

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 314
Judiciary

(Delegates Grammer and Bartlett)

**Wiretapping and Electronic Surveillance - Intercepted Communications -
Admissibility of Evidence**

This bill authorizes a court to receive into evidence an intercepted wire, oral, or electronic communication – regardless of whether the disclosure of the communication would violate the State’s Wiretapping and Electronic Surveillance Act – if (1) the contents of the communication and evidence derived therefrom are offered as evidence of a material fact; (2) the interception was not made as part of or in furtherance of an investigation by State law enforcement officials; (3) the contents of the communication and evidence derived therefrom are more probative on the point for which they are offered than any other evidence that the proponent can procure through reasonable efforts; and (4) the interest of justice will be best served by the admission of the communication into evidence. Even if these requirements are satisfied, a court may not receive a communication into evidence unless the proponent gives the adverse party notice of their intention to offer the communication and evidence derived therefrom and provides the name and address of the party whose communication was intercepted. Notice must be given sufficiently in advance of the trial or hearing to allow the adverse party a fair opportunity to prepare.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Current Law:

Interception of a Communication

Except as otherwise provided in § 10-402 of the Courts and Judicial Proceedings Article, 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.

A violator is guilty of a felony and on conviction is subject to imprisonment for up to five years and/or a maximum fine of \$10,000.

Section 10-402 provides various exceptions to this general prohibition, including where the interceptor is a party to the communication and all parties to the communication have given prior consent to the interception (sometimes called “two-party consent”), unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of State or federal law. Most of the exceptions, though, can only be utilized by investigative or law enforcement officers or under very specific circumstances.

Admissibility of Evidence Obtained through an Intercepted Communication

Generally, whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom 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.

A court is authorized, however, to receive an intercepted wire, oral, or electronic communication into evidence if the interception was legally made in another jurisdiction – despite being illegal in Maryland – and the following requirements are met:

- at least one of the parties to the communication was outside the State at the time of the communication;

- the interception was not made as part of or in furtherance of a State law enforcement investigation; and
- all parties to the communication were co-conspirators in a crime of violence.

Additional Information

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

Designated Cross File: None.

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

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km/aad

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