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*The Maryland House of Delegates*  
ANNAPOLIS, MARYLAND 21401

**February 25, 2020**

**Testimony in Support of House Bill 803 – Intercepted Communications – Penalties and Admissibility of Evidence**

Good afternoon Mr. Chairman and members of the Committee. Thank you for the opportunity to speak to you on behalf of **House Bill 803 – Intercepted Communications – Penalties and Admissibility of Evidence**.

This measure makes changes to Maryland's wiretap law. It eliminates incarceration penalties for violating the law and repeals its classification as a felony. House Bill 803 also adds an additional circumstance by which an intercepted communication may be entered into evidence.

Currently, an intercepted communication that is lawful in another state is not admissible in Maryland unless:

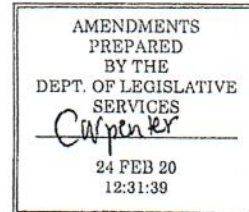
1. At least one of the parties to the communication was outside the state during the communication;
2. The interception was not part of or in furtherance of an investigation conducted by or on behalf of law enforcement officials of this State; and
3. All parties to the communication were co-conspirators in a crime of violence as defined in Section 14-101 of the Criminal Law Article.

This legislation adds an additional exception for communications intercepted lawfully in another state. It would allow as admissible communication that a court determines constitutes material evidence. Furthermore the communication must be more probative on the applicable point than alternative evidence that can be reasonably obtained. Additionally, the admission of the material and probative evidence must be in the interest of justice.

It makes sense to remove incarceration as a penalty for violating our wiretapping law, as a prison sentence is rarely imposed. Moreover, the threat of incarceration prevents victims of certain crimes, such as domestic violence and human trafficking, from providing recorded evidence of their abuse. Eliminating incarceration, along with repealing the felony classification, would move Maryland closer to the single-party consent laws of 38 other states and the District of Columbia. Additionally, this legislation's limited approach in expanding the admissibility of intercepted communication furthers justice. For these reasons, I respectfully request a favorable approach for House Bill 803.



HB0803/463827/1



BY: Delegate Dumais  
(To be offered in the House Judiciary Committee)

AMENDMENT TO HOUSE BILL 803  
(First Reading File Bill)

On page 4, in line 6, strike "subsection (b)" and substitute "SUBSECTIONS (B) AND (C)"; in line 20, strike "(I)"; in line 22, strike "(II)"; in line 24, strike "(III)"; in lines 22 and 24, in each instance, strike the bracket; in line 25, strike "; OR" and substitute a period; strike in its entirety line 26 and substitute:

"(C) IF ANY WIRE, ORAL, OR ELECTRONIC COMMUNICATION IS INTERCEPTED IN THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE THAT IS IN VIOLATION OF THIS SUBTITLE, THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED FROM THE COMMUNICATION MAY BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING, OR OTHER PROCEEDING IN OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY, LEGISLATIVE COMMITTEE, OR OTHER AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE IF A COURT DETERMINES THAT:"

and in lines 27, 30, and 34, strike "(I)", "(II)", and "(III)", respectively, and substitute "(1)", "(2)", and "(3)", respectively.

On page 5, in line 2, strike "(C)" and substitute "(D)"; and in line 4, after "(B)" insert "OR (C)".