

HB 274 - Intercepted Communications - Penalty - JP

Uploaded by: Andrea Rafter

Position: FAV

BILL NO: House Bill 274
TITLE: Intercepted Communications - Penalty
COMMITTEE: Judicial Proceedings
HEARING DATE: March 21, 2024
POSITION: **SUPPORT**

House Bill 274 would reclassify a violation of § 10-402(a) of the Courts and Judicial Proceedings Article (intercepted communications) from a felony to a misdemeanor, but does not change the possible penalty. The Women's Law Center (WLC) supports this bill as recognition that in today's world so much is recorded.

Maryland is one of the minority of states that is a "two-party" consent state, and any audio recording must be consented to by all involved in the recording. Currently, a violation of the wiretap law is a felony and subject to punishment including imprisonment for not more than 5 years or a fine of not more than \$10,000, or both. (There is another bill, HB 290, that would create exceptions to the law in certain circumstances that we also support although with amendments). Making a violation a misdemeanor rather than a felony would at least recognize that in our current society everybody seemingly records everything, often ignorant of the law. We all have a cell phone in our hand with the ability to record. In fact, in many of our domestic violence cases our clients have recorded the audio (and the video) of their abuser harming to threatening to harm them. They want to show it to the court, but we have to advise not to do it as it is a felony without the other party's permission. There are strategic reasons and facts that can sometimes make the decision to seek to admit the evidence that is in violation of our laws, but that is infrequent. And we must advise our clients of the felony ramifications of current law.

For these reasons, the WLC urges a favorable report on HB 274.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women.

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Uploaded by: Doyle Niemann

Position: FAV



To: Members of The House Judiciary Committee
From: Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section,
Maryland State Bar Association
Date: February 9, 2024
Subject: **HB274 - Intercepted Communications - Penalty**
Position: **SUPPORT**

The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Supports HB274 - Intercepted Communications – Penalty.**

This bill will reduce the penalty for a violation of Section 10-402 of the Courts and Proceedings Article, which makes it a crime to intercept, disclose or use any wire, oral or electronic communication, a misdemeanor rather than a felony.

Maryland’s statute effectively prohibits one-party recording of almost any conversation. As such, it is much stricter than comparable federal legislation and those of many other states. While referred to as a “wiretap” law, the statute covers oral and electronic communications much more broadly. It is regularly violated by individuals in their daily lives – especially in an era where most citizens carry recording equipment with them at all times through their cell phones. The designation of a violation as a felony is far more harsh than appropriate.

As noted, all HB274 does is change the classification of a violation to a much more appropriate classification as a misdemeanor.

For the reasons stated, we **Support HB274 - Intercepted Communications – Penalty.**

If you have questions about the position of the Criminal Law and Practice Section’s Legislative Committee, please feel free to address them to me at 240-606-1298 or at doyleniemann@gmail.com.

Should you have other questions, please contact The MSBA’s Legislative Office at (410) 387-5606..

Wiretap - felony to misdemeanor - testimony - hous

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting House Bill 274
Lisae C. Jordan, Executive Director & Counsel
March 21, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on House Bill 274.

House Bill 274 – Wiretap – Change to Misdemeanor

This bill would reclassify violation of the all party consent law for audio recordings from a felony to a misdemeanor.

This Committee has heard extensive testimony this session regarding the challenges faced when a victim of a violent crime, including a sex crime, records the crime in an attempt to document what occurred. HB274 is a modest step towards reducing the penalty for this type of action.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on House Bill 274**

HB 274_MNADV_FAV_JPR.pdf

Uploaded by: Melanie Shapiro

Position: FAV



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POSITION: **Support**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on HB 274.**

Maryland requires the consent of every party to a phone call or conversation to make a recording lawful. Currently, a violation of the wiretap law is a felony and subject to punishment including imprisonment for not more than 5 years or a fine of not more than \$10,000, or both.

HB 274 would reclassify a violation of the wiretap law from a felony to a misdemeanor. MNADV supports a victim's ability to use a recording of the violence they suffered in court proceedings. Currently it is a felony for a victim, including victims of domestic violence, to record and document the abuse and violence they experienced and use it to obtain relief from the courts. HB 274 is an important attempt to remediate Maryland's wiretap laws.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on HB 274.**

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Uploaded by: Scott Shellenberger

Position: FAV

Bill Number: HB 274
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF HOUSE BILL 274
INTERCEPTED COMMUNICATIONS – PENALTY

I write in support of House Bill 274 Intercepted Communications – Penalty. For years I have attempted to amend or strike Courts and Judicial Proceeding Article (CJ) §10-406 Maryland Wire Tap Statute.

Maryland is a two party consent state when it comes to the recording of oral communications especially through the telephone. Thirty-eight States are one party consent states that require only one party to a conversation “consent” to the recording. Maryland has long had a statutory scheme in which law enforcement, under a judges supervision, are permitted to record telephone conversations when they have probable cause to believe telephones are being use to commit crimes.

Because CJ is a vestige of the past, recording someone orally both over the telephone and in person has been labeled a felony punishable up to 5 years in jail. Recording visually has never been against the law.

In today's reality people record everything both visually and orally. Most people are unaware when they pull out their phones and hit camera/record they are breaking the law in Maryland.

While I have been unsuccessful in changing the statute it seems reasonable to at least make a baby step forward and make it a misdemeanor instead of a felony. We should not subject someone to such a harsh potential penalty when doing something everyone does every day and everyone accepts.

I urge a favorable report.