

2025 DVCC Letter SB 142 Marital Communications.pdf

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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 Domestic Violence Coordinating Council (DVCC) writes in support of Senate Bill 142: 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 SB 142. 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 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 SB 142.

Brett Engler, Esq.
Chair, Frederick County DVCC

50 State Survey Laws on Marital Communications Exc

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State Laws Regarding Marital Communications Exceptions

The vast majority of states **have an exception** for when one spouse is charged with a crime against the other, abrogating the marital communications privilege for that situation.

States without an exception: Maryland, Missouri, North Carolina, Pennsylvania, Rhode Island, South Carolina

States that appear to have **exception in practice**: Indiana, Iowa, New York

States with **different language, but exceptions still apply**: Michigan, West Virginia

The relevant language is **highlighted in yellow**

Alabama

[Ala. R. Evid. Rule 504](#)

(d)Exceptions.

There is no **privilege** under this rule:

(1)Parties to a civil action.

In any civil proceeding in which the spouses are adverse parties.

(2)Furtherance of crime.

In any criminal proceeding in which the spouses are alleged to have acted jointly in the commission of the crime charged.

(3)Criminal action.

In a criminal action or proceeding in which **one spouse is charged with a crime against the person or property of (A) the other spouse,** (B) a minor child of either, (C) a person residing in the household of either, or (D) a third person if the crime is committed in the course of committing a crime against any of the persons previously named in this sentence.

(3) **Criminal action.** Commentators have long suggested that grave injustice is avoided by precluding an assertion of the **marital incompetency privilege** -- which may keep a witness spouse off the stand completely -- in cases where the charged offense is committed against the witness spouse. 8 J. Wigmore, *Wigmore on Evidence* § 2239 (McNaughton rev. 1961). This position has been embraced by the [Supreme Court of the United States, *Wyatt v. United States*, 362 U.S. 525, 80 S. Ct. 901, 4 L. Ed. 2d 931, 1960 U.S. LEXIS 1145 \(1960\)](#) (denying accused's motion to exclude wife's testimony in Mann Act prosecution where she was the woman who was transported for immoral purposes). Such an exception to the **marital incompetency or disqualification privilege** was recognized in early **Alabama** decisions holding that the spouse's testimony was compellable by the state in a case where the crime was committed against the spouse. See, e.g., [State v. Neill, 6 Ala. 685 \(1844\)](#); [Clarke v. State, 117 Ala. 1, 23 So. 671 \(1898\)](#). It would be reasonable to conclude that such compellability of the victim spouse would hold today in **Alabama** even after enactment of the competency statute, which provides that the **privilege** of testifying or not is solely that of the witness spouse (contrasted with the ability

to divulge a confidential **communication**). See [McCoy v. State, 221 Ala. 466, 129 So. 21 \(1930\)](#).

Based upon this exception to the spousal incompetency rule, subsection (d)(3) accomplishes two things. First, it establishes the same exception in the area of husband-wife confidential **communications** -- meaning that an accused spouse may not object to the witness spouse's divulging confidential inter-spousal **communications** when they are offered in a criminal prosecution in which the witness spouse is the victim. Second, it expands the exception beyond crimes committed against the spouse, to include those committed against a minor child of either spouse and crimes committed against certain others.

Alaska

(a)(2)(D) The need of limitation upon the **privilege** in order to avoid grave injustice in **cases of offenses against the other spouse** or child of either can scarcely be denied. The rule therefore disallows any **privilege** against spousal testimony in these cases. See Proposed Federal Rule of Evidence 505 (c)(1); 8 Wigmore § 2239; Model Code of Evidence rule 216 (1942). For relevant **Alaska** law see AS 25.25.230 (pimping) and 11.40.430 (non-support). Subdivision (a)(2)(D)(iii) is not limited to natural or adoptive children of the spouse. Subdivision (a)(2)(D)(iv) is directed at the case where the defendant marries the prosecution's star witness to prevent him or her from testifying.

(b)(2) Exceptions. --

(A) All of the exceptions under the spousal immunity **privilege** apply to the confidential **marital communications privilege**.

Arizona

[A.R.S. § 13-4062](#)

1. A husband for or against his wife without her consent, nor a wife for or against her husband without his consent, as to events occurring during the marriage, nor can either, during the marriage or afterwards, without consent of the other, be examined as to any **communication** made by one to the other during the marriage. **These exceptions do not apply in a criminal action or proceeding for a crime committed by the husband against the wife, or by the wife against the husband,** nor in a criminal action or proceeding against the husband for abandonment, failure to support or provide for or failure or neglect to furnish the necessities of life to the wife or the minor children. Either spouse may be examined as a witness for or against the other in a prosecution for an offense listed in [section 13-706](#), subsection F, paragraph 1, for bigamy or adultery, committed by either spouse, or for sexual assault committed by the husband if either of the following occurs:

(a) Before testifying, the testifying spouse makes a voluntary statement to a law enforcement officer during an investigation of the offense or offenses about the events

that gave rise to the prosecution or about any statements made to the spouse by the other spouse about those events.

(b) Either spouse requests to testify.

Arkansas

[Ark. R. Evid. 504](#)

(a) **Definition.** -- A **communication** is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

(b) **General Rule of Privilege.** -- An accused in a criminal proceeding has a **privilege** to prevent his spouse from testifying as to any confidential **communication** between the accused and the spouse.

(c) **Who May Claim the Privilege.** -- The **privilege** may be claimed by the accused or by the spouse on behalf of the accused. The authority of the spouse to do so is presumed.

(d) **Exceptions.** -- There is no **privilege** under this rule in a proceeding in which one [1] spouse is charged with a crime against the person or property of (1) the other, (2) a child of either, (3) a person residing in the household of either, or (4) a third person committed in the course of committing a crime against any of them.

California

[Cal Evid Code § 985](#)

§ 985. Certain criminal proceedings

There is no **privilege** under this article in a criminal proceeding in which one spouse is charged with:

(a) A crime committed at any time against the person or property of the other spouse or of a child of either.

(b) A crime committed at any time against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse.

(c) Bigamy.

(d) A crime defined by [Section 270 or 270a of the Penal Code](#).

Colorado

[C.R.S. 13-90-107](#)

(a)(1) Except as otherwise provided in [section 14-13-310 \(4\), C.R.S.](#), a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any **communications** made by one to the other during the marriage;

but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise **privileged** information is communicated after the marriage.

Connecticut

[Conn. Gen. Stat. § 54-84b](#)

(c) The testimony of a spouse regarding a confidential **communication** may be compelled, in the same manner as for any other witness, in a criminal proceeding against the other spouse for (1) joint participation with the spouse in what was, at the time the **communication** was made, criminal conduct or conspiracy to commit a crime, (2) **bodily injury, sexual assault or other violence attempted, committed or threatened upon the spouse, or** (3) bodily injury, sexual assault, risk of injury pursuant to section 53-21, or other violence attempted, committed or threatened upon the minor child of either spouse, or any minor child in the care or custody of either spouse.

Delaware

[D.R.E. 504](#)

(e) **Exceptions.** -- There is no **privilege** under this rule in the following types of proceedings:

(1) **A proceeding that charges one spouse with a wrong against the person or property of the other spouse.**

(2) A proceeding that charges one spouse with a wrong against the person or property of a child of either spouse.

(3) A proceeding that charges one spouse with a wrong against the person or property of a person residing in the household of either spouse.

(4) A proceeding that charges one spouse with a wrong against the person or property of a third person committed in the course of committing a crime against the other spouse, a child of the either spouse, a person residing in the household of either spouse, or the third person.

(5) A proceeding brought under Title 13 of the Delaware Code, or Chapter 9 of Title 10 of the Delaware Code.

(6) Any proceeding when the interests of the spouses are adverse.

DC

[D.C. Code § 14-306](#)

(b-1) Notwithstanding subsections (a) and (b) of this section, a spouse or domestic partner is both competent and compellable to testify against his or her spouse or domestic partner as to both confidential **communications** made by one to the other during the marriage or domestic partnership and any other matter in:

(1) A criminal or delinquency proceeding where one spouse or domestic partner is charged with committing:

(A) Intimate partner violence as defined in [§ 16-1001\(7\)](#) if the spouse or domestic partner has previously refused to testify in a criminal or delinquency proceeding against the same spouse or domestic partner for an offense against him or her; or

Florida

[Fla. Stat. § 90.504](#)

(3) There is no **privilege** under this section:

(a) In a proceeding brought by or on behalf of one spouse against the other spouse.

(b) In a criminal proceeding in which one spouse is charged with a crime committed at any time against the person or property of the other spouse, or the person or property of a child of either.

(c) In a criminal proceeding in which the **communication** is offered in evidence by a defendant-spouse who is one of the spouses between whom the **communication** was made.

Georgia

[O.C.G.A. § 24-5-503](#)

(a) A husband and wife shall be competent but shall not be compellable to give evidence in any criminal proceeding for or against each other.

(b) The privilege created by subsection (a) of this Code section or by corresponding privileges in paragraph (1) of subsection (a) of Code Section 24-5-501 or subsection (a) of Code Section 24-5-505 shall not apply in proceedings in which:

(1) The husband or wife is charged with a crime against the person of a child under the age of 18, but such husband or wife shall be compellable to give evidence only on the specific act for which the accused is charged;

(2) The husband or wife is charged with a crime against his or her spouse;

(3) The husband or wife is charged with causing physical damage to property belonging to the husband and wife or to their separate property; or

(4) The alleged crime against his or her current spouse occurred prior to the lawful marriage of the husband and wife.

Hawaii

[HRS chap. 626, HRS Rule 505](#)

(c) Exceptions. There is no **privilege** under this rule (1) in proceedings in which one spouse is charged with a crime against the person or property of (A) the other, (B) a child of either, (C) a third person residing in the household of either, or (D) a third person committed in the course of committing a crime against any of these, or (2) as to matters occurring prior to the marriage.

Idaho

[I.R.E. Rule 504](#)

(2)Criminal action.

In a criminal action or proceeding in which one spouse is charged with a crime against the person or property of (A) the other spouse, (B) a person residing in the household of either spouse, or (C) a third person committed in the course of committing a crime against the other spouse or a person residing in the household of either spouse.

Illinois

[725 ILCS 5/115-16](#)

In criminal cases, husband and wife may testify for or against each other. Neither, however, may testify as to any communication or admission made by either of them to the other or as to any conversation between them during marriage, **except in cases in which either is charged with an offense against the person or property of the other**, in case of spouse abandonment, when the interests of their child or children or of any child or children in either spouse's care, custody, or control are directly involved, when either is charged with or under investigation for an offense under Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012 [720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60] and the victim is a minor under 18 years of age in either spouse's care, custody, or control at the time of the offense, or as to matters in which either has acted as agent of the other.

Indiana (but not codified in statute)

[Burns Ind. Code Ann. § 34-46-3-1](#)

Except as otherwise provided by statute, the following persons shall not be required to testify regarding the following communications:

- (1) Attorneys, as to confidential communications made to them in the course of their professional business, and as to advice given in such cases.
- (2) Physicians, as to matters communicated to them by patients, in the course of their professional business, or advice given in such cases.
- (3) Clergymen, as to the following confessions, admissions, or confidential communications:
 - (A) Confessions or admissions made to a clergyman in the course of discipline enjoined by the clergyman's church.
 - (B) A confidential communication made to a clergyman in the clergyman's professional character as a spiritual adviser or counselor.
- (4) Husband and wife, as to communications made to each other.

Exceptions.

Spousal privilege is subject to certain well-established exceptions including: where the spousal communication is made in the presence of a third person, where the communication is intended to be communicated to a third person, where an offense charged was committed by one spouse against the other, and where the parties do not have a legally recognized marriage. [Glover v. State](#), 816 N.E.2d 1197, 2004 Ind. App. LEXIS 2195 (Ind. Ct. App. 2004), transfer granted, vacated, 831 N.E.2d 737, 2005 Ind. LEXIS 146 (Ind. 2005).

Iowa (but not codified in statute)

[Iowa Code § 622.9](#)

Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted.

Defendant's claim that his wife could not testify against him on the charge of tampering with a witness due to marital privilege was without merit because the record showed that the case involved an allegation of a crime committed by defendant against his wife. [State v. Williams](#), 913 N.W.2d 275, 2018 Iowa App. LEXIS 192 (Iowa Ct. App. 2018).

Kansas

[K.S.A. § 60-428](#)

(b) *Exceptions.* Neither spouse may claim such **privilege** (1) in an action by one spouse against the other spouse, or (2) in an action for damages for the alienation of the affections of the other, or for criminal conversation with the other, or (3) in a criminal action in which one of them is charged with a crime against the person or property of the other or of a child of either, or a crime against the person or property of a third person committed in the course of committing a crime against the other, or bigamy or adultery, or desertion of the other or of a child of either, or (4) in a criminal action in which the accused offers evidence of a **communication** between him or her

and his or her spouse, or (5) if the judge finds that sufficient evidence, aside from the **communication**, has been introduced to warrant a finding that the **communication** was made, in whole or in part, to enable or aid anyone to commit or to plan to commit a crime or a tort.

Kentucky

[KRE Rule 504](#)

(c) Exceptions.

There is no **privilege** under this rule:

- (1) In any criminal proceeding in which the court determines that the spouses conspired or acted jointly in the commission of the crime charged;
- (2) In any proceeding in which one (1) spouse is charged with wrongful conduct against the person or property of:
 - (A) The other;
 - (B) A minor child of either;
 - (C) An individual residing in the household of either; or
 - (D) A third person if the wrongful conduct is committed in the course of wrongful conduct against any of the individuals previously named in this sentence; or
- (3) In any proceeding in which the spouses are adverse parties.

Louisiana

[La. C.E. Art. 504](#)

C. Confidential communications; exceptions. — This **privilege** does not apply:

- (1) In a criminal case in which one spouse is charged with a crime against the person or property of the other spouse or of a child of either.
- (2) In a civil case brought by or on behalf of one spouse against the other spouse.
- (3) In commitment or interdiction proceedings as to either spouse.
- (4) When the **communication** is offered to protect or vindicate the rights of a minor child of either spouse.
- (5) In cases otherwise provided by legislation.

Maine

[Me. R. Evid. 504](#)

- (d) Exceptions. The spousal **privilege** is subject to the following exceptions:

(1) The spousal **privilege** does not apply in a proceeding in which one spouse is charged with a crime against the person or property of:

(A) The other spouse;

(B) A child of either spouse;

(C) Any person residing in either spouse's household; or

(D) Any third person, if the crime against that person or property occurred in the course of committing a crime against the other spouse, a child of either spouse, or any person residing in either spouse's household.

Maryland

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 9-105

Where a **marital communication** amounts to an admission or confession of a crime, the **communication** is of a confidential nature and consequently protected by this section from disclosure. [Coleman v. State, 281 Md. 538, 380 A.2d 49 \(1977\)](#).

The spouse/incompetency rule is inapplicable when the confidential **communication** constitutes a threat or crime against the other spouse. [Harris v. State, 37 Md. App. 180, 376 A.2d 1144 \(1977\)](#).

The statutory **privilege** was applicable to a **marital communication** made by a husband to his wife ten days after the husband had criminally assaulted her. [State v. Enriquez, 327 Md. 365, 609 A.2d 343 \(1992\)](#).

Massachusetts

ALM G. Evid. § 504

(b) Spousal Disqualification.

(1) **General Rule.** In any proceeding, civil or criminal, a witness shall not testify as to private conversations with a spouse occurring during their marriage.

(2) **Exceptions.** This disqualification shall not apply to

(A) a proceeding arising out of or involving a contract between spouses;

(B) a proceeding to establish paternity or to modify or enforce a support order;

(C) a prosecution for nonsupport, desertion, or neglect of parental duty;

(D) child abuse proceedings, including incest;

(E) any criminal proceeding in which a spouse has been charged with a crime against the other spouse;

Michigan

[MCLS § 600.2162](#)

(3) The **spousal privileges** established in subsections (1) and (2) and the confidential **communications privilege** established in subsection (7) do not apply in any of the following:

- (a) In a suit for divorce, separate maintenance, or annulment.
- (b) In a prosecution for bigamy.
- (c) In a prosecution for a crime committed against a child of either or both or a crime committed against an individual who is younger than 18 years of age.
- (d) In a cause of action that grows out of a personal wrong or injury done by one to the other or that grows out of the refusal or neglect to furnish the spouse or children with suitable support.

Minnesota

[Minn. Stat. § 595.02](#)

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any **communication** made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

Mississippi

[Miss. R. Evid. 504](#)

(d) **Exceptions.** -- The **privilege** does not apply:

- (1) in a civil case between the spouses; or
- (2) in a criminal case when one spouse is charged with a crime against:
 - (A) the person of a minor child; or
 - (B) the person or property of:
 - (i) the other spouse;
 - (ii) a resident of either spouse's household; or
 - (iii) a third person when committed during a crime against any person described in paragraphs (d)(1) and (2).

Missouri

[§ 546.260 R.S.Mo.](#)

2. Notwithstanding subsection 1 of this section or any other provision of law to the contrary, in any criminal prosecution under chapter 565, 566 or 568, involving an alleged victim under the age of eighteen, a spouse shall be a competent witness against a defendant spouse, and no **spousal privilege** as set forth in subsection 1 of this section or any other provision of law shall exist.

Although defendant's wife was competent to voluntarily testify under former Mo Rev. Stat. § 4081(now Mo. Rev. Stat. § 546.260) as a state witness against her husband after he shot her with a shotgun, she could not be compelled to testify against him, regardless of the seriousness of the crime. State v. Dunbar, 360 Mo. 788, 230 S.W.2d 845, 1950 Mo. LEXIS 645 (Mo. 1950).

Montana

[26-1-802, MCA](#)

26-1-802 Spousal privilege.

Neither spouse may, without the consent of the other, testify during or after the marriage concerning any **communication** made by one to the other during their marriage. The **privilege** is restricted to **communications** made during the existence of the marriage relationship and does not extend to **communications** made prior to the marriage or to **communications** made after the marriage is dissolved. The **privilege** does not apply to a civil action or proceeding by one spouse against the other or to a **criminal action or proceeding for a crime committed by one spouse against the other** or against a child of either spouse.

Nebraska

[R.R.S. Neb. § 27-505](#)

(3) These **privileges** may not be claimed:

(a) **In any criminal case where the crime charged is a crime of violence, bigamy, incest, or any crime committed by one against the person** or property of the other or of a child of either or in any criminal prosecution against the husband for wife or child abandonment;

Nevada

[Nev. Rev. Stat. Ann. § 49.295](#)

2. The provisions of subsection 1 do not apply to a:

- (a) Civil proceeding brought by or on behalf of one spouse against the other spouse;
- (b) Proceeding to commit or otherwise place a spouse, the property of the spouse or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse;
- (c) Proceeding brought by or on behalf of a spouse to establish his or her competence;
- (d) Proceeding in the juvenile court or family court pursuant to title 5 of NRS or [NRS 432B.410 to 432B.590](#), inclusive; or
- (e) Criminal proceeding in which one spouse is charged with:
(1) A crime against the person or the property of the other spouse or of a child of either, or of a child in the custody or control of either, whether the crime was committed before or during marriage.

New Hampshire

[RSA 632-A:5](#)

632-A:5. Spouse as Victim; Evidence of Husband and Wife.

An actor commits a crime under this chapter even though the victim is the actor's legal spouse. Laws attaching a **privilege** against the disclosure of **communications** between husband and wife are inapplicable to proceedings under this chapter.

New Jersey

[N.J. R. Evid. 509](#)

Except as otherwise provided in this rule, no person shall disclose any communication made in confidence between such person and his or her spouse or civil union partner. There is no privilege under this rule (a) if both spouses or partners consent to the disclosure; (b) if the communication is relevant to an issue in an action between the spouses or partners; (c) in a criminal action or proceeding in which either spouse or partner consents to the disclosure; (d) in a criminal action or proceeding coming within Rule 501(2); or (e) in a criminal action or proceeding if the communication relates to an ongoing or future crime or fraud in which the spouses or partners were or are joint participants at the time of the communication

Rule 501. Privilege of Accused

(2) The spouse or one partner in a civil union couple of the accused in a criminal action shall not testify in such action except to prove the fact of marriage or civil union unless (a) such spouse or partner consents, or (b) the accused is charged with an offense against the spouse or partner, a child of the accused or of the spouse or partner, or a child to whom the accused or the spouse or partner stands in the place of a parent, or (c) such spouse or partner is the complainant.

New Mexico

[11-505 NMRA](#)

D. Exceptions.

(1) *Criminal cases.* No **privilege** shall apply to confidential **communications** relevant to proceedings in which one spouse is charged with a crime against (a) the person or property of the other spouse or a child of either; or (b) the person or property of a third person committed during the course of a crime against the other spouse.

New York (but not codified in statute)

[NY CLS CPLR § 4502](#)

(b) **Confidential Communication Privileged.** A husband or wife shall not be required, or, without consent of the other if living, allowed, to disclose a confidential communication made by one to the other during marriage.

There are three recognized grounds for the destruction of the protection afforded by [CPLR 4502\(b\)](#): (1) where the criminal activity is aimed against the other spouse; (2) where the communication is made in the presence of third parties; (3) where the defendant in communicating relied on other grounds specifically enjoining silence or fear; but a fourth exception will not be added where the parties are not living together in the milieu of the normal marriage relationship. [People v Fields, 38 A.D.2d 231, 328 N.Y.S.2d 542, 1972 N.Y. App. Div. LEXIS 5423 \(N.Y. App. Div. 1st Dep't\)](#), aff'd, [31 N.Y.2d 713, 337 N.Y.S.2d 517, 289 N.E.2d 557, 1972 N.Y. LEXIS 1041 \(N.Y. 1972\)](#).

North Carolina

[N.C. Gen. Stat. § 8-57](#)

(a) The spouse of the defendant shall be a competent witness for the defendant in all criminal actions, but the failure of the defendant to call such spouse as a witness shall not be used against him. Such spouse is subject to cross-examination as are other witnesses.

(b) The spouse of the defendant shall be competent but not compellable to testify for the State against the defendant in any criminal action or grand jury proceedings, except that the spouse of the defendant shall be both competent and compellable to so testify:

(1) In a prosecution for bigamy or criminal cohabitation, to prove the fact of marriage and facts tending to show the absence of divorce or annulment;

(2) In a prosecution for assaulting or communicating a threat to the other spouse;

(3) In a prosecution for trespass in or upon the separate lands or residence of the other spouse when living separate and apart from each other by mutual consent or court order;

(4) In a prosecution for abandonment of or failure to provide support for the other spouse or their child;

(5) In a prosecution of one spouse for any other criminal offense against the minor child of either spouse, including any child of either spouse who is born out of wedlock or adopted or a foster child.

(c) No husband or wife shall be compellable **in any event** to disclose any confidential **communication** made by one to the other during their marriage.

North Dakota

[N.D.R. Ev. Rule 504](#)

(d) Exceptions.

There is no **privilege** under this rule:

(1) in any civil proceeding in which the spouses are adverse parties;

(2) in any criminal proceeding in which an unrefuted showing is made that the spouses acted jointly in the commission of the crime charged;

(3) in any proceeding in which **one spouse is charged with a crime or tort against the person or property of the other**, a minor child of either, an individual residing in the household of either, or a third person if the crime or tort is committed in the course of committing a crime or tort against the other spouse, a minor child of either spouse, or an individual residing in the household of either spouse; or

(4) in any other proceeding, in the discretion of the court, if the interests of a minor child of either spouse may be adversely affected by invocation of the **privilege**.

Ohio

[ORC Ann. 2945.42](#)

No person is disqualified as a witness in a criminal prosecution by reason of the person's interest in the prosecution as a party or otherwise or by reason of the person's conviction of crime. Husband and wife are competent witnesses to testify in behalf of each other in all criminal prosecutions and to testify against each other in all actions, prosecutions, and proceedings for personal injury of either by the other, bigamy, or failure to provide for, neglect of, or cruelty to their children under eighteen years of age or their physically or mentally handicapped child under twenty-one years of age. A spouse may testify against his or her spouse in a prosecution under a provision of [sections 2903.11 to 2903.13, 2919.21, 2919.22, or 2919.25 of the Revised Code](#) for cruelty to, neglect of, or abandonment of such spouse, in a prosecution against his or her spouse under [section 2903.211 or 2911.211, of the Revised Code](#) for the commission of the offense against the spouse who is testifying, in a prosecution under [section 2919.27 of the Revised Code](#) involving a protection order issued or consent agreement approved pursuant to [section 2919.26 or 3113.31 of the Revised Code](#) for the commission of the offense against the spouse who is testifying, or in a prosecution under [section 2907.02 of the Revised Code](#) for the commission of rape or under former [section 2907.12 of the Revised Code](#) for felonious sexual penetration against such spouse in a case in which the offense can be committed against a spouse. Such interest, conviction, or relationship may be shown for the purpose of affecting the credibility of the witness. **Husband or wife shall not testify concerning a communication made by one to the other, or act done by either in the presence of the other, during coverture, unless the communication was made or act done in the known presence or hearing of a third person competent to be a witness, or in case of personal injury by either the husband or wife to the other,** or rape or the former offense of felonious sexual penetration in a case in which the offense can be committed against a spouse, or bigamy, or failure to provide for, or neglect or cruelty of either to their children under eighteen years of age or their physically or mentally handicapped child under twenty-one years of age, violation of a protection order or consent agreement, or neglect or abandonment of a spouse under a provision of those sections. The presence or whereabouts of the husband or wife is not an act under this section. The rule is the same if the **marital** relation has ceased to exist.

Oklahoma

[12 Okl. St. § 2504](#)

D. There is no **privilege** under this section in a proceeding in which one spouse is charged with a crime against the person or property of:

1. The other;

2. A child of either;

3. A person residing in the household of either; or

4. A third person when the crime is committed in the course of committing a crime against any other person named in this section.

Oregon

[ORS § 40.255](#)

(4) There is no **privilege** under this section:

- (a) In all criminal actions in which one spouse is charged with bigamy or with an offense or attempted offense against the person or property of the other spouse or of a child of either, or with an offense against the person or property of a third person committed in the course of committing or attempting to commit an offense against the other spouse;
- (b) As to matters occurring prior to the marriage; or
- (c) In any civil action where the spouses are adverse parties.

Pennsylvania

[42 Pa.C.S. § 5914](#)

§ 5914. Confidential communications between spouses.

Except as otherwise provided in this subchapter, in a criminal proceeding neither husband nor wife shall be competent or permitted to testify to confidential **communications** made by one to the other, unless this **privilege** is waived upon the trial.

Rhode Island

[R.I. Gen. Laws § 9-17-13](#)

In the trial of every civil cause, the husband or wife of either party shall be deemed a competent witness; provided, that neither shall be permitted to give any testimony tending to criminate the other or to disclose any communication made to him or her, by the other, during their marriage, except on trials of petitions for divorce between them, trials between them involving their respective property rights, and under the provisions of [§ 11-34.1-9](#).

§ 11-34.1-9. Spouse as witness in pandering or permitting prostitution

In any prosecution for any offense under this chapter, any person shall be a competent witness against the offender in relation to any offense committed by the offender upon or against him or her, or by the offender against or upon another person or persons in his or her presence, notwithstanding that person may have been married to the offender before or after the commission of the offense, and notwithstanding that person may be called as witness during the existence of the marriage or after its dissolution.

South Carolina

[S.C. Code Ann. § 19-11-30](#)

§ 19-11-30. Competency of husband or wife of party as witness.

In any trial or inquiry in any suit, action, or proceeding in any court or before any person having, by law or consent of the parties, authority to examine witnesses or hear evidence, no husband or wife may be required to disclose any confidential or, in a criminal proceeding, any **communication** made by one to the other during their marriage.

Notwithstanding the above provisions, a husband or wife is required to disclose any **communication**, confidential or otherwise, made by one to the other during their marriage where the suit, action, or proceeding concerns or is based on child abuse or neglect, the death of a child, or criminal sexual conduct involving a minor.

South Dakota

[S.D. Codified Laws § 19-19-504](#)

(d) Exceptions. There is no **privilege** under this section in a proceeding in which one spouse is charged with a crime against the person or property of:

(1) The other;

(2) A child of either;

(3) A person residing in the household of either; or

(4) A third person committed in the course of committing a crime against any of them.

Tennessee

[Tenn. Code Ann. § 24-1-201](#)

(2) Upon a finding that a **marital communication** is **privileged**, it shall be inadmissible if either spouse objects. **Such communication privileges shall not apply to proceedings concerning abuse of one (1) of the spouses** or abuse of a minor in the custody of or under the dominion and control of either spouse, including, but not limited to proceedings arising under title 37, chapter 1, parts 1 and 4; title 37, chapter 2, part 4; and title 71, chapter 6, part 1.

Texas

[Tex. Evid. R. 504](#)

(4) **Exceptions.** --This **privilege** does not apply:

(A) **Furtherance of Crime or Fraud.** --If the **communication** is made - wholly or partially - to enable or aid anyone to commit or plan to commit a crime or fraud.

(B) **Proceeding Between Spouse and Other Spouse or Claimant Through Deceased Spouse.** -- In a civil proceeding:

(i) brought by or on behalf of one spouse against the other; or

(ii) between a surviving spouse and a person claiming through the deceased spouse.

(C) **Crime Against Family, Spouse, Household Member, or Minor Child.** --In a:

(i) proceeding in which a party is accused of conduct that, if proved, is a crime against the person of the other spouse, any member of the household of either spouse, or any minor child; or

(ii) criminal proceeding involving a charge of bigamy under [Section 25.01 of the Penal Code](#).

Utah

[Utah R. Evid. Rule 502](#)

(e) **Exceptions to the privilege.** -- No **privilege** exists under paragraph (c) in the following circumstances:

(1) **Spouses as adverse parties.** -- In a civil proceeding in which the spouses are adverse parties;

(2) **Furtherance of crime or tort.** -- As to any **communication** which was made, in whole or in part, to enable or aid anyone to commit; to plan to commit; or to conceal a crime or a tort.

(3) **Spouse charged with crime or tort.** -- In a proceeding in which one spouse is charged with a crime or a tort against the person or property of:

(A) the other spouse;

(B) the child of either spouse;

(C) a person residing in the household of either spouse; or

(D) a third person if the crime or tort is committed in the course of committing a crime or tort against any of the persons named above.

Vermont

[V.R.E. Rule 504](#)

(d) **Exceptions.** -- There is no **privilege** under this rule in a proceeding in which one spouse is charged with a crime, or alleged to have committed a tort, against the person or property of (1) the other, (2) a child of either, (3) a person residing in the household of either, or (4) a third person in the course of committing a crime against any of them. There is also no **privilege** under this rule in any other civil proceeding in which the spouses are adverse parties; or, in the discretion of the court, in any other proceeding where the interests of a child of either are involved.

Virginia

[Va. Sup. Ct. R. 2:504](#)

(b) Spousal Testimony in Criminal Cases

2. Except in the prosecution for a criminal offense as set forth in subsections (b)(1)(i), (ii) and (iii) above, in any criminal proceeding, a person has a **privilege** to refuse to disclose, and to prevent anyone else from disclosing, any confidential **communication** between such person and his or her spouse during their marriage, regardless of whether the person is married to that spouse at the time the person objects to disclosure. For the purposes of this Rule, "confidential **communication**" means a **communication** made privately by a person to his or her spouse that is not intended for disclosure to any other person.

(i) in the case of a prosecution for an offense committed by one against the other, against a minor child of either, or against the property of either; (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other; or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371).

Washington

[Rev. Code Wash. \(ARCW\) § 5.60.060](#)

(1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any **communication** made by one to the other during the marriage or the domestic partnership. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 71.05 or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 71.05 or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

West Virginia

[W. Va. Code § 57-3-3](#)

§ 57-3-3. Testimony of husband and wife in criminal cases.

In criminal cases **husband and wife** shall be allowed, and, subject to the rules of evidence governing other witnesses, may be compelled to testify in behalf of each other, but neither shall be compelled, nor, without the consent of the other, allowed to be called as a witness against the other **except in the case of a prosecution for an offense committed by one against the other**, or against the child, father, mother, sister or brother of either of them. The failure of either **husband** or **wife** to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by anyone.

Scope of protection. —

This section absolutely prohibits the spouse of a criminal defendant from testifying against the defendant, **except where the defendant is charged with a crime against the person or property of the other spouse or certain other relatives. Where properly invoked, this statute precludes all adverse testimony by a spouse, not merely disclosure of confidential communications.**

This **spousal** protection applies only to legally recognized marriages and lasts only as long as the legal marriage exists. [State v. Bradshaw, 193 W. Va. 519, 457 S.E.2d 456, 1995 W. Va. LEXIS 61 \(W. Va.\)](#), cert. denied, [516 U.S. 872, 116 S. Ct. 196, 133 L. Ed. 2d 131, 1995 U.S. LEXIS 6224 \(U.S. 1995\)](#)

Wisconsin

[Wis. Stat. § 905.05](#)

(3) Exceptions. There is no **privilege** under this rule:

(a) If both spouses or former spouses or domestic partners or former domestic partners are parties to the action.

(b) In proceedings in which one spouse or former spouse or domestic partner or former domestic partner is charged with a crime against the person or property of the other or of a child of either, or with a crime against the person or property of a 3rd person committed in the course of committing a crime against the other.

(c) In proceedings in which a spouse or former spouse or domestic partner or former domestic partner is charged with a crime of pandering or prostitution.

(d) If one spouse or former spouse or domestic partner or former domestic partner has acted as the agent of the other and the private **communication** relates to matters within the scope of the agency.

Wyoming

[Wyo. Stat. § 1-12-104](#)

§ 1-12-104. Husband and wife as witnesses in civil and criminal cases.

No **husband** or **wife** shall be a witness against the other **except in criminal proceedings for a crime committed by one against the other**, or in a civil action or proceeding by one against the other. They may in all civil and criminal cases be witnesses for each other the same as though the **marital** relation did not exist.

SAO Letter SB Marital Communications.pdf

Uploaded by: Brett Engler

Position: FAV



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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 Senate Bill 142: 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 SB 142.


Chief, Domestic Violence Unit,

Frederick County State's Attorney's Office

SB0142 HB0241 - Marriage – Confidential Communicat

Uploaded by: Catherine OMalley

Position: FAV

BILL NO: Senate Bill 0142
TITLE: Marriage – Confidential Communication – Criminal Charge
COMMITTEE: Judicial Proceedings
HEARING DATE: January 16, 2025
POSITION: **SUPPORT**

Senate Bill 0142 amends Section 9–105 of the Annotated Code of Maryland to include former spouses for purposes of the disclosure of confidential communications occurring during marriage. This means that a former 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. The Women’s Law Center (WLC) supports Senate Bill 0142 as it places the power in the hands of the victim spouse if they choose to reveal confidential communication.

Under current law, if an abusive spouse commits an act of abuse against their spouse during marriage, and then apologizes to the victim or admits to the abuse in communications with them, 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. SB0142 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 even after the cessation of their marriage.

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's spouse should be given the choice on whether or not to testify about these communications but should not be compelled to do so regardless if the marriage is still intact.

Therefore, the Women’s Law Center of Maryland, Inc. urges a favorable report on Senate Bill 0142.

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.

Sen Sydnor fav SB 142 Testimony.pdf

Uploaded by: Charles E. Sydnor III

Position: FAV

CHARLES E. SYDNOR III, ESQ.
Legislative District 44
Baltimore County

DEPUTY MAJORITY WHIP

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.

Feinstein Letter of Support SB 142 Marriage--Confidential

Uploaded by: Debbie Feinstein

Position: FAV



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DEPUTY STATE'S ATTORNEYS
PETER A. FEENEY
RYAN S. WECHSLER

January 14, 2025

The Honorable Will Smith
Chair, Judicial Proceedings Committee
11 Bladen Street
Annapolis, MD 21401

Dear Chair Smith and Committee Members:

On behalf of the Montgomery County State's Attorney's Office and the Maryland State's Attorneys' Association, I write in support of SB142—Marriage—Confidential Communication—Criminal Charge. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office. I am also the co-chair of the MSSA Special Victims Committee and a member of the Governor's Family Violence Council.

Section 9-105 of the Maryland Courts and Judicial Proceedings Article currently states: "One spouse is not competent to disclose any confidential communication between the spouses occurring during their marriage." The law includes no exceptions.

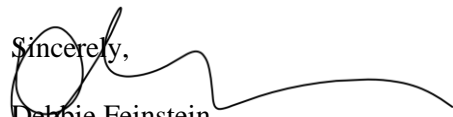
Senate Bill 142 creates a needed exception: "A spouse who is the alleged victim is competent to disclose a confidential communication between spouses occurring during their marriage in a criminal action in which one spouse is charged with a crime against the other spouse." At the same time, the bill does not require a spouse to disclose a marital communication: "A spouse may not be compelled to testify to a confidential communication under this subtitle."

The proposed law preserves a spouse's right not to disclose the information; this preservation is important because even if the General Assembly enacts Senate Bill 142, a court cannot compel a spouse to disclose marital communication. The victimized spouse can choose to disclose or not, and the defendant spouse cannot use this privilege as a protective cloak.

Maryland is one of the few states without an exception to the marital communications privilege for crimes committed against a spouse. Senate Bill 142 aligns our state with the vast majority of the country.

I strongly urge this Committee to issue a favorable report on Senate Bill 142.

Sincerely,


Debbie Feinstein
Chief, Special Victims Division
Senior Assistant State's Attorney

SB 142 - MNadv - FAV.pdf

Uploaded by: Laure Ruth

Position: FAV



BILL NO: Senate Bill 142
TITLE: Marriage – Confidential Communication – Criminal Charge
COMMITTEE: Judicial Proceedings
HEARING DATE: January 16, 2025
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 SB 142.**

Senate Bill 142 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. The bill specifies that under § 9-105 of the Courts and Judicial Proceedings Article, “spouse” includes a former spouse. The traditional privacy concepts that are thought of in a marriage are inappropriate and could even be dangerous in marriages where one spouse is abusive to the other spouse. According to testimony offered last year, only 5 states do not have what this bill would do.

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. Senate Bill 142 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 SB 142.**

For further information contact Laure Ruth ■ Public Policy Director ■ 301-852-3930 ■ lruth@mnadv.org

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Spousal Communications - senate - testimony - 20

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 142
Lisae C. Jordan, Executive Director & Counsel
January 16, 2025

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 Senate Bill 142.

Senate Bill 142 - Marital Communications

Senate Bill 142 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 Senate Bill 142 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. HB142 would allow the victim spouse to testify about a spousal communication when their spouse committed any crime against them. Importantly, HB142 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 Senate Bill 142**

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Uploaded by: Michelle Smith

Position: FAV



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To: Members of the Senate Judicial Proceedings Committee

From: Family Law Section Council (FLSC)

Date: January 14, 2025

Subject: Senate Bill 142
Marriage – Confidential Communication

Position: FAVORABLE

The Maryland State Bar Association (MSBA) Family Law Section Council **supports Senate Bill 142.**

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. SB 142 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 Senate Bill 142 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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