

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 64
Judiciary

(Delegate Grammer)

Judicial Proceedings

Criminal Trials - Spousal Privilege - Exception

This bill establishes that the spouse of a person on trial for a crime may be compelled to testify as an adverse witness if the person on trial and the spouse married after the date on which the alleged crime for which the person is on trial occurred.

Fiscal Summary

State Effect: The bill does not materially impact the finances of the Judiciary or the Office of the Public Defender (OPD).

Local Effect: The bill does not materially impact the finances of State's Attorneys' offices or the circuit courts.

Small Business Effect: None.

Analysis

Current Law: The spouse of a person on trial for a crime may not be compelled to testify against that person unless the charge involves the abuse of a child younger than age 18. The spousal testimony privilege is also unavailable when the charge is assault in any degree in which the spouse is a victim under the following circumstances:

- 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 testimony privilege.

Background: The Court of Special Appeals recently considered the applicability of the spousal privilege in the context of a “sham marriage.” In *Wilson v. State of Maryland*, 241 Md. App. 683, (2019), the Court of Special Appeals held that a spouse may invoke the spousal privilege even in situations in which the marriage was entered into for the sole purpose of silencing a potential witness. According to the Court of Special Appeals, the underlying reason for the marriage is not relevant in deciding whether a person may assert the spousal privilege and the only relevant factor is whether the marriage is valid.

State/Local Fiscal Effect: Although the bill may reduce the number of criminal cases in which a spousal privilege is available, potentially increasing the number of cases that are tried, any resulting impact on workload does not materially impact the finances of the Judiciary, OPD, or State’s Attorneys’ offices.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Legislative Services

Fiscal Note History: First Reader - January 16, 2020
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