

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 382 (Senator Lee)
Judicial Proceedings

Intercepted Communications - Admissibility of Evidence

This bill establishes that if a wire, oral, or electronic communication is intercepted in the State in violation of the State’s prohibitions under Title 10, Subtitle 4 of the Courts and Judicial Proceedings Article, the contents of the communication and evidence derived from the communication may be received in evidence in specified judicial or other proceedings 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, a violation of § 3-802 of the Criminal Law Article (stalking), or a violation of § 4-509 of the Family Law Article (violation of a protective order) and (2) the court makes specified determinations. The bill also establishes disclosure requirements.

Fiscal Summary

State Effect: The bill is procedural and is not anticipated to materially affect State finances or operations.

Local Effect: The bill is procedural and is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Before the contents of the communication and evidence derived from the communication may be received into evidence in the proceeding, a court must determine that (1) the contents of the communication and evidence derived from the communication are offered as evidence of a material fact in a criminal proceeding; (2) the contents of the

communication and evidence derived from the communication are more probative on the point for which they are offered than any other evidence that the proponent can procure through reasonable efforts; and (3) the interest of justice will be best served by admission of the contents of the communication and evidence derived from the communication into evidence.

The bill requires the proponent of the contents of the communication and evidence derived from the communication to disclose to the adverse party the intention to offer the contents of the communication and evidence derived from the communication, including the name and address of any party whose communication was intercepted. This disclosure must be sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the contents of the communication and evidence derived from the communication. Unless this disclosure requirement is met, the contents of the communication and evidence derived from the communication may not be received into evidence under the evidentiary exception established under the bill or the existing evidentiary exception for communications intercepted outside of the State.

Current Law:

Interception of a Communication

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.

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.

Violators are guilty of a felony, punishable by imprisonment for up to five years and/or a \$10,000 maximum fine.

Admission of Evidence Obtained through an Intercepted Communication

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.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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