Unofficial Copy 2004 Regular Session E2 4lr1605

By: Delegate Niemann

Introduced and read first time: February 2, 2004

Assigned to: Judiciary

## A BILL ENTITLED

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1	$\Delta N$	A( "I	concerning

- 2 Criminal Procedure Expungement of Record Exception for Spousal Assault
- 4 FOR the purpose of making a certain provision of law that relates to the expungement
- of certain criminal records inapplicable to a person charged with the commission
- of a certain crime to the person's spouse under certain conditions; defining a
- 7 term; providing for the application of this Act; and generally relating to the
- 8 expungement of criminal records.

## 9 BY renumbering

- 10 Article Criminal Procedure
- Section 10-105(b) through (g), respectively
- to be Section 10-105(c) through (h), respectively
- 13 Annotated Code of Maryland
- 14 (2001 Volume and 2003 Supplement)
- 15 BY repealing and reenacting, without amendments,
- 16 Article Courts and Judicial Proceedings
- 17 Section 9-106
- 18 Annotated Code of Maryland
- 19 (2002 Replacement Volume and 2003 Supplement)
- 20 BY repealing and reenacting, without amendments,
- 21 Article Criminal Procedure
- 22 Section 10-101(a)
- 23 Annotated Code of Maryland
- 24 (2001 Volume and 2003 Supplement)
- 25 BY adding to
- 26 Article Criminal Procedure
- 27 Section 10-101(i) and 10-105(a)
- 28 Annotated Code of Maryland

1	(2001 Volume and 2003 Supplement)							
2 3 4 5 6	BY repealing and reenacting, with amendments, Article - Criminal Procedure Section 10-105(a) Annotated Code of Maryland (2001 Volume and 2003 Supplement)							
9	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 10-105(b) through (g), respectively, of Article - Criminal Procedure of the Annotated Code of Maryland be renumbered to be Section(s) 10-105(c) through (h), respectively.							
11 12	SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:							
13	Article - Courts and Judicial Proceedings							
14	9-106.							
15 16	(a) The spouse of a person on trial for a crime may not be compelled to testify as an adverse witness unless the charge involves:							
17	(1) The abuse of a child under 18; or							
18	(2) Assault in any degree in which the spouse is a victim if:							
19 20	(i) The person on trial was previously charged with assault in any degree or assault and battery of the spouse;							
21	(ii) The spouse was sworn to testify at the previous trial; and							
22 23	(iii) The spouse refused to testify at the previous trial on the basis of the provisions of this section.							
26	(b) (1) If the spouse of a person on trial for assault in any degree in which the spouse was a victim is sworn to testify at the trial and refuses to testify on the basis of the provisions of this section, the clerk of the court shall make and maintain a record of that refusal, including the name of the spouse refusing to testify.							
30	(2) When an expungement order is presented to the clerk of the court in a case involving a charge of assault in any degree, the clerk shall check the record to determine whether the defendant's spouse refused to testify on the basis of the provisions of this section.							
34	(3) If the record shows such refusal, the clerk shall make and maintain a separate record of the refusal, including the defendant's name, the spouse's name, the case file number, a copy of the charging document, and the date of the trial in which the spouse refused to testify.							

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1		(4)	The separ	rate record specified under paragraph (3) of this subsection:	
2 3	Criminal Pro	cedure A		Is not subject to expungement under Title 10, Subtitle 1 of the	
4 5	and an attorn	ey for the		Shall be available only to the court, a State's Attorney's office, at.	
6				Article - Criminal Procedure	
7	10-101.				
8	(a)	In this s	ubtitle the	following words have the meanings indicated.	
9 10	(I) BATTERY			AULT" MEANS ASSAULT IN ANY DEGREE OR ASSAULT AND THE OTHER SPOUSE.	
11	10-105.				
14	COMMISSI PROVISION	ON OF S	SPOUSAL 9-106 OF	DOES NOT APPLY TO A PERSON CHARGED WITH THE ASSAULT IF THE VICTIM SPOUSE INVOKED THE THE COURTS ARTICLE AND REFUSED TO TESTIFY AS AN E PERSON'S TRIAL.	
18 19	[(a)] (B) [A] EXCEPT AS PROVIDED IN SUBSECTION (A) OF THIS SECTION, A person who has been charged with the commission of a crime, including a violation of the Transportation Article for which a term of imprisonment may be imposed, may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State if:				
21		(1)	the person	n is acquitted;	
22		(2)	the charg	e is otherwise dismissed;	
	with a violat 3-211 of the		21-902 of	on before judgment is entered, unless the person is charged the Transportation Article or Title 2, Subtitle 5 or § cle;	
26		(4)	a nolle pr	osequi is entered;	
27 28	the criminal	(5) charge "		indefinitely postpones trial of a criminal charge by marking e docket;	
29		(6)	the case i	s compromised under § 3-207 of the Criminal Law Article;	
30 31	article; or	(7)	the charg	e was transferred to the juvenile court under § 4-202 of this	
32		(8)	the person	n:	

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1 2 of v	violence; and	(i)	is convicted of only one criminal act, and that act is not a crime
3		(ii)	is granted a full and unconditional pardon by the Governor.
4	SECTION 3. AN	D BE IT	FURTHER ENACTED, That this Act shall be

- 5 construed to apply only prospectively and may not be applied or interpreted to have 6 any effect on or application to any expungement of a criminal record of a person 7 charged with spousal assault that was committed before the effective date of this Act.
- 8 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 9 October 1, 2004.