

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 183

(Delegate Shewell, *et al.*)

Judiciary

Judicial Proceedings

Wiretapping and Electronic Surveillance - Sexual Abuse of a Minor

This bill adds to the list of eligible offenses for which investigative officers, law enforcement officers, the Attorney General, the State Prosecutor, or any State's Attorney may intercept or obtain judicial orders to intercept a wire, oral, or electronic communication.

Fiscal Summary

State Effect: Any increase in wiretaps or requests for judicial orders for wiretaps that occur as a result of this bill could be handled with existing resources.

Local Effect: Any increase in wiretaps or requests for judicial orders for wiretaps in local jurisdictions that occur as a result of this bill could be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: This bill adds sexual abuse of a minor under § 3-602 of the Criminal Law Article to the list of offenses for which an investigative or law enforcement officer acting in a criminal investigation, or any other person acting under law enforcement direction and supervision, may intercept a wire, oral, or electronic communication ("wiretap") for evidence gathering purposes. The bill also clarifies that child abuse in the first or second degree are both eligible offenses.

The bill also adds the following offenses to the list of offenses for which the Attorney General, State Prosecutor, or any State's Attorney may apply for a judicial order authorizing law enforcement to wiretap for evidence gathering purposes:

- rape;
- sexual offense in the first or second degree;
- child abuse in the first or second degree;
- insurance fraud; and
- sexual abuse of a minor under § 3-602 of the Criminal Law Article.

Current Law: Under Maryland's Wiretap Act, it is generally unlawful to willfully intercept an oral, wire, or electronic communication without the consent of all parties to the communication. Violation is a felony punishable by imprisonment for up to five years and/or a fine of up to \$10,000. However, it is lawful 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 covered communication in order to provide evidence of the commission, conspiracy to commit, or solicitation to commit any of the following crimes:

- murder;
- kidnapping;
- rape;
- a sexual offense in the first or second degree;
- child abuse;
- child pornography under § 11-207, § 11-208, or § 11-208.1 of the Criminal Law Article;
- gambling;
- robbery (with or without a dangerous weapon);
- arson or other malicious burning (felonies only);
- bribery;
- extortion;
- dealing in a controlled dangerous substance;
- insurance fraud;
- manufacture or possession of a device containing explosive, incendiary, or toxic material;
- sexual solicitation of a minor;

- inducing false testimony or avoidance of subpoena;
- retaliation for testimony; and
- intimidating or corrupting a juror.

Wiretapping is also authorized if a person has created a barricade situation, and there is probable cause to believe a hostage or hostages may be involved.

This authority applies when the investigative or law enforcement officer or other person is a party to the communication, or one of the parties to the communication has given prior consent to the communication.

The Attorney General, State Prosecutor, or any State's Attorney may apply for a judicial order authorizing law enforcement to wiretap in order to provide evidence of the commission, conspiracy to commit, or solicitation to commit any of the following crimes:

- murder;
- kidnapping;
- child pornography under § 11-207, § 11-208, or § 11-208.1 of the Criminal Law Article;
- gambling;
- robbery (with or without a dangerous weapon);
- arson or other malicious burning (felonies only);
- bribery;
- extortion;
- dealing in a controlled dangerous substance;
- an offense related to destructive devices;
- sexual solicitation of a minor;
- inducing false testimony or avoidance of subpoena;
- retaliation for testimony; and
- intimidating or corrupting a juror.

Background: Chapter 273 of 2002 deleted sexual abuse of a minor from the child abuse statute (§ 3-601 of the Criminal Law Article) and moved it to its current location under § 3-602 of the Criminal Law Article. Chapter 167 of 2003 rewrote § 3-601 to differentiate between first and second degree child abuse. With the changes proposed by this bill, the Attorney General, State Prosecutor, or any State's Attorney would be able to obtain

judicial orders for wiretaps for the same offenses for which law enforcement officers are authorized to wiretap.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2006
ncs/jr

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