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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