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MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on  
Cybersecurity, Information Technology,  
and Biotechnology

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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

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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.