
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 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, and stalking. Act 208 also required
6 the University of Hawaii to publicize on each campus' website
7 the names, phone numbers, and email addresses of confidential
8 advocates. Since 2016, many victims have sought help from
9 confidential advocates, which has given victims continued access
10 to higher education. One of the most important factors in
11 providing assistance to victims has been confidentiality for
12 victims who fear retaliation or further abuse and harassment.

13 The legislature also finds that the confidentiality that
14 may be provided to university employees is limited, due to the
15 provisions of Title VII of the Civil Rights Act of 1964
16 (P.L. 88-352), a federal employment law. If a confidential
17 advocate learns that the perpetrator of sexual harassment,



1 sexual assault, domestic violence, dating violence, or stalking
2 is an employee of the university, the information must be
3 reported and cannot be kept confidential.

4 The purpose of this Act is to expand the victim-counselor
5 privilege to confidential advocates employed by the University
6 of Hawaii.

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

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

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

17 (2) "Domestic violence victims' program" means any refuge,
18 shelter, office, safe home, institution, or center
19 established for the purpose of offering assistance to
20 victims of abuse through crisis intervention, medical,
21 legal, or support counseling.



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

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

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

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



1 agency, prosecutor's office, or the department of
2 human services.

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



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

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

18 SECTION 3. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

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

5 SECTION 5. This Act shall take effect on July 1, 2050.



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 confidential advocates employed by the University of Hawaii. Effective 7/1/2050.
(HD1)

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