

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 765
Judiciary

(Delegate Dumais, *et al.*)

Domestic Violence - Spousal Privilege - Repeal

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.

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.

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 2005 *Uniform Crime Report*, maintained by the State Police, 22,092 domestic violence crimes were reported in Maryland in calendar 2005. There were 20,482 domestic violence crimes involving assaults in calendar 2005. Of the total number of assaults, 4,668 were aggravated assaults and over half of those involved a firearm, knife, or other weapon.

Additional Information

Prior Introductions: This bill is a reintroduction of SB 258/HB 331 of 2005. SB 258 received an unfavorable report from the Senate Judicial Proceedings Committee and HB 331 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 20, 2007
nas/jr

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