

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 373
Judiciary

(Charles County Delegation)

Criminal Law - Lawful Wiretapping - Sexual Offense in the Third Degree

This bill adds third degree sexual 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 does not materially affect State finances.

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

Small Business Effect: None.

Analysis

Current Law:

State Wiretapping Laws

Except as otherwise specified 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 an 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;
- manufacture 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 employees 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 in 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 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.

Third Degree Sexual Offenses

In general, the following are considered sexual offenses in the third degree:

- engaging in nonconsensual sexual contact with an individual while: (1) employing or displaying a dangerous weapon; (2) inflicting serious physical injury on the victim or another while committing the crime; (3) threatening or placing the victim in fear that someone known to the victim will be imminently subject to death, strangulation, kidnapping, or serious physical injury; or (4) being aided and abetted by another while committing the aforementioned acts;
- engaging in sexual contact with an individual who is mentally defective, mentally incapacitated, or physically helpless and the person performing the act knew or reasonably should have known of the individual's status;
- engaging in sexual contact with another if the victim is younger than age 14 and the person performing the sexual contact is at least four years older than the victim; and
- engaging in a sexual act or vaginal intercourse with another if the victim is age 14 or 15 and the person performing the sexual act is at least age 21.

The terms "sexual act" and "sexual contact" have specific definitions which are in State law. (See Criminal Law Article §§ 3-301 and 3-307.)

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mcp/kdm

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