

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 314
Judiciary

(Delegate Smigiel, *et al.*)

Criminal Procedure - Wiretapping - Evidence of Sexual Offense Against or Sexual Abuse of a Child

This bill authorizes an intercepted wire, oral, or electronic communication that shows evidence of a sexual offense in the first or second degree involving a victim younger than the age of 14 years or sexual abuse of a minor younger than the age of 14 years to be received in evidence in a criminal proceeding against a defendant being prosecuted for the offense.

Fiscal Summary

State Effect: None. The bill is procedural in nature and is not expected to materially affect State finances.

Local Effect: None. The bill is procedural in nature and is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Generally, whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived from the contents may be used as evidence if disclosure of the information would be in violation of the Maryland Wiretapping and Electronic Surveillance Act. The contents of any wire, oral, or electronic communication intercepted in another state or U.S. territory in accordance with the applicable laws of that jurisdiction may be admitted as evidence, even if the interception would have violated Maryland's laws had the interception been

made in this State, if (1) at least one of the parties to the communication was outside this State during the communication; (2) the interception was not made as part of or in furtherance of an investigation conducted by or on behalf of law enforcement officials in this State; and (3) all parties to the communication were co-conspirators in a crime of violence as defined by Maryland 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 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 the general prohibition against wiretapping exist, including:

- providers of wire or electronic communications services 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 an 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; or
- law enforcement may place a device within a vehicle to intercept a communication to provide evidence of vehicle theft.

State Expenditures: The Office of the Public Defender (OPD) advises that should the bill's expansion of admissible evidence result in 80 additional prosecutions, OPD would require one-half of an assistant public defender position.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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