

HJR003S01 compared with HJR003

~~{deleted text}~~ shows text that was in HJR003 but was deleted in HJR003S01.

Inserted text shows text that was not in HJR003 but was inserted into HJR003S01.

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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

~~{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 confidential communications of victims.

Highlighted Provisions:

This resolution:

- ▶ defines terms;

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- ▶ 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 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

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

Rule 512. Victim Communications.

(a) Definitions.

(a) (1) "~~{Communication}~~Advocacy services" means the same as that term is defined in UCA § 77-38-403.

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

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

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

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

~~———— (a) (5) "Victim advocate communications" means communications between a victim and a victim advocate.‡~~

(a) (~~{6}~~4) "~~{Victim advocate}~~Health care provider" means the same as that term is defined in UCA § ~~{77-38-403}~~.

~~‡78B-3-403.~~

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

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

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

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

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

(d) **Exceptions.** ~~{A}~~An exception to the privilege ~~{does not exist under paragraph (b)}~~ exists in the following circumstances:

(d) (1) when the victim, or the victim's guardian or conservator if the guardian or conservator is not the accused, provides written, informed, and voluntary consent ~~{that is}~~for the disclosure, and the written disclosure contains:

(d) (1) (A) ~~{reasonably time limited;~~

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

~~(d) (1) (C) descriptive of the information that the victim authorizes to be shared and with whom; and~~

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

~~(d) (2) when the victim is a minor and the nongovernment organization victim advocate believes it is in the best interest of the victim to disclose the~~the specific confidential communication ~~{to the victim's parents or legal guardians};~~

~~(d) (3) when the victim is a minor and the minor's parents or guardians have consented to disclosure of the victim advocate communication and provided the written consent outlined~~

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~~in Subsection (d)(1):~~

~~— (d) (4) for victim advocate communication that} subject to disclosure;~~

~~(d) (1) (B) the limited purpose of the disclosure; and~~

~~(d) (1) (C) the name of the individual or party to which the specific confidential communication may be disclosed.~~

~~(d) (2) when the confidential communication is required to be disclosed under Title 62A, Chapter 4a, Child and Family Services, or Section 62A-3-305;~~

~~(d) (~~5~~3) ~~{for victim advocate}~~ when the confidential communication ~~{ that }~~ is evidence of a victim being in clear and immediate danger to the victim's self or others;~~

~~(d) (~~6~~4) ~~{for victim advocate}~~ when the confidential communication ~~{ that }~~ is evidence that the victim has committed a crime, plans to commit a crime, or intends to conceal a crime;~~

~~(d) (~~7~~5) if the confidential communication is with a victim advocate, the victim advocate may disclose the confidential communication to a law enforcement officer, health care provider, mental health therapist, domestic violence shelter employee, or member of a multidisciplinary team assembled by a Children's Justice Center or law enforcement agency for the purpose of providing advocacy services;~~

~~(d) (6) if the confidential communication is with a criminal justice system victim advocate, ~~{ the third person to which the victim advocate communication is provided is a government entity that possesses a role or responsibility within }~~ the criminal justice system ~~{;~~~~

~~— (d) (8) if the} victim advocate must disclose to a prosecutor under UCA § 77-38-405;~~

~~(d) (7) if the confidential communication is with a criminal justice ~~{system}~~ victim advocate, ~~{when}~~ and a court determines, after ~~{notice to the victim and the right to be heard as to the prejudicial effect as part of the}~~ the victim has been notified and afforded an opportunity to be heard at an in camera review, that:~~

~~(d) (7) (A) the probative value of the ~~{victim advocate communication outweighs the prejudicial effect}~~ confidential communication and the interest of justice served by the admission of the confidential communication substantially outweigh the adverse effect of the admission of the confidential communication on the victim or the relationship between the ~~{criminal justice system}~~ victim and the victim advocate; or~~

~~(d) (~~9~~7) ~~{ if }~~ (B) the ~~{victim advocate communication is with a criminal justice~~~~

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~~system victim advocate, when a court determines, after in camera review, that the~~ confidential
communication is exculpatory evidence, including impeachment evidence.