



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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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