

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

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd Weiler

LONG TITLE

Committee Note:

The Victim Advocate Confidentiality Task Force recommended this bill.

Membership: 5 legislators 4 non-legislators

Legislative Vote: 5 voting for 0 voting against 0 absent

General Description:

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

Highlighted Provisions:

This resolution:

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

Special Clauses:

None

Utah Rules of Evidence Affected:

ENACTS:

Rule 512, Utah Rules of Evidence

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each



28 *of the two houses voting in favor thereof:*

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

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

33 **Rule 512. Victim Communications.**

34 **(a) Definitions.**

35 (a) (1) "Communication" means the same as that term is defined in UCA § 77-38-403.

36 (a) (2) "Criminal justice system victim advocate" means the same as that term is
37 defined in UCA § 77-38-403.

38 (a) (3) "Non-government organization victim advocate" means the same as that term is
39 defined in UCA § 77-38-403.

40 (a) (4) "Victim" means an individual defined as a victim in UCA § 77-38-403.

41 (a) (5) "Victim advocate communications" means communications between a victim
42 and a victim advocate.

43 (a) (6) "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 victim advocate communications.

47 **(c) Who May Claim the Privilege.** The privilege may be claimed by the victim
48 engaged in victim advocate communications, or the guardian or conservator of the victim
49 engaged in victim advocate communications. An individual who is a victim advocate at the
50 time of the victim advocate communications is presumed to have authority during the life of
51 the victim to claim the privilege on behalf of the victim.

52 **(d) Exceptions.** A privilege does not exist under paragraph (b):

53 (d) (1) when the victim provides written, informed, and voluntary consent that is:

54 (d) (1) (A) reasonably time limited;

55 (d) (1) (B) discussed with the victim regarding why the information might be shared,
56 who would have access to the information, and what information could be shared under the
57 release;

58 (d) (1) (C) descriptive of the information that the victim authorizes to be shared and

59 with whom; and

60 (d) (1) (D) specifies the duration for which the information may be shared;

61 (d) (2) when the victim is a minor and the nongovernment organization victim

62 advocate believes it is in the best interest of the victim to disclose the confidential

63 communication to the victim's parents or legal guardians;

64 (d) (3) when the victim is a minor and the minor's parents or guardians have consented

65 to disclosure of the victim advocate communication and provided the written consent outlined

66 in Subsection (d)(1);

67 (d) (4) for victim advocate communication that is required to be disclosed under Title

68 62A, Chapter 4a, Child and Family Services, or Section [62A-3-305](#);

69 (d) (5) for victim advocate communication that is evidence of a victim being in clear

70 and immediate danger to the victim's self or others;

71 (d) (6) for victim advocate communication that is evidence that the victim has

72 committed a crime, plans to commit a crime, or intends to conceal a crime;

73 (d) (7) if the victim advocate communication is with a criminal justice system victim

74 advocate, the third person to which the victim advocate communication is provided is a

75 government entity that possesses a role or responsibility within the criminal justice system;

76 (d) (8) if the victim advocate communication is with a criminal justice system victim

77 advocate, when a court determines, after notice to the victim and the right to be heard as to the

78 prejudicial effect as part of the in camera review, that the probative value of the victim advocate

79 communication outweighs the prejudicial effect on the victim or the relationship between the

80 criminal justice system victim advocate; or

81 (d) (9) if the victim advocate communication is with a criminal justice system victim

82 advocate, when a court determines, after in camera review, that the communication is

83 exculpatory evidence, including impeachment evidence.