

JAN 19 2023

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, (Act 208) required the University of Hawaii
3 to designate at each campus a confidential advocate for victims
4 seeking help for sexual harassment, sexual assault, domestic
5 violence, dating violence, stalking, and related issues. Act
6 208 also required the University of Hawaii to publicize on each
7 campus website the names, phone numbers, and email addresses of
8 confidential advocates. Since 2016, many victims have sought
9 help from confidential advocates, which has allowed victims to
10 gain the information and help that they need to continue
11 succeeding in their educational, personal, and professional
12 goals. One of the most important factors in providing
13 assistance to victims has been confidentiality for victims who
14 fear retaliation or further abuse and harassment.

15 The purpose of this Act is to expand the victim-counselor
16 privilege under the Hawaii Rules of Evidence to include
17 confidential advocates.



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

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

5 (1) A communication is "confidential" if not intended to
6 be disclosed to third persons other than those to whom
7 disclosure would be in furtherance of the provision of
8 counseling or treatment services to the victim or
9 those reasonably necessary for the transmission of the
10 communication.

11 (2) "Domestic violence victims' program" means any refuge,
12 shelter, office, safe home, institution, or center
13 established for the purpose of offering assistance to
14 victims of abuse through crisis intervention, medical,
15 legal, or support counseling.

16 (3) "Sexual assault crisis center" means any office,
17 institution, or center offering assistance to victims
18 of sexual assault and the families of such victims
19 through crisis intervention, medical, legal, or
20 support counseling.



- 1 (4) "Social worker" means a person who has received a
2 master's degree in social work from a school of social
3 work accredited by the Council on Social Work
4 Education.
- 5 (5) A "victim" is a person who consults a victim counselor
6 for assistance in overcoming any adverse emotional or
7 psychological effect of sexual assault, domestic
8 violence, dating violence, stalking, sexual
9 harassment, or child abuse.
- 10 (6) A "victim counseling program" is any activity of a
11 domestic violence victims' program or a sexual assault
12 crisis center that has, as its primary function, the
13 counseling and treatment of sexual assault, domestic
14 violence, or child abuse victims and their families,
15 and that operates independently of any law enforcement
16 agency, prosecutor's office, or the department of
17 human services.
- 18 (7) A "victim counselor" is [~~either~~] a sexual assault
19 counselor [~~or a~~], domestic violence victims'
20 counselor[-], or confidential advocate. A sexual
21 assault counselor is a person who is employed by or is



1 a volunteer in a sexual assault crisis center, has
2 undergone a minimum of thirty-five hours of training
3 and who is, or who reports to and is under the direct
4 control and supervision of, a social worker, nurse,
5 psychiatrist, psychologist, or psychotherapist, and
6 whose primary function is the rendering of advice,
7 counseling, or assistance to victims of sexual
8 assault. A domestic violence victims' counselor is a
9 person who is employed by or is a volunteer in a
10 domestic violence victims' program, has undergone a
11 minimum of [~~twenty-five~~] thirty-five hours of training
12 and who is, or who reports to and is under the direct
13 control and supervision of, a direct service
14 supervisor of a domestic violence victims' program,
15 and whose primary function is the rendering of advice,
16 counseling, or assistance to victims of abuse. A
17 confidential advocate is a person who is designated by
18 the University of Hawaii pursuant to section 304A-120
19 to confidentially discuss sexual assault, domestic
20 violence, dating violence, stalking, sexual
21 harassment, and related issues with victims, has



1 undergone a minimum of thirty-five hours of training,
2 and whose primary function is the rendering of advice,
3 counseling, or assistance to victims.

4 (b) General rule of privilege. A victim has a privilege
5 to refuse to disclose and to prevent any other person from
6 disclosing confidential communications made to a victim
7 counselor for the purpose of counseling or treatment of the
8 victim for the emotional or psychological effects of sexual
9 assault, domestic violence, dating violence, stalking, sexual
10 harassment, or child abuse or neglect, and to refuse to provide
11 evidence that would identify the name, location, or telephone
12 number of a safe house, abuse shelter, or other facility that
13 provided temporary emergency shelter to the victim."

14 SECTION 3. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 236

1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY Michelle Tedani



S.B. NO. 236

Report Title:

Rules of Evidence; Victim-Counselor Privilege; University of Hawaii; Confidential Advocates

Description:

Expands the victim-counselor privilege under the Hawaii Rules of Evidence to include confidential advocates employed by the University of Hawaii. Increases the minimum number of hours of training a domestic violence victims' counselor must complete to be considered a victim counselor.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

