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The Honorable Luke Clippinger & Members of the House Judiciary Committee
Taylor House Office Building, Room 101
6 Bladen St., Annapolis, MD 21401

Dear Chairperson Clippinger and Members of the Judiciary 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. 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 is over, if the communication happened during the marriage.

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. This was the exact issue in *State v. Enriquez*, 327. Md. 365 (1992). The Defendant was convicted of second-degree sexual offense against his wife. The Victim testified 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 that the act was consensual.

The Courts ruled 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.

We urge a favorable report 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
Chair, Frederick County DVCC