

SENATE BILL 310

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2001 Regular Session
(11r1748)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **Senator Van Hollen**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 ~~Courts - Wiretapping and Electronic Surveillance - Admissibility of~~
3 ~~Evidence~~
4 **Criminal Procedure - Wiretapping - Exceptions for Out-of-State Interception**

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

17 BY repealing and reenacting, with amendments,

1 Article - Courts and Judicial Proceedings
2 Section 10-405, 10-407(c), and 10-408(i)
3 Annotated Code of Maryland
4 (1998 Replacement Volume and 2000 Supplement)

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

7 **Article - Courts and Judicial Proceedings**

8 10-405.

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

16 ~~(B) THE CONTENTS OF AN INTERCEPTED COMMUNICATION, INCLUDING AN~~
17 ~~INTERCEPTION PROHIBITED UNDER THIS SUBTITLE, MAY BE RECEIVED INTO~~
18 ~~EVIDENCE IN ANY CRIMINAL PROCEEDING, IF SUCH COMMUNICATION WAS:~~

19 ~~(1) BETWEEN INTERCEPTED BY AT LEAST ONE OF TWO OR MORE~~
20 ~~PERSONS WHO WERE A PARTY TO THE INTERCEPTED COMMUNICATION AND WERE~~
21 ~~NOT ACTING AS LAW ENFORCEMENT AGENTS AND THE INTERCEPTED~~
22 ~~COMMUNICATION IS RELEVANT TO A CRIME AT ISSUE IN THE PROCEEDING; OR~~

23 ~~(2) INTERCEPTED IN ANOTHER JURISDICTION, AND THE INTERCEPTION~~
24 ~~WOULD NOT BE EXCLUDED IN A CRIMINAL PROCEEDING IN THE OTHER~~
25 ~~JURISDICTION.~~

26 ~~(B) IF ANY WIRE OR ORAL COMMUNICATION IS INTERCEPTED IN ANY STATE~~
27 ~~OR ANY POLITICAL SUBDIVISION OF A STATE, THE UNITED STATES OR ANY~~
28 ~~TERRITORY, PROTECTORATE, OR POSSESSION OF THE UNITED STATES, INCLUDING~~
29 ~~THE DISTRICT OF COLUMBIA IN ACCORDANCE WITH THE LAW OF THAT~~
30 ~~JURISDICTION, BUT THAT WOULD BE IN VIOLATION OF THIS SUBTITLE IF THE~~
31 ~~INTERCEPTION WAS MADE IN THIS STATE, THE CONTENTS OF THE COMMUNICATION~~
32 ~~AND EVIDENCE DERIVED FROM THE COMMUNICATION MAY BE RECEIVED IN~~
33 ~~EVIDENCE IN ANY TRIAL, HEARING, OR OTHER PROCEEDING IN OR BEFORE ANY~~
34 ~~COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY,~~
35 ~~LEGISLATIVE COMMITTEE, OR OTHER AUTHORITY OF THIS STATE, OR ANY~~
36 ~~POLITICAL SUBDIVISION OF THIS STATE IF:~~

37 ~~(1) AT LEAST ONE OF THE PARTIES TO THE COMMUNICATION WAS~~
38 ~~OUTSIDE THE STATE DURING THE COMMUNICATION;~~

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

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

6 10-407.

7 (c) (1) Any person who has received, by any means authorized by this
8 subtitle, any information concerning a wire, oral, or electronic communication, or
9 evidence derived therefrom intercepted in accordance with the provisions of this
10 subtitle, may disclose the contents of that communication or the derivative evidence
11 while giving testimony under oath or affirmation in any proceeding held under the
12 authority of any state or any political subdivision of a state, the United States or any
13 territory, protectorate, or possession of the United States including the District of
14 Columbia.

15 (2) ANY PERSON WHO HAS RECEIVED ANY INFORMATION CONCERNING
16 A WIRE, ORAL, OR ELECTRONIC COMMUNICATION INTERCEPTED IN ANY STATE OR
17 ANY POLITICAL SUBDIVISION OF A STATE, THE UNITED STATES OR ANY TERRITORY,
18 PROTECTORATE, OR POSSESSION OF THE UNITED STATES, INCLUDING THE
19 DISTRICT OF COLUMBIA IN ACCORDANCE WITH THE LAW OF THAT JURISDICTION,
20 BUT THAT WOULD BE IN VIOLATION OF THIS SUBTITLE IF THE INTERCEPTION WAS
21 MADE IN THIS STATE, OR EVIDENCE DERIVED FROM THE COMMUNICATION, MAY
22 DISCLOSE THE CONTENTS OF THAT COMMUNICATION OR THE DERIVATIVE
23 EVIDENCE WHILE GIVING TESTIMONY UNDER OATH OR AFFIRMATION IN ANY
24 PROCEEDING HELD UNDER THE AUTHORITY OF THIS STATE IF:

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

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

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

33 10-408.

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

39 (i) The communication was unlawfully intercepted;

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

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

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

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

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

22 ~~SECTION 2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect October 1, 2001.