

1 **JOINT RESOLUTION ADOPTING PRIVILEGE UNDER**
2 **RULES OF EVIDENCE**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: V. Lowry Snow**

6 Senate Sponsor: Todd Weiler

8 **LONG TITLE**

9 **General Description:**

10 This joint resolution adopts a privilege under the rules of evidence related to
11 confidential communications of victims.

12 **Highlighted Provisions:**

13 This resolution:

- 14 ▶ defines terms;
- 15 ▶ states the privilege and who may claim the privilege; and
- 16 ▶ provides for exceptions from the privilege.

17 **Special Clauses:**

18 This bill provides a special effective date.

19 **Utah Rules of Evidence Affected:**

20 ENACTS:

21 **Rule 512**, Utah Rules of Evidence

23 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*
24 *of the two houses voting in favor thereof:*

25 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend
26 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of
27 all members of both houses of the Legislature:

28 Section 1. **Rule 512**, Utah Rules of Evidence is enacted to read:

29 **Rule 512. Victim Communications.**

30 **(a) Definitions.**

31 (a) (1) "Advocacy services" means the same as that term is defined in UCA §
32 77-38-403.

33 (a) (2) "Confidential communication" means a communication that is intended to be
34 confidential between a victim and a victim advocate for the purpose of obtaining advocacy
35 services as defined in UCA § 77-38-403.

36 (a) (3) "Criminal justice system victim advocate" means the same as that term is
37 defined in UCA § 77-38-403.

38 (a) (4) "Health care provider" means the same as that term is defined in UCA §
39 78B-3-403.

40 (a) (5) "Mental health therapist" means the same as that term is defined in UCA §
41 58-60-102.

42 (a) (6) "Victim" means an individual defined as a victim in UCA § 77-38-403.

43 (a) (7) "Victim advocate" means the same as that term is defined in UCA § 77-38-403.

44 **(b) Statement of the Privilege.** A victim communicating with a victim advocate has a
45 privilege during the victim's life to refuse to disclose and to prevent any other person from
46 disclosing a confidential communication.

47 **(c) Who May Claim the Privilege.** The privilege may be claimed by the victim
48 engaged in a confidential communication, or the guardian or conservator of the victim engaged
49 in a confidential communication if the guardian or conservator is not the accused. An
50 individual who is a victim advocate at the time of a confidential communication is presumed to
51 have authority during the life of the victim to claim the privilege on behalf of the victim.

52 **(d) Exceptions.** An exception to the privilege exists in the following circumstances:

53 (d) (1) when the victim, or the victim's guardian or conservator if the guardian or
54 conservator is not the accused, provides written, informed, and voluntary consent for the
55 disclosure, and the written disclosure contains:

- 56 (d) (1) (A) the specific confidential communication subject to disclosure;
- 57 (d) (1) (B) the limited purpose of the disclosure; and
- 58 (d) (1) (C) the name of the individual or party to which the specific confidential
- 59 communication may be disclosed;
- 60 (d) (2) when the confidential communication is required to be disclosed under Title
- 61 62A, Chapter 4a, Child and Family Services, or UCA § [62A-3-305](#);
- 62 (d) (3) when the confidential communication is evidence of a victim being in clear and
- 63 immediate danger to the victim's self or others;
- 64 (d) (4) when the confidential communication is evidence that the victim has committed
- 65 a crime, plans to commit a crime, or intends to conceal a crime;
- 66 (d) (5) if the confidential communication is with a criminal justice system victim
- 67 advocate, the criminal justice system victim advocate may disclose the confidential
- 68 communication to a parent or guardian if the victim is a minor and the parent or guardian is not
- 69 the accused, or a law enforcement officer, health care provider, mental health therapist,
- 70 domestic violence shelter employee, an employee of the Utah Office for Victims of Crime, or
- 71 member of a multidisciplinary team assembled by a Children's Justice Center or law
- 72 enforcement agency for the purpose of providing advocacy services;
- 73 (d) (6) if the confidential communication is with a criminal justice system victim
- 74 advocate, the criminal justice system victim advocate must disclose the confidential
- 75 communication to a prosecutor under UCA § [77-38-405](#);
- 76 (d) (7) if the confidential communication is with a criminal justice system victim
- 77 advocate, and a court determines, after the victim and the defense attorney have been notified
- 78 and afforded an opportunity to be heard at an in camera review, that:
- 79 (d) (7) (A) the probative value of the confidential communication and the interest of
- 80 justice served by the admission of the confidential communication substantially outweigh the
- 81 adverse effect of the admission of the confidential communication on the victim or the
- 82 relationship between the victim and the criminal justice system victim advocate; or

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83 (d) (7) (B) the confidential communication is exculpatory evidence, including
84 impeachment evidence.

85 Section 2. **Effective date.**

86 (1) Except as provided in Subsection (2), this resolution takes effect on July 31, 2019.

87 (2) If the Utah Supreme Court adopts a rule of privilege for victim communications on
88 or before July 30, 2019, this resolution does not take effect.