
By: **Delegates Barkley and Vallario**

Introduced and read first time: February 7, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Wiretapping - Exceptions for Out-of-State**
3 **Interception**

4 FOR the purpose of allowing certain information to be used and certain persons to
5 disclose certain information concerning certain communications intercepted in
6 out-of-state jurisdictions in certain proceedings if the interception was made in
7 accordance with the law of the other jurisdiction under certain circumstances;
8 requiring that a motion to suppress the contents of certain communications or
9 certain evidence be made in accordance with the Maryland Rules; providing for
10 the application of this Act; and generally relating to interception of wire, oral,
11 and electronic communications.

12 BY repealing and reenacting, with amendments,
13 Article - Courts and Judicial Proceedings
14 Section 10-405, 10-407(c), and 10-408(i)
15 Annotated Code of Maryland
16 (1998 Replacement Volume and 2000 Supplement)

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

19 **Article - Courts and Judicial Proceedings**

20 10-405.

21 (A) [Whenever] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
22 WHENEVER any wire or oral communication has been intercepted, no part of the
23 contents of the communication and no evidence derived therefrom may be received in
24 evidence in any trial, hearing, or other proceeding in or before any court, grand jury,
25 department, officer, agency, regulatory body, legislative committee, or other authority
26 of this State, or a political subdivision thereof if the disclosure of that information
27 would be in violation of this subtitle.

28 (B) IF ANY WIRE OR ORAL COMMUNICATION IS INTERCEPTED IN ANY STATE
29 OR ANY POLITICAL SUBDIVISION OF A STATE, THE UNITED STATES OR ANY

1 TERRITORY, PROTECTORATE, OR POSSESSION OF THE UNITED STATES, INCLUDING
2 THE DISTRICT OF COLUMBIA IN ACCORDANCE WITH THE LAW OF THAT
3 JURISDICTION, BUT THAT WOULD BE IN VIOLATION OF THIS SUBTITLE IF THE
4 INTERCEPTION WAS MADE IN THIS STATE, THE CONTENTS OF THE COMMUNICATION
5 AND EVIDENCE DERIVED FROM THE COMMUNICATION MAY BE RECEIVED IN
6 EVIDENCE IN ANY TRIAL, HEARING, OR OTHER PROCEEDING IN OR BEFORE ANY
7 COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY,
8 LEGISLATIVE COMMITTEE, OR OTHER AUTHORITY OF THIS STATE, OR ANY POLITICAL
9 SUBDIVISION OF THIS STATE IF:

10 (1) AT LEAST ONE OF THE PARTIES TO THE COMMUNICATION WAS
11 OUTSIDE THE STATE DURING THE COMMUNICATION;

12 (2) THE INTERCEPTION WAS NOT MADE AS PART OF OR IN
13 FURTHERANCE OF AN INVESTIGATION CONDUCTED BY OR ON BEHALF OF LAW
14 ENFORCEMENT OFFICIALS OF THIS STATE; AND

15 (3) ALL PARTIES TO THE COMMUNICATION WERE CO-CONSPIRATORS IN
16 A CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27, § 643B OF THE CODE.

17 10-407.

18 (c) (1) Any person who has received, by any means authorized by this
19 subtitle, any information concerning a wire, oral, or electronic communication, or
20 evidence derived therefrom intercepted in accordance with the provisions of this
21 subtitle, may disclose the contents of that communication or the derivative evidence
22 while giving testimony under oath or affirmation in any proceeding held under the
23 authority of any state or any political subdivision of a state, the United States or any
24 territory, protectorate, or possession of the United States including the District of
25 Columbia.

26 (2) ANY PERSON WHO HAS RECEIVED ANY INFORMATION CONCERNING
27 A WIRE, ORAL, OR ELECTRONIC COMMUNICATION INTERCEPTED IN ANY STATE OR
28 ANY POLITICAL SUBDIVISION OF A STATE, THE UNITED STATES OR ANY TERRITORY,
29 PROTECTORATE, OR POSSESSION OF THE UNITED STATES, INCLUDING THE DISTRICT
30 OF COLUMBIA IN ACCORDANCE WITH THE LAW OF THAT JURISDICTION, BUT THAT
31 WOULD BE IN VIOLATION OF THIS SUBTITLE IF THE INTERCEPTION WAS MADE IN
32 THIS STATE, OR EVIDENCE DERIVED FROM THE COMMUNICATION, MAY DISCLOSE
33 THE CONTENTS OF THAT COMMUNICATION OR THE DERIVATIVE EVIDENCE WHILE
34 GIVING TESTIMONY UNDER OATH OR AFFIRMATION IN ANY PROCEEDING HELD
35 UNDER THE AUTHORITY OF THIS STATE IF:

36 (I) AT LEAST ONE OF THE PARTIES TO THE COMMUNICATION WAS
37 OUTSIDE THE STATE DURING THE COMMUNICATION;

38 (II) THE INTERCEPTION WAS NOT MADE AS PART OF OR IN
39 FURTHERANCE OF AN INVESTIGATION CONDUCTED BY OR ON BEHALF OF LAW
40 ENFORCEMENT OFFICIALS OF THIS STATE; AND

1 (III) ALL PARTIES TO THE COMMUNICATION WERE
2 CO-CONSPIRATORS IN A CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27, § 643B OF
3 THE CODE.

4 10-408.

5 (i) (1) Any aggrieved person in any trial, hearing, or proceeding in or before
6 any court, department, officer, agency, regulatory body, or other authority of this
7 State or a political subdivision thereof, may move to suppress the contents of any
8 intercepted wire, oral, or electronic communication, or evidence derived therefrom, on
9 the grounds that:

10 (i) The communication was unlawfully intercepted;

11 (ii) The order of authorization under which it was intercepted is
12 insufficient on its face, or was not obtained or issued in strict compliance with this
13 subtitle; or

14 (iii) The interception was not made in conformity with the order of
15 authorization.

16 (2) This motion [may be made before or during the trial, hearing, or
17 proceeding] SHALL BE MADE IN ACCORDANCE WITH THE MARYLAND RULES. If the
18 motion is granted, the contents of the intercepted wire, oral, or electronic
19 communication, or evidence derived therefrom, shall be treated as having been
20 obtained in violation of this subtitle. The judge, upon the filing of the motion by the
21 aggrieved person, in his discretion may make available to the aggrieved person or his
22 counsel for inspection such portions of the intercepted communication or evidence
23 derived therefrom as the judge determines to be in the interests of justice.

24 (3) In addition to any other right to appeal, the State shall have the right
25 to appeal from the denial of an application for an order of approval, if the prosecuting
26 attorney shall certify to the judge or other official denying the application that the
27 appeal is not taken for purposes of delay. The appeal shall be taken within 30 days
28 after the date the order was entered and shall be diligently prosecuted.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
30 construed only prospectively to apply to communications intercepted on or after the
31 effective date of this Act.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
33 effect October 1, 2001.