
To: Members of the House Judiciary Committee

From: Family Law Section Council (FLSC)

Date: February 12, 2024

Subject: House Bill 406
Marriage – Confidential Communication – Criminal Charge

Position: FAVORABLE

The Maryland State Bar Association (MSBA) Family Law Section Council **supports House Bill 406.**

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. HB 406 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.

As drafted, HB 406 is not clear as to the scope of the subject matter of the marital communications the victim spouse is permitted to reveal when testifying as a victim of a crime against him/her. The FLSC assumes the intent is to permit communications regarding only the crime being prosecuted at that time. If that is true, then we suggest amending the language on page 1, lines



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19-22, in HB 406 to clarify that the victim spouse is only permitted to testify regarding marital communications related to the charges pending in the case against his/her spouse in which he/she is testifying.

For the reason(s) stated above, the MSBA Family Law Section Counsel **supports House Bill 406 and urges a favorable committee report with amendment.**

Should you have any questions, please contact Michelle Smith at 410-280-1700 or msmith@lawannapolis.com.