

HOUSE BILL 74
EMERGENCY BILL

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2002 Regular Session
2lr0797
CF 2lr2014

(PRE-FILED)

By: **Delegates Hutchins and Owings**

Requested: November 1, 2001

Introduced and read first time: January 9, 2002

Assigned to: Rules and Executive Nominations

Re-referred to: Judiciary, February 4, 2002

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2002

CHAPTER _____

1 AN ACT concerning

2 **Wiretap and Electronic Surveillance - Terrorist Organizations**

3 FOR the purpose of adding offenses that are committed by or on behalf of an
4 organization that is designated as an international terrorist organization or
5 engaged in terrorist activity under federal law to those crimes for which
6 evidence may be gathered by interception of oral, wire, or electronic
7 communications under certain circumstances; adding offenses that are
8 committed by or on behalf of an organization that is designated as an
9 international terrorist organization or engaged in terrorist activity under
10 federal law to those crimes for which certain persons may apply to a judge for an
11 order authorizing the interception of oral, wire, or electronic communications;
12 making stylistic changes; ~~requiring a certain study and report to be made;~~
13 ~~providing for the termination of certain provisions of this Act~~ making this Act an
14 emergency measure; and generally relating to wiretapping and electronic
15 surveillance.

16 BY repealing and reenacting, with amendments,
17 Article - Courts and Judicial Proceedings
18 Section 10-402(c)(2) and 10-406
19 Annotated Code of Maryland
20 (1998 Replacement Volume and 2001 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 10-402.

3 (c) (2) (I) THIS PARAGRAPH APPLIES TO AN INTERCEPTION IN WHICH:4 1. THE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER OR
5 OTHER PERSON IS A PARTY TO THE COMMUNICATION; OR6 2. ONE OF THE PARTIES TO THE COMMUNICATION HAS
7 GIVEN PRIOR CONSENT TO THE INTERCEPTION.8 (II) It is lawful under this subtitle for an investigative or law
9 enforcement officer acting in a criminal investigation or any other person acting at
10 the prior direction and under the supervision of an investigative or law enforcement
11 officer to intercept a wire, oral, or electronic communication in order to provide
12 evidence of:13 1. OF the commission of:14 ~~(I)~~ A. [the offenses of murder, kidnapping, rape, a sexual offense
15 in the first or second degree, child abuse, child pornography, as defined under Article
16 27, §§ 419A and 419B of the Code, gambling, robbery under Article 27, § 486 or § 487
17 of the Code, any felony punishable under the "Arson and Burning" subheading of
18 Article 27, bribery, extortion, or dealing in controlled dangerous substances, including
19 violations of Article 27, § 286B or § 287A, fraudulent] MURDER;20 ~~(II)~~ B. KIDNAPPING;21 ~~(III)~~ C. RAPE;22 ~~(IV)~~ D. A SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE;23 ~~(V)~~ E. CHILD ABUSE;24 ~~(VI)~~ F. CHILD PORNOGRAPHY UNDER § 11-207 OR § 11-208 OF THE
25 CRIMINAL LAW ARTICLE;26 ~~(VII)~~ G. GAMBLING;27 ~~(VIII)~~ H. ROBBERY UNDER § 3-402 OR § 3-403 OF THE CRIMINAL
28 LAW ARTICLE;29 ~~(IX)~~ I. ~~ANY~~ A FELONY UNDER TITLE 6, SUBTITLE 1 OF THE
30 CRIMINAL LAW ARTICLE;31 ~~(X)~~ J. BRIBERY;32 ~~(XI)~~ K. EXTORTION;

1 ~~(XII)~~ L. DEALING IN A CONTROLLED DANGEROUS SUBSTANCE,
2 INCLUDING A VIOLATION OF § 5-617 OR § 5-619 OF THE CRIMINAL LAW ARTICLE;

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

5 ~~(XIV)~~ N. ~~OFFENSES~~ AN OFFENSE relating to destructive devices
6 under [Article 27, § 139C of the Code, or any] § 4-503 OF THE CRIMINAL LAW
7 ARTICLE;

8 ~~(XV)~~ ~~OFFENSES THAT ARE COMMITTED BY OR ON BEHALF OF AN~~
9 ~~ORGANIZATION THAT IS DESIGNATED AS AN INTERNATIONAL TERRORIST~~
10 ~~ORGANIZATION IN ACCORDANCE WITH 8 U.S.C. § 1189;~~

11 ~~(XVI)~~ A conspiracy or solicitation to commit [any of these offenses, or
12 where any] AN OFFENSE LISTED IN ITEMS (I) THROUGH (XV) OF THIS SUBSECTION;
13 OR

14 ~~(XVII)~~ IF:

15 1. A person has created a barricade [situation and probable]
16 SITUATION;

17 2. PROBABLE cause exists for the investigative or law
18 enforcement officer to believe a hostage or hostages may be [involved, where the]
19 INVOLVED; AND

20 3. A. THE person is a party to the [communication or one]
21 COMMUNICATION; OR

22 B. ONE of the parties to the communication has given prior
23 consent to the interception.

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

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

31 2. IF:

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

34 B. PROBABLE cause exists for the investigative or law
35 enforcement officer to believe a hostage or hostages may be involved[, where the

1 person is a party to the communication or one of the parties to the communication has
 2 given prior consent to the interception].

3 10-406.

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

9 (1) [the offense of murder, kidnapping, child pornography, as defined in
 10 Article 27, §§ 419A and 419B of the Code, gambling, robbery under Article 27, § 486 or
 11 § 487 of the Code, any felony punishable under the "Arson and Burning" subheading
 12 of Article 27 of this Code, bribery, extortion, or dealing in controlled dangerous
 13 substances, offenses] MURDER;

14 (2) KIDNAPPING;

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

17 (4) GAMBLING;

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

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

21 (7) BRIBERY;

22 (8) EXTORTION;

23 (9) DEALING IN A CONTROLLED DANGEROUS SUBSTANCE;

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

26 ~~(11) OFFENSES THAT ARE COMMITTED BY OR ON BEHALF OF AN~~
 27 ~~ORGANIZATION THAT IS DESIGNATED AS AN INTERNATIONAL TERRORIST~~
 28 ~~ORGANIZATION IN ACCORDANCE WITH 8 U.S.C. § 1189; OR~~

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

33 (12) A conspiracy or solicitation to commit [any of the foregoing offenses]
 34 AN OFFENSE LISTED IN ITEMS (1) THROUGH (11) OF THIS SUBSECTION.

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

3 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Department of~~
4 ~~State Police in consultation with the Office of the Attorney General shall study the~~
5 ~~use and effectiveness of this Act and shall submit a report to the General Assembly~~
6 ~~before December 1, 2006.~~

7 ~~SECTION 3. AND BE IT FURTHER ENACTED, That §§ 10-402(c)(2)(xv) and~~
8 ~~10-406(a)(11) of the Courts Article as enacted by this Act shall remain effective for a~~
9 ~~period of 5 years and, at the end of September 30, 2007, with no further action~~
10 ~~required by the General Assembly, this Act shall be abrogated and of no further force~~
11 ~~and effect.~~

12 ~~SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
13 ~~October 1, 2002.~~

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
15 measure, is necessary for the immediate preservation of the public health or safety,
16 has been passed by a yea and nay vote supported by three-fifths of all the members
17 elected to each of the two Houses of the General Assembly, and shall take effect from
18 the date it is enacted.