

HB 406 - Marriage – Confidential Communication – C

Uploaded by: Andrea Rafter

Position: FAV

BILL NO: House Bill 406
TITLE: Marriage – Confidential Communication – Criminal Charge
COMMITTEE: Judicial Proceedings
HEARING DATE: March 21, 2024
POSITION: **SUPPORT**

House Bill 406 would provide that a spouse may, but does not have to, reveal a confidential communication made by the other spouse if the other spouse has committed a crime against the spouse. The Women's Law Center (WLC) supports House Bill 406 as it places the power in the hands of the victim spouse if they choose to reveal a confidential communication.

Under current law, if an abusive spouse commits an act of abuse against their spouse, and then apologizes to the victim or admits to the abuse in communications with their spouse, the apology or admission is considered a private communication between the married parties and the criminal defendant can bar the victim from testifying to what the defendant said. HB 406 would allow the victim spouse to testify about the apology, etc. – any communication related to the crime committed by the abusive spouse against the victim spouse. The language makes clear to all prosecutors that the power is held in the hands of the victim, and they cannot be compelled to testify. The marital privilege remains in effect for all other confidential communications.

As drafted, the nexus is not clear that what can be testified about is only those confidential communications about the crime committed against the spouse. The spouse cannot go on to testify about the spouse's bank robbery, or extortion, for example.

Part of the cycle of abuse is when the abuser has remorse and promises not to do it again, and the abuser often asks for forgiveness or apologizes. This is evidence that the act occurred. A victim spouse should be given the choice on whether or not to testify about these communications but should not be compelled to do so.

Therefore, the Women's Law Center of Maryland, Inc. urges a favorable report on House Bill 406 as amended.

The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

Senate Letters of Support HB 406.pdf

Uploaded by: Brett Engler

Position: FAV



The Honorable William Smith & Members of the Senate Judicial Proceedings Committee
Senate Judicial Proceedings Committee
11 Bladen Street, Annapolis, MD 21401

Dear Chairperson Smith and Judicial Proceedings Committee,

The Frederick County Domestic Violence Coordinating Council (DVCC) writes in support of House Bill 406: Marriage—Confidential Communication—Criminal Charge. The Frederick County DVCC is a multidisciplinary public board, formed in 2020, to increase collaboration and communication among criminal and civil justice stakeholders, service providers, and community members with the goal of reducing and preventing domestic violence in Frederick County.

The DVCC is in support of House Bill 406. Currently, Maryland is one of only a *few* states that *does not* have an exception to the marital communications privilege for a crime committed against the other spouse. In practice, this means that an offending spouse can *prohibit* their victim from testifying in a Court of law as to confessions, apologies, or other acknowledgments of violence they committed. In crimes such as marital rape and domestic assault, these communications are critical pieces of evidence of brutal crimes that most often occur behind closed doors--with no witnesses other than the perpetrator and victim. To allow an offender to keep their confessions and relevant communications from the judge or jury is unjust. A marital communications privilege without a crime exception is archaic and the privilege statute must be modernized to reflect the reality of marital violence.

We urge a favorable report on HB 406.

Brett Engler, Esq.
Frederick County State's Attorney's Office
Chair, Frederick County DVCC



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The Honorable William Smith & Members of the Senate Judicial Proceedings Committee
Senate Judicial Proceedings Committee
11 Bladen Street, Annapolis, MD 21401

Dear Chairperson Smith and Judicial Proceedings Committee,

The Frederick County State's Attorney's Office writes in support of House Bill 406:
Marriage—Confidential Communication—Criminal Charge.

Currently, Maryland is one of only a *few* states that *does not* have an exception to the marital communications privilege for crimes committed against a spouse. The privilege is held by both spouses. In practice, this means that an offending spouse can *prohibit* their victim from testifying to apologies, acknowledgements, or other statements relevant to crimes they committed against their partner--even after the marriage ends--if the communication happened during the marriage. It is, of course, in an offender's interest to keep relevant, inculpatory evidence from the judge or jury, if the law allows them to do so.

In crimes such as marital rape and domestic assault, these communications are critical pieces of evidence of brutal crimes that most often occur behind closed doors--with no witnesses other than the perpetrator and their victim. This was the exact issue presented in *State v. Enriquez*, 327 Md. 365 (1992). The Defendant was convicted of a second-degree sexual offense against his wife. The Victim testified for the prosecution about the crime and testified that the Defendant

apologized to her later—a critical piece of evidence. The Defendant argued that the apology--a marital communication--was inadmissible because it was statutorily privileged, while he maintained to the jury that the act was consensual.

The Court agreed with the Defendant that the apology should have been excluded under § 9-105 of Courts and Judicial Proceedings, commenting: “. . . the legislature has taken no action to add any express exceptions to the statute. Since the legislature is presumed to know the law . . . and it did not amend the statute, we conclude that it intended that our interpretation of the statute . . . should obtain.” (internal citations omitted). His conviction was *reversed* and remanded. There has been no action by the Legislature on martial communications since *Enriquez*, and it is still good law in this State.

As said by the Frederick County DVCC, to continue to allow an offender to silence a victim and prohibit them from sharing their attacker’s confessions and relevant communications to a judge or jury is unjust. A martial communications privilege without a crime exception is archaic and the privilege statute must be modernized to reflect the reality of martial violence and the State’s commitment to justice for all.

We urge the Senate Judicial Proceedings Committee to report favorably on HB 406.

A handwritten signature in black ink that reads "Brett Engler". The signature is written in a cursive, flowing style.

Brett Engler, Esq.
Frederick County State’s Attorney’s Office
Chief, Domestic Violence Unit

_HB 406 Written Testimony.pdf

Uploaded by: Karen Simpson

Position: FAV

KAREN SIMPSON
Legislative District 3
Frederick County

Judiciary Committee



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Favorable: HB 406 - Marriage - Confidential Communication - Criminal Charge

Hearing on 03/21/2024 at 1:00pm

To: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

The purpose of HB 406 - Marriage - Confidential Communication - Criminal Charge is to permit, not require, a spouse to disclose marital communication when one spouse is charged with a crime against the other spouse.

The current Maryland code, which has remained unchanged since 1973, states that a spouse is not “competent” to disclose any confidential communication between spouses during their marriage making any communication, including disclosures of crime against the other, inadmissible in a court of law.


HB 406 rectifies this by codifying that a spouse, who is an alleged victim of a crime against them by their spouse, is considered competent to disclose confidential communications that occurred during their marriage if they choose to share. Please note, that this bill does not require (compel) the victim to disclose confidential communications between them and their spouse.

Last year, this body repealed the spousal defense, affirming that our state stands with all victims, even those victimized in their own marriage. Despite this, Maryland is one of only nine other states that do not have this exception codified in statute regarding spousal confidential communication.

Oftentimes, abusers will communicate their intent to harm or express their regrets after the fact. By permitting this exception, we not only create a safer environment for individuals impacted by intimate partner violence but also recognize that justice must take precedence when the inherent safety in a marriage is violated.

In conclusion, I strongly request a favorable report of HB 406 - Marriage - Confidential Communication - Criminal Charge to empower victims through our legal system. Thank you for your time and consideration.

Respectfully Yours,

A handwritten signature in blue ink, appearing to read "Karen Simpson". The signature is fluid and cursive, with the first name "Karen" and the last name "Simpson" clearly distinguishable.

Delegate Karen Simpson
Legislative District 3 - Frederick County

Spousal Communications - house in the senate - te

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting House Bill 406
Lisae C. Jordan, Executive Director & Counsel
March 21, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on House Bill 406.

House Bill 406 - Marital Communications

House Bill 406 would provide that a spouse may, but does not have to, reveal a confidential communication made by the other spouse if the other spouse has committed a crime against them. MCASA supports House Bill 406 because it places the power in the hands of the victim-survivor spouse if they choose to reveal a confidential communication.

Under current law, if a person commits crime against their spouse (including rape), and then admits to the sexual assault in communications with their spouse, the admission is considered a private communication between the married parties and the rapist-criminal defendant can bar the victim from testifying to what the defendant said. Courts & Judicial Proceedings §9-105. Current law limits a claim of spousal privilege to one time for cases involving assault, however, this perversely does not apply when the underlying charge is rape unless the sex crimes charged are dropped in favor of an assault charge. §9-106. HB406 would allow the victim spouse to testify about a spousal communication when their spouse committed any crime against them. Importantly, HB406 makes clear to prosecutors that the power is held in the hands of the victim and they cannot be compelled to testify. The marital privilege remains in effect for all other communications.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on House Bill 406**

HB 406_MNADV_FAV_JPR.pdf

Uploaded by: Melanie Shapiro

Position: FAV



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TITLE: Marriage – Confidential Communication – Criminal Charge
COMMITTEE: Judicial Proceedings
HEARING DATE: March 21, 2024
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on HB 406.**

House Bill 406 would empower a victim spouse to waive the marital privilege and testify against their spouse if they choose to do so. The marital privilege is intended to protect the privacy of communications between married persons. However, this privacy within the marriage is inappropriate and could even be dangerous in marriages where one spouse is abusive to the other spouse.

Under current law, if an assault is committed by one spouse against another, and the abusive spouse apologizes to the victim or admits to the abuse, the apology or admission is considered a private communication between the married parties and the criminal defendant can bar the victim from testifying to what the defendant said. Abusive spouses should not be able to use the marital privilege to silence their victims or hide from criminal prosecution when the victim is the defendant's own spouse. HB 405 would allow a victim to testify about the communications related to the actual crime committed against the victim. The victim retains the autonomy to decide whether they testify. The marital privilege remains in effect for all other communications.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on HB 406.**

2024 03 20, HB 406_FLSC_FAV.pdf

Uploaded by: Michelle Smith

Position: FAV

To: Members of the Senate Judicial Proceedings Committee

From: Family Law Section Council (FLSC)

Date: March 20, 2024

Subject: House Bill 406
Marriage – Confidential Communication – Criminal Charge

Position: FAVORABLE

The Maryland State Bar Association (MSBA) Family Law Section Council **supports House Bill 406.**

This testimony is submitted on behalf of the Family Law Section Council (“FLSC”) of the Maryland State Bar Association (“MSBA”). The FLSC is the formal representative of the Family Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family law and, at the same time, tries to bring together the members of the MSBA who are concerned with family law legal issues and in reforms and improvements in such laws through legislation or otherwise. The FLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

Under current law, if a spouse commits a criminal act against his or her spouse, and then apologizes to the victim or admits to the act in communications with his or her spouse, the apology or admission is considered a private communication between the married parties and the criminal defendant can bar the victim from testifying to that communication. HB 406 would allow the victim spouse to testify about the communication or apology for the act in his/her discretion. In these cases, the power to decide whether to reveal the marital communication regarding the current crime is held in the hands of the victim as the spouse cannot be compelled to testify by the State. In addition, the marital privilege remains in effect for all other confidential communications. The FLSC supports this exception to the prohibition regarding spouses revealing confidential communications.

For the reason(s) stated above, the MSBA Family Law Section Counsel **supports House Bill 406 and urges a favorable committee report.**



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Should you have any questions, please contact Michelle Smith at 410-280-1700 or msmith@lawannapolis.com.

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