
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, required the University of Hawaii to
3 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 the
7 names, phone numbers, and email addresses of confidential
8 advocates. Since 2016, many victims have sought help from
9 confidential advocates, which has allowed victims continued
10 access to higher education and pursuit of their goals. One of
11 the most important factors in providing assistance to victims
12 has been confidentiality for victims who fear retaliation or
13 further abuse and harassment.

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



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

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

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

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

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

18 (2) "Domestic violence victims' program" means any refuge,
19 shelter, office, safe home, institution, or center
20 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 assault.
15 A domestic violence victims' counselor is a person who
16 is employed by or is a volunteer in a domestic
17 violence victims' program, has undergone a minimum of
18 twenty-five hours of training and who is, or who
19 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 upon its approval.



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. (SD1)

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