

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3636

STATE OF NEW JERSEY

DATED: SEPTEMBER 22, 2014

The Assembly Judiciary Committee reports favorably Assembly Bill No. 3636.

This bill would amend section 22 of “The Evidence Act, 1960,” P.L.1960, c.52 (C.2A:84A-22), which concerns the marital and civil union partnership communications privilege and which is enumerated as Rule 509 of the New Jersey Rules of Evidence.

Currently, section 22 of P.L.1960, c.52 (C.2A:84A-22) provides that no person shall disclose any communication made in confidence between a person and his or her spouse or, consistent with section 5 of P.L.2006, c.103 (C.37:1-32), his or her civil union partner unless both consent to the disclosure, or unless the communication is relevant to an issue in an action between them, or in a criminal action or proceeding in which either spouse or partner consents to the disclosure, or in a criminal action or proceeding coming within section 17 of P.L.1960, c.52 (C.2A:84A-17), also referenced as Rule 501 of the New Jersey Rules of Evidence, for which a testimonial privilege does not apply. This privilege against disclosure does not terminate with divorce, dissolution of civil union, or separation.

The marital and civil union partnership communications privilege arises from the strong public policy in this State of encouraging free and uninhibited communication between spouses and civil union partners, and, consequently, of protecting the sanctity and tranquility of marriages and civil unions. However, in its current form, this privilege has the unintended consequence of serving to immunize conversations between spouses and partners about their ongoing and future joint criminal behavior.

In a unanimous decision, State v. Terry, 218 N.J. 224 (2014), the New Jersey Supreme Court proposed an amendment to Rule 509 of the New Jersey Rules of Evidence to include a crime-fraud exception to the communications privilege. The proposal constituted an effort to strike an appropriate balance between marital and civil union privacy and the public’s interest in attaining justice. In response to the New Jersey Supreme Court’s proposed amendment, this bill would amend the section of “The Evidence Act, 1960” to which Rule 509 corresponds.