

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 74

(Delegates Hutchins and Owings)

Judiciary

Judicial Proceedings

Wiretap and Electronic Surveillance - Terrorist Organizations

This emergency 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 a foreign terrorist organization or engaged in terrorist activity as defined 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.

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.

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. Section 411 of the Act defines the term "engage in terrorist activity" to mean, in an individual capacity or as a member of an organization, to:

- commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;
- prepare or plan a terrorist activity;
- gather information on potential targets for terrorist activity;
- solicit funds or other things of value for a terrorist activity or a terrorist organization (with limited exceptions);
- solicit any individual to engage in one of the above or below activities or for membership in a terrorist organization (with limited exceptions); or
- commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training -- (a) for the commission of a terrorist activity; (b) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity; or (c) to a terrorist organization (with limited exceptions).

The other 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.

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

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: SB 380 (Senator Roesser) – Judicial Proceedings.

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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