



HAWAII

HAW. REV. STAT. § 505.5

Type of Privilege: Qualified by judicial decision

Privilege:

- A victim may refuse to disclose and prevent any other person from disclosing confidential communications made to a victim counselor during the course of counseling for the psychological or emotional effects of sexual assault
- A victim has a privilege to refuse to disclose evidence that would identify the name, location, or telephone number of a shelter that provided temporary emergency shelter to the victim HAW. REV. STAT. § 505.5 (b)

Statutory Exceptions to Privilege: HAW. REV. STAT. § 505.5 (d) (1)-(8)

- Victim advocate reasonably believes that the victim has given perjured testimony
- In matters of proof concerning the psychical appearance and condition of the victim at the time of the assault
- Communication is relevant to an issue of breach of duty by the victim counselor or victims counseling program
- Mandatory reporting of child abuse or neglect, domestic abuse, or abuse of a dependent adult
- Communication is relevant to an issue in proceedings to hospitalize the victim for mental illness or substance abuse, or to discharge a victim previously hospitalized for mental illness or substance abuse
- Court orders an examination of the physical, mental, or emotional condition of the victim
- Communication is relevant to the physical, mental, or emotional condition of the victim in any proceeding in which the condition is an element of the victim's claim or defense
- Victim initiates a proceeding against the victim counselor or the victim counseling program

In Camera Review: Provided for by judicial decision

- State v. Peseti, 65 P.3d 119, 129, 133 (Haw. 2003)
 - There are some cases in which the defendant's constitutional rights of due process and confrontation will trump a statutory evidentiary privilege
 - An in camera review of the privileged communications by the trial court serves the defendant's interests while preserving the State's need to protect confidentiality of sexual assault victims
 - Defendant must show that:
 - There is a legitimate need for the privileged information,
 - The information is relevant and material to the issue before the court, and
 - It has been shown by a preponderance of the evidence that the privileged information cannot be obtained by a less intrusive means
 - If defendant makes the required showing, the court will conduct an in camera review of the privileged information and grant defendant access to the portions of the privileged records that are relevant to the defendant's case
 - The portions of the privileged records not released to defendant must be sealed for appellate review

Holder of Privilege: Victim

- Privilege may be claimed by the victim, the victim's guardian or conservator, or the personal representative of a deceased victim
- Privilege may be claimed by the victim counselor, but only on behalf of the victim HAW. REV. STAT. § 505.5 (c)

Waiver of Privilege:



- Only victim may waive the privilege HAW. REV. STAT. § 505.5 (b)

DEFINITIONS:

Confidential Communication:

- Any communication not intended to be disclosed to third persons other than those to whom disclosure would be in furtherance of the provision of counseling or treatment services to the victim or those reasonably necessary for the transmission of the communication. HAW. REV. STAT. § 505.5 (a) (1)

Sexual Assault Crisis Center:

- Any office, institution, or center offering assistance to victims of sexual assault and their families through crisis intervention and medical, legal, and support counseling HAW. REV. STAT. § 505.5 (a) (3)

Sexual Assault Counselor:

- A person who is employed by or is a volunteer at a sexual assault crisis center, who reports to and is under the direct control and supervision of a licensed counselor, and who advises, counsels, and assists victims of sexual assault HAW. REV. STAT. § 505.5 (a) (7)

Training Requirements for Sexual Assault Counselors:

- At least 35 hours of training HAW. REV. STAT. § 505.5 (a) (7)

Domestic Violence Victims' Counselor:

- A person who is employed by or is a volunteer in a domestic violence victims' program, and who is, or who reports to and is under the direct control and supervision of, a direct service supervisor of a domestic violence victims' program, and whose primary function is the rendering of advice, counseling, or assistance to victims. HAW. REV. STAT. § 505.5 (a) (7)

Training Requirements for Sexual Assault Counselors:

At least twenty-five hours of training. HAW. REV. STAT. § 505.5 (a) (7)