

HOUSE BILL 720

E2

1r1520
CF 1r0805

By: **Delegate Moon**

Introduced and read first time: January 26, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Intercepted Communications – Penalties and Admissibility of Evidence**

3 FOR the purpose of reclassifying, as a misdemeanor instead of a felony, a certain offense
4 relating to the prohibition against intercepting and disclosing certain
5 communications; altering certain penalties relating to the prohibition against
6 intercepting and disclosing certain communications; providing that a certain
7 communication that was intercepted in violation of certain provisions of law may be
8 admissible in certain proceedings under certain circumstances; prohibiting the
9 admissibility of the contents of an intercepted communication or evidence derived
10 from an intercepted communication as evidence unless certain conditions are met;
11 and generally relating to intercepted communications and the admissibility of
12 evidence.

13 BY repealing and reenacting, without amendments,
14 Article – Courts and Judicial Proceedings
15 Section 10–402(a), (d), and (f)
16 Annotated Code of Maryland
17 (2020 Replacement Volume)

18 BY repealing and reenacting, with amendments,
19 Article – Courts and Judicial Proceedings
20 Section 10–402(b) and (e) and 10–405
21 Annotated Code of Maryland
22 (2020 Replacement Volume)

23 BY repealing and reenacting, without amendments,
24 Article – Criminal Procedure
25 Section 4–101(a)(1), (2), and (4) and (c)
26 Annotated Code of Maryland
27 (2018 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Courts and Judicial Proceedings**

4 10–402.

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

7 (1) Willfully intercept, endeavor to intercept, or procure any other person
8 to intercept or endeavor to intercept, any wire, oral, or electronic communication;

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

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

17 (b) Any person who violates subsection (a) of this section is guilty of a [felony]
18 **MISDEMEANOR** and is subject to imprisonment for not more than [5 years] **90 DAYS** or a
19 fine of not more than \$10,000, or both.

20 (d) (1) Except as provided in paragraph (2) of this subsection, a person or
21 entity providing an electronic communication service to the public may not intentionally
22 divulge the contents of any communication (other than one to the person or entity providing
23 the service, or an agent of the person or entity) while in transmission on that service to any
24 person or entity other than an addressee or intended recipient of the communication or an
25 agent of the addressee or intended recipient.

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

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

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

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

34 (e) (1) Except as provided in paragraph (2) of this subsection or in subsection

1 (f) of this section, a person who violates subsection (d) of this section is subject to a fine of
2 not more than \$10,000 or imprisonment for not more than [5 years] **90 DAYS**, or both.

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

8 (i) The communication is not the radio portion of a cellular
9 telephone communication, a public land mobile radio service communication, or a paging
10 service communication, the offender is subject to a fine of not more than \$1,000 or
11 imprisonment for not more than [1 year] **90 DAYS**, or both; or

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

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

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

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

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

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

31 (ii) A radio communication that is transmitted on frequencies
32 allocated under Subpart D of Part 74 of the Rules of the Federal Communications
33 Commission that is not scrambled or encrypted and the conduct in violation of this subtitle
34 is not for a tortious or illegal purpose or for purposes of direct or indirect commercial
35 advantage or private commercial gain.

36 (2) (i) The State is entitled to appropriate injunctive relief in an action
37 under this subsection if the violation is the person's first offense under subsection (e)(1) of

1 this section and the person has not been found liable in a prior civil action under § 10–410
2 of this subtitle.

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

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

11 10–405.

12 (a) Except as provided in [subsection (b)] **SUBSECTIONS (B) AND (C)** of this
13 section, whenever any wire, oral, or electronic communication has been intercepted, no part
14 of the contents of the communication and no evidence derived therefrom may be received
15 in evidence in any trial, hearing, or other proceeding in or before any court, grand jury,
16 department, officer, agency, regulatory body, legislative committee, or other authority of
17 this State, or a political subdivision thereof if the disclosure of that information would be
18 in violation of this subtitle.

19 (b) If any wire, oral, or electronic communication is intercepted in any state or
20 any political subdivision of a state, the United States or any territory, protectorate, or
21 possession of the United States, including the District of Columbia in accordance with the
22 law of that jurisdiction, but that would be in violation of this subtitle if the interception was
23 made in this State, the contents of the communication and evidence derived from the
24 communication may be received in evidence in any trial, hearing, or other proceeding in or
25 before any court, grand jury, department, officer, agency, regulatory body, legislative
26 committee, or other authority of this State, or any political subdivision of this State if:

27 (1) At least one of the parties to the communication was outside the State
28 during the communication;

29 (2) The interception was not made as part of or in furtherance of an
30 investigation conducted by or on behalf of law enforcement officials of this State; and

31 (3) All parties to the communication were co-conspirators in a crime of
32 violence as defined in § 14–101 of the Criminal Law Article.

33 **(C) IF ANY WIRE, ORAL, OR ELECTRONIC COMMUNICATION IS INTERCEPTED**
34 **IN THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE IN VIOLATION OF THIS**
35 **SUBTITLE, THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED FROM**
36 **THE COMMUNICATION MAY BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING, OR**
37 **OTHER PROCEEDING IN OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT,**

1 OFFICER, AGENCY, REGULATORY BODY, LEGISLATIVE COMMITTEE, OR OTHER
2 AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE IF:

3 (1) THE EVIDENCE IS OFFERED IN A TRIAL, HEARING, OR OTHER
4 PROCEEDING THAT INVOLVES:

5 (I) A CRIME OF VIOLENCE, AS DEFINED UNDER § 14-101 OF
6 THE CRIMINAL LAW ARTICLE; OR

7 (II) A DOMESTICALLY RELATED CRIME, AS DEFINED UNDER §
8 6-233 OF THE CRIMINAL PROCEDURE ARTICLE; AND

9 (2) A COURT DETERMINES THAT:

10 (I) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE
11 DERIVED FROM THE COMMUNICATION ARE OFFERED AS EVIDENCE OF A MATERIAL
12 FACT IN A CRIMINAL PROCEEDING;

13 (II) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE
14 DERIVED FROM THE COMMUNICATION ARE MORE PROBATIVE ON THE POINT FOR
15 WHICH THEY ARE OFFERED THAN ANY OTHER EVIDENCE THAT THE PROPONENT CAN
16 PROCURE THROUGH REASONABLE EFFORTS; AND

17 (III) THE INTEREST OF JUSTICE WILL BE BEST SERVED BY
18 ADMISSION OF THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED
19 FROM THE COMMUNICATION INTO EVIDENCE.

20 (D) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED
21 FROM THE COMMUNICATION MAY NOT BE RECEIVED IN EVIDENCE UNDER
22 SUBSECTION (B) OR (C) OF THIS SECTION UNLESS:

23 (1) THE PROPONENT OF THE CONTENTS OF THE COMMUNICATION
24 AND EVIDENCE DERIVED FROM THE COMMUNICATION DISCLOSES TO THE ADVERSE
25 PARTY THE INTENTION TO OFFER THE CONTENTS OF THE COMMUNICATION AND
26 EVIDENCE DERIVED FROM THE COMMUNICATION, INCLUDING THE NAME AND
27 ADDRESS OF ANY PARTY WHOSE COMMUNICATION WAS INTERCEPTED; AND

28 (2) THE DISCLOSURE REQUIRED UNDER THIS SUBSECTION IS MADE
29 SUFFICIENTLY IN ADVANCE OF THE TRIAL OR HEARING TO PROVIDE THE ADVERSE
30 PARTY WITH A FAIR OPPORTUNITY TO PREPARE TO MEET THE CONTENTS OF THE
31 COMMUNICATION AND EVIDENCE DERIVED FROM THE COMMUNICATION.

1 4–101.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) (i) “Citation” means a written charging document that a police
4 officer or fire marshal issues to a defendant, alleging the defendant has committed a crime.

5 (ii) “Citation” does not include an indictment, information, or
6 statement of charges.

7 (4) “Police officer” has the meaning stated in § 2–101 of this article.

8 (c) (1) (i) Subject to paragraph (2) of this subsection, in addition to any
9 other law allowing a crime to be charged by citation, a police officer shall charge by citation
10 for:

11 1. any misdemeanor or local ordinance violation that does
12 not carry a penalty of imprisonment;

13 2. any misdemeanor or local ordinance violation for which
14 the maximum penalty of imprisonment is 90 days or less, except:

15 A. failure to comply with a peace order under § 3–1508 of the
16 Courts Article;

17 B. failure to comply with a protective order under § 4–509 of
18 the Family Law Article;

19 C. violation of a condition of pretrial or posttrial release
20 under § 5–213.1 of this article;

21 D. possession of an electronic control device after conviction
22 of a drug felony or crime of violence under § 4–109(b) of the Criminal Law Article;

23 E. violation of an out-of-state domestic violence order under
24 § 4–508.1 of the Family Law Article; or

25 F. abuse or neglect of an animal under § 10–604 of the
26 Criminal Law Article; or

27 3. possession of marijuana under § 5–601 of the Criminal
28 Law Article.

29 (ii) Subject to paragraph (2) of this subsection, in addition to any
30 other law allowing a crime to be charged by citation, a police officer may charge by citation
31 for:

- 1 1. sale of an alcoholic beverage to an underage drinker or
2 intoxicated person under § 6–304, § 6–307, § 6–308, or § 6–309 of the Alcoholic Beverages
3 Article;
- 4 2. malicious destruction of property under § 6–301 of the
5 Criminal Law Article, if the amount of damage to the property is less than \$500; or
- 6 3. misdemeanor theft under § 7–104(g)(2) of the Criminal
7 Law Article.

- 8 (2) A police officer may charge a defendant by citation only if:
- 9 (i) the officer is satisfied with the defendant’s evidence of identity;
- 10 (ii) the officer reasonably believes that the defendant will comply
11 with the citation;
- 12 (iii) the officer reasonably believes that the failure to charge on a
13 statement of charges will not pose a threat to public safety;
- 14 (iv) the defendant is not subject to arrest for another criminal charge
15 arising out of the same incident; and
- 16 (v) the defendant complies with all lawful orders by the officer.
- 17 (3) A police officer who has grounds to make a warrantless arrest for an
18 offense that may be charged by citation under this subsection may:
- 19 (i) issue a citation in lieu of making the arrest; or
- 20 (ii) make the arrest and subsequently issue a citation in lieu of
21 continued custody.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2021.