

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 61

(Senator West)

Judicial Proceedings

Wiretapping and Electronic Surveillance - Authorized Interception of Oral Communications - Cellular Telephones and Security Cameras

This bill establishes two new exceptions to the prohibition on willfully intercepting an oral communication under § 10-402 of the Courts and Judicial Proceedings Article. Under the bill, it is lawful for a person to use (1) a cellular telephone or another device to intercept an oral communication in public if the speaker should reasonably anticipate that the oral communication could be overheard or intercepted or (2) a security camera or another device installed on or about real property owned, leased, or otherwise lawfully controlled by the person to intercept an oral communication on that property.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Current Law: Under Maryland’s Wiretapping and Electronic Surveillance Act, it is unlawful to willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication. The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called “two-party consent”). Maryland is 1 of approximately

11 two-party consent states, many of which spell out clearly that the consent is required only in circumstances where there is a “reasonable expectation of privacy.”

The Act does provide specified exceptions to the State’s two-party consent requirement for intercepting an oral communication, including for:

- an investigative or law enforcement officer, during a criminal investigation, to obtain evidence of the commission of a murder, a kidnapping, or other specified crimes;
- an officer, employee, or agent of a governmental emergency communications center that is a party to a conversation concerning an emergency; and
- a law enforcement officer equipped with a body-worn digital recording device who uses the device to make a videotape or digital recording of an oral communication that the officer is a party to (subject to meeting other specified requirements).

A violation of the Act’s interception provisions is a felony, punishable by imprisonment for up to five years and/or a \$10,000 maximum fine. A person who is the victim of a violation of the Act has a civil cause of action against the wiretapper for damages, attorney’s fees, and litigation costs.

Additional Comments: The Judiciary advises that, in fiscal 2024, there were 34 violations (charges) and 0 guilty dispositions (convictions) under § 10-402 of the Courts and Judicial Proceedings Article in the District Court and 8 violations and 0 guilty dispositions in the State’s circuit courts. In fiscal 2023, there were 23 violations and 0 guilty dispositions in the District Court and 53 violations and 1 guilty disposition in the circuit courts.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; Reporters Committee for Freedom of the Press; Department of Legislative Services

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