



State of Maryland
Office of the Attorney General

February 16, 2021

TO: The Honorable Luke Clippinger, Chair, Judiciary Committee
FROM: Carrie J. Williams, Assistant Attorney General
RE: Attorney General's Support for HB 720 with Amendments

The Attorney General urges the Judiciary Committee to add a perfecting amendment and then report favorably on House Bill 720. The suggested amendment would exclude from criminal liability the disclosure and use of an intercepted communication when that disclosure and use is related to an attempt to admit the communication in a court proceeding.

House Bill 720 reduces the crime of willfully intercepting, disclosing, or using an unlawfully intercepted communication from a felony to a misdemeanor, and reduces the maximum penalty from five years' to 90 days' incarceration. It also provides for the admission of an unlawfully intercepted communication in certain proceedings.

The Attorney General supports the reduction in the penalty for intercepting communications and believes that the contents of these communications should be admissible under certain circumstances. In modern society, nearly everyone has a recording device on their person at all times. A recorded communication can be highly probative of a defendant's guilt or innocence in a criminal case or of liability in a civil proceeding. Yet, under current law, that extremely probative evidence is not admissible if the recording was made in violation of the Wiretap Act. This bill would allow the contents of a recording communication, and evidence derived from that communication, to be admitted into evidence in certain proceedings.

As the bill is currently written, the disclosure of an intercepted communication by an attorney to opposing counsel or the court, and the use of the intercepted communication in a court proceeding would constitute a violation of Courts & Judicial Proceedings Article, Section 10-402. In order for attorneys to seek admission of an intercepted communication without running afoul of the law, the

Attorney General respectfully suggests that House Bill 720 be amended to exempt from liability the use and disclosure of intercepted communications where that use and disclosure is related to a court proceeding. The Attorney General urges the Judiciary Committee to adopt this amendment and issue a favorable report on House Bill 720.

cc: Members of the Committee