

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 380 (Senator Roesser)
Judicial Proceedings

Wiretap and Electronic Surveillance - Terrorist Organizations

This bill adds the following offenses to the list of offenses for which an officer may intercept a wire, oral, or electronic communication during an investigation: offenses committed by or on behalf of an organization that is designated as an international terrorist organization under federal law. The bill also adds these terrorist-related offenses to the list of offenses for which the Attorney General, State Prosecutor, or any State's Attorney may apply for an order authorizing an officer to intercept a wire, oral, or electronic communication as evidence of the commission of the crime.

The bill requires the Department of State Police, in consultation with the Office of the Attorney General, to study the use and effectiveness of the bill and to submit a report to the General Assembly before December 1, 2006.

The bill sunsets on September 30, 2007.

Fiscal Summary

State Effect: This bill is not expected to create more than a minimal number of new cases, which could be handled with existing budgeted resources. It is also expected that the required study could be undertaken with existing budgeted resources.

Local Effect: None -- see above.

Small Business Effect: None.

Analysis

Current Law: Law enforcement and investigative officers and persons acting under the direction or supervision of such officers may intercept a wire, oral, or electronic communication as evidence in a criminal investigation of the following offenses: murder, kidnapping, rape, a sexual offense in the first or second degree, child abuse, child pornography, gambling, robbery, arson and burning felonies, bribery, extortion, dealing in controlled dangerous substances, fraudulent insurance acts, offenses relating to destructive devices, any conspiracy or solicitation to commit any of these offenses, or where any person has created a barricade situation and 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.

In a subset of these offenses, the Attorney General, State Prosecutor, or any State's Attorney may apply to a judge for an order authorizing an investigative or law enforcement officer to intercept a wire, oral, or electronic communication as evidence of the commission of the crime.

Background: In the wake of the September 11, 2001 attacks, the U.S. Congress passed the USA PATRIOT Act, which in part added terrorism to the list of offenses for obtaining a wiretap under federal law. The affected chapter of the U.S. Code (Title 19 – Crimes and Criminal Procedure, Chapter 113B Terrorism), defines “international terrorism” as activities that:

- involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States or of any state;
- appear to be intended to: (1) intimidate or coerce a civilian population; (2) influence the policy of a government by intimidation or coercion; or (3) affect the conduct of a government by assassination or kidnapping; and
- occur primarily outside the United States.

The federal law referenced in this bill, 8 U.S.C. 1189, is part of U.S. immigration law. 8 U.S.C. 1189 defines a “foreign terrorist organization” as one where the Secretary of State finds that:

- the organization is a foreign organization;
- the organization engages in terrorist activity; and

- the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States.

“Terrorist activity” is defined as any unlawful activity that involves any of the following:

- the hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle);
- the seizing or detaining, and threatening to kill, injure, or continue to detain, an individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained;
- a violent attack upon an internationally protected person or upon the liberty of such a person;
- an assassination;
- the use of any –
 - biological agent, chemical agent, or nuclear weapon or device; or
 - explosive or firearm (other than for mere personal monetary gain);with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property; or
- a threat, attempt, or conspiracy to do any of the foregoing.

Currently, there are 28 groups designated as foreign terrorist organizations. The State Department is the designated lead agency for terrorism overseas.

There is no universally accepted definition of international terrorism; however, all current definitions exclude violence for financial profit or religious motivation. Perl, *Terrorism, the Future, and U.S. Foreign Policy* (CRS Report IB95112), Library of Congress Congressional Research Service, Sept. 12, 2001.

Executive Order 13224, signed by President Bush on September 23, 2001, blocks the assets of organizations and individuals linked to terrorism. Currently, there are 168 such groups, entities, and individuals covered by the executive order. The 28 organizations designated by the Secretary of State as foreign terrorist organizations are included in this list.

Additional Information

Prior Introductions: None.

Cross File: HB 74 (Delegates Hutchins and Owings) – Judiciary.

Information Source(s): State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), State Prosecutor, Department of Public Safety and Correctional Services, Office of the Attorney General, Department of Legislative Services

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