

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 355

By Senators Trump, Weld, Woelfel, Deeds, and

Woodrum

[Introduced January 12, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §57-3-3 of the Code of West Virginia, 1931, as amended, relating to
 2 spousal privilege; and expanding the exceptions to spousal privilege to exclude therefrom
 3 cases in which the offense at issue was committed against any child rather than a child of
 4 one or both spouses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. COMPETENCY OF WITNESSES.

§57-3-3. Testimony of ~~husband and wife~~ spouses in criminal cases.

1 In criminal cases ~~husband and wife~~ spouses shall be allowed, and, subject to the rules of
 2 evidence governing other witnesses, may be compelled to testify ~~in~~ on behalf of each other, but
 3 neither shall be compelled, nor, without the consent of the other, allowed to be called as a witness
 4 against the other except in the case of a prosecution for an offense committed by one against the
 5 other, or against the child, father, mother, sister or brother of either of them, or minor, as defined in
 6 §2-2-10 of this code, or any person deemed incompetent by mental disease, defect, or other
 7 disability. The failure of either ~~husband or wife~~ spouses to testify, however, shall create no
 8 presumption against the accused, nor be the subject of any comment before the court or jury by
 9 anyone.

NOTE: The purpose of this bill is to expand the spousal exception and allow for adverse testimony by a spouse when the defendant spouse has committed a crime against "any child" in addition to a child of either spouse.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.