

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 406
Judiciary

(Delegate Simpson, *et al.*)

Judicial Proceedings

Marriage - Confidential Communication

This bill establishes that 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. However, a spouse may not be compelled to testify to a confidential communication under these circumstances. The bill specifies that under § 9-105 of the Courts and Judicial Proceedings Article, “spouse” includes a former spouse.

Fiscal Summary

State Effect: The bill is procedural and is not anticipated to materially affect State finances or operations.

Local Effect: The bill is procedural and is not anticipated to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Current Law: Under the marital communications privilege (§ 9-105 of the Courts and Judicial Proceedings Article), one spouse is not competent to disclose any confidential communication between the spouses occurring during the marriage.

This privilege does not render the spouse-witness incompetent but is rather a privilege that the spouse who made the confidential communication can exercise or waive to preclude

the person's spouse from disclosing the communication through testimony. See *Brown v. State*, 359 Md. 180 (2000). The presumption that marital communications are confidential is rebuttable. Maryland courts have ruled that the presumption can be rebutted if it can be shown that a communication was not intended to remain confidential, was made to a third party, or was made in the presence of a third party. See *Coleman v. State*, 281 Md. 538 (1977). The marital communications privilege applies so long as the spouses were in a valid marriage at the time the communication was made, even if the spouses are no longer married at trial. This privilege also applies if the communication was made in furtherance of a crime. *Id.* The privilege does not apply when the confidential communication "constitutes a threat or crime against the other spouse." *Harris v. State*, 37 Md. App. 180, 184 (1977). However, in *Coleman*, a case decided after the decision by the Court of Special Appeals (now the Appellate Court of Maryland) in *Harris*, the Court of Appeals (now the Supreme Court of Maryland) determined that no express exceptions exist.

State v. Enriquez, 327 Md. 365 (1992), concerned a husband who was convicted of committing battery and sexual offenses against his wife. Before trial and during trial, the husband moved to preclude the State from offering evidence of marital communications. The trial court allowed the wife/victim's testimony after determining that the privilege under § 9-105 does not apply where one spouse is the victim of a crime allegedly perpetrated by the other spouse. On appeal, the State argued that there is an exception under § 9-105 for prosecutions of one spouse for crimes committed against the other spouse. The State supported its arguments by citing the *Harris* decision, legal treatises, cases from other jurisdictions, common law principles, legislative history, and public policy. The Court of Appeals affirmed the intermediate court's decision that the admission of testimony regarding a telephone conversation between the spouses violated the statutory marital communications privilege. The Court of Appeals noted that the legislature did not add any express exceptions to the statute since the *Coleman* decision and determined that because the legislature did not subsequently amend the statute, the court's interpretation of § 9-105 under *Coleman* should continue to apply.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1418 of 2022.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

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