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House Bill 4684 (Substitute H-2 as reported with amendment)

Sponsor: Representative Jennifer Faunce

House Committee: Family and Civil Law

Senate Committee: Judiciary

CONTENT

The bill would amend the Revised Judicature Act (RJA) to reverse the spousal privilege for testimony in criminal cases. That is, the bill would require the consent of the individual testifying, rather than the individual for or against whom his or her spouse would testify. The bill also would allow an individual to testify in a criminal prosecution about communication made during marriage.

Currently, a husband may not be required to testify for or against his wife without her consent and a wife may not be required to testify for or against her husband without his consent. Under the bill, in a criminal prosecution, a husband could not be examined as a witness for or against his wife without *his* consent, and a wife could not be examined as a witness for or against her husband without *her* consent, except as otherwise specified. The bill would retain the current consent provision for spousal testimony in a civil action or administrative proceeding.

Similarly, under the RJA, a married person or a person who has previously been married may not be examined as to any communication made between that person and his or her spouse or former spouse during the marriage. Under the bill, a married person or a person who had previously been married could not be examined in a criminal prosecution as to any communication made between that person and his or her spouse or former spouse during the marriage without the consent of the person to be examined. The bill would retain the current spousal communication privilege for testimony in a civil action or administrative proceeding.

The RJA contains exceptions to the spousal privilege for both testimony and marital communication. The exceptions include a suit for divorce; a prosecution for bigamy; a prosecution for a crime committed against a child of either spouse or both spouses; a cause of action that grows out of a personal wrong or injury done by one spouse to the other or that grows out of the refusal or neglect to furnish the spouse or children with suitable support; and a case of desertion or abandonment. The bill would retain all of the present exceptions, and would expand the exception regarding crimes committed against spouses' children to include crimes committed against any individual who was younger than 18 years of age.

MCL 600.2162

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government. There are no statewide data that suggest the number of criminal prosecutions that could be affected under the bill.

Date Completed: 4-14-00

Fiscal Analyst: B. Bowerman