

105TH CONGRESS
2D SESSION

H. R. 4286

To amend the Federal Rules of Evidence to establish a parent-child privilege.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 1998

Mr. ANDREWS introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To amend the Federal Rules of Evidence to establish a
parent-child privilege.

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 “Parent-Child Privilege
5 Act of 1998”.

6 **SEC. 2. PARENT-CHILD PRIVILEGE.**

7 (a) IN GENERAL.—Article V of the Federal Rules of
8 Evidence is amended by adding at the end the following:

9 **“Rule 502. Parent-Child Privilege**

10 “(a) Definitions.—For purposes of this rule, the fol-
11 lowing definitions apply:

1 “(1) The term ‘child’ means the son, daughter,
2 stepchild, or foster child of a parent or the ward of
3 a legal guardian or of any other person who serves
4 as the child’s parent. A person who meets this defi-
5 nition is a child for purposes of this rule, irrespec-
6 tive of whether or not that person has attained the
7 age of majority in place in which the that person re-
8 sides.

9 “(2) The term ‘confidential communication’
10 means a communication between a parent and the
11 parent’s child, made privately or solely in the pres-
12 ence of other members of the child’s family or an at-
13 torney, physician, psychologist, psychotherapist, so-
14 cial worker, clergy member, or other third party who
15 has a confidential relationship with the parent or the
16 child, which is not intended for further disclosure ex-
17 cept to other members of the child’s family or house-
18 hold or to other persons in furtherance of the pur-
19 poses of the communication.

20 “(3) The term ‘parent’ means a birth parent,
21 adoptive parent, stepparent, foster parent, or legal
22 guardian of a child, or any other person that a court
23 has recognized as having acquired the right to act
24 as a parent of that child.

1 “(b) Adverse Testimonial Privilege.—In any civil or
2 criminal proceeding governed by these rules, and subject
3 to the exceptions set forth in subdivision (d) of this rule—

4 “(1) a parent shall not be compelled to give tes-
5 timony as a witness adverse to a person who is, at
6 the time of the proceeding, a child of that parent;
7 and

8 “(2) a child shall not be compelled to give testi-
9 mony as a witness adverse to a person who is, at the
10 time of the proceeding, a parent of that child;

11 unless the parent or child who is the witness voluntarily
12 and knowingly waives the privilege to refrain from giving
13 such adverse testimony.

14 “(c) Confidential Communications Privilege.—(1) In
15 any civil or criminal proceeding governed by these rules,
16 and subject to the exceptions set forth in subdivision (d)
17 of this rule—

18 “(A) a parent shall not be compelled to divulge
19 any confidential communication made between that
20 parent and the child during the course of their par-
21 ent-child relationship; and

22 “(B) a child shall not be compelled to divulge
23 any confidential communication made between that
24 child and the parent during the course of their par-
25 ent-child relationship;

1 unless both the child and the parent or parents of the child
2 who are privy to the confidential communication volun-
3 tarily and knowingly waive the privilege against the dislo-
4 sure of the communication in the proceeding.

5 “(2) The privilege set forth in this subdivision applies
6 even if, at the time of the proceeding, the parent or child
7 who made or received the confidential communication is
8 deceased or the parent-child relationship has terminated.

9 “(d) Exceptions.—The privileges set forth in subdivi-
10 sions (c) and (d) of this rule shall be inapplicable and un-
11 enforceable—

12 “(1) in any civil action or proceeding by the
13 child against the parent, or the parent against the
14 child;

15 “(2) in any civil action or proceeding in which
16 the child’s parents are opposing parties;

17 “(3) in any civil action or proceeding contesting
18 the estate of the child or of the child’s parent;

19 “(4) in any action or proceeding in which the
20 custody, dependency, deprivation, abandonment, sup-
21 port or nonsupport, abuse, or neglect of the child, or
22 the termination of parental rights with respect to
23 the child, is at issue;

1 “(5) in any action or proceeding to commit the
2 child or a parent of the child because of alleged
3 mental or physical incapacity;

4 “(6) in any action or proceeding to place the
5 person or the property of the child or of a parent
6 of the child in the custody or control of another be-
7 cause of alleged mental or physical capacity; and

8 “(7) in any criminal or juvenile action or pro-
9 ceeding in which the child or a parent of the child
10 is charged with an offense against the person or the
11 property of the child, a parent of the child or any
12 member of the family or household of the parent or
13 the child.

14 “(e) Appointment of a Representative for a Child
15 Below the Age of Majority.—When a child who appears
16 to be the subject of a privilege set forth in subdivision
17 (b) or (c) of this rule is below the age of majority at the
18 time of the proceeding in which the privilege is or could
19 be asserted, the court may appoint a guardian, attorney,
20 or other legal representative to represent the child’s inter-
21 ests with respect to the privilege. If it is in furtherance
22 of the child’s best interests, the child’s representative may
23 waive the privilege under subdivision (b) or consent on be-
24 half of the child to the waiver of the privilege under sub-
25 division (c).

1 “(f) Non-Effect of this Rule on Other Evidentiary
2 Privileges.—This rule shall not affect the applicability or
3 enforceability of other recognized evidentiary privileges
4 that, pursuant to rule 501, may be applicable and enforce-
5 able in any proceeding governed by these rules.”.

6 (b) CLERICAL AMENDMENT.—The table of contents
7 for the Federal Rules of Evidence is amended by adding
8 at the end the following new item:

“Rule 501. Parent-child privilege.”.

9 (c) EFFECT OF AMENDMENTS.—The amendments
10 made by this Act shall apply with respect to communica-
11 tions made before, on, or after the date of the enactment
12 of this Act.

○