

105TH CONGRESS
2D SESSION

S. 1721

To provide for the Attorney General of the United States to develop guidelines for Federal prosecutors to protect familial privacy and communications between parents and their children in matters that do not involve allegations of violent or drug trafficking conduct and the Judicial Conference of the United States to make recommendations regarding the advisability of amending the Federal Rules of Evidence for such purpose.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 1998

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the Attorney General of the United States to develop guidelines for Federal prosecutors to protect familial privacy and communications between parents and their children in matters that do not involve allegations of violent or drug trafficking conduct and the Judicial Conference of the United States to make recommendations regarding the advisability of amending the Federal Rules of Evidence for such purpose.

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

1 **SECTION 1. CONFIDENTIALITY OF PARENT CHILD COMMU-**
2 **NICATIONS IN JUDICIAL PROCEEDINGS.**

3 (a) **STUDY AND DEVELOPMENT OF PROSECUTORIAL**
4 **GUIDELINES.**—The Attorney General of the United States
5 shall—

6 (1) study and evaluate the manner in which the
7 States have taken measures to protect the confiden-
8 tiality of communications between children and par-
9 ents and, in particular, whether such measures have
10 been taken in matters that do not involve allegations
11 of violent or drug trafficking conduct;

12 (2) develop guidelines for Federal prosecutors
13 that will provide the maximum protection possible
14 for the confidentiality of communications between
15 children and parents in matters that do not involve
16 allegations of violent or drug trafficking conduct,
17 within any applicable constitutional limits, and with-
18 out compromising public safety or the integrity of
19 the judicial system, taking into account—

20 (A) the danger that the free communica-
21 tion between a child and his or her parent will
22 be inhibited and familial privacy and relation-
23 ships will be damaged if there is no assurance
24 that such communications will be kept confiden-
25 tial;

1 (B) whether an absolute or qualified testi-
2 monial privilege for communications between a
3 child and his or her parents in matters that do
4 not involve allegations of violent or drug traf-
5 ficking conduct is appropriate to provide the
6 maximum guarantee of familial privacy and
7 confidentiality without compromising public
8 safety or the integrity of the judicial system;
9 and

10 (C) the appropriate limitations on a testi-
11 monial privilege for such communications be-
12 tween a child and his or her parents, includ-
13 ing—

14 (i) whether the privilege should apply
15 in criminal and civil proceedings;

16 (ii) whether the privilege should ex-
17 tend to all children, regardless of age,
18 unemancipated or emancipated, or be more
19 limited;

20 (iii) the parameters of the familial re-
21 lationship subject to the privilege, includ-
22 ing whether the privilege should extend to
23 stepparents or grandparents, adopted chil-
24 dren, or siblings; and

1 (iv) whether disclosure should be al-
2 lowed absent a particularized showing of a
3 compelling need for such disclosure, and
4 adequate procedural safeguards are in
5 place to prevent unnecessary or damaging
6 disclosures; and

7 (3) prepare and disseminate to Federal prosecu-
8 tors the findings made and guidelines developed as
9 a result of the study and evaluation.

10 (b) REPORT AND RECOMMENDATIONS.—Not later
11 than 1 year after the date of enactment of this Act, the
12 Attorney General of the United States shall submit a re-
13 port to Congress on—

14 (1) the findings of the study and the guidelines
15 required under subsection (a); and

16 (2) recommendations based on the findings on
17 the need for and appropriateness of further action
18 by the Federal Government.

19 (c) REVIEW OF FEDERAL RULES OF EVIDENCE.—
20 Not later than 180 days after the date of enactment of
21 this Act, the Judicial Conference of the United States
22 shall complete a review and submit a report to Congress
23 on—

24 (1) whether the Federal Rules of Evidence
25 should be amended to guarantee that the confiden-

1 tiality of communications by a child to his or her
2 parent in matters that do not involve allegations of
3 violent or drug trafficking conduct will be adequately
4 protected in Federal court proceedings; and

5 (2) if the rules should be so amended, a pro-
6 posal for amendments to the rules that provides the
7 maximum protection possible for the confidentiality
8 of such communications, within any applicable con-
9 stitutional limits and without compromising public
10 safety or the integrity of the judicial system.

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