

BILL NO: House Bill 289  
TITLE: Evidence – Testimony by Spouse – Violation of Protective Order  
COMMITTEE: Judiciary  
HEARING DATE: February 6, 2020  
POSITION: **SUPPORT**

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House Bill 289 would eliminate the ability of a witness-spouse to invoke marital privilege to refuse to testify against his or her defendant-spouse at a Violation of Protective Order prosecution if the defendant spouse violated by committing another act of abuse. The Women's Law Center (WLC) supports HB 289 because the State's Attorneys have identified this as a crucial way to successfully prosecute violations of protective orders, which increases safety for victims and society as a whole.

Currently, a spouse may invoke marital privilege *one time* to refuse to testify against his or her spouse. Compelling testimony from the witness-spouse is available only if certain conditions have been met: (1) the person on trial (the defendant-spouse) was previously charged with assault in any degree or assault and battery of the witness-spouse; (2) the witness-spouse was previously sworn to testify at the previous trial of the defendant-spouse; and (3) the witness-spouse refused to testify at the previous trial of the defendant-spouse. HB 289 limits the opportunity for a witness-spouse to invoke marital privilege and refuse to testify at the trial of a violation of a protective order when the witness-spouse has previously petitioned the court to obtain a protective order, and the respondent/defendant violated the protective order by committing a subsequent act of abuse. This would allow prosecutors to require a spouse to testify at the violation trial even if they have not previously invoked their one-time privilege.

The WLC agrees that adjusting the marital privilege statute in these circumstances may ultimately help those who are dealing with repeated episodes of domestic violence. In cases where a witness-spouse is called to testify, the defendant-spouse often applies significant pressure, including threats of harm, on the witness-spouse to refrain from testifying. Requiring the witness-spouse to testify by eliminating this aspect of the marital privilege can relieve this pressure and assist in obtaining a conviction for a violation of a protective order. This accountability is an important aspect of eliminating domestic violence in our community.

Spousal privilege, the right to *not* testify against one's spouse, arose in an effort to recognize that spouses may tell each other things in confidence and that the confidentiality of such communications should be honored.

In the common law, spousal privilege (also called marital privilege or husband-wife privilege) is a term used in the law of evidence to describe two separate privileges that apply to spouses: the spousal communications privilege and the spousal testimonial privilege.

Both types of privilege are based on the policy of encouraging spousal harmony and preventing spouses from having to condemn, or be condemned by, their spouses: the spousal

communications privilege or confidences privilege is a form of privileged communication that protects the contents of confidential communications between spouses during their marriage from testimonial disclosure, while spousal testimonial privilege (also called spousal incompetency and spousal immunity) protects the individual holding the privilege from being called to testify in proceedings relating to his/her spouse. However, the spousal privilege have their roots in the legal fiction that a husband and wife were one person.

It is quite obvious that the intent was not to prevent the spouse from testifying when the crime that occurred (violation of the protective order) was against the other spouse. There is no spousal harmony left to protect.

Therefore, the Women's Law Center of Maryland, Inc. urges a favorable report on HB 289.

***The Women's Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change. The Women's Law Center operates two hotlines, Protection Order Advocacy and Representation Projects in Baltimore City, Baltimore County and Carroll County and the Multi-Ethnic Domestic Violence Project.***