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By: **Delegate Niemann**

Introduced and read first time: February 2, 2004

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Criminal Procedure - Expungement of Record - Exception for Spousal**  
3                                   **Assault**

4 FOR the purpose of making a certain provision of law that relates to the expungement  
5 of certain criminal records inapplicable to a person charged with the commission  
6 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  
11 Section 10-105(b) through (g), respectively  
12 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 BY repealing and reenacting, with amendments,

3 Article - Criminal Procedure

4 Section 10-105(a)

5 Annotated Code of Maryland

6 (2001 Volume and 2003 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
8 MARYLAND, That Section(s) 10-105(b) through (g), respectively, of Article -  
9 Criminal Procedure of the Annotated Code of Maryland be renumbered to be  
10 Section(s) 10-105(c) through (h), respectively.

11 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
12 read as follows:

13 **Article - Courts and Judicial Proceedings**

14 9-106.

15 (a) The spouse of a person on trial for a crime may not be compelled to testify  
16 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 (i) The person on trial was previously charged with assault in any  
20 degree or assault and battery of the spouse;

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

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

24 (b) (1) If the spouse of a person on trial for assault in any degree in which  
25 the spouse was a victim is sworn to testify at the trial and refuses to testify on the  
26 basis of the provisions of this section, the clerk of the court shall make and maintain  
27 a record of that refusal, including the name of the spouse refusing to testify.

28 (2) When an expungement order is presented to the clerk of the court in  
29 a case involving a charge of assault in any degree, the clerk shall check the record to  
30 determine whether the defendant's spouse refused to testify on the basis of the  
31 provisions of this section.

32 (3) If the record shows such refusal, the clerk shall make and maintain a  
33 separate record of the refusal, including the defendant's name, the spouse's name, the  
34 case file number, a copy of the charging document, and the date of the trial in which  
35 the spouse refused to testify.



1 (i) is convicted of only one criminal act, and that act is not a crime  
2 of violence; and

3 (ii) is granted a full and unconditional pardon by the Governor.

4 SECTION 3. AND 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.