

CF 7r0657

By: Delegate Taylor and Chairman, Judiciary Committee (Family Violence Council), and Delegates Dewberry, Hurson, Arnick, Busch, Curran, Harrison, Hixson, Kopp, Menes, Owings, Rawlings, Hecht, Grosfeld, Montague, Love, Pendergrass, Conway, Cadden, Stup, Watson, Petzold, Nathan-Pulliam, Willis, McIntosh, Parker, Rosenberg, B. Hughes, Branch, Edwards, Donoghue, Franchot, Brinkley, Eckardt, Bobo, Conroy, Fry, Hubbard, and Pitkin

Introduced and read first time: January 30, 1997

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 4, 1997

CHAPTER ____

1 AN ACT concerning

2 Evidence - Assault Trials - Spousal Privilege - Record of Assertion

3 FOR the purpose of requiring that the clerk of the court make and maintain a ~~separate~~
 4 record of the refusal of certain witnesses to testify in certain assault trials under
 5 certain circumstances; requiring the clerk to make and maintain a certain separate
 6 record when an expungement order is presented in certain cases; specifying the
 7 contents of the record; limiting the availability of the record; providing that the
 8 record is not subject to expungement; and generally relating to the privilege of the
 9 spouse of a person on trial for certain crimes to refuse to testify.

10 BY repealing and reenacting, with amendments,
 11 Article - Courts and Judicial Proceedings
 12 Section 9-106
 13 Annotated Code of Maryland
 14 (1995 Replacement Volume and 1996 Supplement)

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

2

1 **Article - Courts and Judicial Proceedings**

2 9-106.

3 (A) The spouse of a person on trial for a crime may not be compelled to testify as
4 an adverse witness unless the charge involves:

5 (1) The abuse of a child under 18; or

6 (2) Assault in any degree in which the spouse is a victim if:

7 (i) The person on trial was previously charged with assault in any
8 degree or assault and battery of the spouse;

9 (ii) The spouse was sworn to testify at the previous trial; and

10 (iii) The spouse refused to testify at the previous trial on the basis of
11 the provisions of this section.

12 (B) (1) IF THE SPOUSE OF A PERSON ON TRIAL FOR ASSAULT IN ANY
13 DEGREE IN WHICH THE SPOUSE WAS A VICTIM IS SWORN TO TESTIFY AT THE TRIAL
14 AND REFUSES TO TESTIFY ON THE BASIS OF THE PROVISIONS OF THIS SECTION, THE
15 CLERK OF THE COURT SHALL MAKE AND MAINTAIN A ~~SEPARATE~~ RECORD OF THAT
16 REFUSAL, INCLUDING THE NAME OF THE SPOUSE REFUSING TO TESTIFY.

17 (2) ~~THE RECORD SHALL INCLUDE WHEN AN EXPUNGEMENT ORDER IS~~
18 PRESENTED TO THE CLERK OF THE COURT IN A CASE INVOLVING A CHARGE OF
19 ASSAULT IN ANY DEGREE, THE CLERK SHALL CHECK THE RECORD TO DETERMINE
20 WHETHER THE DEFENDANT'S SPOUSE REFUSED TO TESTIFY ON THE BASIS OF THE
21 PROVISIONS OF THIS SECTION.

22 (3) IF THE RECORD SHOWS SUCH A REFUSAL, THE CLERK SHALL MAKE
23 AND MAINTAIN A SEPARATE RECORD OF THE REFUSAL, INCLUDING THE
24 DEFENDANT'S NAME, THE SPOUSE'S NAME, THE CASE FILE NUMBER, A COPY OF THE
25 CHARGING DOCUMENT, AND THE DATE OF THE TRIAL IN WHICH THE SPOUSE
26 REFUSED TO TESTIFY.

27 ~~(4)~~ (4) THE SEPARATE RECORD SPECIFIED UNDER PARAGRAPH (3) OF
28 THIS SUBSECTION:

29 (I) IS NOT SUBJECT TO EXPUNGEMENT UNDER ARTICLE 27, §§ 735
30 THROUGH 741 OF THE CODE; AND

31 (II) SHALL BE AVAILABLE ONLY TO THE COURT, A STATE'S
32 ATTORNEY'S OFFICE, AND AN ATTORNEY FOR THE DEFENDANT.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 1997.

