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# A BILL FOR AN ACT

RELATING TO VICTIM-COUNSELOR PRIVILEGE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that in Act 208, Session  
2 Laws of Hawaii 2016, (Act 208) required the University of Hawaii  
3 to designate at each campus a confidential advocate for victims  
4 seeking help for sexual harassment, sexual assault, domestic  
5 violence, dating violence, stalking, and related issues.  
6 Act 208 also required the University of Hawaii to publicize on  
7 each campus website the names, phone numbers, and email  
8 addresses of confidential advocates. Since 2016, many victims  
9 have sought help from confidential advocates, which has allowed  
10 victims continued access to higher education and pursuit of  
11 their goals. One of the most important factors in providing  
12 assistance to victims has been confidentiality for victims who  
13 fear retaliation or further abuse and harassment.

14           The legislature also finds that the confidentiality that  
15 may be provided to University of Hawaii employees is limited,  
16 due to the provisions of Title VII of the Civil Rights Act of  
17 1964 (Public Law 88-352), a federal employment law. If a



1 confidential advocate learns that the perpetrator of sexual  
2 harassment, sexual assault, domestic violence, dating violence,  
3 or stalking is an employee of the University, the information  
4 must be reported and cannot be kept confidential.

5 The purpose of this Act is to expand the victim-counselor  
6 privilege to confidential advocates to allow University of  
7 Hawaii employees to receive the same confidential services as  
8 students.

9 SECTION 2. Section 626-1, Hawaii Revised Statutes, is  
10 amended by amending subsections (a) and (b) of rule 505.5 to  
11 read as follows:

12 "(a) Definitions. As used in this rule:

13 (1) A communication is "confidential" if not intended to  
14 be disclosed to third persons other than those to whom  
15 disclosure would be in furtherance of the provision of  
16 counseling or treatment services to the victim or  
17 those reasonably necessary for the transmission of the  
18 communication.

19 (2) "Domestic violence victims' program" means any refuge,  
20 shelter, office, safe home, institution, or center  
21 established for the purpose of offering assistance to



1 victims of abuse through crisis intervention, medical,  
2 legal, or support counseling.

3 (3) "Sexual assault crisis center" means any office,  
4 institution, or center offering assistance to victims  
5 of sexual assault and the families of such victims  
6 through crisis intervention, medical, legal, or  
7 support counseling.

8 (4) "Social worker" means a person who has received a  
9 master's degree in social work from a school of social  
10 work accredited by the Council on Social Work  
11 Education.

12 (5) A "victim" is a person who consults a victim counselor  
13 for assistance in overcoming any adverse emotional or  
14 psychological effect of sexual assault, domestic  
15 violence, dating violence, stalking, sexual  
16 harassment, or child abuse.

17 (6) A "victim counseling program" is any activity of a  
18 domestic violence victims' program or a sexual assault  
19 crisis center that has, as its primary function, the  
20 counseling and treatment of sexual assault, domestic  
21 violence, or child abuse victims and their families,



1 and that operates independently of any law enforcement  
2 agency, prosecutor's office, or the department of  
3 human services.

4 (7) A "victim counselor" is [~~either~~] a sexual assault  
5 counselor [~~or a~~], domestic violence victims'  
6 counselor[~~-~~], or confidential advocate. A sexual  
7 assault counselor is a person who is employed by or is  
8 a volunteer in a sexual assault crisis center, has  
9 undergone a minimum of thirty-five hours of training  
10 and who is, or who reports to and is under the direct  
11 control and supervision of, a social worker, nurse,  
12 psychiatrist, psychologist, or psychotherapist, and  
13 whose primary function is the rendering of advice,  
14 counseling, or assistance to victims of sexual  
15 assault. A domestic violence victims' counselor is a  
16 person who is employed by or is a volunteer in a  
17 domestic violence victims' program, has undergone a  
18 minimum of twenty-five hours of training and who is,  
19 or who reports to and is under the direct control and  
20 supervision of, a direct service supervisor of a  
21 domestic violence victims' program, and whose primary



1 function is the rendering of advice, counseling, or  
2 assistance to victims of abuse. A confidential  
3 advocate is a person who is designated by the  
4 University of Hawaii pursuant to section 304A-120 to  
5 confidentially discuss sexual harassment, sexual  
6 assault, domestic violence, dating violence, stalking,  
7 and related issues with victims and who has undergone  
8 a minimum of thirty-five hours of training.

9 (b) General rule of privilege. A victim has a  
10 semiabsolute privilege to refuse to disclose and to prevent any  
11 other person from disclosing confidential communications made to  
12 a victim counselor for the purpose of counseling or treatment of  
13 the victim for the emotional or psychological effects of sexual  
14 assault, domestic violence, dating violence, stalking, sexual  
15 harassment, or child abuse or neglect, and to refuse to provide  
16 evidence that would identify the name, location, or telephone  
17 number of a safe house, abuse shelter, or other facility that  
18 provided temporary emergency shelter to the victim."

19 SECTION 3. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2060.



# H.B. NO. 569 H.D. 2

**Report Title:**

Rules of Evidence; Victim-Counselor Privilege; UH Confidential Advocate

**Description:**

Expands the victim-counselor privilege under Rule 505.5 of the Hawaii Rules of Evidence to include victims of dating violence, stalking, and sexual harassment and confidential advocates employed by the University of Hawaii. Effective 7/1/2060.  
(HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

