77-32a-2. Costs — What constitute.

Costs shall be limited to expenses specially incurred by the state or any political subdivision in investigating, searching for, apprehending, and prosecuting the defendant, including attorney fees of counsel assigned to represent the defendant pursuant to Section 77-32-2 and investigators' fees. Costs cannot include expenses inherent in providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Costs cannot include attorneys' fees for prosecuting attorneys.

History: C. 1953, 77-32a-2, enacted by L. 1980, ch. 15, § 2; 1993, ch. 238, § 1.

Amendment Notes. — The 1993 amend-

ment, effective May 3, 1993, inserted "investigating, searching for, apprehending, and" in the first sentence, deleted "or expenses incurred by

the prosecution for investigators or witnesses" after "prosecuting attorneys" in the last sentence, and made stylistic changes.

NOTES TO DECISIONS

Investigation costs.

The expense of an examination of a sexual assault victim was a cost incurred by the prosecution in the course of the investigation and before the filing of the criminal information. It

could not have been assessed against defendant as a cost; costs of investigation are ineligible for restitution. *State v. Depaoli*, 835 P.2d 162 (Utah 1992).

77-32a-3. Ability to pay considered.

The court shall not include in the judgment a sentence that a defendant pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose and that restitution be the first priority.

History: C. 1953, 77-32a-3, enacted by L. 1980, ch. 15, § 2.

NOTES TO DECISIONS

ANALYSIS

Findings required.
Cited.

Findings required.

Case was remanded for supplementary findings on the questions of restitution and responsibility for attorney fees, together with such

additional proceedings as might be necessary to permit the making of adequate findings, where there was no record to demonstrate compliance with this section. *State v. Haston*, 811 P.2d 929 (Utah Ct. App. 1991), rev'd on other grounds, 846 P.2d 1276 (Utah 1993).

Cited in *State v. Brown*, 853 P.2d 851 (Utah 1992).

77-32a-4. Petition for remission of payment of costs.

A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under Section 77-32a-5.

History: C. 1953, 77-32a-4, enacted by L. 1980, ch. 15, § 2.

77-32a-5. Time and method of payment.

When a defendant is sentenced to pay costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the costs shall be payable forthwith.

History: C. 1953, 77-32a-5, enacted by L.
1980, ch. 15, § 2.

77-32a-6. Payment as condition of probation or suspended sentence.

When a defendant sentenced to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of costs a condition of probation or suspension of sentence.

History: C. 1953, 77-32a-6, enacted by L.
1980, ch. 15, § 2.

COLLATERAL REFERENCES

A.L.R. — Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs, 79 A.L.R.3d 1025.

77-32a-7. Default in payment as contempt — Order to show cause — Warrant of arrest.

When a defendant sentenced to pay costs defaults in the payment thereof or of any installment, the court on motion of the attorney general or the county attorney or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue an order to show cause or a warrant of arrest for his appearance.

History: C. 1953, 77-32a-7, enacted by L. **Cross-References.** — Contempt, Title 78,
1980, ch. 15, § 2. Chapter 32.

77-32a-8. Default in payment as contempt — What constitutes contempt — Imprisonment.

Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the costs or a specified part thereof, are paid.

History: C. 1953, 77-32a-8, enacted by L.
1980, ch. 15, § 2.

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Costs § 110; **Key Numbers.** — Costs ⇨ 322.
21A Am. Jur. 2d Criminal Law § 1049.

77-32a-9. Costs imposed on corporation or association — Duty to pay — Contempt.

When costs are imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the

corporation or association to pay the costs from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in Section 77-32a-8 of this act.

History: C. 1953, 77-32a-9, enacted by L.
1980, ch. 15, § 2.

77-32a-10. Imprisonment for contempt — Limitations.

The term of imprisonment for contempt for nonpayment of costs shall be set forth in the commitment order, and shall not exceed one day for each \$25 of the costs, 30 days if the costs were imposed upon conviction of a misdemeanor, or six months in the case of a felony, whichever is the shorter period. A person committed for nonpayment of costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

History: C. 1953, 77-32a-10, enacted by L.
1980, ch. 15, § 2.

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Costs § 110; **Key Numbers.** — Costs ⇨ 322.
21A Am. Jur. 2d Criminal Law § 1049.

77-32a-11. Default not constituting contempt — Relief allowed.

If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the costs or the unpaid portion thereof in whole or in part.

History: C. 1953, 77-32a-11, enacted by L.
1980, ch. 15, § 2.

77-32a-12. Collection of payment in default — Execution.

A default in the payment of costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the costs has actually been collected.

History: C. 1953, 77-32a-12, enacted by L. **Cross-References.** — Execution to enforce judgment, Rule 69, Rules of Civil Procedure.

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Costs § 110; **Key Numbers.** — Costs ⇨ 320.
21A Am. Jur. 2d Criminal Law § 1049.

77-32a-13. Docketing judgment for costs.

A judgment that the defendant pay costs may be docketed in the same manner as a judgment in a civil action.

History: C. 1953, 77-32a-13, enacted by L. 1980, ch. 15, § 2.

77-32a-14. Verified statement of time and expenses of counsel for indigent defendants.

The court may require a verified statement of time and expenses from appointed counsel or the nonprofit legal aid or other association providing counsel to convicted indigent defendants in order to establish the costs, if any, which will be included in the judgment.

History: C. 1953, 77-32a-14, enacted by L. 1980, ch. 15, § 2.

CHAPTER 33

UNIFORM RENDITION OF PRISONERS AS WITNESSES IN CRIMINAL PROCEEDINGS ACT

Section		Section	
77-33-1.	Definitions.	77-33-6.	Prisoner in another state summoned to testify in this state — Certificate of judge.
77-33-2.	Summoning prisoner in this state to testify in another state — Certificate of out-of-state judge.	77-33-7.	Prisoner in another state summoned to testify in this state — Order of compliance with terms and conditions prescribed by out-of-state judge.
77-33-3.	Summoning prisoner in this state to testify in another state — Hearing — Issuance of order to attend.	77-33-8.	Exemption of prisoner from another state from arrest or service of process.
77-33-4.	Summoning prisoner in this state to testify in another state — Order to provide for return, safeguards on custody, and payment of expenses.	77-33-9.	Uniformity of interpretation.
77-33-5.	Rendition procedure inapplicable to person confined as insane or mentally ill or under sentence of death.	77-33-10.	Citation — Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act.

77-33-1. Definitions.

As used in this act:

(1) "Witness" means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.

(2) "Penal institution" includes a jail, prison, penitentiary, house of correction, or other place of penal detention; and

(3) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory of the United States.

History: C. 1953, 77-33-1, enacted by L. 1980, ch. 15, § 2.

Meaning of "this act." — The phrase "this act" literally means Laws 1980, ch. 15, which

enacted this title. As the phrase is used throughout this chapter, however, and in light of § 77-33-10, it probably means "this chapter."

77-33-2. Summoning prisoner in this state to testify in another state — Certificate of out-of-state judge.

A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing.

History: C. 1953, 77-33-2, enacted by L. 1980, ch. 15, § 2.

77-33-3. Summoning prisoner in this state to testify in another state — Hearing — Issuance of order to attend.

If at the hearing the judge determines (1) that the witness may be material and necessary, (2) that his attending and testifying are not adverse to the interest of this state or to the health or legal rights of the witness, (3) that the laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order, and (4) that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass, the judge shall issue an order, with a copy of the certificate attached, (a) directing the witness to attend and testify, (b) directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order, and (c) prescribing such conditions as the judge shall determine.

History: C. 1953, 77-33-3, enacted by L. 1980, ch. 15, § 2.

77-33-4. Summoning prisoner in this state to testify in another state — Order to provide for return, safeguards on custody, and payment of expenses.

The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness, and may prescribe such other conditions as the judge thinks proper or necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

History: C. 1953, 77-33-4, enacted by L.
1980, ch. 15, § 2.

77-33-5. Rendition procedure inapplicable to person confined as insane or mentally ill or under sentence of death.

This act does not apply to any person in this state confined as insane or mentally ill or under sentence of death.

History: C. 1953, 77-33-5, enacted by L.
1980, ch. 15, § 2.

77-33-6. Prisoner in another state summoned to testify in this state — Certificate of judge.

If a person confined in a penal institution in any state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in another state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

History: C. 1953, 77-33-6, enacted by L.
1980, ch. 15, § 2.

77-33-7. Prisoner in another state summoned to testify in this state — Order of compliance with terms and conditions prescribed by out-of-state judge.

The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

History: C. 1953, 77-33-7, enacted by L.
1980, ch. 15, § 2.

77-33-8. Exemption of prisoner from another state from arrest or service of process.

If a witness from another state comes into or passes through this state under an order directing him to attend and testify in this or another state, he shall not while in this state pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to his arrival in this state under the order.

History: C. 1953, 77-33-8, enacted by L.
1980, ch. 15, § 2.

77-33-9. Uniformity of interpretation.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: C. 1953, 77-33-9, enacted by L.
1980, ch. 15, § 2.

77-33-10. Citation — Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act.

This act may be cited as the "Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act."

History: C. 1953, 77-33-10, enacted by L.
1980, ch. 15, § 2.

CHAPTER 34

UNIFORM INTERSTATE FURLOUGH COMPACT

Section 77-34-1.	Citation — Utah Interstate Furlough Compact.	Section 77-34-5.	Contracts supplemental to compact authorized.
77-34-2.	Definitions.	77-34-6.	Jurisdiction and duties of authorized persons of sending and receiving states.
77-34-3.	Reasons for granting furlough pursuant to compact — Period of furlough — Escorted furloughs — Waiver of extradition — Termination of furlough — Laws and regulations applicable to inmates.	77-34-7.	Costs and expenses.
		77-34-8.	Effect of execution of compact between states — Renunciation of compact.
77-34-4.	Duties of officials in nonemergency and emergency cases.		

77-34-1. Citation — Utah Interstate Furlough Compact.

This chapter may be cited as the "Utah Interstate Furlough Compact."

History: C. 1953, 77-34-1, enacted by L. 1980, ch. 15, § 2.

77-34-2. Definitions.

As used in this compact:

(1) "State" means a state in the United States, the United States of America, a territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(2) "Sending state" means a state which is party to this compact in which conviction or commitment was had except if confinement be in another state, pursuant to the Interstate Corrections Compact, in which event the sending state shall be determined by contract between the parties of the Interstate Corrections Compact agreement;

(3) "Receiving state" means a state which is party to this compact to which an inmate is sent for furlough;

(4) "Institution" means a penal or correctional facility, including all those facilities normally used by adult correctional agencies for the care and custody of inmates whether or not such facilities are owned or operated by the agencies;

(5) "Relative" means spouse, child (including stepchild, adopted child, or foster child), parents (including stepparents, adoptive parents, or foster parents), brothers, sisters, and grandparents;

(6) "Interstate furlough" means any out-of-state leave of an inmate for a designated period in accordance with the requirements established by the appropriate officials of the sending state;

(7) "Appropriate official" means a person designated by the sending state to grant furloughs or by the receiving state to accept or reject furloughs pursuant to this compact;

(8) "Authorized person" means a person designated by law or appointment for purposes of escorting, transferring, or retaining a furloughed inmate;

(9) "Medical emergency" means any illness, injury, incapacity, or condition, physical or mental, of such a nature and gravity that timely and immediate treatment of and attention to the illness is required to prevent permanent injury, substantial harm, or death, and which cannot be adequately treated or attended to, in a timely manner, by the sending state;

(10) "Escorted interstate furlough" means the transference of an inmate in emergency situations, who does not meet the furlough requirements of the sending state to a state which is party to the compact under escort or guard of an authorized person of the sending state;

(11) "Escapee" means an inmate who is on interstate furlough, pursuant to this compact, and fails to return at the prescribed time to the sending state or becomes a known absconder during the period of his furlough; and

(12) "Violator" means an inmate who is on interstate furlough in the receiving state, pursuant to this compact, and fails to abide by the conditions of the furlough as established by the sending state.

History: C. 1953, 77-34-2, enacted by L. 1980, ch. 15, § 2.

77-34-3. Reasons for granting furlough pursuant to compact — Period of furlough — Escorted furloughs — Waiver of extradition — Termination of furlough — Laws and regulations applicable to inmates.

(1) A furlough pursuant to this compact may be granted to an inmate for the following reasons:

- (a) To visit a critically ill relative;
- (b) To attend a funeral of a relative;
- (c) To obtain medical services of both a physiological and psychiatric nature;
- (d) To contact prospective employers;
- (e) To secure a suitable residence for use upon discharge or upon parole; if in the latter event, the inmate qualifies for the Interstate Parole and Probation Compact;
- (f) For any other reason which, in the opinion of the appropriate official of the sending state, is consistent with the rehabilitation of the inmate.

(2) A furlough among states which are party to the compact shall be granted for a period not to exceed 15 days, including travel time; however, for emergency or other exigent circumstances and at the written request of the furloughee, an extension may be granted by the appropriate official of the sending state upon the consent of the receiving state.

(3) For those inmates ineligible for an unescorted furlough, the sending state, in emergency situations, as defined below, may furlough those inmates under escort to a state which is party to this compact. All inmates on escorted furlough shall be under the guard and jurisdiction of an authorized person from the sending state and shall be under the continuous supervision of that person as consistent with Section 77-34-6.

(a) An emergency situation shall apply only to visit a critically ill relative, to attend a funeral of a relative, or if a medical emergency exists. In all such instances, the sending state shall first verify the legitimacy of the request and if verified shall request the receiving state to approve or reject the proposed furlough.

(b) Escorted furloughs granted for these reasons shall not exceed four days including travel time; however for emergency or other exigent circumstances and at the written request of the inmate, an extension may be granted by the appropriate official of the sending state upon the verification and consent of the appropriate official of the receiving state.

(4) Prior to the authorization for an inmate to go beyond the limits of the state, the appropriate official shall obtain a written waiver of extradition from the inmate waiving his right to be extradited from any state to which he is furloughed or from any state where he was apprehended.

(5) The grant of a stipulated period of furlough may be terminated by either the sending or receiving state upon written showing of cause. In some instances, the furloughed inmate shall be given reasonable opportunity to obtain the information, including written statements of witnesses and other documentation, which may be of assistance to him in subsequent disciplinary hearings by the sending state for those events or violations that caused termination of his furlough. Reasonable costs of gathering of the information shall be chargeable to the furloughee or to the sending state in the event of the furloughed inmate's inability to pay.

(6) Inmates from the sending state, who are on interstate furlough in the receiving state, shall be subject to all the provisions of laws and regulations applicable to those on interstate furlough status within the receiving state, not inconsistent with the sentence imposed.

History: C. 1953, 77-34-3, enacted by L. 1980, ch. 15, § 2.

77-34-4. Duties of officials in nonemergency and emergency cases.

(1) In nonemergency situations, the appropriate official of the sending state shall notify the appropriate official of the receiving state in writing 30 days prior to the granting of the furlough, requesting the receiving state to investigate the circumstances of the proposed furlough plan. In these circumstances, the receiving state shall respond in writing within 10 days prior to the proposed furlough either accepting the inmate or stating the reasons for the rejection.

(2) In emergency circumstances, as defined in Section 77-34-3(3)(a), the appropriate official of the sending state shall, prior to granting such furlough, (a) verify the legitimacy of the request, and (b) upon verification, immediately notify and secure the consent of the receiving state.

History: C. 1953, 77-34-4, enacted by L. 1980, ch. 15, § 2.

77-34-5. Contracts supplemental to compact authorized.

The appropriate official of a party state may supplement but in no way abrogate the provisions of this compact through one or more contracts with any other party state for the furlough of inmates. The contracts may provide for:

- (1) Duration;
- (2) Terms and conditions of the furlough;
- (3) Report of violations and escapes by furloughees;
- (4) Costs, if any, to be incurred;
- (5) Delivery and retaining of furloughees; and
- (6) Other matters as may be necessary and appropriate to fix the jurisdictions, obligations, responsibilities, liabilities, and rights of the sending and receiving states.

History: C. 1953, 77-34-5, enacted by L. 1980, ch. 15, § 2.

77-34-6. Jurisdiction and duties of authorized persons of sending and receiving states.

(1) As provided for by the laws, rules, and regulations of the sending state, the furloughee will at all times be subject to the jurisdiction of the appropriate officials and authorized persons of the sending state who shall retain the powers over the furloughee that they would normally exercise over the inmate were he on intrastate furlough.

(2) The authorized person of a sending state may at all times enter a receiving state and there apprehend and retake any person on furlough. For that purpose no formalities will be required other than establishing the authority of that person and the identity of the furlougee to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto as to such persons. The decision of the sending state to retake a person on furlough shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a furlougee there should be pending against him within the receiving state any criminal charge or should he be suspected of having committed within that state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for the offense.

(3) The authorized person of the sending state or the receiving state acting as agent for the sending state will be permitted to transport inmates being retaken through any or all states party to this compact without interference.

(4) The governor of each state may designate an officer who, acting jointly with like officers of other party states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(5) Appropriate officials and authorized persons of the receiving state shall act solely as agents of the sending state with respect to jurisdiction over and liability for the furlougees. The jurisdiction and liability of the sending and receiving states may be subject to further contractual specifications by the sending and receiving states as may be deemed necessary.

(6) The receiving state shall, upon a furlough violation of which it has knowledge, promptly notify the sending state. The notification should specify the nature of the violation and, if a crime has been committed, shall, whenever possible, give the official and furlougee's version of the act. If the grant of furlough is terminated due to the violation, the right and responsibility to retake the furlougee shall be that of the sending state but nothing contained herein shall prevent the receiving state from assisting the sending state toward retaking and returning the furlougee except in instances where the receiving state shall subject the furlougee to confinement for a crime allegedly committed during the furlough within its boundaries. All costs in connection therewith shall be chargeable to the sending state unless costs arise from an escape from confinement in the receiving state.

(7) In the case of an escape to a jurisdiction other than the sending or receiving state, the right and responsibility to retake the escapee shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee, except in instances where the receiving state shall subject the furlougee to confinement for a crime allegedly committed during furlough within its boundaries.

(8) The receiving state shall make all necessary arrangements to secure overnight lodging in a state, county, or municipal facility for escorted furlougees or, in exceptional circumstances, for unescorted furlougees when they would not have the availability of overnight lodging.

History: C. 1953, 77-34-6, enacted by L. 1980, ch. 15, § 2.

77-34-7. Costs and expenses.

(1) Costs arising out of a grant of a furlough for transportation, lodgings, meals, and other related expenses shall be the sole responsibility of the furloughee; however, in the event that the furloughee is financially unable to pay for these expenses, such costs may be assumed by the sending state.

(2) Extraordinary costs, other than those specified in Subsection (1) arising from the grant of furlough among party states shall be the sole responsibility of the sending state. Such costs will generally be confined to emergency medical and special confinement and transportation needs.

History: C. 1953, 77-34-7, enacted by L. 1980, ch. 15, § 2.

77-34-8. Effect of execution of compact between states — Renunciation of compact.

The contracting states solemnly agree:

(1) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state; and

(2) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to furloughees residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending a six-month notice in writing of its intention to withdraw from the compact to the other states party hereto.

History: C. 1953, 77-34-8, enacted by L. 1980, ch. 15, § 2.

CHAPTER 35

UTAH RULES OF CRIMINAL PROCEDURE

(Repealed by Laws 1989, ch. 187, § 15.)

Repeals. — Laws 1989, ch. 187, § 15 repeals Chapter 35 of Title 77 effective July 1, 1990.

The Utah Supreme Court, in *In re Rules of procedure and evidence to be used in the courts of this state*, filed January 13, 1989, provided per curiam:

"Pursuant to the provisions of article VIII, section 4 of the Constitution of Utah, as amended, and rule 11-101(3)(E) of the Code of Judicial Administration, the Court adopts all existing statutory rules of procedure and evidence contained in Utah Code Ann. §§ 77-35-1 to -33 (1982 & Supp. 1988) not inconsistent with or superseded by rules of procedure and evidence heretofore adopted by this Court, with the exception of section 77-35-12(g) (*see State v. Mendoza*, 748 P.2d 181 (Utah 1987)) and section 77-35-21.5(4)(c) and (d) (*see State v. Copeland*, 97 Utah Adv. Rep. 3 (Dec. 6, 1988)). Effective as of January 1, 1989."

The Rules of Criminal Procedure, and their annotations, now appear only in the softbound *Utah Court Rules Annotated*. Laws 1989, ch. 187, § 14 established a committee "to review Chapter 35, Title 77, Code of Criminal Procedure to determine which provisions should be reenacted as codified

substantive law under Article VIII, Utah Constitution"; the committee was to report its recommendations to the Legislative Judiciary Interim Committee and the Utah Supreme Court no later than October 1989.

Compiler's Notes. — Notwithstanding the 1989 repeal, the 1990 Legislature took the following actions:

Laws 1990, ch. 201, § 2 repealed former § 77-35-9, effective April 23, 1990; for present comparable provisions, see § 77-8a-1.

Laws 1990, ch. 15, § 3 amended former § 77-35-12 to delete a portion that had been found unconstitutional by the state Supreme Court, effective April 23, 1990.

Laws 1990, ch. 306, § 18 repealed former § 77-35-21.5, effective April 23, 1990; for present comparable statutory provisions, see Chapter 16a of this title.

Laws 1990, ch. 7, § 2 reenacted as § 77-1-7 former Subsection 77-35-25(d).

CHAPTER 36

COHABITANT ABUSE PROCEDURES ACT

Section		Section	
77-36-1.	Definitions.	77-36-5.	Sentencing — Restricting contact with victim — Counseling — Cost assessed against defendant.
77-36-2.	Law enforcement officers' training, duties, and powers — Reports — Records.	77-36-6.	Enforcement of orders restricting contact with victim.
77-36-3.	Court's powers and duties in domestic violence actions — Order restraining defendant — Penalty for violation.	77-36-7.	Prosecutor to notify victim of decision as to prosecution.
77-36-3.1.	Conditions for release after arrest for domestic violence.	77-36-8.	Peace officers' immunity from liability.
77-36-3.5.	Repealed.	77-36-9.	Separability clause.
77-36-4.	Appearance of defendant required — Determinations by court.		

77-36-1. Definitions.

As used in this chapter:

- (1) "Cohabitant" has the same meaning as in Section 30-6-1.
- (2) "Domestic violence" includes any of the following crimes when committed by one cohabitant against another:
 - (a) assault, as described in Section 76-5-102;
 - (b) aggravated assault, as described in Section 76-5-103;
 - (c) mayhem, as described in Section 76-5-105;
 - (d) criminal mischief, as described in Section 76-6-106;
 - (e) burglary, as described in Section 76-6-202;
 - (f) aggravated burglary, as described in Section 76-6-203;
 - (g) criminal trespass, as described in Section 76-6-206;
 - (h) aggravated kidnapping, as described in Section 76-5-302;
 - (i) unlawful detention, as described in Section 76-5-304; or
 - (j) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a.
- (3) "Victim" means a cohabitant who has been subjected to domestic violence.

History: C. 1953, 77-36-1, enacted by L. 1983, ch. 114, § 1; 1990, ch. 256, § 3; 1991, ch. 180, § 7; 1993, ch. 137, § 13.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, in Subsection (1) deleted the former Subsection (a) designation

at the beginning of the subsection, substituted the present introductory paragraph for "‘Cohabitant’ means a person who is 16 years of age or older and who," substituted the present letter subsection designations for the former roman numerals, and deleted former Subsection (1)(b) which read: "‘Cohabitant’ does not include the relationship of a parent or stepparent and his minor child."

The 1993 amendment, effective May 3, 1993, substituted "has the same meaning as in Section 30-6-1" for former language referring to Section 15-2-1 and listing relationships for an emancipated person in Subsection (1), added Subsection (2)(j), and made stylistic changes.

NOTES TO DECISIONS

Cited in Utah Dep’t of Cors. v. Despain, 824 P.2d 439 (Utah Ct. App. 1991).

COLLATERAL REFERENCES

Journal of Contemporary Law. — Utah Task Force on Gender And Justice: Report to the Utah Judicial Council, March 1990, 16 J. Contemp. L. 135 (1990).

77-36-2. Law enforcement officers’ training, duties, and powers — Reports — Records.

(1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress protection of the victim, enforcement of criminal laws in domestic situations, and availability of community resources. Law enforcement agencies and community organizations with expertise in domestic violence shall cooperate in all aspects of that training.

(2) The primary duty of peace officers responding to a domestic violence call is to protect the parties and enforce the laws allegedly violated.

(3) (a) In addition to the arrest powers described in Section 77-7-2, when a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall arrest without a warrant or issue a citation to any person that he has probable cause to believe has committed any of the offenses described in Subsections 77-36-1(2)(a) through (i).

If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation under this section. For purposes of this section "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section 76-1-601.

(b) If a peace officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise, he shall notify the victim of his or her right to initiate a criminal proceeding and of the importance of preserving evidence.

(c) A peace officer responding to a domestic violence call shall prepare an incident report including an officer’s disposition of the case. That report shall be made available to the victim, upon request, at no cost.

(4) The peace officer shall offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries, or to a place of safety or shelter.

(5) The law enforcement agency shall forward the incident report to the appropriate prosecutor within ten days of making the report, unless the case is under active investigation.

(6) Each law enforcement agency shall, as soon as practicable, make a written record and maintain records of all incidents of domestic violence reported to it.

(7) Records made and kept pursuant to Subsections (3) and (6) shall be identified by a law enforcement agency code for domestic violence.

History: C. 1953, 77-36-2, enacted by L. 1983, ch. 114, § 1; 1990, ch. 256, § 4; 1991, ch. 156, § 1.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, added the second paragraph in Subsection (3)(a).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Family Law, 1992 Utah L. Rev. 350.

77-36-3. Court's powers and duties in domestic violence actions — Order restraining defendant — Penalty for violation.

(1) Because of the serious nature of domestic violence, the court, in domestic violence actions:

(a) may not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;

(b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;

(c) shall waive any requirement that the victim's location be disclosed other than to the defendant's attorney, upon a showing that there is a possibility of further violence. The court may order the defendant's attorney not to disclose the victim's location to his client;

(d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence;

(e) may not dismiss a charge involving domestic violence at the request of the victim unless it has reasonable cause to believe that the dismissal would benefit the victim; and

(f) may hold a plea in abeyance, making treatment for the defendant a condition of that status. If the defendant fails to complete treatment as directed, the court may accept the defendant's plea.

(2) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant charged with a crime involving domestic violence is released from custody before trial, the court authorizing the release may issue an order prohibiting the defendant from having any contact with the victim. A violation of that order is a class A misdemeanor.

(b) The order releasing the defendant shall contain the court's directives and shall state: Violation of this order is a class A misdemeanor. The prosecutor shall provide a certified copy of the order to the victim.

History: C. 1953, 77-36-3, enacted by L. 1983, ch. 114, § 1; 1990, ch. 256, § 5; 1993, ch. 137, § 14.

Amendment Notes. — The 1993 amend-

ment, effective May 3, 1993, substituted "class A misdemeanor" for "class B misdemeanor" in Subsections (2)(a) and (2)(b) and made a stylistic change.

77-36-3.1. Conditions for release after arrest for domestic violence.

(1) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release he is ordered by the court or agrees in writing that until the expiration of that time he will:

(a) have no personal contact with the alleged victim;

(b) not threaten or harass the alleged victim; and

(c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(2) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the requirements described in Subsection (1). Upon waiver, those requirements shall not apply to the alleged perpetrator.

(b) A court or magistrate may modify the requirements described in Subsections (1)(a) or (c), in writing or on the record, and only for good cause shown.

(3) Whenever a person is released pursuant to Subsection (1), the releasing agency shall contact the arresting law enforcement agency. The arresting law enforcement agency shall then make reasonable effort to notify the victim of that release. This subsection does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

(4) (a) Any person who knowingly violates a court order or agreement executed pursuant to Subsection (1) shall be guilty as follows:

(i) if the original arrest was for a felony, an offense under this section is a third degree felony;

(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

(b) City attorneys may prosecute class A misdemeanor violations under this section.

(5) An individual who was originally arrested for a felony under this chapter and released pursuant to this section, may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

(6) At the time an arrest for domestic violence is made, the arresting officer shall provide both the alleged victim and the alleged perpetrator with written notice containing the following information:

(a) the requirements described in Subsection (1), and notice that those requirements shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

(b) notification of the penalties for violation of a court order or agreement executed under Subsection (1);

(c) the date and time, absent modification by a court or magistrate, that the requirements expire;

(d) the address of the appropriate court in the district or county in which the alleged victim resides;

- (e) the availability and effect of a waiver of the requirements; and
- (f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

(7) In addition to the provisions of Subsections (1) through (5), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail. If bail is denied under this subsection, it shall be under the terms and conditions described in Subsections (1) through (5).

History: C. 1953, 77-36-3.1, enacted by L. 1991, ch. 156, § 2.

became effective on April 29, 1991, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1991, ch. 156

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Family Law, 1992 Utah L. Rev. 350.

77-36-3.5. Repealed.

Repeals. — Laws 1991, ch. 156, § 3 repeals § 77-36-3.5, as enacted by Laws 1990, ch. 258, § 1, relating to the no-contact requirement for

alleged perpetrators of domestic violence, effective April 29, 1991. For present comparable provisions, see § 77-36-3.1.

77-36-4. Appearance of defendant required — Determinations by court.

(1) A defendant who has been arrested for an offense involving domestic violence shall appear in person before a magistrate within one judicial day after the arrest.

(2) A defendant who has been charged by citation, complaint, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of an appearance under Subsection (1) or (2), the court shall determine the necessity of imposing a protective order or other condition of pretrial release, and shall state its findings and determination in writing.

(4) Appearances required by this section are mandatory and may not be waived.

History: C. 1953, 77-36-4, enacted by L. 1983, ch. 114, § 1; 1990, ch. 256, § 6.

77-36-5. Sentencing — Restricting contact with victim — Counseling — Cost assessed against defendant.

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's contact with the victim, the condition shall be included in a written order and the prosecutor shall provide a certified copy of that order to the victim.

(2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in treatment or therapy under the direction of an organization or individual experienced in domestic violence counseling. The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim, as well as the costs for defendant's own counseling. The court shall assess against the defendant, as restitution, any costs for services or treatment provided to the abused spouse by the Division of Family Services under Section 62A-4a-106. The court shall order those costs to be paid directly to the division.

History: C. 1953, 77-36-5, enacted by L. 1983, ch. 114, § 1; 1987, ch. 113, § 2; 1989, ch. 32, § 6; 1990, ch. 256, § 7; 1994, ch. 260, § 81.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, substituted "Section 62A-4a-106" for "Section 62A-4-108" in Subsection (2).

77-36-6. Enforcement of orders restricting contact with victim.

Any law enforcement agency in this state may enforce orders restricting the defendant's contact with the victim.

History: C. 1953, 77-36-6, enacted by L. 1983, ch. 114, § 1.

77-36-7. Prosecutor to notify victim of decision as to prosecution.

(1) The prosecutor who is responsible for making the decision of whether to prosecute a case shall advise the victim, upon request, of the status of the victim's case and shall notify the victim of a decision within five days after it has been made.

(2) Notification to the victim that charges will not be filed shall include a description of the procedures available to the victim in that jurisdiction for initiation of criminal and other protective proceedings.

History: C. 1953, 77-36-7, enacted by L. 1983, ch. 114, § 1; 1990, ch. 256, § 8.

77-36-8. Peace officers' immunity from liability.

A peace officer may not be held liable in any civil action brought by a party to an incident of domestic violence for making or failing to make an arrest or for issuing or failing to issue a citation in accordance with this chapter, for enforcing in good faith an order of the court, or for acting or omitting to act in any other way in good faith under this chapter in situations arising from an alleged incident of domestic violence.

History: C. 1953, 77-36-8, enacted by L. 1983, ch. 114, § 1; 1990, ch. 256, § 9.

77-36-9. Separability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

History: C. 1953, 77-36-9, enacted by L. 1983, ch. 114, § 9.

CHAPTER 37

VICTIMS' RIGHTS

Compiler's Notes. — This chapter was originally enacted as Title 64A, Chapter 1, but was renumbered by the Office of Legislative Research and General Counsel to be part of the Code of Criminal Procedure.

Section		Section	
77-37-1.	Legislative intent.	77-37-4.	Additional rights — Children.
77-37-2.	Definitions.	77-37-5.	Remedies — Victims' Rights Committee.
77-37-3.	Bill of Rights.		

77-37-1. Legislative intent.

(1) The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

(2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

History: C. 1953, 64A-1-1, enacted by L. 1987, ch. 194, § 1; recodified as C. 1953, 77-37-1.

COLLATERAL REFERENCES

Journal of Contemporary Law. — Comment, Victims' Rights and the Parole Hearing, 15 J. Contemp. L. 71 (1989).

77-37-2. Definitions.

In this chapter:

(1) "Child" means a person who is younger than 18 years of age, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.

(2) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.

(3) "Victim" means a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.

(4) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.

History: C. 1953, 64A-1-2, enacted by L. 1987, ch. 194, § 2; recodified as C. 1953, 77-37-2.

77-37-3. Bill of Rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form that is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims are entitled to restitution or reparations, including medical costs, as provided in Title 63, Chapter 63, and Sections 77-27-6, 62A-7-122, and 76-3-201. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Utah Crime Victims' Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24-1 through 77-24-5. Criminal justice

agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the convicted sexual offender for HIV infection as provided in Section 76-5-502. The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.

(2) Informational rights of the victim under this chapter are based upon the victim providing his current address and telephone number to the criminal justice agencies involved in the case.

History: C. 1953, 64A-1-3, enacted by L. 1987, ch. 194, § 3; recodified as C. 1953, 77-37-3; L. 1988, ch. 1, § 400; 1993, ch. 40, § 7.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, added Subsection (1)(j) and made stylistic changes throughout the section.

COLLATERAL REFERENCES

A.L.R. — Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense, 66 A.L.R.4th 985.

77-37-4. Additional rights — Children.

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

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

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

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

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

History: C. 1953, 64A-1-4, enacted by L. 1987, ch. 194, § 4; recodified as C. 1953, 77-37-4.

77-37-5. Remedies — Victims' Rights Committee.

Remedies available are:

(1) In each judicial district, the presiding district court judge shall appoint a person who shall establish and chair a victims' rights committee consisting of:

- (a) a county attorney or district attorney;
- (b) a sheriff;
- (c) a corrections field services administrator;
- (d) an appointed victim advocate;
- (e) a municipal attorney;
- (f) a municipal chief of police; and
- (g) other representatives as appropriate.

(2) The committee shall meet at least semiannually to review progress and problems related to this chapter. Victims and other interested parties may submit matters of concern to the victims' rights committee. These matters shall also be considered at the meetings of the victims' rights committee. The minutes of the semiannual meeting shall be forwarded to the Commission on Criminal and Juvenile Justice.

(3) The Office of Crime Victims' Reparations shall provide materials to local law enforcement to inform every victim of a sexual offense of his right to request testing of the convicted sexual offender and of himself as provided in Section 76-5-502.

(4) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual. Failure to provide the rights enumerated above does not constitute cause for a judgment for monetary damage or an attorney's fee.

(5) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

History: C. 1953, 64A-1-5, enacted by L. 1987, ch. 194, § 5; recodified as C. 1953, 77-37-5; 1993, ch. 38, § 104; 1993, ch. 40, § 8.

Amendment Notes. — The 1993 amend-

ment by ch. 38, effective May 3, 1993, added "or district attorney" at the end of Subsection (1)(a).

The 1993 amendment by ch. 40, effective May

3, 1993, rewrote Subsection (3), which read "A violation of this chapter is not a criminal offense, but is subject to civil remedies under Subsection (4)," and made stylistic changes throughout the section.

This section is set out as reconciled by the

Office of Legislative Research and General Counsel.

Cross-References. — Commission on Criminal and Juvenile Justice, § 63-25-1 et seq.

CHAPTER 38

RIGHTS OF CRIME VICTIMS ACT

Repeals. — Laws 1992, ch. 171, § 17 repealed former §§ 77-38-1 to 77-38-8, as enacted by L. 1989, ch. 246, §§ 4 to 11 and as last amended by L. 1990, ch. 183, § 53; 1990, ch. 306, §§ 14, 15, and 17; 1991, ch. 66, § 6; and 1991, ch. 292, § 7, relating to the Psychiatric Security Review Board, effective July 1, 1992.

Compiler's Notes. — Laws 1994, S.J.R. 6 proposed amending Utah Const., Art. I, Sec. 12 and adding a new Sec. 28 to that article. These changes were approved by the voters to take effect on January 1, 1995. Laws 1994, ch. 198, which enacted this chapter, provides in § 16 that the Legislature intends the act to serve as the implementing legislation of those constitutional amendments.

Section	Title.	Section	
77-38-1.		77-38-8.	Age-appropriate language at preliminary hearing.
77-38-2.	Definitions — Victim of a crime, representative of a victim, important criminal justice proceedings.	77-38-9.	Representative of victim — Court designation — Representation in cases involving minors — Photographs in homicide cases.
77-38-3.	Notification to victims — Initial notice, election to receive subsequent notices — Form of notice.	77-38-10.	Victim's discretion.
77-38-4.	Right to be present and to be heard — Control of disruptive acts or irrelevant statements — Statements from persons in custody.	77-38-11.	Enforcement — Declaratory judgment — No right to money damages.
77-38-5.	Application of the crime victims declaration of rights to felonies.	77-38-12.	Construction of this chapter — No right to set aside conviction — Severability clause.
77-38-6.	Victim's right to privacy.	77-38-13.	Declaration of legislative authority.
77-38-7.	Victim's right to a speedy trial.	77-38-14.	Notice of expungement petition — Victim's right to object.

77-38-1. Title.

This act shall be known and may be cited as the "Rights of Crime Victims Act."

History: C. 1953, 77-38-1, enacted by L. 1994, ch. 198, § 2.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-2. Definitions — Victim of a crime, representative of a victim, important criminal justice proceedings.

For the purposes of this chapter and the Utah Constitution:

- (1) (a) "Victim of a crime" means any natural person against whom the charged crime is alleged to have been perpetrated or attempted by the

defendant personally or as a party to the offense or, in the discretion of the court, against whom a related crime 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 a crime 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 pre-trial 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.

(2) "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.

(3) "Important criminal justice hearings" means the following proceedings in felony criminal cases:

(a) any preliminary hearing to determine probable cause;

(b) any court arraignment where practical;

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

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

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

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

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

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

History: C. 1953, 77-38-2, enacted by L. 1994, ch. 198, § 3.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-3. Notification to victims — Initial notice, election to receive subsequent notices — Form of notice.

(1) 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) 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(3)(a) through (f) and rights under this chapter.

(3) The prosecuting agency shall provide notice to a victim of a crime for the important criminal justice hearings provided in Subsections 77-38-2(3)(a) through (f) which the victim has requested.

(4) (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(3)(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) (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(3)(a) through (f) permit an opportunity for victims of crimes to be notified.

(b) The court shall also consider whether any notification system that 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) 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(3)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.

(7) (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(3)(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) Prosecuting agencies and the Board of Pardons are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(3)(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) (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 that it has received from a victim to the Board of Pardons and Parole.

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

History: C. 1953, 77-38-3, enacted by L. 1994, ch. 198, § 4.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-4. Right to be present and to be heard — Control of disruptive acts or irrelevant statements — Statements from persons in custody.

(1) The victim of a crime shall have the right to be present at the important criminal justice hearings provided in Subsections 77-38-2(3)(a) through (f), the right to be heard at the important criminal justice hearings provided in Subsections 77-38-2(3)(b), (c), (d), and (f), and, upon request to the judge hearing the matter, the right to be present and heard at the initial appearance of the person suspected of committing the criminal offense against the victim on issues relating to whether to release a defendant and, if so, under what conditions release may occur.

(2) This chapter shall not confer any right to the victim of a crime to be heard at any criminal trial, including the sentencing phase of a capital trial under Section 76-3-207 or at any preliminary hearing, unless called as a witness.

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

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

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

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

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

(8) If the victim of a crime is a person who is in custody as a pre-trial 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, the right to be heard under this chapter shall be exercised by submitting a written statement to the court.

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

(10) The Constitution may not be construed as limiting the existing rights of the prosecution to introduce evidence in support of a capital sentence.

History: C. 1953, 77-38-4, enacted by L. 1994, ch. 198, § 5.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-5. Application of the crime victims declaration of rights to felonies.

The provisions of this chapter shall apply to all felonies filed in the courts of the state of Utah and, if specifically provided, to cases in the juvenile court.

History: C. 1953, 77-38-5, enacted by L. 1994, ch. 198, § 6.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-6. Victim's right to privacy.

(1) The victim of a crime has the right, at any court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court orders disclosure on finding that a compelling need exists to disclose the information. A court proceeding on whether to order disclosure shall be in camera.

(2) A defendant may not compel any witness to a crime, at any court proceeding, to testify regarding the witness's address, telephone number, place of employment, or other locating information unless the witness specifically consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on whether to order disclosure shall be in camera.

History: C. 1953, 77-38-6, enacted by L. 1994, ch. 198, § 7.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-7. Victim's right to a speedy trial.

(1) In determining a date for any criminal trial or other important criminal justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's right to a speedy trial.

(2) The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant and to prompt and final conclusion of the case after the conviction and sentence, including prompt and final conclusion of all collateral attacks on criminal judgments.

(3) (a) In ruling on any motion by a defendant to continue a previously established trial or other important criminal justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy disposition of the case.

(b) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

History: C. 1953, 77-38-7, enacted by L. 1994, ch. 198, § 8.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-8. Age-appropriate language at preliminary hearing.

In any preliminary hearing concerning a charge of child abuse or sexual abuse against a child, examination and cross-examination of a victim or

witness 13 years of age or younger shall be conducted in age-appropriate language.

History: C. 1953, 77-38-8, enacted by L. 1994, ch. 198, § 9.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-9. Representative of victim — Court designation — Representation in cases involving minors — Photographs in homicide cases.

(1) (a) A victim of a crime may designate, with the approval of the court, a representative who may exercise the same rights that the victim is entitled to exercise under this chapter.

(b) Except as otherwise provided in this section, the victim may revoke the designation at any time.

(c) In cases where the designation is in question, the court may require that the designation of the representative be made in writing by the victim.

(2) In cases in which the victim is deceased or incapacitated, upon request from the victim's spouse, parent, child, or close friend, the court shall designate a representative or representatives of the victim to exercise the rights of a victim under this chapter on behalf of the victim. The responsible prosecuting agency may request a designation to the court.

(3) (a) If the victim is a minor, the court in its discretion may allow the minor to exercise the rights of a victim under this chapter or may allow the victim's parent or other immediate family member to act as a representative of the victim.

(b) The court may also, in its discretion, designate a person who is not a member of the immediate family to represent the interests of the minor.

(4) The representative of a victim of a crime shall not be:

(a) the accused or a person who appears to be accountable or otherwise criminally responsible for or criminally involved in the crime, a related crime, or a crime arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state;

(b) a person in the custody of or under detention of federal, state, or local authorities; or

(c) a person whom the court in its discretion considers to be otherwise inappropriate.

(5) Any notices that are to be provided to a victim pursuant to this chapter shall be sent to the victim or the victim's lawful representative.

(6) On behalf of the victim, the prosecutor may assert any right to which the victim is entitled under this chapter, unless the victim requests otherwise or exercises his own rights.

(7) In any homicide prosecution, the prosecution may introduce a photograph of the victim taken before the homicide to establish that the victim was a human being, the identity of the victim, and for other relevant purposes.

History: C. 1953, 77-38-9, enacted by L. 1994, ch. 198, § 10.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-10. Victim's discretion.

(1) (a) The victim may exercise any rights under this chapter at his discretion to be present and to be heard at a court proceeding.

(b) The absence of the victim at the court proceeding does not preclude the court from conducting the proceeding.

(2) A victim shall not refuse to comply with an otherwise lawful subpoena under this chapter.

(3) A victim shall not prevent the prosecution from complying with requests for information within a prosecutor's possession and control under this chapter.

History: C. 1953, 77-38-10, enacted by L. 1994, ch. 198, § 11.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-11. Enforcement — Declaratory judgment — No right to money damages.

(1) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief, including prospective injunctive relief, may be brought against the individual and the governmental entity that employs the individual.

(2) (a) The victim of a crime or representative of a victim of a crime, including any Victims' Rights Committee as defined in Section 77-37-5, may bring an action for declaratory relief defining the rights of victims and the obligations of government entities under this chapter.

(b) Adverse rulings on these actions may be appealed under the rules governing appellate actions, provided that no appeal shall constitute a grounds for delaying any criminal proceeding.

(c) An appellate court shall review all such properly presented issues, including issues that are capable of repetition but would otherwise evade review.

(3) The failure to provide the rights enumerated in this chapter shall not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorneys' fees, or the costs of exercising any rights under this chapter.

History: C. 1953, 77-38-11, enacted by L. 1994, ch. 198, § 12.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-12. Construction of this chapter — No right to set aside conviction — Severability clause.

(1) All of the provisions contained in this chapter shall be construed to assist the victims of crime.

(2) This chapter may not be construed as creating a basis for dismissing any criminal charge, or vacating any conviction or plea of guilty or no contest, or for appellate, habeas corpus, or other relief from a judgment in any criminal case.

(3) This chapter may not be construed as creating any right of a victim to appointed counsel at state expense.

(4) All of the rights contained in this chapter shall be construed to conform to the Constitution of the United States.

(5) (a) In the event that any portion of this chapter is found to violate the Constitution of the United States, the remaining provisions of this chapter shall continue to operate in full force and effect.

(b) In the event that a particular application of any portion of this chapter is found to violate the Constitution of the United States, all other applications shall continue to operate in full force and effect.

(6) The enumeration of certain rights for crime victims in this chapter shall not be construed to deny or disparage other rights granted by the Legislature or retained by victims of crimes.

History: C. 1953, 77-38-12, enacted by L. 1994, ch. 198, § 13.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-13. Declaration of legislative authority.

It is the view of the Legislature that the provisions of this chapter, and other provisions enacted simultaneously with it, are substantive provisions within inherent legislative authority. In the event that any of the provisions of this chapter, and other provisions enacted simultaneously with it, are interpreted to be procedural in nature, the Legislature also intends to invoke its powers to modify procedural rules under the Utah Constitution.

History: C. 1953, 77-38-13, enacted by L. 1994, ch. 198, § 14.

Effective Dates. — Laws 1994, ch. 198, § 17 makes the act effective on May 2, 1994,

and provides that it applies to criminal proceedings and criminal investigations initiated on or after May 2, 1994.

77-38-14. Notice of expungement petition — Victim's right to object.

(1) The Department of Corrections shall prepare a document explaining the right of a victim or a victim's representative to object to a petition for expungement under Section 77-18-11 and the procedures for obtaining notice of any such petition. The department shall also provide each trial court a copy of the document which has jurisdiction over criminal offenses subject to expungement.

(2) The prosecuting attorney in any case leading to a conviction subject to expungement shall provide a copy of the document to each person who would

be entitled to notice of a petition for expungement under Subsection 77-18-11(3).

History: C. 1953, 77-38-14, enacted by L. 1994, ch. 143, § 10. became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.
Effective Dates. — Laws 1994, ch. 143

CHAPTER 39

SALE OF TOBACCO AND ALCOHOL TO UNDER AGE PERSONS

Section
 77-39-101. Investigation of sales of alcohol
 and tobacco to under age per-
 sons.

77-39-101. Investigation of sales of alcohol and tobacco to under age persons.

(1) (a) A peace officer, as defined by Section 77-1a-1, may investigate the possible violation of Section 32A-12-203 or Section 76-10-104 by requesting a person under the legal age to attempt to purchase alcohol as provided in Section 32A-12-203, or tobacco as provided in Section 76-10-104, to enter into and attempt to purchase or make a purchase of alcohol or tobacco products from a retail establishment.

(b) A peace officer who is present at the site of a proposed purchase shall direct, supervise, and monitor the person requested to make the purchase.

(c) Immediately following the purchase or attempted purchase or as soon as practical the supervising peace officer shall inform the cashier and the proprietor or manager of the retail establishment that the attempted purchaser was under the legal age to purchase alcohol or tobacco.

(d) If a citation or information is issued, it shall be issued within seven days of the purchase.

(2) (a) If a person under the age of 18 years old is requested to attempt a purchase, a written consent of that person's parent or guardian shall be obtained prior to that person participating in any attempted purchase.

(b) A person requested by the peace officer to attempt a purchase may be a trained volunteer or receive payment but may not be paid based on the number of successful purchases of alcohol or tobacco.

(3) The person requested by the peace officer to attempt a purchase and anyone accompanying the person attempting a purchase may not during the attempted purchase misrepresent the age of the person by false or misleading identification documentation in attempting the purchase.

(4) A person requested to purchase alcohol or tobacco pursuant to this section is immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or possession of alcohol or tobacco if a peace officer directs, supervises, and monitors the person.

(5) (a) Except as provided in Subsection (5)(b), a purchase attempted under this section shall be conducted on a random basis.

(b) Nothing in this section shall prohibit an investigation if there is reasonable suspicion to believe the retail establishment has sold alcohol or

tobacco to a person under the age established by Section 32A-12-203 or 76-10-104.

(6) The peace officer exercising direction, supervision, and monitoring of the attempted purchase shall make a report of the attempted purchase, whether or not a purchase was made. The report shall include:

- (a) the name of the supervising peace officer;
- (b) the name of the person attempting the purchase;
- (c) a photograph of the person attempting the purchase showing how that person appeared at the time of the attempted purchase;
- (d) the name and description of the cashier or proprietor from whom the person attempted the purchase;
- (e) the name and address of the retail establishment; and
- (f) the date and time of the attempted purchase.

History: C. 1953, 77-39-101, enacted by L. 1994, ch. 168, § 1.

became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1994, ch. 168