Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 290 (Delegates Grammer and Bartlett)
Judiciary Judicial Proceedings

Crimes - Interception of Wire, Oral, or Electronic Communications - Exception for Imminent Danger

This bill, by creating an exception under § 10-402 of the Courts and Judicial Proceedings Article (interception of communications), makes it lawful for a person to intercept a wire, oral, or electronic communication if the person has a good faith belief that they, or another person, are in imminent danger of a becoming the victim of a crime of violence, as defined under § 14-101 of the Criminal Law Article; stalking under § 3-802 of the Criminal Law Article; abuse, as defined under § 4-501 of the Family Law Article; or a violation of a protective order under § 4-509 of the Family Law Article.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations or finances.

Local Effect: The bill is not expected to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

Interception of a Communication

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

Violators are guilty of a felony, punishable by imprisonment for up to five years and/or a $10,000 maximum fine.

One specified exception is the interception of a communication where the interceptor is a party to the communication and all of the parties to the communication have given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of State or federal law. Exceptions also exist for law enforcement activities that meet specified criteria.

Admission of Evidence Obtained through an Intercepted Communication/Disclosure during Testimony

Except as specified, whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived from the communication may be received in evidence in any trial, hearing, or other proceeding if the disclosure of that information would be *in violation of* the State's wiretap and electronic surveillance laws.

However, any person who has received information concerning a communication that was obtained through an *authorized* interception or evidence derived from an *authorized* interception may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any federal, State, or local proceeding.

State Fiscal Effect: The bill may affect the number of charges filed for illegal interceptions and evidentiary proceedings relating to intercepted communications. Regardless, any such changes in judicial caseloads and related workloads are not expected to materially affect the finances or operations of the courts, State's Attorneys' offices, or the Office of the Public Defender.

The Judiciary advises that there were 43 alleged violations and 1 conviction under § 10-402(a) of the Courts and Judicial Proceedings Article in the State's courts during fiscal 2023. The Maryland State Commission on Criminal Sentencing Policy advises that

its database does not specify if the one person sentenced for this offense in the State's circuit courts during fiscal 2023 committed the offense under threat of imminent danger.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 714 and SB 749 of 2023 and SB 375 of 2022.

Designated Cross File: SB 610 (Senators Folden and Salling) - Judicial Proceedings.

Information Source(s): Prince George's County; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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