

106TH CONGRESS  
1ST SESSION

# H. R. 2876

To amend the Federal Rules of Evidence regarding testimonial privileges of parents, children, and members of the Secret Service; to amend title 18 of the United States Code to restrict prosecutorial conduct with respect to sexual activity not unlawful under Federal law, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 1999

Ms. LOFGREN introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To amend the Federal Rules of Evidence regarding testimonial privileges of parents, children, and members of the Secret Service; to amend title 18 of the United States Code to restrict prosecutorial conduct with respect to sexual activity not unlawful under Federal law, 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 “Kenneth Starr Correc-  
5       tions Act of 1999”.

1 **SEC. 2. TESTIMONIAL PRIVILEGES IN FEDERAL, CIVIL AND**  
2 **CRIMINAL PROCEEDINGS.**

3 Rule 501 of the Federal Rules of Evidence (28 U.S.C.  
4 App.) is amended—

5 (1) in the 1st sentence by inserting “(a)” before  
6 “Except”,

7 (2) in the 2d sentence by striking “However,  
8 in” and inserting the following:

9 “(d) Notwithstanding any other provision of this sec-  
10 tion, in”, and

11 (3) by inserting after the first sentence the fol-  
12 lowing:

13 “(b)(1) A witness may not be compelled to testify  
14 against a child or parent of the witness.

15 “(2) A witness may not be compelled to disclose the  
16 content of a confidential communication with a child or  
17 parent of the witness.

18 “(3) For purposes of this subdivision, ‘child’ means,  
19 with respect to an individual, a birth, adoptive, or step-  
20 child of the individual, and any person (such as a foster  
21 child or a relative of whom the individual has long-term  
22 custody) with respect to whom the court recognizes the  
23 individual as having a right to act as a parent.

24 “(4) The privileges provided in this subdivision shall  
25 be governed by principles of the common law, as they may  
26 be interpreted by the courts of the United States in the

1 light of reason and experience, that are similar to the prin-  
 2 ciples that apply to the similar privileges of a witness with  
 3 respect to a spouse of the witness.

4 “(c) A member of the United States Secret Service  
 5 may not be compelled to testify with respect to any con-  
 6 versation of the President heard by such member while  
 7 such member is on duty.”.

8 **SEC. 3. RESTRICTIONS ON PROSECUTORIAL CONDUCT.**

9 (a) AMENDMENT.—Part II of title 18, United States  
 10 Code, is amended by adding at the end the following:

11 **“CHAPTER 237—RESTRICTIONS**

“Sec.

“3761. Restrictions on prosecutorial conduct.

12 **“§ 3761. Restrictions on prosecutorial conduct**

13 “(a) PERJURY PROSECUTIONS BASED ON GRAND  
 14 JURY TESTIMONY.—A criminal proceeding for perjury or  
 15 false statement may not be brought against a witness  
 16 based on a statement made by the witness to the grand  
 17 jury if—

18 “(1) such statement is made in response to a  
 19 question that—

20 “(A) is asked by the prosecutor or a mem-  
 21 ber of the grand jury; and

22 “(B) arises from or has any basis in phys-  
 23 ical nontestimonial evidence available, and then  
 24 known, to the prosecutor; and

1 “(2) the prosecutor fails—

2 “(A) to provide such evidence to the wit-  
3 ness before the conclusion of the testimony of  
4 the witness; or

5 “(B) to allow the witness, after receiving  
6 such evidence, to explain or modify any testi-  
7 mony given by the witness to the grand jury.

8 “(b) PERJURY PROSECUTIONS BASED ON CERTAIN  
9 AFFIDAVITS IN CIVIL CASES.—A criminal proceeding may  
10 not be commenced by an officer or employee of the United  
11 States against an individual for making a false statement  
12 that relates to adultery or to sexual activity that is not  
13 unlawful under Federal law, in an affidavit filed in a non-  
14 criminal proceeding.

15 “(c) LIMITATION ON POWER TO AUTHORIZE CER-  
16 TAIN RECORDINGS.—An officer or employee of an agency  
17 of the United States may not authorize any person to  
18 make an audio or video record of a private communication  
19 that such officer, such employee, or such person reason-  
20 ably expects will relate to adultery or to sexual activity  
21 that is not unlawful under Federal law.”.

22 (b) CONFORMING AMENDMENTS.—The table of chap-  
23 ters of part II of title 18, United States Code, is amended  
24 by inserting after the item relating to chapter 235 the fol-  
25 lowing:

“237. Restrictions ..... 3761”.

1 **SEC. 4. LIMITATIONS APPLICABLE TO PROCEEDINGS BE-**  
2 **FORE THE GRAND JURY.**

3 Rule 6 of the Federal Rules of Criminal Procedure  
4 (18 U.S.C. App.) is amended by adding at the end the  
5 following:

6 “(h) PHOTOGRAPHIC RECORDS.—A photographic  
7 record may not be made of a witness who testifies before  
8 a grand jury for the purpose of recording the testimony  
9 such witness gives before the grand jury.”.

10 **SEC. 5. IMMUNITY FOR CERTAIN GRAND JURY WITNESSES.**

11 Section 6003 of title 18, United States Code, is  
12 amended by adding at the end the following:

13 “(c) An individual who is a target of an investigation  
14 of a violation of a law of the United States may not be  
15 compelled to appear before a grand jury except under the  
16 terms of an order that is effective as provided in section  
17 6002 of this title.”.

18 **SEC. 6. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

19 (a) EFFECTIVE DATE.—Except as provided in sub-  
20 section (b), this Act and the amendments made by this  
21 Act shall take effect on the date of the enactment of this  
22 Act.

23 (b) APPLICATION OF AMENDMENTS.—The amend-  
24 ments made by this Act shall apply only with respect to

1 conduct occurring after the date of the enactment of this  
2 Act.

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