

OSPwrittenSB440.pdf

Uploaded by: David, Sarah

Position: FAV

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RE: SUPPORT OF SB 440 Wiretapping-Misconduct in Office

Dear Mr. Chairman and Members of the Judicial Proceedings Committee:

We are writing to express the Office of the State Prosecutor's support for SB 440, Wiretapping-Misconduct in Office, which adds misconduct in office to the list of enumerated crimes in Courts and Judicial Proceedings § 10-406 for which the State can apply to a Court for an Order authorizing a wiretap investigation. This legislation comes out of challenges faced by law enforcement and prosecutors when investigating and attempting to prosecute cases related to official misconduct.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of State government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our State and local government institutions, officials, employees and elections.

Our office receives requests for investigation from the General Assembly, the Governor, and the Attorney General, and can also investigate cases on our own initiative. We also receive referrals from other administrative and regulatory agencies throughout the State of Maryland. Our role is two-fold as to conducting thorough and confidential investigations: to ensure that those who have committed crimes are prosecuted and to ensure that those who did not commit a crime are not tarnished through false accusations. We strive to complete thorough and discrete investigations, and SB 440 would greatly assist our office in ensuring that both of these goals are met.

Wiretap- Enumerated Crimes

State's Attorneys, the Attorney General's Office and the Office of the State Prosecutor can apply for an authorization from a judge to use a wiretap to investigate certain crimes,

enumerated in CJP 10-406. The crimes listed in this section include crimes such as obstruction of justice and bribery, but exclude misconduct in office.

We are able to discuss cases we have charged but are not able to discuss cases we have not. That being said, we believe this legislation is necessary to help address the challenges that arise when investigating corrupt networks in government and law enforcement.

Misconduct in Office

Misconduct in office, is a common law offense with a two-year statute of limitations.¹

The Office of the State Prosecutor has statutory jurisdiction over misconduct in office and has successfully prosecuted many cases of individuals charged with this offense. However, these investigations are stifled when it comes to uncovering networks of corruption because of a lack of ability to obtain a court-ordered wiretap to investigate allegations of misconduct in office.

Cases of corruption are difficult to investigate. Much of the illegal conduct takes place out of the public eye, and often transpires via phone, email, and text. Corrupt officers are very cognizant to keep their conduct under wraps and will exert their status as a government official to compel others to keep quiet. Corrupt networks, such as networks of law enforcement officers engaged in corrupt behavior, are understandably hesitant to provide information that would put a fellow officer in legal jeopardy. This makes the investigation of crimes within law enforcement networks more difficult. SB 440 will make it possible for prosecutors to investigate crimes within these networks, allowing for an investigation to rely less on witness cooperation.

The Office of the State Prosecutor is equally concerned with maintaining individuals' rights. It is therefore important to note that these types of wiretap applications would only be used in the investigation of criminal allegations based on a finding of probable cause. This legislation only allows a wiretap application to be granted upon the approval of a judge after a close inspection of the wiretap application, which will lay out the available evidence and why the wiretap will benefit the investigation.

Furthermore, as previously noted, the use of a wiretap to investigate instances of misconduct in office will also ensure that reputations are not tarnished through false

¹ **Misdemeanors that are criminal offenses under ethics laws or committed by officers of the State:** A prosecution for the commission of or the attempt to commit a misdemeanor constituting: (1) a criminal offense under the Maryland Public Ethics Law; or (2) criminal malfeasance, misfeasance, or nonfeasance in office committed by an officer of the State, or of an agency of the State, or of a political subdivision of the State, or of a bicounty or multicounty agency in the State shall be instituted within 2 years after the offense was committed. Md. Code Ann., Cts. & Jud. Proc. § 5-106 (West).

charges. Since evidence obtained through a wiretap is the most reliable kind of evidence, charges will only be brought once the prosecutorial entity elects to bring charges.

We strongly support reforms in our public corruption laws to ensure that our investigators and prosecutors have the tools to ensure that we can preserve the integrity of State government. To that end, we would encourage a favorable report from the Judicial Proceedings Committee on SB 440.

Sincerely,

Charlton T. Howard, III
Maryland State Prosecutor

HB490-SB440 - Wiretapping - Misconduct in Office.p

Uploaded by: Niemann, Doyle

Position: FAV

To: Members of The House Judiciary Committee and Senate Judicial Proceedings Committee

From: Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section

Date: February 1, 2021

Subject: **HB489 and SB440 – Wiretapping – Misconduct in Office**

Position: **Support**

The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Supports HB489 and SB440 – Wiretapping – Misconduct in Office.**

This bill adds Misconduct in Office to the list of offenses for which a law enforcement agency can petition a court for authorization to electronically record conversations through a wiretap.

Given the serious nature of the crimes covered by a charge of Misconduct in Office and the often-secret way in which those crimes are committed, which can make prosecutions difficult if not impossible, this is a useful change.

Currently, many of the prosecutions for these crimes must be handled in federal court, where similar restrictions on the use of a wiretap do not exist. This limits the number of prosecutions and effectively ties the hands of state and local prosecutors. This bill will help ensure that local and state prosecutors have the tool they need.

For the reasons stated, we **Support HB489 and SB440 – Wiretapping – Misconduct in Office.**

If you have questions about the position of the Criminal Law and Practice Section's Legislative Committee, please feel free to address them to me at 240-606-1298 or at doyleniemann@verizon.net.

Should you have other questions, please contact The MSBA's Legislative Office at (410)-269-6464 / (410)-685-7878 ext: 3066 or at Richard@MSBA.org.

SB 440 - Wiretapping.pdf

Uploaded by: Shellenberger, Scott

Position: FAV

Bill Number: SB 440

**Scott D. Shellenberger, State's Attorney for Baltimore County
Support**

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 440
WIRETAPPING – MISCONDUCT IN OFFICE

I write in support to Senate Bill 440 that will expand by one the types of crimes for which law enforcement is permitted to investigate using a wiretap.

Maryland is a one party consent state when it comes to the recording of oral communications especially through the telephone. Maryland has long had a statutory scheme in which law enforcement, under a judges supervision, are permitted to record telephone conversations when they have probable cause to believe telephones are being use to commit crimes. For years, Courts and Judicial Proceedings Article §10-406 has had 22 specific crimes which permitted law enforcement to obtain court orders to record telephone conversations.

Senate Bill 440 adds an additional crime of misconduct in office. This addition is a logical addition to CJ §10-406's list. Misconduct in office is a crime often conducted surreptitiously out of sight of all. It is only logical that some of the misconduct conducted could be done over the telephone.

Senate Bill 440 gives law enforcement another tool in fighting corruption. Please remember by adding this crime to §10-406 the police will have to have probable cause and prove in a wiretap request to a Judge the reason for the wiretap. The write taps are supervised by a Judge with weekly updates required and time limits for how long they can last. In addition, wiretaps must be signed off on by The Elected State's Attorney for each jurisdiction or the State Prosecutor. There is an abundance of protections in this area of the law to be certain that a Defendant's rights have been protected.

I urge a favorable report.

SB440 (misconduct wiretap) AG Testimony in Support

Uploaded by: Williams, Carrie

Position: FAV



State of Maryland
Office of the Attorney General

February 9, 2021

TO: The Honorable William C. Smith, Jr. Chair, Judicial Proceedings
Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support SB 440

The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 440. Senate Bill 440 adds misconduct in office to the list of crimes for which the Attorney General's Office, the State Prosecutor, or any State's Attorney may seek a court order authorizing a wiretap.

Investigating officials and holding them to account when they commit misconduct is crucial to maintaining the public trust. Senate Bill 440 gives prosecutors a valuable tool to assist in those investigations. Intercepting communications can lead to important evidence and bring public officials who are committing misconduct to justice. The Attorney General urges the Judicial Proceedings Committee to issue a favorable report for Senate Bill 440.

cc: Members of the Committee

SB440_FAV_LeeSponsorTestimony.pdf

Uploaded by: Lore, Michael

Position: FWA

SUSAN C. LEE
Legislative District 16
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

Chair Emeritus
Maryland Legislative Asian American
and Pacific Islander Caucus

President Emeritus
Women Legislators of the
Maryland General Assembly, Inc.



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THE SENATE OF MARYLAND

ANNAPOLIS, MARYLAND 21401

February 11, 2021
Senate Judicial Proceedings Committee

Senate Bill 440 – Courts - Wiretapping - Misconduct in Office

If you stop and think about this proposed measure, you may very well be surprised this is not already part of our current law. The discussions bubbling around police accountability have already moved passed criminal charges to focus on administrative complaints, but our current law doesn't even allow a wiretap against police for criminal official misconduct. This bill is not about administrative or civil proceedings, it only applies in the criminal context where a warrant is requested from a prosecutor and granted by a judge for an underlying crime of official misconduct. Our law is woefully inadequate, and the debate on police accountability should start here, and we should provide the same threshold for all public officials who swear an oath of office. We should hold our officials accountable under law, only we can do this.

This bill does not seek to codify the common law criminal offense of official misconduct. The existing standard is added to the enumerated list of eligible crimes for a warrant to receive a wiretap. These wiretaps are automatically set to sunset unless the need for it is reestablished with a judge at the end of the month. There is no indication that wiretaps would be sought or granted for minor infractions, but instead would allow serious investigations where the tip of the iceberg is visible but the underlying harm may not yet be apparent. As a common sense measure, SB 440 allows for common sense police accountability, and provides increased confidence of the integrity of our elected officials and public officers, who similarly swear an oath to uphold the constitution, and to use their entrusted power in a lawfully manner.

There is a clarification amendment that this bill would extend to the transmission of the evidence to law enforcement, as well as the mere collection of it. Because under current law, not only is the recording illegal, but so too is the transmission of that audio recording. Therefore, we need to clarify that the transfer to law enforcement would have an exception as well. That amendment has been prepared but was not available to include in the written testimony. We have circulated the amendment on the hearing date, and are happy to discuss the intent and language, but suggest those questions be addressed to the Office of the State Prosecutor, or the States Attorneys who are here today in support of this bill.

For these reasons, I respectfully request a favorable committee report, with the amendment to allow a procedural transmission to law enforcement for investigatory purposes.