

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1169
Judiciary

(Delegate Conway, *et al.*)

Courts - Testimony by Spouses - Central Registry of Records of Refusals

This bill requires a clerk of the court to forward any records made under current law pertaining to the refusal of a spouse to testify in an assault case to the Administrative Office of the Courts (AOC). The forwarded record must contain the defendant's name, the name of the spouse refusing to testify, the case file number, a copy of the charging document, and the date of the trial in which the spouse refused to testify.

AOC must maintain a central registry of all records of refusal made and forwarded under the bill. AOC records of refusal are not subject to expungement and may only be made available to (1) a court; (2) a State's Attorney's office; and (3) an attorney for the defendant. Data derived from the AOC central registry must be made available to an organization that conducts research or provides services related to domestic violence. Data released to such an organization (1) may only be used for research, evaluation, and statistical analysis; and (2) may not contain any unique identifying information, including names, record numbers, or case file numbers.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The bill's requirements can be handled with existing local resources.

Small Business Effect: None.

Analysis

Current Law: Provisions codifying the “spousal privilege” established that the spouse of a person on trial for a crime may not be compelled to testify against that person unless the charge involves (1) the abuse of a child younger than age 18; or (2) assault in any degree in which the spouse is a victim if:

- the person on trial was previously charged with assault in any degree or assault and battery of the spouse;
- the spouse was sworn to testify at the previous trial; and
- the spouse refused to testify at the previous trial by asserting the spousal privilege.

If the spouse of the person on trial for assault in any degree against the spouse refuses to testify on the basis of spousal privilege, the clerk of the court must make and maintain a record of the refusal, including the name of the spouse refusing to testify. When an expungement order is presented to the clerk of the court involving assault in any degree against a spouse, the clerk must check the record to determine whether the defendant’s spouse refused to testify on the basis of spousal privilege. If the record shows a refusal, the clerk must make and keep a separate record of the refusal, including the defendant’s name, the spouse’s name, the case file number, a copy of the charging document, and the trial date when the spouse refused to testify. The separate record is not subject to expungement and may be made available only to the court, a State’s Attorney’s office, and the defendant’s attorney.

The spousal privilege only applies if the spouses are married to each other at the time the spouse-witness is called to the stand.

State Fiscal Effect: The Judiciary advises that capturing and maintaining the information on spousal privilege testimony records in a central registry will necessitate the transmittal of information from various case management systems and will entail approximately 3,475 hours of computer programming and testing, at a cost of \$203,000. The Department of Legislative Services advises that given the limited number of records affected by the bill and that the bill does not require records created before the bill’s effective date to be entered into the central registry, the Judiciary can handle the bill’s requirements with existing resources using readily available database software. Furthermore, it is likely that the central registry can be incorporated into the implementation of the Judiciary’s new unified case management system, anticipated in 2015.

Additional Information

Prior Introductions: None.

Cross File: Although SB 919 (Senator Mathias, *et al.* - Judicial Proceedings) is designated as a cross file, it is not identical.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2011
mc/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510