SPOUSAL PRIVILEGE; RIGHT OF WITNESS

House Bill 5738
Sponsor: Rep. Kwame Kilpatrick
Committee: Judiciary

Complete to 5-8-98

A SUMMARY OF HOUSE BILL 5738 AS INTRODUCED 4-2-98

Under the Revised Judicature Act, generally, a husband cannot testify as a witness for or against his wife without the wife's consent, and likewise, a wife cannot testify for or against her husband without his consent. (This is known as "spousal privilege".) The privilege does not apply in cases of divorce, bigamy, prosecution for a crime committed against the children of either or both, actions for personal injury by one spouse to the other, desertion or abandonment, certain property actions, and cases involving invalid marriages.

The bill would amend the act to reverse the privilege, so that it would rest with the testifying witness rather than with the defendant. Under the bill, a husband could not be compelled to testify for or against his wife against his will, and likewise, a wife could not be compelled to testify for or against her husband against her will. The existing exceptions to the spousal privilege provisions would apply, under the bill, to the privilege of the witness; thus, in cases of divorce, bigamy, actions for personal injury, etc., as specified above, testimony could be compelled by one spouse against the other, but only in those cases. In addition, the bill would amend the language pertaining to the exception for prosecution for a crime committed against the children of either or both spouses, so that it would also include a crime committed against any person under 18 years old.

The bill would also delete certain language (and repeal several related sections of law) that relates to the spousal privilege and its exceptions.

MCL 600.2162, 750.166, and 750.461

Analyst: D. Martens