

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 1036

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “prohibiting” in line 3 down through “circumstances;” in line 7; strike in their entirety lines 22 and 23; and strike beginning with “providing” in line 25 down through “penalties;” in line 28 and substitute “allowing certain restitution;”.

On page 2, strike beginning with “prohibiting” in line 4 down through “circumstances;” in line 9; and strike beginning with “prohibiting” in line 13 down through “period;” in line 16.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 24 through 34, inclusive.

On page 3, in line 17, strike “, 5-101(c), 5-202(b), and 5-207”; after line 19, insert:

“BY repealing and reenacting, with amendments,

Article - Criminal Law

Section 4-401(b) and 14-101(a)

Annotated Code of Maryland

(As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of 2002)”;

in line 22, strike “3-1001 through 3-1004” and substitute “9-801 through 9-805, inclusive”; in the same line, strike “10.” and substitute “8.”; and strike in their entirety lines 27 through 38, inclusive.

On page 4, in line 8, strike “12-301.”; and in the same line, strike “16-103.1, 16-115(a).”.

AMENDMENT NO. 3

On pages 4 through 6, strike in their entirety the lines beginning with line 18 on page 4 through line 22 on page 6, inclusive.

(Over)

AMENDMENT NO. 4

On page 7, in lines 7 and 8, strike “OR A THREAT TO COMMIT AN ACT OF TERRORISM UNDER § 3-1002 OR § 3-1003” and substitute “UNDER § 9-802”; strike in their entirety lines 9 and 10; in line 11, strike “(17)” and substitute “(16)”; and in line 12, strike “(18)” and substitute “(17)”.

AMENDMENT NO. 5

On pages 8 through 10, strike in their entirety the lines beginning with line 2 on page 8 through line 23 on page 10, inclusive, and substitute:

“(c) (2) (I) THIS PARAGRAPH APPLIES TO AN INTERCEPTION IN WHICH:

1. THE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER OR OTHER PERSON IS A PARTY TO THE COMMUNICATION; OR

2. ONE OF THE PARTIES TO THE COMMUNICATION HAS GIVEN PRIOR CONSENT TO THE INTERCEPTION.

(II) It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence:

1. [of] OF the commission of:

A. [the offenses of murder, kidnapping, rape, a sexual offense in the first or second degree, child abuse, child pornography, as defined under Article 27, §§ 419A and 419B of the Code, gambling, robbery under Article 27, § 486 or § 487 of the Code, any felony punishable under the "Arson and Burning" subheading of Article 27, bribery, extortion, or dealing in controlled dangerous substances, including violations of Article 27, § 286B or § 287A, fraudulent] MURDER;

B. KIDNAPPING;

C. RAPE;

D. A SEXUAL OFFENSE IN THE FIRST OR SECOND

DEGREE;

E. CHILD ABUSE;

F. CHILD PORNOGRAPHY UNDER § 11-207 OR § 11-208 OF
THE CRIMINAL LAW ARTICLE;

G. GAMBLING;

H. ROBBERY UNDER § 3-402 OR § 3-403 OF THE
CRIMINAL LAW ARTICLE;

I. A FELONY UNDER TITLE 6, SUBTITLE 1 OF THE
CRIMINAL LAW ARTICLE;

J. BRIBERY;

K. EXTORTION;

L. DEALING IN A CONTROLLED DANGEROUS
SUBSTANCE, INCLUDING A VIOLATION OF § 5-617 OR § 5-619 OF THE CRIMINAL LAW
ARTICLE;

M. A FRAUDULENT insurance [acts] ACT, as defined in Title
27, Subtitle 4 of the Insurance [Article, offenses] ARTICLE;

N. AN OFFENSE relating to destructive devices under [Article
27, § 139C of the Code, or any] § 4-503 OF THE CRIMINAL LAW ARTICLE;

O. AN OFFENSE COMMITTED BY OR ON BEHALF OF AN
ORGANIZATION THAT IS DESIGNATED AS A FOREIGN TERRORIST ORGANIZATION IN
ACCORDANCE WITH 8 U.S.C., § 1189 OR ENGAGED IN TERRORIST ACTIVITY AS
DEFINED IN § 411 OF THE FEDERAL USA PATRIOT ACT OF 2001; OR

P. AN ACT OF TERRORISM UNDER § 9-802 OF THE CRIMINAL LAW ARTICLE;

Q. A conspiracy or solicitation to commit [any of these offenses, or where any] AN OFFENSE LISTED IN ITEMS A THROUGH P OF THIS ITEM; OR

2. IF:

A. A person has created a barricade [situation and probable] SITUATION; AND

B. PROBABLE cause exists for the investigative or law enforcement officer to believe a hostage or hostages may be involved[, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception].

10-406.

(A) The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction, and the judge, in accordance with the provisions of § 10-408 of this subtitle, may grant an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of:

(1) [the offense of murder, kidnapping, child pornography, as defined in Article 27, §§ 419A and 419B of the Code, gambling, robbery under Article 27, § 486 or § 487 of the Code, any felony punishable under the "Arson and Burning" subheading of Article 27 of this Code, bribery, extortion, or dealing in controlled dangerous substances, offenses] MURDER;

(2) KIDNAPPING;

(3) CHILD PORNOGRAPHY UNDER § 11-207 OR § 11-208 OF THE CRIMINAL LAW ARTICLE;

(4) GAMBLING;

(5) ROBBERY UNDER § 3-402 OR § 3-403 OF THE CRIMINAL LAW
ARTICLE;

(6) A FELONY UNDER TITLE 6, SUBTITLE 1 OF THE CRIMINAL LAW
ARTICLE;

(7) BRIBERY;

(8) EXTORTION;

(9) DEALING IN A CONTROLLED DANGEROUS SUBSTANCE;

(10) AN OFFENSE relating to destructive devices under [Article 27, § 139C of the
Code, or any] § 4-503 OF THE CRIMINAL LAW ARTICLE;

(11) AN OFFENSE COMMITTED BY OR ON BEHALF OF AN
ORGANIZATION THAT IS DESIGNATED AS A FOREIGN TERRORIST ORGANIZATION IN
ACCORDANCE WITH 8 U.S.C., § 1189 OR ENGAGED IN TERRORIST ACTIVITY AS
DEFINED IN § 411 OF THE FEDERAL USA PATRIOT ACT OF 2001;

(12) AN ACT OF TERRORISM UNDER § 9-802 OF THE CRIMINAL LAW
ARTICLE; or

(13) A conspiracy or solicitation to commit [any of the foregoing offenses] AN
OFFENSE LISTED IN ITEMS (1) THROUGH (12) OF THIS SUBSECTION.

(B) No application or order shall be required if the interception is lawful under the
provisions of § 10-402(c) of this subtitle.”.

AMENDMENT NO. 6

On page 11, strike in their entirety lines 27 through 38, inclusive, and substitute:

(Over)

“(2) (I) IN THE CASE OF AN APPLICATION AUTHORIZING THE INTERCEPTION OF AN ORAL COMMUNICATION, A PARTICULAR DESCRIPTION OF THE NATURE AND LOCATION OF THE FACILITIES FROM WHICH OR THE PLACE WHERE THE COMMUNICATION IS TO BE INTERCEPTED IS NOT REQUIRED IF THE APPLICATION:

1. IS BY AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER;

2. IS APPROVED BY THE ATTORNEY GENERAL, THE STATE PROSECUTOR, OR A STATE’S ATTORNEY;

3. CONTAINS A FULL AND COMPLETE STATEMENT AS TO WHY THE DESCRIPTION IS NOT PRACTICAL; AND

4. IDENTIFIES THE INDIVIDUAL COMMITTING THE OFFENSE AND WHOSE COMMUNICATIONS ARE TO BE INTERCEPTED.

(II) IN THE CASE OF AN APPLICATION AUTHORIZING THE INTERCEPTION OF A WIRE OR ELECTRONIC COMMUNICATION, THE NATURE AND LOCATION OF THE FACILITIES FROM WHICH OR THE PLACE WHERE THE COMMUNICATION IS TO BE INTERCEPTED IS NOT REQUIRED IF THE APPLICATION:

1. IS BY AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER;

2. IS APPROVED BY THE ATTORNEY GENERAL, THE STATE PROSECUTOR, OR A STATE’S ATTORNEY;

3. IDENTIFIES THE INDIVIDUAL BELIEVED TO BE COMMITTING THE OFFENSE AND WHOSE COMMUNICATIONS ARE TO BE INTERCEPTED;

4. MAKES A SHOWING THAT THERE IS PROBABLE

CAUSE TO BELIEVE THAT THE INDIVIDUAL'S ACTIONS COULD HAVE THE EFFECT OF THWARTING INTERCEPTION FROM A SPECIFIED FACILITY; AND

5. SPECIFIES THAT INTERCEPTION WILL BE LIMITED TO TIMES WHERE IT IS REASONABLE TO PRESUME THAT THE INDIVIDUAL IDENTIFIED IN THE APPLICATION WILL BE PROXIMATE TO THE COMMUNICATION DEVICE AND WILL BE USING THE COMMUNICATION DEVICE THROUGH WHICH THE COMMUNICATION WILL BE TRANSMITTED.”.

AMENDMENT NO. 7

On page 16, in line 18, strike “§§ 3-1002 THROUGH 3-1004” and substitute “§§ 9-802 THROUGH 9-804”.

On pages 17 and 18, strike in their entirety the lines beginning with line 10 on page 17 through line 14 on page 18, inclusive.

AMENDMENT NO. 8

On page 18, after line 15, insert:
“4-401.

- (b) (1) "Crime of violence" means:
- (i) murder in any degree;
 - (ii) manslaughter;
 - (iii) kidnapping;
 - (iv) rape in any degree;
 - (v) assault in the first degree;
 - (vi) robbery under § 3-402 or § 3-403 of this article;

(Over)

(vii) burglary in any degree;

(viii) escape in the first degree; [or]

(ix) theft; OR

(X) AN ACT OF TERRORISM UNDER § 9-802 OF THIS ARTICLE.

(2) "Crime of violence" includes an attempt to commit a crime listed in paragraph (1) of this subsection.";

in line 16, strike "10." and substitute "8."; in line 17, strike "3-1001." and substitute "9-801."; in lines 18 and 19, strike "OR ATTEMPTED COMMISSION"; strike beginning with "AN" in line 19 down through "KIDNAPPING" in line 23 and substitute "ANY OF THE FOLLOWING ACTS WITH INTENT TO INTIMIDATE, COERCE, OR INSTILL FEAR IN A CIVILIAN POPULATION:

(1) THE HIGHJACKING OR SABOTAGE OF ANY CONVEYANCE, INCLUDING AN AIRCRAFT, VESSEL, OR VEHICLE;

(2) THE SEIZING OR DETAINING, AND THREATENING TO KILL, INJURE, OR CONTINUE TO DETAIN, ANOTHER INDIVIDUAL IN ORDER TO COMPEL A THIRD PERSON, INCLUDING A GOVERNMENTAL UNIT, TO DO OR ABSTAIN FROM DOING ANY ACT AS AN EXPLICIT OR IMPLICIT CONDITION FOR THE RELEASE OF THE INDIVIDUAL SEIZED OR DETAINED;

(3) AN ASSASSINATION; OR

(4) THE USE OF ANY OF THE FOLLOWING ITEMS:

(I) A BIOLOGICAL AGENT, CHEMICAL AGENT, OR NUCLEAR WEAPON OR DEVICE; OR

(II) AN EXPLOSIVE, FIREARM, OR OTHER WEAPON OR DESTRUCTIVE DEVICE, OTHER THAN FOR MERE MONETARY GAIN, WITH INTENT TO ENDANGER, DIRECTLY OR INDIRECTLY, THE SAFETY OF ONE OR MORE INDIVIDUALS OR TO CAUSE SUBSTANTIAL DAMAGE TO PROPERTY; OR

(5) AN ATTEMPT OR CONSPIRACY TO COMMIT AN ACT LISTED IN ITEMS (1) THROUGH (4) OF THIS SECTION”;

and in lines 24 and 28, strike “3-1002.” and “3-1003.”, respectively, and substitute “9-802.” and “9-803.”, respectively.

AMENDMENT NO. 9

On page 19, strike in their entirety lines 1 through 11, inclusive, and substitute:
“9-804.”

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CONCEAL” MEANS TO HIDE, SECRETE, OR KEEP OUT OF SIGHT.

(3) “HARBOR” MEANS TO PROVIDE FINANCIAL RESOURCES, TRANSPORTATION, FOOD, SHELTER, COMMUNICATIONS, SUPPORT, ASSISTANCE, OR OTHER AID MATERIAL TO OR IN SUPPORT OF THE COMMISSION OF AN ACT OF TERRORISM.”;

in line 12, strike “ANOTHER WHOM” and substitute “OR CONCEAL ANOTHER WHO”; in line 13, strike “HAS REASONABLE GROUNDS TO BELIEVE” and substitute “KNOWS OR SHOULD HAVE KNOWN”; in line 16, strike “10” and substitute “20”; and in line 17, strike “\$10,000” and substitute “\$25,000”.

AMENDMENT NO. 10

On page 19, after line 17, insert:

“9-805.

(A) IN ADDITION TO THE PENALTIES PROVIDED IN THIS SUBTITLE, A PERSON CONVICTED UNDER THIS SUBTITLE MAY BE ORDERED TO PAY RESTITUTION TO:

(1) A UNIT OF GOVERNMENT FOR ACTUAL COSTS REASONABLY INCURRED IN RESPONDING TO THE VIOLATION OF THIS SUBTITLE;

(2) AN OWNER OR TENANT OF A PROPERTY FOR THE ACTUAL VALUE OF ANY GOODS, SERVICES, OR INCOME LOST AS A RESULT OF A REASONABLE AND NECESSARY EVACUATION OF PROPERTY IN RESPONSE TO THE VIOLATION OF THIS SUBTITLE;

(3) A PERSON INJURED AS A RESULT OF THE VIOLATION OF THIS SUBTITLE; AND

(4) A SURVIVING SPOUSE, CHILD, OR DEPENDENT OF A PERSON KILLED AS A RESULT OF THE VIOLATION OF THIS SUBTITLE.

(B) IF THE FINDER OF FACT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT A PERSON CONVICTED UNDER THIS SUBTITLE KNOWINGLY COMMITTED THE VIOLATION OF THIS SUBTITLE IN FURTHERANCE OF A CONSPIRACY PERPETUATED BY AN ORGANIZATION, THE ORGANIZATION AND THE PERSON CONVICTED UNDER THIS SUBTITLE MAY BE HELD JOINTLY AND SEVERALLY LIABLE TO PAY RESTITUTION UNDER THIS SECTION.

(C) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A PERSON TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE.”.

AMENDMENT NO. 11

On pages 19 through 21, strike in their entirety the lines beginning with line 18 on page 19 through line 24 on page 21, inclusive.

On page 22, in lines 12 and 13, strike “OR A THREAT TO COMMIT AN ACT OF TERRORISM UNDER § 3-1002 OR § 3-1003” and substitute “UNDER § 9-802”; strike in their entirety lines 14 and 15; and in lines 16, 17, 18, 19, 20, 21, 22, and 24, strike “(17)”, “(16)”, “(18)”, “(19)”, “(20)”, “(21)”, “(22)”, and “(23)”, respectively, and substitute “(16)”, “(15)”, “(17)”, “(18)”, “(19)”, “(20)”, “(21)”, and “(22)”, respectively.

AMENDMENT NO. 12

On page 23, in line 11, after “(2)” insert:

“(I) THIS PARAGRAPH DOES NOT APPLY TO A HIGHWAY AS DEFINED IN § 8-101 OF THIS ARTICLE OR OTHER PUBLIC PROPERTY OR WATERWAY OPEN FOR PUBLIC CONVEYANCE.

“(II) FOR PURPOSES OF ESTABLISHING PERIMETER SECURITY AGAINST A THREAT OR ACT OF TERRORISM.”;

strike in their entirety lines 14 through 28, inclusive, and substitute:

“1. WITHIN 500 FEET OF PROPERTY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION; AND

2. ON OR WITHIN 500 FEET OF ANY OTHER PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE DEPARTMENT.”;
and in line 30, strike “PARAGRAPH (2)” and substitute “SUBSECTION (A)(2)”.

On page 25, in line 9, strike “MAY” and substitute “SHALL”.

AMENDMENT NO. 13

On pages 26 through 29, strike in their entirety the lines beginning with line 24 on page 26 through line 7 on page 29, inclusive.

On pages 31 through 33, strike in their entirety the lines beginning with line 23 on page 31

(Over)

through line 31 on page 33, inclusive.

On page 34, in line 27, strike “FELONY” and substitute “MISDEMEANOR”.

On page 35, in line 4, strike “FELONY” and substitute “MISDEMEANOR”.