

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 749

(Senator Folden)

Judicial Proceedings

**Crimes - Interception of Wire, Oral, or Electronic Communications - Exception
for Imminent Danger and Admission as Evidence**

This bill, by creating an exception under § 10-402 of the Courts and Judicial Proceedings Article (interception of communications), makes it lawful for a person to intercept a wire, oral, or electronic communication when the person reasonably believes they are in imminent danger of a becoming the victim of a crime of violence under § 14-101 of the Criminal Law Article; stalking under § 3-802 of the Criminal Law Article; abuse, as defined under § 4-501 of the Family Law Article; or a violation of a protective order under § 4-509 of the Family Law Article. The bill also contains provisions addressing the admissibility of communications intercepted under these circumstances.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finance and operations.

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

Small Business Effect: None.

Analysis

Bill Summary: Any wire, oral, or electronic communication that has been intercepted as authorized under the bill may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State, or a political subdivision of the State, if:

- the communication is offered as evidence of a material fact;
- the probative value of the communication is greater than other evidence that the proponent is able to procure through reasonable efforts; and
- admission of communication that has been intercepted into evidence is in the interest of justice.

A wire, oral, or electronic communication that has been intercepted may not be admitted into evidence unless the proponent notifies the adverse party of the proponent's intention to offer the communication as evidence sufficiently in advance of the trial, hearing, or other proceeding to provide the adverse party with a fair opportunity to examine the evidence and question witnesses. This notice must include a particular description of the wire, oral, or electronic communication, including the name and address of any person included in the communication.

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 or endeavor to intercept, any wire, oral, or electronic communication;
- 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 an illegal intercept; or
- 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 an illegal intercept.

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

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 any wire, oral, or electronic communication is intercepted outside of the State in accordance with the law of that jurisdiction, but would be in violation of Maryland law if the interception was made in Maryland, 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.

State Fiscal Effect: The Judiciary does not expect a substantial impact on court operations under the bill, and the Office of the Public Defender (OPD) advises that the bill has a minimal impact on OPD workloads. The Maryland State Commission on Criminal Sentencing Policy advises that during fiscal 2022, no one was sentenced in the State's circuit courts for of willfully intercepting any wire, oral, or electronic communication in violation of § 10-402 of the Courts and Judicial Proceedings Article.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 375 of 2022.

Designated Cross File: HB 714 (Delegate Grammer) - Judiciary.

Information Source(s): 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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