

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

House Bill 331  
Judiciary

(Delegate Dumais)

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Domestic Violence - Spousal Privilege - Repeal

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This bill repeals the conditions limiting the application of the spousal privilege against providing adverse testimony if the charge involves assault in any degree and the spouse is a victim. Accordingly, the spouse of a person on trial for a first offense of assault, if the spouse is a victim, may be compelled to testify against that person.

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Fiscal Summary

**State Effect:** None. The bill's requirements could be met with existing resources.

**Local Effect:** None. The bill's requirements could be met with existing resources.

**Small Business Effect:** None.

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Analysis

**Current Law:** The spouse of a person on trial for a crime may not be compelled to testify against that person unless the charge involves the abuse of a child under 18 or assault in any degree in which the spouse is a victim and certain conditions are met. The spousal privilege becomes unavailable when the charge is assault against the spouse under the following circumstances:

- the person on trial was previously charged with assault in any degree or assault and battery of the spouse;
- the spouse was sworn to testify at the previous trial; and

- the spouse refused to testify at the previous trial by asserting spousal privilege.

If the spouse of the person on trial for assault in any degree against the spouse refuses to testify on the basis of spousal privilege, the clerk of the court must make and maintain a record of the refusal, including the name of the spouse refusing to testify. When an expungement order is presented to the clerk of the court involving assault in any degree against a spouse, the clerk must check the record to determine whether the defendant's spouse refused to testify on the basis of spousal privilege. If the record shows a refusal, the clerk must make and keep 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 trial date when the spouse refused to testify. The separate record is not subject to expungement and must be made available only to the court, a State's Attorney's office, and the defendant's attorney.

**Background:** According to the 2003 *Uniform Crime Report*, maintained by the State Police, 17,860 domestic violence crimes were reported in Maryland in calendar 2003. The data excludes crimes in Baltimore City, which did not report occurrences to the State Police for that period. The number of domestic violence crimes involving assaults was 16,699 for calendar 2003.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 258 (Senator Grosfeld) – Judicial Proceedings.

**Information Source(s):** Department of Legislative Services

**Fiscal Note History:** First Reader - February 8, 2005  
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