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Assigned to: Judiciary

Committee Report: Favorable

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CHAPTER _____

1 AN ACT concerning

2 **Wiretapping and Electronic Surveillance - Sexual Abuse of a Minor**

3 FOR the purpose of providing that it is lawful for a certain investigative or law
4 enforcement officer or certain other person to intercept a wire, oral, or electronic
5 communication in order to provide evidence of the commission of certain crimes;
6 authorizing a judge, in accordance with certain provisions, to grant an order
7 authorizing the interception of wire, oral, or electronic communications by
8 investigative or law enforcement officers when the interception may provide or
9 has provided evidence of the commission of certain crimes; clarifying certain
10 language; and generally relating to interception of wire, oral, or electronic
11 communications.

12 BY repealing and reenacting, with amendments,
13 Article - Courts and Judicial Proceedings
14 Section 10-402 and 10-406
15 Annotated Code of Maryland
16 (2002 Replacement Volume and 2005 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Courts and Judicial Proceedings**

2 10-402.

3 (a) Except as otherwise specifically provided in this subtitle it is unlawful for
4 any person to:

5 (1) Wilfully intercept, endeavor to intercept, or procure any other person
6 to intercept or endeavor to intercept, any wire, oral, or electronic communication;

7 (2) Wilfully disclose, or endeavor to disclose, to any other person the
8 contents of any wire, oral, or electronic communication, knowing or having reason to
9 know that the information was obtained through the interception of a wire, oral, or
10 electronic communication in violation of this subtitle; or

11 (3) Wilfully use, or endeavor to use, the contents of any wire, oral, or
12 electronic communication, knowing or having reason to know that the information
13 was obtained through the interception of a wire, oral, or electronic communication in
14 violation of this subtitle.

15 (b) Any person who violates subsection (a) of this section is guilty of a felony
16 and is subject to imprisonment for not more than 5 years or a fine of not more than
17 \$10,000, or both.

18 (c) (1) (i) It is lawful under this subtitle for an operator of a switchboard,
19 or an officer, employee, or agent of a provider of wire or electronic communication
20 service, whose facilities are used in the transmission of a wire or electronic
21 communication to intercept, disclose, or use that communication in the normal course
22 of his employment while engaged in any activity which is a necessary incident to the
23 rendition of his service or to the protection of the rights or property of the provider of
24 that service, except that a provider of wire communications service to the public may
25 not utilize service observing or random monitoring except for mechanical or service
26 quality control checks.

27 (ii) 1. It is lawful under this subtitle for a provider of wire or
28 electronic communication service, its officers, employees, and agents, landlords,
29 custodians or other persons to provide information, facilities, or technical assistance
30 to persons authorized by federal or State law to intercept wire, oral, or electronic
31 communications or to conduct electronic surveillance, if the provider, its officers,
32 employees, or agents, landlord, custodian, or other specified person has been provided
33 with a court order signed by the authorizing judge directing the provision of
34 information, facilities, or technical assistance.

35 2. The order shall set forth the period of time during which
36 the provision of the information, facilities, or technical assistance is authorized and
37 specify the information, facilities, or technical assistance required. A provider of wire
38 or electronic communication service, its officers, employees, or agents, or landlord,
39 custodian, or other specified person may not disclose the existence of any interception
40 or surveillance or the device used to accomplish the interception or surveillance with
41 respect to which the person has been furnished an order under this subparagraph,

1 except as may otherwise be required by legal process and then only after prior
2 notification to the judge who granted the order, if appropriate, or the State's Attorney
3 of the county where the device was used. Any such disclosure shall render the person
4 liable for compensatory damages. No cause of action shall lie in any court against any
5 provider of wire or electronic communication service, its officers, employees, or
6 agents, landlord, custodian, or other specified person for providing information,
7 facilities, or assistance in accordance with the terms of a court order under this
8 subtitle.

9 (2) (i) This paragraph applies to an interception in which:

10 1. The investigative or law enforcement officer or other
11 person is a party to the communication; or

12 2. One of the parties to the communication has given prior
13 consent to the interception.

14 (ii) It is lawful under this subtitle for an investigative or law
15 enforcement officer acting in a criminal investigation or any other person acting at
16 the prior direction and under the supervision of an investigative or law enforcement
17 officer to intercept a wire, oral, or electronic communication in order to provide
18 evidence:

19 1. Of the commission of:

20 A. Murder;

21 B. Kidnapping;

22 C. Rape;

23 D. A sexual offense in the first or second degree;

24 E. Child abuse IN THE FIRST OR SECOND DEGREE;

25 F. Child pornography under § 11-207, § 11-208, or §
26 11-208.1 of the Criminal Law Article;

27 G. Gambling;

28 H. Robbery under § 3-402 or § 3-403 of the Criminal Law
29 Article;

30 I. A felony under Title 6, Subtitle 1 of the Criminal Law
31 Article;

32 J. Bribery;

33 K. Extortion;

- 1 L. Dealing in a controlled dangerous substance, including a
2 violation of § 5-617 or § 5-619 of the Criminal Law Article;
- 3 M. A fraudulent insurance act, as defined in Title 27, Subtitle
4 4 of the Insurance Article;
- 5 N. An offense relating to destructive devices under § 4-503 of
6 the Criminal Law Article;
- 7 O. Sexual solicitation of a minor under § 3-324 of the
8 Criminal Law Article;
- 9 P. An offense relating to obstructing justice under § 9-302, §
10 9-303, or § 9-305 of the Criminal Law Article; [or]
- 11 Q. SEXUAL ABUSE OF A MINOR UNDER § 3-602 OF THE
12 CRIMINAL LAW ARTICLE; OR
- 13 [Q.] R. A conspiracy or solicitation to commit an offense listed
14 in items A through [P] Q of this item; or
- 15 2. If:
- 16 A. A person has created a barricade situation; and
- 17 B. Probable cause exists for the investigative or law
18 enforcement officer to believe a hostage or hostages may be involved.
- 19 (3) It is lawful under this subtitle for a person to intercept a wire, oral, or
20 electronic communication where the person is a party to the communication and
21 where all of the parties to the communication have given prior consent to the
22 interception unless the communication is intercepted for the purpose of committing
23 any criminal or tortious act in violation of the Constitution or laws of the United
24 States or of this State.
- 25 (4) (i) It is lawful under this subtitle for a law enforcement officer in
26 the course of the officer's regular duty to intercept an oral communication if:
- 27 1. The law enforcement officer initially lawfully detained a
28 vehicle during a criminal investigation or for a traffic violation;
- 29 2. The law enforcement officer is a party to the oral
30 communication;
- 31 3. The law enforcement officer has been identified as a law
32 enforcement officer to the other parties to the oral communication prior to any
33 interception;
- 34 4. The law enforcement officer informs all other parties to
35 the communication of the interception at the beginning of the communication; and

1 (iv) For other users of the same frequency to intercept any radio
2 communication made through a system that utilizes frequencies monitored by
3 individuals engaged in the provision or the use of the system, if the communication is
4 not scrambled or encrypted.

5 (8) It is lawful under this subtitle:

6 (i) To use a pen register or trap and trace device as defined under
7 § 10-4B-01 of this title; or

8 (ii) For a provider of electronic communication service to record the
9 fact that a wire or electronic communication was initiated or completed in order to
10 protect the provider, another provider furnishing service toward the completion of the
11 wire or electronic communication, or a user of that service, from fraudulent, unlawful,
12 or abusive use of the service.

13 (9) It is lawful under this subtitle for a person to intercept a wire or
14 electronic communication in the course of a law enforcement investigation of possible
15 telephone solicitation theft if:

16 (i) The person is an investigative or law enforcement officer or is
17 acting under the direction of an investigative or law enforcement officer; and

18 (ii) The person is a party to the communication and participates in
19 the communication through the use of a telephone instrument.

20 (10) It is lawful under this subtitle for a person to intercept a wire, oral, or
21 electronic communication in the course of a law enforcement investigation in order to
22 provide evidence of the commission of vehicle theft if:

23 (i) The person is an investigative or law enforcement officer or is
24 acting under the direction of an investigative or law enforcement officer; and

25 (ii) The device through which the interception is made has been
26 placed within a vehicle by or at the direction of law enforcement personnel under
27 circumstances in which it is thought that vehicle theft may occur.

28 (d) (1) Except as provided in paragraph (2) of this subsection, a person or
29 entity providing an electronic communication service to the public may not
30 intentionally divulge the contents of any communication (other than one to the person
31 or entity providing the service, or an agent of the person or entity) while in
32 transmission on that service to any person or entity other than an addressee or
33 intended recipient of the communication or an agent of the addressee or intended
34 recipient.

35 (2) A person or entity providing electronic communication service to the
36 public may divulge the contents of a communication:

37 (i) As otherwise authorized by federal or State law;

1 (ii) To a person employed or authorized, or whose facilities are used,
2 to forward the communication to its destination; or

3 (iii) That were inadvertently obtained by the service provider and
4 that appear to pertain to the commission of a crime, if the divulgence is made to a law
5 enforcement agency.

6 (e) (1) Except as provided in paragraph (2) of this subsection or in
7 subsection (f) of this section, a person who violates subsection (d) of this section is
8 subject to a fine of not more than \$10,000 or imprisonment for not more than 5 years,
9 or both.

10 (2) If an offense is a first offense under paragraph (1) of this subsection
11 and is not for a tortious or illegal purpose or for purposes of direct or indirect
12 commercial advantage or private commercial gain, and the wire or electronic
13 communication with respect to which the offense occurred is a radio communication
14 that is not scrambled or encrypted, and:

15 (i) The communication is not the radio portion of a cellular
16 telephone communication, a public land mobile radio service communication, or a
17 paging service communication, the offender is subject to a fine of not more than
18 \$1,000 or imprisonment for not more than 1 year, or both; or

19 (ii) The communication is the radio portion of a cellular telephone
20 communication, a public land mobile radio service communication, or a paging service
21 communication, the offender is subject to a fine of not more than \$500.

22 (3) Unless the conduct is for the purpose of direct or indirect commercial
23 advantage or private financial gain, conduct which would otherwise be an offense
24 under this subsection is not an offense under this subsection if the conduct consists of
25 or relates to the interception of a satellite transmission that is not encrypted or
26 scrambled and that is transmitted:

27 (i) To a broadcasting station for purposes of retransmission to the
28 general public; or

29 (ii) As an audio subcarrier intended for redistribution to facilities
30 open to the public, but not including data transmissions or telephone calls.

31 (f) (1) A person who engages in conduct in violation of this subtitle is subject
32 to suit by the federal government or by the State in a court of competent jurisdiction,
33 if the communication is:

34 (i) A private satellite video communication that is not scrambled or
35 encrypted and the conduct in violation of this subtitle is the private viewing of that
36 communication, and is not for a tortious or illegal purpose, or for purposes of direct or
37 indirect commercial advantage, or private commercial gain; or

38 (ii) A radio communication that is transmitted on frequencies
39 allocated under Subpart D of Part 74 of the Rules of the Federal Communications

1 Commission that is not scrambled or encrypted and the conduct in violation of this
2 subtitle is not for a tortious or illegal purpose or for purpose of direct or indirect
3 commercial advantage or private commercial gain.

4 (2) (i) The State is entitled to appropriate injunctive relief in an action
5 under this subsection if the violation is the person's first offense under subsection
6 (e)(1) of this section and the person has not been found liable in a prior civil action
7 under § 10-410 of this subtitle.

8 (ii) In an action under this subsection, if the violation is a second or
9 subsequent offense under subsection (e)(1) of this section or if the person has been
10 found liable in a prior civil action under § 10-410 of this subtitle, the person is subject
11 to a mandatory civil fine of not less than \$500.

12 (3) The court may use any means within its authority to enforce an
13 injunction issued under paragraph (2)(i) of this subsection, and shall impose a civil
14 fine of not less than \$500 for each violation of an injunction issued under paragraph
15 (2)(i) of this subsection.

16 10-406.

17 (a) The Attorney General, State Prosecutor, or any State's Attorney may apply
18 to a judge of competent jurisdiction, and the judge, in accordance with the provisions
19 of § 10-408 of this subtitle, may grant an order authorizing the interception of wire,
20 oral, or electronic communications by investigative or law enforcement officers when
21 the interception may provide or has provided evidence of the commission of:

22 (1) Murder;

23 (2) Kidnapping;

24 [(3) Child pornography under § 11-207, § 11-208, or § 11-208.1 of the
25 Criminal Law Article;

26 (4) Gambling;

27 (5) Robbery under § 3-402 or § 3-403 of the Criminal Law Article;

28 (6) A felony under Title 6, Subtitle 1 of the Criminal Law Article;

29 (7) Bribery;

30 (8) Extortion;

31 (9) Dealing in a controlled dangerous substance;

32 (10) An offense relating to destructive devices under § 4-503 of the
33 Criminal Law Article;

34 (11) Sexual solicitation of a minor under § 3-324 of the Criminal Law
35 Article;

- 1 (12) An offense relating to obstructing justice under § 9-302, § 9-303, or §
2 9-305 of the Criminal Law Article; or
- 3 (13) A conspiracy or solicitation to commit an offense listed in items (1)
4 through (12) of this subsection.]
- 5 (3) RAPE;
- 6 (4) A SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE;
- 7 (5) CHILD ABUSE IN THE FIRST OR SECOND DEGREE;
- 8 (6) CHILD PORNOGRAPHY UNDER § 11-207, § 11-208, OR § 11-208.1 OF THE
9 CRIMINAL LAW ARTICLE;
- 10 (7) GAMBLING;
- 11 (8) ROBBERY UNDER § 3-402 OR § 3-403 OF THE CRIMINAL LAW ARTICLE;
- 12 (9) A FELONY UNDER TITLE 6, SUBTITLE 1 OF THE CRIMINAL LAW
13 ARTICLE;
- 14 (10) BRIBERY;
- 15 (11) EXTORTION;
- 16 (12) DEALING IN A CONTROLLED DANGEROUS SUBSTANCE, INCLUDING A
17 VIOLATION OF § 5-617 OR § 5-619 OF THE CRIMINAL LAW ARTICLE;
- 18 (13) A FRAUDULENT INSURANCE ACT, AS DEFINED IN TITLE 27, SUBTITLE
19 4 OF THE INSURANCE ARTICLE;
- 20 (14) AN OFFENSE RELATING TO DESTRUCTIVE DEVICES UNDER § 4-503
21 OF THE CRIMINAL LAW ARTICLE;
- 22 (15) SEXUAL SOLICITATION OF A MINOR UNDER § 3-324 OF THE CRIMINAL
23 LAW ARTICLE;
- 24 (16) AN OFFENSE RELATING TO OBSTRUCTING JUSTICE UNDER § 9-302, §
25 9-303, OR § 9-305 OF THE CRIMINAL LAW ARTICLE;
- 26 (17) SEXUAL ABUSE OF A MINOR UNDER § 3-602 OF THE CRIMINAL LAW
27 ARTICLE; OR
- 28 (18) A CONSPIRACY OR SOLICITATION TO COMMIT AN OFFENSE LISTED IN
29 ITEMS (1) THROUGH (17) OF THIS SUBSECTION.
- 30 (b) No application or order shall be required if the interception is lawful under
31 the provisions of § 10-402(c) of this subtitle.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2006.