

1 **Rule 512. Victim communications.**

2
3 **(a) Definitions.**

4
5 **(a)(1)** "Advocacy services" means the same as that term is defined in UCA § 77-38-
6 403.

7
8 **(a)(2)** "Confidential communication" means a communication that is intended to be
9 confidential between a victim and a victim advocate for the purpose of obtaining
10 advocacy services as defined in UCA § 77-38-403.

11
12 **(a)(3)** "Criminal justice system victim advocate" means the same as that term is
13 defined in UCA § 77-38-403.

14
15 **(a)(4)** "Health care provider" means the same as that term is defined in UCA § 78B-
16 3-403.

17
18 **(a)(5)** "Mental health therapist" means the same as that term is defined in UCA §
19 58-60-102.

20
21 **(a)(6)** "Victim" means an individual defined as a victim in UCA § 77-38-403.

22
23 **(a)(7)** "Victim advocate" means the same as that term is defined in UCA § 77-38-
24 403.

25
26 **(b) Statement of the Privilege.** A victim communicating with a victim advocate has a
27 privilege during the victim's life to refuse to disclose and to prevent any other person from
28 disclosing a confidential communication.

29
30 **(c) Who May Claim the Privilege.** The privilege may be claimed by:

31
32 (c)(1) the victim;

33
34 (c)(2) ~~engaged in a confidential communication, or~~ the guardian or conservator of
35 the victim ~~engaged in a confidential communication~~ if the guardian or conservator is
36 not the accused; and.

37
38 (c)(3) ~~An individual who is a~~ the victim advocate ~~at the time of a confidential~~
39 ~~communication is presumed to have authority~~ during the life of the victim ~~to claim~~
40 ~~the privilege on behalf of the victim.~~

41
42 (d) Disclosures That Do Not Waive the Privilege. The confidential communication may
43 be disclosed in the following circumstances without waiving the privilege found in
44 paragraph (b):

45

46 (d)(1) the confidential communication is required to be disclosed under Title 62A,
47 Chapter 4a, Child and Family Services, or UCA § 62A-3-305;

48
49 (d)(2) the confidential communication is evidence of a victim being in clear and
50 immediate danger to the victim's self or others;

51
52 (d)(3) the confidential communication is evidence that the victim has committed a
53 crime, plans to commit a crime, or intends to conceal a crime;

54
55 (d)(4) the confidential communication is disclosed by a criminal justice system victim
56 advocate for the purpose of providing advocacy services to a law enforcement
57 officer, health care provider, mental health therapist, domestic violence shelter
58 employee, an employee of the Utah Office for Victims of Crime, a member of a
59 multidisciplinary team assembled by a Children's Justice Center or law enforcement
60 agency, or a parent or guardian if the victim is a minor and the parent or guardian is
61 not the accused;

62
63 (d)(5) the confidential communication is with a criminal justice system victim
64 advocate, and the criminal justice system victim advocate must disclose the
65 confidential communication to a prosecutor under UCA § 77-38-405.

66
67 **(e) Disclosures That Waive the Privilege.**

68
69 (e)(1) No privilege exists under paragraph (b) if:

70
71 (e)(1)(A) the victim, or the victim's guardian or conservator, if the guardian or
72 conservator is not the accused, provides written, informed, and voluntary
73 consent for the disclosure, and the written disclosure contains:

74
75 (e)(1)(A)(i) the specific confidential communication subject to
76 disclosure;

77
78 (e)(1)(A)(ii) the limited purpose of the disclosure;

79
80 (e)(1)(A)(iii) the name of the individual or party to which the specific
81 confidential communication may be disclosed; and

82
83 (e)(1)(A)(iv) a warning that the disclosure will waive the privilege;

84
85 (e)(1)(B) the confidential communication is with a criminal justice system
86 victim advocate, and a court determines, after the victim and the defense
87 attorney have been notified and afforded an opportunity to be heard at an in
88 camera review, that:

89
90 (e)(1)(B)(i) the probative value of the confidential communication and
91 the interest of justice served by the admission of the confidential

92 communication substantially outweigh the adverse effect of the
93 admission of the confidential communication on the victim or the
94 relationship between the victim and the criminal justice system victim
95 advocate; or

97 (e)(1)(B)(ii) the confidential communication is exculpatory evidence,
98 including impeachment evidence.

100 (e)(2) A request for a hearing and in camera review under paragraph (e)(1)(B) may
101 be made by any party by motion. The court shall give all parties and the victim
102 notice of any hearing and an opportunity to be heard.

104
105 ~~**(d) Exceptions.** An exception to the privilege exists in the following circumstances:~~

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

111 ~~**(d)(1)(A)** the specific confidential communication subject to disclosure;~~

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

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

117
118 ~~**(d)(2)** when the confidential communication is required to be disclosed under Title~~
119 ~~62A, Chapter 4a, Child and Family Services, or UCA § 62A-3-305;~~

120
121 ~~**(d)(3)** when the confidential communication is evidence of a victim being in clear~~
122 ~~and immediate danger to the victim's self or others;~~

123
124 ~~**(d)(4)** when the confidential communication is evidence that the victim has~~
125 ~~committed a crime, plans to commit a crime, or intends to conceal a crime;~~

126
127 ~~**(d)(5)** if the confidential communication is with a criminal justice system victim~~
128 ~~advocate, the criminal justice system victim advocate may disclose the confidential~~
129 ~~communication to a parent or guardian if the victim is a minor and the parent or~~
130 ~~guardian is not the accused, or a law enforcement officer, health care provider,~~
131 ~~mental health therapist, domestic violence shelter employee, an employee of the~~
132 ~~Utah Office for Victims of Crime, or member of a multidisciplinary team assembled~~
133 ~~by a Children's Justice Center or law enforcement agency for the purpose of~~
134 ~~providing advocacy services;~~

135

136 ~~(d)(6) if the confidential communication is with a criminal justice system victim~~
137 ~~advocate, the criminal justice system victim advocate must disclose the confidential~~
138 ~~communication to a prosecutor under UCA § 77-38-405;~~

139
140 ~~(d)(7) if the confidential communication is with a criminal justice system victim~~
141 ~~advocate, and a court determines, after the victim and the defense attorney have~~
142 ~~been notified and afforded an opportunity to be heard at an in camera review, that:~~

143
144 ~~(d)(7)(A) the probative value of the confidential communication and the~~
145 ~~interest of justice served by the admission of the confidential communication~~
146 ~~substantially outweigh the adverse effect of the admission of the confidential~~
147 ~~communication on the victim or the relationship between the victim and the~~
148 ~~criminal justice system victim advocate; or~~

149
150 ~~(d)(7)(B) the confidential communication is exculpatory evidence, including~~
151 ~~impeachment evidence.~~

152
153 ~~Effective July 31, 2019, pursuant to 2019 UT H.J.R. 3 “Joint Resolution Adopting Privilege~~
154 ~~Under Rules of Evidence.”~~