

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 497

(Delegate Niemann)

Judiciary

Criminal Procedure - Expungement of Record - Exception for Spousal Assault

This bill states that a person may not expunge a criminal record in connection with a “spousal assault” if the victim spouse refused to testify as an adverse witness at the person’s trial. A spousal assault means assault in any degree or assault and battery of a spouse by the other spouse.

Fiscal Summary

State Effect: None. Any decrease in expungements would not materially affect the Judiciary’s operations or finances.

Local Effect: None (see above).

Small Business Effect: None.

Analysis

Current Law: A person who has been charged with the commission of a crime 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, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon.

A person is not entitled to expungement if the petition is based on the entry of probation before judgment, a *nolle prosequi*, a stet, or the grant of a pardon by the Governor, if the

person has subsequently been convicted of a crime or is a defendant in a criminal proceeding.

A spouse victim cannot be compelled to testify in a spousal assault trial if the charge is the defendant's first offense, and the victim invokes spousal privilege. When this occurs, the clerk of the court makes and maintains a separate record of the refusal, which includes the defendant's name and the spouse's name. This additional record is not subject to expungement, but is made available only to the court, a State's Attorney's office, and an attorney for the defendant.

Background: Under common law, which is followed in Maryland unless abrogated by statute, spouses were not allowed to testify against each other in criminal actions. Common law viewed husband and wife as a single entity, which could not be forced to testify against itself.

In recent years, an increasing number of states have abolished spousal privilege in domestic violence cases, either judicially, statutorily, or by court rule. Some have abolished it completely; while in others, including Maryland, it may be asserted only a certain number of times (once in Maryland) against the same alleged abuser.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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