

106TH CONGRESS
1ST SESSION

S. 1360

To preserve the effectiveness of Secret Service protection by establishing a protective function privilege, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13 (legislative day, JULY 12), 1999

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

A BILL

To preserve the effectiveness of Secret Service protection by establishing a protective function privilege, 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 “Secret Service Protec-
5 tive Privilege Act of 1999”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) The physical safety of the Nation's top
2 elected officials is a public good of transcendent im-
3 portance.

4 (2) By virtue of the critical importance of the
5 Office of the President, the President and those in
6 direct line of the Presidency are subject to unique
7 and mortal jeopardy—jeopardy that in turn threat-
8 ens profound disruption to our system of representa-
9 tive government and to the security and future of
10 the Nation.

11 (3) The physical safety of visiting heads of for-
12 eign states and foreign governments is also a matter
13 of paramount importance. The assassination of such
14 a person while on American soil could have calami-
15 tous consequences for our foreign relations and na-
16 tional security.

17 (4) Given these grave concerns, Congress has
18 provided for the Secret Service to protect the Presi-
19 dent and those in direct line of the Presidency, and
20 has directed that these officials may not waive such
21 protection. Congress has also provided for the Secret
22 Service to protect visiting heads of foreign states
23 and foreign governments.

24 (5) The protective strategy of the Secret Serv-
25 ice depends critically on the ability of its personnel

1 to maintain close and unremitting physical proximity
2 to the protectee.

3 (6) Secret Service personnel must remain at the
4 side of the protectee on occasions of confidential
5 conversations and, as a result, may overhear top se-
6 cret discussions, diplomatic exchanges, sensitive con-
7 versations, and matters of personal privacy.

8 (7) The necessary level of proximity can be
9 maintained only in an atmosphere of complete trust
10 and confidence between the protectee and his or her
11 protectors.

12 (8) If a protectee has reason to doubt the con-
13 fidentiality of actions or conversations taken in sight
14 or hearing of Secret Service personnel, the protectee
15 may seek to push the protective envelope away or
16 undermine it to the point at which it could no longer
17 be fully effective.

18 (9) The possibility that Secret Service personnel
19 might be compelled to testify against their protectees
20 could induce foreign nations to refuse Secret Service
21 protection in future state visits, making it impossible
22 for the Secret Service to fulfill its important statu-
23 tory mission of protecting the life and safety of for-
24 eign dignitaries.

1 (10) A privilege protecting information acquired
2 by Secret Service personnel while performing their
3 protective function in physical proximity to a
4 protectee will preserve the security of the protectee
5 by lessening the incentive of the protectee to dis-
6 tance Secret Service personnel in situations in which
7 there is some risk to the safety of the protectee.

8 (11) Recognition of a protective function privi-
9 lege for the President and those in direct line of the
10 Presidency, and for visiting heads of foreign states
11 and foreign governments, will promote sufficiently
12 important interests to outweigh the need for pro-
13 bative evidence.

14 (12) Because Secret Service personnel retain
15 law enforcement responsibility even while engaged in
16 their protective function, the privilege must be sub-
17 ject to a crime/treason exception.

18 (b) PURPOSES.—The purposes of this Act are—

19 (1) to facilitate the relationship of trust and
20 confidence between Secret Service personnel and cer-
21 tain protected officials that is essential to the ability
22 of the Secret Service to protect these officials, and
23 the Nation, from the risk of assassination; and

24 (2) to ensure that Secret Service personnel are
25 not precluded from testifying in a criminal investiga-

1 tion or prosecution about unlawful activity com-
 2 mitted within their view or hearing.

3 **SEC. 3. ESTABLISHMENT OF PROTECTIVE FUNCTION PRIVI-**
 4 **LEGE.**

5 (a) ADMISSIBILITY OF INFORMATION ACQUIRED BY
 6 SECRET SERVICE PERSONNEL WHILE PERFORMING
 7 THEIR PROTECTIVE FUNCTION.—Chapter 203 of title 18,
 8 United States Code, is amended by inserting after section
 9 3056 the following:

10 **“§ 3056A. Testimony by Secret Service personnel; pro-**
 11 **TECTIVE FUNCTION PRIVILEGE**

12 “(a) DEFINITIONS.—In this section:

13 “(1) PROTECTEE.—The term ‘protectee’
 14 means—

15 “(A) the President;

16 “(B) the Vice President (or other officer
 17 next in the order of succession to the Office of
 18 President);

19 “(C) the President-elect;

20 “(D) the Vice President-elect; and

21 “(E) visiting heads of foreign states or for-
 22 eign governments who, at the time and place
 23 concerned, are being provided protection by the
 24 United States Secret Service.

1 “(2) SECRET SERVICE PERSONNEL.—The term
2 ‘Secret Service personnel’ means any officer or agent
3 of the United States Secret Service.

4 “(b) GENERAL RULE OF PRIVILEGE.—Subject to
5 subsection (c), testimony by Secret Service personnel or
6 former Secret Service personnel regarding information af-
7 fecting a protectee that was acquired during the perform-
8 ance of a protective function in physical proximity to the
9 protectee shall not be received in evidence or otherwise dis-
10 closed in any trial, hearing, or other proceeding in or be-
11 fore any court, grand jury, department, officer, agency,
12 regulatory body, or other authority of the United States,
13 a State, or a political subdivision thereof.

14 “(c) EXCEPTIONS.—There is no privilege under this
15 section—

16 “(1) with respect to information that, at the
17 time the information was acquired by Secret Service
18 personnel, was sufficient to provide reasonable
19 grounds to believe that a crime had been, was being,
20 or would be committed; or

21 “(2) if the privilege is waived by the protectee
22 or the legal representative of a protectee or deceased
23 protectee.

24 “(d) CONCURRENT PRIVILEGES.—The proximity of
25 Secret Service personnel to a protectee engaged in a privi-

1 leged communication with another shall not, by itself, de-
2 feat an otherwise valid claim of privilege.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—
4 The analysis for chapter 203 of title 18, United States
5 Code, is amended by inserting after the item relating to
6 section 3056 the following:

“3056A. Testimony by Secret Service personnel; protective function privilege.”.

7 **SEC. 4. APPLICATION.**

8 This Act and the amendments made by this Act shall
9 apply to any proceeding commenced on or after the date
10 of enactment of this Act.

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