

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 268
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.

Recently, in *State v. Wilson*, ___ Md. ___ (2020), the Court of Appeals considered the applicability of the spousal testimony privilege in the context of a “sham marriage” (*i.e.*, a purported marriage in which the formal requirements of marriage may be met, but in which the parties have no intent of living together as spouses). The court did not ultimately reach the question of whether to judicially establish a categorical “sham marriage” exception that would become applicable to all persons who might subsequently attempt to assert the spousal testimony privilege. Instead, the court more narrowly held that, under the particular facts of the case, the defendant in question could be found guilty of witness tampering and obstruction of justice for having entered into a sham marriage for the purpose of silencing a potential witness.

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: HB 64 of 2020 passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

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 11, 2021
rh/jkb Third Reader - February 24, 2021

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