

108TH CONGRESS  
1ST SESSION

# H. R. 538

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2003

Mr. ANDREWS 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 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 2003”.

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  
11       following 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 the place in which 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  
2 civil or criminal proceeding governed by these rules, and  
3 subject to the exceptions set forth in subdivision (d) of  
4 this rule—

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

9           “(2) a child shall not be compelled to give testi-  
10 mony as a witness adverse to a person who is, at the  
11 time of the proceeding, a parent of that child;  
12 unless the parent or child who is the witness voluntarily  
13 and knowingly waives the privilege to refrain from giving  
14 such adverse testimony.

15       “(c) CONFIDENTIAL COMMUNICATIONS PRIVI-  
16 LEGE.—(1) In any civil or criminal proceeding governed  
17 by these rules, and subject to the exceptions set forth in  
18 subdivision (d) of this rule—

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

23           “(B) a child shall not be compelled to divulge  
24 any confidential communication made between that

1 child and the parent during the course of their par-  
2 ent-child relationship;  
3 unless both the child and the parent or parents of the child  
4 who are privy to the confidential communication volun-  
5 tarily and knowingly waive the privilege against the disclo-  
6 sure of the communication in the proceeding.

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

11 “(d) EXCEPTIONS.—The privileges set forth in sub-  
12 divisions (c) and (d) of this rule shall be inapplicable and  
13 unenforceable—

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

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

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

21 “(4) in any action or proceeding in which the  
22 custody, dependency, deprivation, abandonment, sup-  
23 port or nonsupport, abuse, or neglect of the child, or  
24 the termination of parental rights with respect to  
25 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  
15   CHILD BELOW THE AGE OF MAJORITY.—When a child  
16   who appears to be the subject of a privilege set forth in  
17   subdivision (b) or (c) of this rule is below the age of major-  
18   ity at the time of the proceeding in which the privilege  
19   is or could be asserted, the court may appoint a guardian,  
20   attorney, or other legal representative to represent the  
21   child’s interests with respect to the privilege. If it is in  
22   furtherance of the child’s best interests, the child’s rep-  
23   resentative may waive the privilege under subdivision (b)  
24   or consent on behalf of the child to the waiver of the privi-  
25   lege under subdivision (c).

1       “(f) NON-EFFECT OF THIS RULE ON OTHER EVI-  
2   DENTIARY PRIVILEGES.—This rule shall not affect the ap-  
3   plicability or enforceability of other recognized evidentiary  
4   privileges that, pursuant to rule 501, may be applicable  
5   and enforceable in any proceeding governed by these  
6   rules.”.

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

“Rule 501. Parent-child privilege.”.

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

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