

HOUSE BILL 45

E1, E2

11r0304

By: **Delegates Waldstreicher, Anderson, Clippinger, and Dumais**

Introduced and read first time: January 18, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Interception of Oral Communications – Law Enforcement**
3 **Officers**

4 FOR the purpose of authorizing a law enforcement officer to intercept certain oral
5 communications when a vehicle is detained for certain purposes without first
6 notifying all other parties to the communication of the interception; creating an
7 exception to the prohibition against willfully intercepting certain
8 communications for a person who intercepts an oral communication made by a
9 law enforcement officer under certain circumstances; and generally relating to
10 the interception of oral communications made to and by law enforcement
11 officers.

12 BY repealing and reenacting, without amendments,
13 Article – Courts and Judicial Proceedings
14 Section 10–402(a) and (b)
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2010 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 10–402(c)(4)
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2010 Supplement)

22 BY adding to
23 Article – Courts and Judicial Proceedings
24 Section 10–402(c)(11)
25 Annotated Code of Maryland
26 (2006 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Courts and Judicial Proceedings**

4 10–402.

5 (a) Except as otherwise specifically provided in this subtitle it is unlawful for
6 any person to:

7 (1) Willfully intercept, endeavor to intercept, or procure any other
8 person to intercept or endeavor to intercept, any wire, oral, or electronic
9 communication;

10 (2) Willfully disclose, or endeavor to disclose, to any other person the
11 contents of any wire, oral, or electronic communication, knowing or having reason to
12 know that the information was obtained through the interception of a wire, oral, or
13 electronic communication in violation of this subtitle; or

14 (3) Willfully use, or endeavor to use, the contents of any wire, oral, or
15 electronic communication, knowing or having reason to know that the information was
16 obtained through the interception of a wire, oral, or electronic communication in
17 violation of this subtitle.

18 (b) Any person who violates subsection (a) of this section is guilty of a felony
19 and is subject to imprisonment for not more than 5 years or a fine of not more than
20 \$10,000, or both.

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

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

25 2. The law enforcement officer is a party to the oral
26 communication;

27 3. The law enforcement officer has been identified as a
28 law enforcement officer to the other parties to the oral communication prior to any
29 interception; **AND**

30 4. [The law enforcement officer informs all other parties
31 to the communication of the interception at the beginning of the communication; and

32 5.] The oral interception is being made as part of a video
33 tape recording.

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

4 1. The] THE identification required under subparagraph
5 (i)3 of this paragraph[; or

6 2. The informing of the parties required under
7 subparagraph (i)4 of this paragraph].

8 (11) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PERSON TO
9 INTERCEPT AN ORAL COMMUNICATION MADE BY A LAW ENFORCEMENT
10 OFFICER:

11 (I) IN A PUBLIC PLACE; AND

12 (II) IN THE COURSE OF THE LAW ENFORCEMENT OFFICER'S
13 REGULAR DUTY.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2011.