

Representative V. Lowry Snow proposes the following substitute bill:

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

General Description:

This joint resolution adopts a privilege under the rules of evidence related to confidential 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 of the two houses voting in favor thereof:

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 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 Section [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 victim advocate, the victim advocate
67 may disclose the confidential communication to a law enforcement officer, health care
68 provider, mental health therapist, domestic violence shelter employee, or member of a
69 multidisciplinary team assembled by a Children's Justice Center or law enforcement agency for
70 the purpose of providing advocacy services;
- 71 (d) (6) if the confidential communication is with a criminal justice system victim
72 advocate, the criminal justice system victim advocate must disclose to a prosecutor under UCA
73 [§ 77-38-405](#);
- 74 (d) (7) if the confidential communication is with a criminal justice victim advocate,
75 and a court determines, after the victim has been notified and afforded an opportunity to be
76 heard at an in camera review, that:
- 77 (d) (7) (A) the probative value of the confidential communication and the interest of
78 justice served by the admission of the confidential communication substantially outweigh the
79 adverse effect of the admission of the confidential communication on the victim or the
80 relationship between the victim and the victim advocate; or
- 81 (d) (7) (B) the confidential communication is exculpatory evidence, including
82 impeachment evidence.