

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 382
Intercepted Communications – Admissibility of Evidence
DATE: February 2, 2022
(2/10)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes Senate Bill 382, as drafted. This bill amends section 10-405 of the Courts Article by adding new a subsection (c) making the contents of an illegally intercepted communication and derivative evidence admissible, if a court makes certain determinations specified in the bill, in a proceeding that involves a crime of violence (under the CR § 14-101 crimes of violence definition), stalking, or a violation of a protective order.

While the Judiciary takes no position on the policy aims of the bill, the bill needs clarification. On page two, the bill allows for the contents of the communication and evidence to be received in evidence in any grand jury proceeding or other proceeding which could include a bond proceeding. It is unclear how the court could determine whether or not the contents of the communication and evidence derived from the communication are more probative on the point for which they are offered in these types of proceedings. In addition, grand jury proceedings are confidential. It is unclear how a court would make this finding prior to a grand jury proceeding.

The bill also does not indicate in which court a proponent is to petition for use of the illegally intercepted communication and derivative evidence if the proponent seeks to have the evidence received in a nonjudicial proceeding, as contemplated in the bill.

Finally, the bill does not indicate who an adverse party would be, for purposes of subsection (d), in the non-adversarial proceedings listed in subsections (b) and (c).

cc. Hon. Susan Lee
Judicial Council
Legislative Committee
Kelley O'Connor