

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 643

(Senators Jimeno and Jacobs)

Judicial Proceedings

Judiciary

Wiretap and Electronic Surveillance - Investigation - Obstructing Justice

This bill expands the authority of an investigative or law enforcement officer acting in a criminal investigation to intercept a wire, oral, or electronic communication by authorizing the interception of a communication to provide evidence of an offense relating to obstruction of justice.

Fiscal Summary

State Effect: None. The bill would not materially affect governmental operations or finances.

Local Effect: None – see above.

Small Business Effect: None.

Analysis

Bill Summary: An investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer may intercept a covered communication in order to provide evidence of the commission of an offense relating to obstruction of justice under the prohibitions against:

- harming another, threatening to harm another, or damaging or destroying property with the intent to:

- influence a victim or witness to testify falsely or withhold testimony; or
- induce a victim or witness to avoid the service of a subpoena or summons to testify or to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned;

- harming another or damaging or destroying property with the intent of retaliating against a victim or witness for giving testimony or reporting a crime or delinquent act; or

- influencing, intimidating, or impeding, by threat, force, or corrupt means, a juror, a witness, or an officer of a court of the State in the performance of the person's official duties.

Current Law: It is generally unlawful to intercept an oral, wire, or electronic communication without the consent of all parties to the communication. However, it is lawful for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer to intercept a covered communication in order to provide evidence of the commission of:

- murder;
- kidnapping;
- rape;
- a sexual offense in the first or second degree;
- child abuse;
- child pornography;
- gambling;
- robbery;
- arson or other malicious burning (felonies only);
- bribery;
- extortion;
- dealing in a controlled dangerous substance;
- insurance fraud;
- manufacture or possession of a device containing explosive, incendiary, or toxic material; or

- conspiracy or solicitation to commit one of the above offenses.

Interception is also authorized if a person has created a barricade situation, and there is probable cause to believe a hostage or hostages may be involved.

This authority applies when the investigative or law enforcement officer or other person is a party to the communication, or one of the parties to the communication has given prior consent to the communication.

Background: Witness intimidation continues to be an impediment to the effective prosecution of violent crimes, especially in jurisdictions where witnesses are reluctant to testify for fear of their lives.

Intimidation by drug dealers has been a top concern in Baltimore City, where a husband, wife, and five children were killed in 2002 after their home was firebombed in retaliation for calls to police against local drug dealers. In January 2005, city detectives sought federal grand jury indictments against four men accused of involvement in a retaliatory firebombing at the North Baltimore home of a woman who had reported drug activity to police. In addition, a so-called “Stop Snitching” DVD has been distributed in Baltimore.

Additional Information

Prior Introductions: None.

Cross File: HB 1208 (Delegate McComas, *et al.*) – Judiciary.

Information Source(s): State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

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