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**By: Senators Kelley, Miller, Hoffman, Ruben, Roesser, Forehand, Van Hollen, Frosh, Green, Trotter, Bromwell, Hollinger, Sfikas, Stone, Jimeno, Pinsky, Middleton, Teitelbaum, Lawlah, Conway, Colburn, Hughes, Middlebrooks, and Young**

Introduced and read first time: January 13, 1997

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 18, 1997

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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:

17 **Article - Courts and Judicial Proceedings**

18 9-106.

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

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

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

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

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

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

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

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

17 (3) IF THE RECORD SHOWS SUCH REFUSAL, THE CLERK SHALL MAKE  
18 AND MAINTAIN A SEPARATE RECORD OF THE REFUSAL, INCLUDING THE  
19 DEFENDANT'S NAME, THE SPOUSE'S NAME, THE CASE FILE NUMBER, A COPY OF THE  
20 CHARGING DOCUMENT, AND THE DATE OF THE TRIAL IN WHICH THE SPOUSE  
21 REFUSED TO TESTIFY.

22 ~~(3)~~ (4) THE SEPARATE RECORD SPECIFIED UNDER PARAGRAPH (3) OF  
23 THIS SUBSECTION:

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

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

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