

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 878
Judicial Proceedings

(Senator Brochin)

Criminal Law - Lawful Interception of Communications - Additional Crimes

This bill adds first degree assault and the attempt to commit specified offenses to the list of eligible offenses for which it is lawful for law enforcement officers and certain others to intercept communications to provide evidence as part of a criminal investigation.

Fiscal Summary

State Effect: The bill would not materially affect State finances.

Local Effect: The bill would not materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through and illegal intercept; and
- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

However, it is lawful for law enforcement officers and persons acting with the prior direction and under the supervision of law enforcement officials to intercept communications as part of a criminal investigation to provide evidence of the commission of the following crimes:

- murder;
- kidnapping;
- rape;
- sexual offense in the first or second degree;
- child abuse in the first or second degree;
- child pornography;
- gambling;
- robbery;
- arson and related felonies;
- bribery;
- extortion;
- dealing in a controlled dangerous substance;
- fraudulent insurance act;
- manufacturer or possession of destructive device;
- sexual solicitation or abuse of a minor;
- obstruction of justice; and
- a conspiracy or solicitation to commit any of the above crimes.

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.

Several other exceptions to this prohibition exist, including:

- Providers of wire or electronic communications services and their agents or employee, may provide information or assistance to persons authorized by law to intercept communications, or conduct electronic surveillance if the provider has been provided with a court order.
- A person may intercept communications where all parties to the communication have given consent, unless the communication is intercepted for the purpose of committing a tortious or criminal act.

- An employee or agent of an emergency communications center may intercept communications concerning an emergency, where that person is a party to the communication.
- Law enforcement personnel may utilize body wires to intercept oral communication if there is reasonable cause to believe a law enforcement officer's safety may be jeopardy.
- A person may intercept electronic or radio communications through a communications system accessible to the general public.
- Law enforcement may place a device within a vehicle to intercept communication in order to provide evidence of vehicle theft.

Generally, a person who violates State eavesdropping or wiretapping laws is guilty of a felony and is subject to maximum penalties of a \$10,000 fine and/or five years imprisonment.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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nas/jr

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