
By: **Delegates Shewell, Bartlett, Cluster, Cryor, Dumais, Eckardt, Edwards,
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Introduced and read first time: January 19, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Wiretapping and Electronic Surveillance - Sexual Abuse of a Minor**

3 FOR the purpose of providing that it is lawful for a certain investigative or law
4 enforcement officer or certain other person to intercept a wire, oral, or electronic
5 communication in order to provide evidence of the commission of certain crimes;
6 authorizing a judge, in accordance with certain provisions, to grant an order
7 authorizing the interception of wire, oral, or electronic communications by
8 investigative or law enforcement officers when the interception may provide or
9 has provided evidence of the commission of certain crimes; clarifying certain
10 language; and generally relating to interception of wire, oral, or electronic
11 communications.

12 BY repealing and reenacting, with amendments,
13 Article - Courts and Judicial Proceedings
14 Section 10-402 and 10-406
15 Annotated Code of Maryland
16 (2002 Replacement Volume and 2005 Supplement)

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

19 **Article - Courts and Judicial Proceedings**

20 10-402.

21 (a) Except as otherwise specifically provided in this subtitle it is unlawful for
22 any person to:

23 (1) Wilfully intercept, endeavor to intercept, or procure any other person
24 to intercept or endeavor to intercept, any wire, oral, or electronic communication;

25 (2) Wilfully disclose, or endeavor to disclose, to any other person the
26 contents of any wire, oral, or electronic communication, knowing or having reason to

1 know that the information was obtained through the interception of a wire, oral, or
2 electronic communication in violation of this subtitle; or

3 (3) Wilfully use, or endeavor to use, the contents of any wire, oral, or
4 electronic communication, knowing or having reason to know that the information
5 was obtained through the interception of a wire, oral, or electronic communication in
6 violation of this subtitle.

7 (b) Any person who violates subsection (a) of this section is guilty of a felony
8 and is subject to imprisonment for not more than 5 years or a fine of not more than
9 \$10,000, or both.

10 (c) (1) (i) It is lawful under this subtitle for an operator of a switchboard,
11 or an officer, employee, or agent of a provider of wire or electronic communication
12 service, whose facilities are used in the transmission of a wire or electronic
13 communication to intercept, disclose, or use that communication in the normal course
14 of his employment while engaged in any activity which is a necessary incident to the
15 rendition of his service or to the protection of the rights or property of the provider of
16 that service, except that a provider of wire communications service to the public may
17 not utilize service observing or random monitoring except for mechanical or service
18 quality control checks.

19 (ii) 1. It is lawful under this subtitle for a provider of wire or
20 electronic communication service, its officers, employees, and agents, landlords,
21 custodians or other persons to provide information, facilities, or technical assistance
22 to persons authorized by federal or State law to intercept wire, oral, or electronic
23 communications or to conduct electronic surveillance, if the provider, its officers,
24 employees, or agents, landlord, custodian, or other specified person has been provided
25 with a court order signed by the authorizing judge directing the provision of
26 information, facilities, or technical assistance.

27 2. The order shall set forth the period of time during which
28 the provision of the information, facilities, or technical assistance is authorized and
29 specify the information, facilities, or technical assistance required. A provider of wire
30 or electronic communication service, its officers, employees, or agents, or landlord,
31 custodian, or other specified person may not disclose the existence of any interception
32 or surveillance or the device used to accomplish the interception or surveillance with
33 respect to which the person has been furnished an order under this subparagraph,
34 except as may otherwise be required by legal process and then only after prior
35 notification to the judge who granted the order, if appropriate, or the State's Attorney
36 of the county where the device was used. Any such disclosure shall render the person
37 liable for compensatory damages. No cause of action shall lie in any court against any
38 provider of wire or electronic communication service, its officers, employees, or
39 agents, landlord, custodian, or other specified person for providing information,
40 facilities, or assistance in accordance with the terms of a court order under this
41 subtitle.

42 (2) (i) This paragraph applies to an interception in which:

1 P. An offense relating to obstructing justice under § 9-302, §
2 9-303, or § 9-305 of the Criminal Law Article; [or]

3 Q. SEXUAL ABUSE OF A MINOR UNDER § 3-602 OF THE
4 CRIMINAL LAW ARTICLE; OR

5 [Q.] R. A conspiracy or solicitation to commit an offense listed
6 in items A through [P] Q of this item; or

7 2. If:

8 A. A person has created a barricade situation; and

9 B. Probable cause exists for the investigative or law
10 enforcement officer to believe a hostage or hostages may be involved.

11 (3) It is lawful under this subtitle for a person to intercept a wire, oral, or
12 electronic communication where the person is a party to the communication and
13 where all of the parties to the communication have given prior consent to the
14 interception unless the communication is intercepted for the purpose of committing
15 any criminal or tortious act in violation of the Constitution or laws of the United
16 States or of this State.

17 (4) (i) It is lawful under this subtitle for a law enforcement officer in
18 the course of the officer's regular duty to intercept an oral communication if:

19 1. The law enforcement officer initially lawfully detained a
20 vehicle during a criminal investigation or for a traffic violation;

21 2. The law enforcement officer is a party to the oral
22 communication;

23 3. The law enforcement officer has been identified as a law
24 enforcement officer to the other parties to the oral communication prior to any
25 interception;

26 4. The law enforcement officer informs all other parties to
27 the communication of the interception at the beginning of the communication; and

28 5. The oral interception is being made as part of a video tape
29 recording.

30 (ii) If all of the requirements of subparagraph (i) of this paragraph
31 are met, an interception is lawful even if a person becomes a party to the
32 communication following:

33 1. The identification required under subparagraph (i)3 of
34 this paragraph; or

35 2. The informing of the parties required under subparagraph
36 (i)4 of this paragraph.

1 (5) It is lawful under this subtitle for an officer, employee, or agent of a
2 governmental emergency communications center to intercept a wire, oral, or
3 electronic communication where the officer, agent, or employee is a party to a
4 conversation concerning an emergency.

5 (6) (i) It is lawful under this subtitle for law enforcement personnel to
6 utilize body wires to intercept oral communications in the course of a criminal
7 investigation if there is reasonable cause to believe that a law enforcement officer's
8 safety may be in jeopardy.

9 (ii) Communications intercepted under this paragraph may not be
10 recorded, and may not be used against the defendant in a criminal proceeding.

11 (7) It is lawful under this subtitle for a person:

12 (i) To intercept or access an electronic communication made
13 through an electronic communication system that is configured so that the electronic
14 communication is readily accessible to the general public;

15 (ii) To intercept any radio communication that is transmitted:

16 1. By any station for the use of the general public, or that
17 relates to ships, aircraft, vehicles, or persons in distress;

18 2. By any governmental, law enforcement, civil defense,
19 private land mobile, or public safety communications system, including police and
20 fire, readily accessible to the general public;

21 3. By a station operating on an authorized frequency within
22 the bands allocated to the amateur, citizens band, or general mobile radio services; or

23 4. By any marine or aeronautical communications system;

24 (iii) To intercept any wire or electronic communication the
25 transmission of which is causing harmful interference to any lawfully operating
26 station or consumer electronic equipment, to the extent necessary to identify the
27 source of the interference; or

28 (iv) For other users of the same frequency to intercept any radio
29 communication made through a system that utilizes frequencies monitored by
30 individuals engaged in the provision or the use of the system, if the communication is
31 not scrambled or encrypted.

32 (8) It is lawful under this subtitle:

33 (i) To use a pen register or trap and trace device as defined under
34 § 10-4B-01 of this title; or

35 (ii) For a provider of electronic communication service to record the
36 fact that a wire or electronic communication was initiated or completed in order to

1 protect the provider, another provider furnishing service toward the completion of the
2 wire or electronic communication, or a user of that service, from fraudulent, unlawful,
3 or abusive use of the service.

4 (9) It is lawful under this subtitle for a person to intercept a wire or
5 electronic communication in the course of a law enforcement investigation of possible
6 telephone solicitation theft if:

7 (i) The person is an investigative or law enforcement officer or is
8 acting under the direction of an investigative or law enforcement officer; and

9 (ii) The person is a party to the communication and participates in
10 the communication through the use of a telephone instrument.

11 (10) It is lawful under this subtitle for a person to intercept a wire, oral, or
12 electronic communication in the course of a law enforcement investigation in order to
13 provide evidence of the commission of vehicle theft if:

14 (i) The person is an investigative or law enforcement officer or is
15 acting under the direction of an investigative or law enforcement officer; and

16 (ii) The device through which the interception is made has been
17 placed within a vehicle by or at the direction of law enforcement personnel under
18 circumstances in which it is thought that vehicle theft may occur.

19 (d) (1) Except as provided in paragraph (2) of this subsection, a person or
20 entity providing an electronic communication service to the public may not
21 intentionally divulge the contents of any communication (other than one to the person
22 or entity providing the service, or an agent of the person or entity) while in
23 transmission on that service to any person or entity other than an addressee or
24 intended recipient of the communication or an agent of the addressee or intended
25 recipient.

26 (2) A person or entity providing electronic communication service to the
27 public may divulge the contents of a communication:

28 (i) As otherwise authorized by federal or State law;

29 (ii) To a person employed or authorized, or whose facilities are used,
30 to forward the communication to its destination; or

31 (iii) That were inadvertently obtained by the service provider and
32 that appear to pertain to the commission of a crime, if the divulgence is made to a law
33 enforcement agency.

34 (e) (1) Except as provided in paragraph (2) of this subsection or in
35 subsection (f) of this section, a person who violates subsection (d) of this section is
36 subject to a fine of not more than \$10,000 or imprisonment for not more than 5 years,
37 or both.

1 (2) If an offense is a first offense under paragraph (1) of this subsection
2 and is not for a tortious or illegal purpose or for purposes of direct or indirect
3 commercial advantage or private commercial gain, and the wire or electronic
4 communication with respect to which the offense occurred is a radio communication
5 that is not scrambled or encrypted, and:

6 (i) The communication is not the radio portion of a cellular
7 telephone communication, a public land mobile radio service communication, or a
8 paging service communication, the offender is subject to a fine of not more than
9 \$1,000 or imprisonment for not more than 1 year, or both; or

10 (ii) The communication is the radio portion of a cellular telephone
11 communication, a public land mobile radio service communication, or a paging service
12 communication, the offender is subject to a fine of not more than \$500.

13 (3) Unless the conduct is for the purpose of direct or indirect commercial
14 advantage or private financial gain, conduct which would otherwise be an offense
15 under this subsection is not an offense under this subsection if the conduct consists of
16 or relates to the interception of a satellite transmission that is not encrypted or
17 scrambled and that is transmitted:

18 (i) To a broadcasting station for purposes of retransmission to the
19 general public; or

20 (ii) As an audio subcarrier intended for redistribution to facilities
21 open to the public, but not including data transmissions or telephone calls.

22 (f) (1) A person who engages in conduct in violation of this subtitle is subject
23 to suit by the federal government or by the State in a court of competent jurisdiction,
24 if the communication is:

25 (i) A private satellite video communication that is not scrambled or
26 encrypted and the conduct in violation of this subtitle is the private viewing of that
27 communication, and is not for a tortious or illegal purpose, or for purposes of direct or
28 indirect commercial advantage, or private commercial gain; or

29 (ii) A radio communication that is transmitted on frequencies
30 allocated under Subpart D of Part 74 of the Rules of the Federal Communications
31 Commission that is not scrambled or encrypted and the conduct in violation of this
32 subtitle is not for a tortious or illegal purpose or for purpose of direct or indirect
33 commercial advantage or private commercial gain.

34 (2) (i) The State is entitled to appropriate injunctive relief in an action
35 under this subsection if the violation is the person's first offense under subsection
36 (e)(1) of this section and the person has not been found liable in a prior civil action
37 under § 10-410 of this subtitle.

38 (ii) In an action under this subsection, if the violation is a second or
39 subsequent offense under subsection (e)(1) of this section or if the person has been

1 found liable in a prior civil action under § 10-410 of this subtitle, the person is subject
2 to a mandatory civil fine of not less than \$500.

3 (3) The court may use any means within its authority to enforce an
4 injunction issued under paragraph (2)(i) of this subsection, and shall impose a civil
5 fine of not less than \$500 for each violation of an injunction issued under paragraph
6 (2)(i) of this subsection.

7 10-406.

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

13 (1) Murder;

14 (2) Kidnapping;

15 [(3) Child pornography under § 11-207, § 11-208, or § 11-208.1 of the
16 Criminal Law Article;

17 (4) Gambling;

18 (5) Robbery under § 3-402 or § 3-403 of the Criminal Law Article;

19 (6) A felony under Title 6, Subtitle 1 of the Criminal Law Article;

20 (7) Bribery;

21 (8) Extortion;

22 (9) Dealing in a controlled dangerous substance;

23 (10) An offense relating to destructive devices under § 4-503 of the
24 Criminal Law Article;

25 (11) Sexual solicitation of a minor under § 3-324 of the Criminal Law
26 Article;

27 (12) An offense relating to obstructing justice under § 9-302, § 9-303, or §
28 9-305 of the Criminal Law Article; or

29 (13) A conspiracy or solicitation to commit an offense listed in items (1)
30 through (12) of this subsection.]

31 (3) RAPE;

32 (4) A SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE;

- 1 (5) CHILD ABUSE IN THE FIRST OR SECOND DEGREE;
- 2 (6) CHILD PORNOGRAPHY UNDER § 11-207, § 11-208, OR § 11-208.1 OF THE
3 CRIMINAL LAW ARTICLE;
- 4 (7) GAMBLING;
- 5 (8) ROBBERY UNDER § 3-402 OR § 3-403 OF THE CRIMINAL LAW ARTICLE;
- 6 (9) A FELONY UNDER TITLE 6, SUBTITLE 1 OF THE CRIMINAL LAW
7 ARTICLE;
- 8 (10) BRIBERY;
- 9 (11) EXTORTION;
- 10 (12) DEALING IN A CONTROLLED DANGEROUS SUBSTANCE, INCLUDING A
11 VIOLATION OF § 5-617 OR § 5-619 OF THE CRIMINAL LAW ARTICLE;
- 12 (13) A FRAUDULENT INSURANCE ACT, AS DEFINED IN TITLE 27, SUBTITLE
13 4 OF THE INSURANCE ARTICLE;
- 14 (14) AN OFFENSE RELATING TO DESTRUCTIVE DEVICES UNDER § 4-503
15 OF THE CRIMINAL LAW ARTICLE;
- 16 (15) SEXUAL SOLICITATION OF A MINOR UNDER § 3-324 OF THE CRIMINAL
17 LAW ARTICLE;
- 18 (16) AN OFFENSE RELATING TO OBSTRUCTING JUSTICE UNDER § 9-302, §
19 9-303, OR § 9-305 OF THE CRIMINAL LAW ARTICLE;
- 20 (17) SEXUAL ABUSE OF A MINOR UNDER § 3-602 OF THE CRIMINAL LAW
21 ARTICLE; OR
- 22 (18) A CONSPIRACY OR SOLICITATION TO COMMIT AN OFFENSE LISTED IN
23 ITEMS (1) THROUGH (17) OF THIS SUBSECTION.
- 24 (b) No application or order shall be required if the interception is lawful under
25 the provisions of § 10-402(c) of this subtitle.
- 26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2006.