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BILL ANALYSIS

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House Bill 4684 (Substitute H-2 as passed by the House)
Sponsor: Representative Jennifer Faunce
House Committee: Family and Civil Law
Senate Committee: Judiciary

Date Completed: 4-11-00

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 privilege does not apply to any of the following actions:

- 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.
- A case of desertion or abandonment.
- A case arising out of Section 6 of Chapter 83 of the Revised Statutes of 1846, which prohibits an insane person, an idiot, or a person afflicted with syphilis or gonorrhea from entering a marriage contract, and requires that a husband or wife be examined as a witness against his or her spouse in a prosecution for that offense (MCL 551.6).
- A case in which the husband or wife is a party to a suit, action, or proceeding if the title to the separate property of the husband or wife called or offered as a witness, or the title to property derived from, through, or under the husband or wife called or offered as a witness, is the subject matter in controversy or litigation in opposition to the claim or interest of the other spouse, who is a party to the suit, action, or proceeding.

The bill would retain all of the exceptions to spousal privilege listed above, 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.

The bill would apply to any criminal prosecution in which a complaint and warrant were authorized on or after the bill's effective date.

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.

Fiscal Analyst: B. Bowerman