

103^D CONGRESS
2^D SESSION

S. 2315

To require the Attorney General to develop model legislation for the States to assure confidentiality of communications between victims of sexual assault or domestic violence victims and their counselors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 26 (legislative day, JULY 20), 1994

Mr. HATCH (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the Attorney General to develop model legislation for the States to assure confidentiality of communications between victims of sexual assault or domestic violence victims and their counselors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rape and Assault Vic-

5 tims Counseling Protection Act”.

6 **SEC. 2. SENSE OF THE SENATE.**

7 It is the sense of the Senate that—

1 (1) counseling programs for victims of sexual
2 assault and domestic violence, in which therapists
3 and trained counselors help victims cope with the
4 trauma of these crimes and recover from their debili-
5 tating effects, serve the valuable dual goals of pro-
6 moting the emotional and physical well-being of vic-
7 tims and ensuring the reporting and prosecution of
8 such crimes;

9 (2) such counseling programs, at rape crisis
10 centers and elsewhere, can achieve these benefits
11 only if the victims have an expectation that the
12 records of the counseling sessions will be kept con-
13 fidential, because otherwise victims fail to develop
14 the relationship of trust with their counselors that is
15 essential to effective treatment or decline to partici-
16 pate in counseling programs altogether;

17 (3) States have adopted a variety of approaches
18 to protecting the confidentiality of communications
19 between victims of sexual assault or domestic vio-
20 lence and their counselors, including the creation of
21 an absolute privilege for such communications, quali-
22 fied privileges that allow defendants in criminal
23 cases to obtain such communications in certain cir-
24 cumstances and subject to certain procedures, and
25 balancing tests that weigh the probative value of

1 such communications against the effects of disclo-
2 sure on the victim and the treatment relationship;

3 (4) in some States, however, criminal defend-
4 ants in sexual assault cases have been successful in
5 obtaining court orders requiring the production to
6 defense counsel of records of confidential counseling
7 sessions with victims based on a showing that such
8 records are merely likely to be relevant to an issue
9 in the case;

10 (5) although the best assurance that sexual as-
11 sault and domestic violence counseling programs will
12 be successful is an absolute privilege barring the dis-
13 closure of records of such sessions or testimony
14 about them, some courts have held that an absolute
15 privilege, by absolutely denying criminal defendants
16 the opportunity to obtain exculpatory evidence and
17 present it at trial, violates their rights under the
18 Federal and State constitutions; and

19 (6) in order to ensure that the effectiveness of
20 sexual assault and domestic violence counseling pro-
21 grams will not be undermined by the disclosure of
22 confidential communications with victims, no Fed-
23 eral or State court, in a criminal or civil action,
24 should order the disclosure of the records of con-
25 fidential communications between victims of such

1 crimes and their therapists or trained counselors, or
2 compel testimony from such therapists or counselors
3 with respect to the substance of their counseling, un-
4 less, at a minimum, the moving party has dem-
5 onstrated a particularized and compelling need for
6 such records or testimony, and the court has estab-
7 lished adequate procedural safeguards against un-
8 necessary or damaging disclosures.

9 **SEC. 3. REPORT AND DEVELOPMENT OF MODEL LEGISLA-**
10 **TION.**

11 (a) STUDY AND DEVELOPMENT OF MODEL LEGISLA-
12 TION.—The Attorney General shall—

13 (1) study and evaluate the manner in which the
14 States have taken measures to protect the confiden-
15 tiality of communications between sexual assault or
16 domestic violence victims and their therapists or
17 trained counselors;

18 (2) develop model legislation that will ade-
19 quately protect the confidentiality of such commu-
20 nications; and

21 (3) prepare and disseminate to State authorities
22 the findings made as a result of the study and eval-
23 uation.

24 (b) REPORT.—Not later than 1 year after the date
25 of enactment of this Act, the Attorney General shall report

1 to the Congress the findings of the study and evaluation
2 required by this section and the need for and appropriate-
3 ness of further action by the Federal Government.

4 **SEC. 4. REVIEW OF FEDERAL EVIDENTIARY RULES.**

5 Not later than 1 year after the date of enactment
6 of this Act, the Judicial Conference shall complete and
7 submit to Congress a study evaluating whether the Fed-
8 eral Rules of Evidence should be amended, and if so how,
9 to guarantee that the confidentiality of communications
10 between sexual assault victims and their therapists or
11 trained counselors will be adequately protected in Federal
12 court proceedings.

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