

# HOUSE BILL 1094

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CF SB 698

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By: **Delegates Sophocleus, Anderson, Barnes, Dumais, Kelly, Levi, McComas,  
and Ramirez**

Introduced and read first time: February 14, 2007

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Interception of Oral Communications – School Vehicles**

3 FOR the purpose of providing that it is lawful for a person to intercept an oral  
4 communication on certain school vehicles and passenger buses being used to  
5 transfer children, students, or teachers for educational purposes or in  
6 connection with a school activity; defining certain terms; and generally relating  
7 to the interception of oral communications.

8 BY repealing and reenacting, with amendments,  
9 Article – Courts and Judicial Proceedings  
10 Section 10–402(c)  
11 Annotated Code of Maryland  
12 (2006 Replacement Volume)

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

15 **Article – Courts and Judicial Proceedings**

16 10–402.

17 (c) (1) (i) It is lawful under this subtitle for an operator of a  
18 switchboard, or an officer, employee, or agent of a provider of wire or electronic  
19 communication service, whose facilities are used in the transmission of a wire or  
20 electronic communication to intercept, disclose, or use that communication in the

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 normal course of his employment while engaged in any activity which is a necessary  
2 incident to the rendition of his service or to the protection of the rights or property of  
3 the provider of that service, except that a provider of wire communications service to  
4 the public may not utilize service observing or random monitoring except for  
5 mechanical or service quality control checks.

6 (ii) 1. It is lawful under this subtitle for a provider of wire or  
7 electronic communication service, its officers, employees, and agents, landlords,  
8 custodians or other persons to provide information, facilities, or technical assistance to  
9 persons authorized by federal or State law to intercept wire, oral, or electronic  
10 communications or to conduct electronic surveillance, if the provider, its officers,  
11 employees, or agents, landlord, custodian, or other specified person has been provided  
12 with a court order signed by the authorizing judge directing the provision of  
13 information, facilities, or technical assistance.

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

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

30 1. The investigative or law enforcement officer or other  
31 person is a party to the communication; or

32 2. One of the parties to the communication has given  
33 prior consent to the interception.

34 (ii) It is lawful under this subtitle for an investigative or law  
35 enforcement officer acting in a criminal investigation or any other person acting at the  
36 prior direction and under the supervision of an investigative or law enforcement officer  
37 to intercept a wire, oral, or electronic communication in order to provide evidence:

- 1                                   1.    Of the commission of:
- 2                                   A.    Murder;
- 3                                   B.    Kidnapping;
- 4                                   C.    Rape;
- 5                                   D.    A sexual offense in the first or second degree;
- 6                                   E.    Child abuse in the first or second degree;
- 7                                   F.    Child pornography under § 11–207, § 11–208, or §  
8 11–208.1 of the Criminal Law Article;
- 9                                   G.    Gambling;
- 10                                  H.    Robbery under § 3–402 or § 3–403 of the Criminal  
11 Law Article;
- 12                                  I.    A felony under Title 6, Subtitle 1 of the Criminal Law  
13 Article;
- 14                                  J.    Bribery;
- 15                                  K.    Extortion;
- 16                                  L.    Dealing in a controlled dangerous substance,  
17 including a violation of § 5–617 or § 5–619 of the Criminal Law Article;
- 18                                  M.    A fraudulent insurance act, as defined in Title 27,  
19 Subtitle 4 of the Insurance Article;
- 20                                  N.    An offense relating to destructive devices under §  
21 4–503 of the Criminal Law Article;
- 22                                  O.    Sexual solicitation of a minor under § 3–324 of the  
23 Criminal Law Article;
- 24                                  P.    An offense relating to obstructing justice under §  
25 9–302, § 9–303, or § 9–305 of the Criminal Law Article;

1 Q. Sexual abuse of a minor under § 3–602 of the  
2 Criminal Law Article; or

3 R. A conspiracy or solicitation to commit an offense listed  
4 in items A through Q of this item; or

5 2. If:

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

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

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

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

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

19 2. The law enforcement officer is a party to the oral  
20 communication;

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

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

26 5. The oral interception is being made as part of a video  
27 tape recording.

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

1                   1.     The identification required under subparagraph (i)<sup>3</sup> of  
2 this paragraph; or

3                   2.     The informing of the parties required under  
4 subparagraph (i)<sup>4</sup> of this paragraph.

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

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

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

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

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

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

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

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

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

28                   4.     By any marine or aeronautical communications  
29 system;

30                   (iii)  To intercept any wire or electronic communication the  
31 transmission of which is causing harmful interference to any lawfully operating

1 station or consumer electronic equipment, to the extent necessary to identify the  
2 source of the interference; or

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

7 (8) It is lawful under this subtitle:

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

10 (ii) For a provider of electronic communication service to record  
11 the fact that a wire or electronic communication was initiated or completed in order to  
12 protect the provider, another provider furnishing service toward the completion of the  
13 wire or electronic communication, or a user of that service, from fraudulent, unlawful,  
14 or abusive use of the service.

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

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

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

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

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

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

30 (11) (I) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS  
31 HAVE THE MEANINGS INDICATED.

1                                   **2. “PASSENGER BUS” MEANS A VEHICLE**  
2 **REGISTERED AS A CLASS P (PASSENGER BUS) VEHICLE UNDER § 13-933 OF THE**  
3 **TRANSPORTATION ARTICLE.**

4                                   **3. “SCHOOL VEHICLE” MEANS A VEHICLE**  
5 **REGISTERED AS A CLASS H (SCHOOL) VEHICLE UNDER § 13-932 OF THE**  
6 **TRANSPORTATION ARTICLE.**

7                                   **(II) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PERSON TO**  
8 **INTERCEPT AN ORAL COMMUNICATION ON A SCHOOL VEHICLE OR PASSENGER**  
9 **BUS THAT IS BEING USED TO TRANSPORT CHILDREN, STUDENTS, OR TEACHERS**  
10 **FOR EDUCATIONAL PURPOSES OR IN CONNECTION WITH A SCHOOL ACTIVITY.**

11                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12                   October 1, 2007.