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HOUSE BILL NO. 879

House Amendments in [] — February 13, 1996

A BILL to amend and reenact § 19.2-271.2 of the Code of Virginia, relating to the testimony of husband and wife in criminal cases.

Patrons—Cunningham, Almand, Guest and Woodrum; Senator: Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §19.2-271.2 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-271.2. Testimony of husband and wife in criminal cases.

[In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses and subject to the exception stated in § 8.01-398, may be compelled to testify in behalf of each other, but neither shall be compelled, nor, without the consent of the other, allowed, to be called as a witness against the other, Husband and wife shall be allowed to testify for or against each other in any criminal case; provided that neither husband nor wife, shall, without the consent of the other, be examined in any action as to any communication privately made by one to the other while married, nor shall either be permitted, without such consent, to reveal in testimony after the marriage relation ceases any such communication made while the marriage subsisted. Neither husband nor wife shall be compelled to testify against the other in any criminal case] except (i) in the case of a prosecution for an offense committed by one against the other or against a minor child of either, (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.

In the prosecution for a criminal offense as set forth in (i), (ii) or (iii) above, each shall be a competent witness except as to privileged communications.

ENGROSSED

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