

Article - Courts and Judicial Proceedings

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§10-402.

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

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

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

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

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

(c) (1) (i) It is lawful under this subtitle for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communications service to the public may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) 1. It is lawful under this subtitle for a provider of wire or electronic communication service, its officers, employees, and agents, landlords, custodians or other persons to provide information, facilities, or technical assistance to persons authorized by federal or State law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, if the provider, its officers, employees, or agents, landlord, custodian, or other specified person has been provided

with a court order signed by the authorizing judge directing the provision of information, facilities, or technical assistance.

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

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

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

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

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

1. Of the commission of:

A. Murder;

B. Kidnapping;

C. Rape;

D. A sexual offense in the first or second degree;

E. Child abuse in the first or second degree;

- F. Child pornography under § 11–207, § 11–208, or § 11–208.1 of the Criminal Law Article;
- G. Gambling;
- H. Robbery under § 3–402 or § 3–403 of the Criminal Law Article;
- I. A felony under Title 6, Subtitle 1 of the Criminal Law Article;
- J. Bribery;
- K. Extortion;
- L. Dealing in a controlled dangerous substance, including a violation of § 5–617 or § 5–619 of the Criminal Law Article;
- M. A fraudulent insurance act, as defined in Title 27, Subtitle 4 of the Insurance Article;
- N. An offense relating to destructive devices under § 4–503 of the Criminal Law Article;
- O. A human trafficking offense under Title 3, Subtitle 11 of the Criminal Law Article;
- P. Sexual solicitation of a minor under § 3–324 of the Criminal Law Article;
- Q. An offense relating to obstructing justice under § 9–302, § 9–303, or § 9–305 of the Criminal Law Article;
- R. Sexual abuse of a minor under § 3–602 of the Criminal Law Article;
- S. A theft scheme or continuing course of conduct under § 7–103(f) of the Criminal Law Article involving an aggregate value of property or services of at least \$10,000;
- T. Abuse or neglect of a vulnerable adult under § 3–604 or § 3–605 of the Criminal Law Article;

U. An offense relating to Medicaid fraud under §§ 8–509 through 8–515 of the Criminal Law Article;

V. An offense involving a firearm under § 5–134, § 5–136, § 5–138, § 5–140, § 5–141, or § 5–144 of the Public Safety Article; or

W. A conspiracy or solicitation to commit an offense listed in items A through V of this item; or

2. If:

A. A person has created a barricade situation; and

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

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

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

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

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

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

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

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

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

1. The identification required under subparagraph (i)3 of this paragraph; or

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

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

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

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

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

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

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

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

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

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

4. By any marine or aeronautical communications system;

(iii) To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference; or

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

(8) It is lawful under this subtitle:

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

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

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

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

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

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

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

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

(11) (i) 1. In this paragraph the following words have the meanings indicated.

2. “Body–worn digital recording device” means a device worn on the person of a law enforcement officer that is capable of recording video and intercepting oral communications.

3. “Electronic control device” has the meaning stated in § 4–109 of the Criminal Law Article.

(ii) It is lawful under this subtitle for a law enforcement officer in the course of the officer’s regular duty to intercept an oral communication with a body–worn digital recording device or an electronic control device capable of recording video and oral communications if:

1. The law enforcement officer is in uniform or prominently displaying the officer’s badge or other insignia;

2. The law enforcement officer is making reasonable efforts to conform to standards in accordance with § 3–511 of the Public Safety Article for the use of body–worn digital recording devices or electronic control devices capable of recording video and oral communications;

3. The law enforcement officer is a party to the oral communication;

4. Law enforcement notifies, as soon as is practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and

5. The oral interception is being made as part of a videotape or digital recording.

(iii) Failure to notify under subparagraph (ii)4 of this paragraph does not affect the admissibility in court of the recording if the failure to notify involved an individual who joined a discussion in progress for which proper notification was previously given.

(d) (1) Except as provided in paragraph (2) of this subsection, a person or entity providing an electronic communication service to the public may not intentionally divulge the contents of any communication (other than one to the person or entity providing the service, or an agent of the person or entity) while in transmission on that service to any person or entity other than an addressee or

intended recipient of the communication or an agent of the addressee or intended recipient.

(2) A person or entity providing electronic communication service to the public may divulge the contents of a communication:

- (i) As otherwise authorized by federal or State law;
- (ii) To a person employed or authorized, or whose facilities are used, to forward the communication to its destination; or
- (iii) That were inadvertently obtained by the service provider and that appear to pertain to the commission of a crime, if the divulgence is made to a law enforcement agency.

(e) (1) Except as provided in paragraph (2) of this subsection or in subsection (f) of this section, a person who violates subsection (d) of this section is subject to a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both.

(2) If an offense is a first offense under paragraph (1) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense occurred is a radio communication that is not scrambled or encrypted, and:

(i) The communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the offender is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both; or

(ii) The communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the offender is subject to a fine of not more than \$500.

(3) Unless the conduct is for the purpose of direct or indirect commercial advantage or private financial gain, conduct which would otherwise be an offense under this subsection is not an offense under this subsection if the conduct consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted:

(i) To a broadcasting station for purposes of retransmission to the general public; or

(ii) As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls.

(f) (1) A person who engages in conduct in violation of this subtitle is subject to suit by the federal government or by the State in a court of competent jurisdiction, if the communication is:

(i) A private satellite video communication that is not scrambled or encrypted and the conduct in violation of this subtitle is the private viewing of that communication, and is not for a tortious or illegal purpose, or for purposes of direct or indirect commercial advantage, or private commercial gain; or

(ii) A radio communication that is transmitted on frequencies allocated under Subpart D of Part 74 of the Rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this subtitle is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(2) (i) The State is entitled to appropriate injunctive relief in an action under this subsection if the violation is the person's first offense under subsection (e)(1) of this section and the person has not been found liable in a prior civil action under § 10–410 of this subtitle.

(ii) In an action under this subsection, if the violation is a second or subsequent offense under subsection (e)(1) of this section or if the person has been found liable in a prior civil action under § 10–410 of this subtitle, the person is subject to a mandatory civil fine of not less than \$500.

(3) The court may use any means within its authority to enforce an injunction issued under paragraph (2)(i) of this subsection, and shall impose a civil fine of not less than \$500 for each violation of an injunction issued under paragraph (2)(i) of this subsection.

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