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By: **Senator Grosfeld**

Introduced and read first time: January 27, 2005

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence - Spousal Privilege - Repeal**

3 FOR the purpose of repealing a provision authorizing the spouse of a person on trial  
4 for assault in which the spouse is a victim to refuse to testify as an adverse  
5 witness under certain circumstances; repealing certain provisions relating to the  
6 record of the assertion of the spousal privilege; and generally relating to  
7 domestic violence and the repeal of a certain spousal privilege.

8 BY repealing and reenacting, with amendments,  
9 Article - Courts and Judicial Proceedings  
10 Section 9-106  
11 Annotated Code of Maryland  
12 (2002 Replacement Volume and 2004 Supplement)

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

15 **Article - Courts and Judicial Proceedings**

16 9-106.

17 [(a)] The spouse of a person on trial for a crime may not be compelled to testify  
18 as an adverse witness unless the charge involves:

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

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

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

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

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

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

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

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

13 (4) The separate record specified under paragraph (3) of this subsection:

14 (i) Is not subject to expungement under Title 10, Subtitle 1 of the  
15 Criminal Procedure Article; and

16 (ii) Shall be available only to the court, a State's Attorney's office,  
17 and an attorney for the defendant].

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2005.