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Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

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CHAPTER _____

1 AN ACT concerning

2 **Manslaughter - Inadequate Provocation - Spousal Adultery**

3 FOR the purpose of establishing ~~that the discovery of one's spouse engaged in sexual~~
4 ~~activity or sexual intercourse with another person does not constitute legally~~
5 ~~adequate provocation for the purpose of mitigating a killing of the spouse from the~~
6 ~~crime of murder to voluntary manslaughter providing that on a certain issue that~~
7 ~~when there is no actual sexual intercourse a certain belief cannot constitute legally~~
8 ~~adequate provocation for the purpose of mitigating any killing from murder to~~
9 ~~voluntary manslaughter; providing for the application of this Act; and generally~~
10 relating to legally adequate provocation as it relates to mitigating a killing from
11 murder to voluntary manslaughter.

12 BY adding to

13 Article 27 - Crimes and Punishments

14 Section 387A

15 Annotated Code of Maryland

16 (1992 Replacement Volume and 1995 Supplement)

17 **Preamble**

18 ~~WHEREAS, Under the common law of Maryland, voluntary manslaughter is a~~
19 ~~killing that would be murder were it not for the presence of mitigation, Girouard v. State,~~
20 ~~321 Md. 532 (1991); and~~

1 ~~WHEREAS, Under the common law, one type of mitigation that turns a killing into~~
2 ~~voluntary manslaughter is a hot blooded, heat of passion response to legally adequate~~
3 ~~provocation; and~~

4 ~~WHEREAS, Under the common law, legally adequate provocation consists of four~~
5 ~~elements:~~

6 ~~(1) There must have been adequate provocation;~~

7 ~~(2) The killing must have been in the heat of passion;~~

8 ~~(3) It must have been a sudden heat of passion: the killing must have~~
9 ~~followed the provocation before there had been a reasonable time for the passion to cool;~~
10 ~~and~~

11 ~~(4) There must have been a causal connection between the provocation, the~~
12 ~~passion, and the killing, Tripp v. State, 36 Md. App. 459 (1977); and~~

13 ~~WHEREAS, Under the common law, in certain circumstances discovering one's~~
14 ~~spouse engaged in sexual activity with another person constitutes legally adequate~~
15 ~~provocation to mitigate a killing of the spouse from murder to voluntary manslaughter,~~
16 ~~Girouard v. State, 321 Md. 532 (1991); and~~

17 ~~WHEREAS, It is the intent of the General Assembly by enactment of this Act, to~~
18 ~~eliminate any injustice that results from allowing the discovery of spousal adultery to~~
19 ~~mitigate a killing of a spouse from murder to voluntary manslaughter; now, therefore,~~

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article 27 - Crimes and Punishments**

23 387A.

24 ~~THE DISCOVERY OF ONE'S SPOUSE ENGAGED IN SEXUAL ACTIVITY OR SEXUAL~~
25 ~~INTERCOURSE WITH ANOTHER PERSON DOES NOT CONSTITUTE LEGALLY~~
26 ~~ADEQUATE PROVOCATION FOR THE PURPOSE OF MITIGATING A KILLING OF THE~~
27 ~~SPOUSE FROM THE CRIME OF MURDER TO VOLUNTARY MANSLAUGHTER WHEN THE~~
28 ~~KILLING WAS PROVOKED BY THAT DISCOVERY. ON THE ISSUE OF SPOUSAL~~
29 ~~ADULTERY AS LEGALLY ADEQUATE PROVOCATION TO MITIGATE MURDER TO~~
30 ~~VOLUNTARY MANSLAUGHTER, WHEN THERE IS NO ACTUAL SEXUAL INTERCOURSE,~~
31 ~~A DEFENDANT'S HONEST AND REASONABLE BELIEF OF SEXUAL INTERCOURSE~~
32 ~~CANNOT CONSTITUTE LEGALLY ADEQUATE PROVOCATION FOR THE PURPOSE OF~~
33 ~~MITIGATING ANY KILLING FROM MURDER TO VOLUNTARY MANSLAUGHTER.~~

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
35 only prospectively and may not be applied or interpreted to have any effect on or
36 application to any crimes committed before the effective date of this Act.

37 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 1996.

