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Judicial Proceedings Committee

Executive Nominations Committee

Joint Committees

Administrative, Executive, and
Legislative Review

Children, Youth, and Families

Senate Chair, Legislative Ethics



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony for Senate Bill 142
Marriage – Confidential Communications
Before the Judicial Proceedings Committee
January 16, 2025**

Good afternoon Chair Smith, and members of the Judicial Proceedings Committee,

In 1992, our state Supreme Court overturned the Montgomery Circuit Court conviction of a husband, Mike Enriquez, for the second-degree sexual assault of his wife on the evidence that he had apologized for his actions, and attempted to reconcile over a telephone call, clearly admitting to the charges brought forward by the state. The Court, referring to the 1977 case *Coleman v. State*, wrote:

The substance of the marital communication in this case was that Enriquez was sorry for his actions.... The presumption that this communication was intended to be confidential, and not disclosed to the police, was simply not rebutted at trial. This is especially so since, as in *Coleman*, the marital communication amounted, implicitly to an admission of a crime. Thus, as in *Coleman*, the wife was incompetent under the statute to divulge the marital communication over her husband's objection because it was made during marriage and was confidential in nature.

In the fifteen years since we decided *Coleman*, 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 in *Coleman* should obtain.”¹

Ultimately, the court ruled Mr. Enriquez's call was improperly admitted evidence and deemed the wife incompetent to divulge marital communications over her husband's objections.²

The law our Supreme Court was interpreting is Section 9-105 of the Courts and Judicial Proceedings Article, which provides: “One spouse is not competent to disclose any confidential communication between spouses during their marriage”. In other words, a spouse is not allowed to share a conversation they had with their spouse in a court proceeding if their spouse commits a

¹ *State v. Enriquez*, 327 Md 365, 373 (1992).

² *Ibid*.

crime against them and apologizes for their criminal behavior. Our law characterizes that apology a “confidential communication” and therefore, not admissible evidence in court. The lack of an exception when a spouse is the victim of a crime perpetrated by the other presents a significant roadblock to holding spouses accused of criminal acts accountable.

Senate Bill 142 addresses this problem that has not been addressed, even after the court signaled to the legislature in 1992, by permitting, but not requiring, communications made within a marriage to be admitted into evidence if one spouse is charged with committing a crime against another. This legislation places the power fully in the hands of the victim-spouse, by providing them with the choice of disclosing such a communication.

In conclusion, this bill passed the House unanimously last session and was heard by us but failed to be reported out of this committee. It is time for Maryland to join the 41 other states in protecting and empowering victims of spousal violence by codifying this vital exception in the spousal confidential communication statute. For the abovementioned reasons, I request a favorable report.