

2A: 84A-17

LEGISLATIVE HISTORY CHECKLIST  
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(Eliminates "spousal privilege")

NJSA: 2A:84A-17  
LAWS OF: 1992 CHAPTER: 142  
BILL NO: S1055  
SPONSOR(S) Gormley and others  
DATE INTRODUCED: July 20, 1992  
COMMITTEE: ASSEMBLY: Judiciary  
SENATE: Judiciary  
AMENDED DURING PASSAGE: No  
DATE OF PASSAGE: ASSEMBLY: October 8, 1992  
SENATE: August 3, 1992  
DATE OF APPROVAL: November 17, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes  
COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: Yes  
FISCAL NOTE: No  
VETO MESSAGE: No  
MESSAGE ON SIGNING: Yes  
FOLLOWING WERE PRINTED:  
REPORTS: No  
HEARINGS: No

See newspaper clippings--attached

KBG:pp

P.L.1992, CHAPTER 142, approved November 17, 1992  
1992 Senate No. 1055

1 **AN ACT** concerning certain testimony in criminal proceedings  
2 and amending P.L.1960, c.52.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. Section 17 of P.L.1960, c.52 (C.2A:84A-17) is amended to  
7 read as follows:

8 17. Rule 23. Privilege of accused.

9 (1) Every person has in any criminal action in which he is an  
10 accused a right not to be called as a witness and not to testify.

11 (2) The spouse of the accused in a criminal action shall not  
12 testify in such action except to prove the fact of marriage unless  
13 (a) such spouse [and the accused shall both consent] consents, or  
14 (b) the accused is charged with an offense against the spouse, a  
15 child of the accused or of the spouse, or a child to whom the  
16 accused or the spouse stands in the place of a parent, or (c) such  
17 spouse is the complainant.

18 (3) An accused in a criminal action has no privilege to refuse  
19 when ordered by the judge, to submit his body to examination or  
20 to do any act in the presence of the judge or the trier of the fact,  
21 except to refuse to testify.

22 (cf: Amended Sept. 14, 1979, eff. July 1, 1980)

23 2. Section 22 of P.L.1960, c.52(C.2A:84A-22) is amended to  
24 read as follows:

25 22. Rule 28. Marital privilege--Confidential communications

26 No person shall disclose any communication made in confidence  
27 between such person and his or her spouse unless both shall  
28 consent to the disclosure or unless the communication is relevant  
29 to an issue in an action between them or in a criminal action or  
30 proceeding in which either spouse consents to the disclosure, or in  
31 a criminal action or proceeding coming within Rule 23(2). When a  
32 spouse is incompetent or deceased, consent to the disclosure may  
33 be given for such spouse by the guardian, executor or  
34 administrator. The requirement for consent shall not terminate  
35 with divorce or separation. A communication between spouses  
36 while living separate and apart under a divorce from bed and  
37 board shall not be a privileged communication.

38 (cf: P.L.1960, c.52, s.22)

39 3. This act shall take effect immediately and, to the fullest  
40 extent consistent with constitutional restrictions, shall apply to  
41 all criminal actions regardless of the date on which the offense  
42 was committed or the action initiated.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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Currently, section 17 of P.L.1960, c.52 (C.2A:84A-17), also referenced as Rule 23 of the New Jersey Rules of Evidence, prohibits the spouse of the accused in a criminal action from testifying under most circumstances. The spouse is permitted to testify: if both spouses consent; if the defendant-spouse is charged with an offense against the witness-spouse, against a child of either of the spouses or against a child to whom either of them stands in the place of a parent; or if the witness-spouse is the complainant.

Under this "spousal privilege" rule, a criminal defendant is entitled to bar the testimony of a spouse who wishes to testify. This provision of "spousal privilege" has been strongly criticized by judges and legal commentators, who note that the provision is antiquated and outmoded, and frustrates justice. The majority of the 50 states has eliminated the right of a criminal defendant to bar a spouse from testifying in state court. In these states, either the "spousal privilege" has been eliminated altogether, or it operates in a modified form, to the benefit of the witness-spouse only: The witness-spouse may exercise the privilege to decline to testify against the defendant-spouse, but the defendant may not prevent a spouse who wants to testify from doing so.

The federal courts also allow the spousal privilege to be used only by the witness-spouse. In Trammel v. United States, 445 U.S.40 (1980), the United States Supreme Court held that a witness-spouse alone has a privilege to refuse to testify adversely in federal court. The witness may neither be compelled to testify, nor foreclosed from testifying.

This bill would conform the State spousal privilege to the federal rule, allowing the privilege to be exercised only by the spouse who is a potential witness.

In addition, the bill would amend section 22 of P.L.1960, c.52 (C.2A:84A-22), Rule 28 of the Rules of Evidence, concerning confidential communications between spouses. Consistent with the change proposed to Rule 23, the bill would permit disclosure in a criminal proceeding of confidential communications between spouses if either spouse consents.

The bill would be effective immediately, and, to the fullest extent consistent with constitutional restrictions, would apply to all criminal actions regardless of the date on which the offense was committed or the action initiated. The New Jersey Supreme Court held in R.S. v. Knighton, 126 N.J.79 (1991) that an evidence rule enacted after a criminal offense occurred could be applied retroactively to a pending case because, unlike a statute relating to substantive rights, the rule did not change the elements of an offense or the ultimate facts necessary to establish guilt.

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Eliminates "spousal privilege" of person accused of a crime to bar spouse from testifying.

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Eliminates "spousal privilege" of person accused of a crime to bar spouse from testifying.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

SENATE, No. 1055

STATE OF NEW JERSEY

DATED: AUGUST 24, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 1055.

Currently, section 17 of P.L.1960, c.52 (C.2A:84A-17), also referenced as Rule 23 of the New Jersey Rules of Evidence, prohibits the spouse of the accused in a criminal action from testifying under most circumstances. The spouse is permitted to testify: if both spouses consent; if the defendant-spouse is charged with an offense against the witness-spouse, against a child of either of the spouses or against a child to whom either of them stands in the place of a parent; or if the witness-spouse is the complainant.

Under this "spousal privilege" rule, a criminal defendant is entitled to bar the testimony of a spouse who wishes to testify. This provision of "spousal privilege" has been strongly criticized by judges and legal commentators, who note that the provision is antiquated and outmoded, and frustrates justice. The majority of the 50 states has eliminated the right of a criminal defendant to bar a spouse from testifying in state court. In these states, either the "spousal privilege" has been eliminated altogether, or it operates in a modified form, to the benefit of the witness-spouse only: The witness-spouse may exercise the privilege to decline to testify against the defendant-spouse, but the defendant may not prevent a spouse who wants to testify from doing so.

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This bill would conform the State spousal privilege to the federal rule, allowing the privilege to be exercised only by the spouse who is a potential witness.

In addition, the bill would amend section 22 of P.L.1960, c.52 (C.2A:84A-22), Rule 28 of the Rules of Evidence, concerning confidential communications between spouses. Consistent with the change proposed to Rule 23, the bill would permit disclosure in a criminal proceeding of confidential communications between spouses if either spouse consents.

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enacted after a criminal offense occurred could be applied retroactively to a pending case because, unlike a statute relating to substantive rights, the rule did not change the elements of an offense or the ultimate facts necessary to establish guilt.

This bill is identical to Assembly Bill No. 1702.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1055

STATE OF NEW JERSEY

DATED: JULY 23, 1992

The Senate Judiciary Committee reports favorably Senate Bill No. 1055.

Currently, section 17 of P.L.1960, c.52 (C.2A:84A-17), also referenced as Rule 23 of the New Jersey Rules of Evidence, prohibits the spouse of the accused in a criminal action from testifying under most circumstances. The spouse is permitted to testify: if both spouses consent; if the defendant-spouse is charged with an offense against the witness-spouse, against a child of either of the spouses or against a child to whom either of them stands in the place of a parent; or if the witness-spouse is the complainant.

Under this "spousal privilege" rule, a criminal defendant is entitled to bar the testimony of a spouse who wishes to testify. This provision of "spousal privilege" has been strongly criticized by judges and legal commentators, who note that the provision is antiquated and outmoded, and frustrates justice. The majority of the 50 states has eliminated the right of a criminal defendant to bar a spouse from testifying in state court. In these states, either the "spousal privilege" has been eliminated altogether, or it operates in a modified form, to the benefit of the witness-spouse only: The witness-spouse may exercise the privilege to decline to testify against the defendant-spouse, but the defendant may not prevent a spouse who wants to testify from doing so.

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This bill would conform the State spousal privilege to the federal rule, allowing the privilege to be exercised only by the spouse who is a potential witness.

In addition, the bill would amend section 22 of P.L.1960, c.52 (C.2A:84A-22), Rule 28 of the Rules of Evidence, concerning confidential communications between spouses. Consistent with the change proposed to Rule 23, the bill would permit disclosure in a criminal proceeding of confidential communications between spouses if either spouse consents.

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# OFFICE OF THE GOVERNOR

## NEWS RELEASE

**CN-001**  
**Contact:**

Jon Shure  
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**TRENTON, N.J. 08625**

**Release:** Tuesday  
Nov. 17, 1992

### **GOVERNOR SIGNS BILL ELIMINATING ARCHAIC RULE** **Legislation Spurred by Reso Case**

**MORRISTOWN --** New Jersey courtrooms are moving into the 20th century under legislation signed today by Governor Jim Florio which eliminates an archaic rule allowing the accused to bar testimony from a spouse -- legislation introduced in response to the Sidney Reso case.

"The tragic case of the Reso kidnapping brought our attention to the issue of "spousal privilege" -- an out-of-date provision in our law," said Governor Florio. "Today New Jersey joins federal law and a majority of the 50 states in eliminating the right of a criminal defendant to bar the testimony of a spouse against them. Our new law allows spouses to testify if they choose, but *preserves* their right to refuse to testify if that is their choice."

Under "spousal privilege", a spouse is only permitted to testify if: both spouses consent; if the defendant-spouse is charged with an offense against the witness-spouse or against a child of either spouse; or if the witness-spouse is the complainant. Under the current system, Irene Seale could have been prohibited from giving state's evidence by her husband, Arthur, regarding the kidnapping and death of Exxon executive Sidney Reso. Arthur Seale subsequently pleaded guilty.

Most states have eliminated the right of a criminal defendant to bar a spouse from testifying in state court. Federal court also allows spousal privilege to be used only by a witness-spouse, who can decide whether or not to testify.

"Today we're bringing this aspect of our law into the 1990's where it belongs. The spousal privilege is rooted in 19th century ideas that women are the property of their husbands. That's not the New Jersey we know today and it's vital that the laws we live by reflect the world we live in," said Governor Florio. "In every part of America, we've been cleaning out the corners and sweeping out the vestiges of



discrimination and sexism. From the bedroom to the boardroom, America shares a set of values that endows women with all the rights available in our society -- no matter what their husbands say. We must bring this same value system to the courtroom."

Governor Florio also said the new law brings New Jersey into line with the opinions of judges and legal commentators nationwide who have strongly criticized spousal privilege laws as antiquated, outmoded and counter-productive.

The bill, S 1055/A 1702, was sponsored by Senators William Gormley and Leanna Brown, and Assemblypersons Harriet Derman and Gary Stuhltrager.

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