

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 720
Judiciary

(Delegate Moon)

Intercepted Communications - Penalties and Admissibility of Evidence

This bill (1) reduces the maximum incarceration penalties for various communications-related offenses and (2) adds an additional exception to the general prohibition on receipt into evidence of intercepted communications whose contents cannot be lawfully disclosed.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Interception of a Communication

Under 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 an illegal intercept; or
- 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.

Violators are guilty of a felony, punishable by imprisonment for up to five years and/or a \$10,000 maximum fine. The bill reclassifies this offense as a misdemeanor and reduces the maximum incarceration penalty to 90 days.

One existing specified exception is the interception of a communication where the interceptor is a party to the communication and 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 State or federal law.

Divulging Contents of a Communication

Under current law, with specified exceptions, a person or entity providing an electronic communication service to the public may not intentionally divulge the contents of any communication (other than to the provider of the service or an agent of the provider) 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.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to five years and/or a \$10,000 maximum fine. The bill reduces the maximum incarceration penalty for this violation to 90 days. However, lesser penalties of imprisonment for up to one year and/or a \$1,000 maximum fine apply to a first offense involving a disclosure that is not for a tortious or illegal purpose or for purposes of commercial advantage or private commercial gain, so long as the communication meets specified criteria. The bill reduces the maximum incarceration penalty for this violation to 90 days.

Admission of Evidence Obtained through an Intercepted Communication

Under current law, whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived from the communication may be received in evidence in any trial, hearing, or other proceeding if the disclosure of that information would be in violation of the State's wiretap and electronic surveillance laws.

However, if the communication is one that was lawfully intercepted in another jurisdiction but would be considered illegally intercepted if made in the State, the contents of the

communication and evidence derived from the communication may be received in evidence in any trial, hearing, or other proceeding if (1) at least one of the parties to the communication was outside the 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 of this State; and (3) all parties to the communication were co-conspirators in a crime of violence under § 14-101 of the Criminal Law Article.

The bill adds an additional exception. Under the bill, if any wire, oral, or electronic communication is intercepted in the State or any political subdivision of the State in violation of the State's prohibitions on interception of communications, the contents of the communication and evidence derived from the communication may be received in evidence in any trial, hearing, or other proceeding if (1) the evidence is offered in a trial, hearing, or other proceeding that involves a crime of violence under § 14-101 of the Criminal Law Article or a domestically related crime under § 6-233 of the Criminal Law Article and (2) a court determines that the contents of the communication and evidence derived from it are offered as evidence of a material fact in a criminal proceeding; the contents of the communication and evidence derived from it are more probative on the point for which they are offered than any other evidence that the proponent can reasonably procure; and admission of the communication and evidence is in the interest of justice.

The contents of the communication and evidence derived from it may not be received in evidence under the existing exception or the exception established under the bill unless the proponent of the contents of the communication and evidence meets specified disclosure requirements.

Additional Information

Prior Introductions: SB 569 of 2020, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 803, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 629 (Senator Lee) - Judicial Proceedings.

Information Source(s): Harford, Montgomery, and Wicomico counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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