Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 440 (Senator Lee)
Judicial Proceedings

Courts - Wiretapping - Misconduct in Office

This bill adds misconduct in office to the list of crimes for which a judge may grant an order authorizing the interception of wire, oral, or electronic communications during a criminal investigation.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations, as discussed below.

Local Effect: The bill does not materially affect local finances or operations, as discussed below.

Small Business Effect: None.

Analysis

Current Law: Except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; or

- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

Notwithstanding the general prohibition, under § 10-406 of the Courts and Judicial Proceedings Article, the Attorney General, State Prosecutor, or any State's Attorney may apply to a judge to grant an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of numerous specified crimes, including:

- murder;
- kidnapping;
- rape;
- sexual offense in the first or second degree;
- child abuse or child pornography, as specified;
- robbery;
- arson and related felonies;
- bribery or extortion;
- dealing in a controlled dangerous substance;
- manufacture or possession of destructive devices;
- obstruction of justice;
- a theft scheme or continuing course of conduct involving an aggregate value of property or services of at least $10,000;
- abuse or neglect of a vulnerable adult;
- Medicaid fraud;
- specified firearm offenses; and
- a conspiracy or solicitation to commit any of the specified crimes.

Furthermore, § 10-402 of the Courts and Judicial Proceedings Article includes a general exception that permits investigative and law enforcement officers and persons acting with the prior direction and under the supervision of such officers to intercept communications as part of a criminal investigation to provide evidence of the commission of specified crimes (mirroring the crimes set forth in § 10-406). The exception applies so long as the investigative/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 interception. The bill does not add misconduct in office to the list of crimes to which this general exception applies.

Statutory provisions set forth numerous requirements regarding the interception of oral, wire, or electronic communications, including those related to (1) application procedures; (2) the content of court orders; (3) the duration of court orders; and (4) disclosures and the use of any evidence derived from the interception.

Misconduct in Office, Generally

Misconduct in office is a common law misdemeanor in Maryland, within the concurrent jurisdiction of the District and circuit courts, that has been defined as "corrupt behavior by a public officer in the exercise of the duties of his office or while acting under color of his office." *Leopold v. State*, 216 Md. App. 586, 604 (2014).

State/Local Fiscal Effect: Though the bill may potentially affect the number of applications for and orders concerning authorization to intercept communications, any increase in investigations and caseloads can be handled with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 489 (Delegate Moon) - Judiciary.

Information Source(s): Howard, Montgomery, and Prince George's counties; City of Havre de Grace; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; State Prosecutor's Office; Department of State Police; State Ethics Commission; Department of Legislative Services

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an/jkb

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