

# **SB 375 - Written Testimony.pdf**

Uploaded by: Scott Shellenberger

Position: FAV

**Bill Number: SB 375**  
**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 375**  
**INTERCEPTED COMMUNICATIONS – EXCEPTION FOR IMMINENT DANGER**

I write in support of Senate Bill 375 that updates an out of date law concerning the recording of oral communications. Maryland Wire Tap Statute is found at Court and Judicial Proceedings (CJ) §10-406. It is an out of date vestige of a past time when switch boards were the mode of communication.

Maryland is a two party consent state when it comes to the recording of oral communications especially through the telephone. Thirty-eight States are one party consent states that require only one party to a conversation "consent" to the recording. 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.

Because CJ is a vestige of the past, recording someone orally both over the telephone and in person has been labeled a felony punishable up to 5 years in jail. Recording visually has never been against the law.

In today's reality people record everything both visually and orally. Most people are unaware when they break out their phones and hit camera/record they are breaking the law in Maryland.

Senate Bill 375 does not change Maryland to a one party consent State. But what it does do is bring us closer into this decade. Senate Bill 375 keeps it a crime preserving Maryland's decision to be two party consent State but allows for exceptions when recording crimes of violence, stalking crimes, and violating a protective order.

Should not the best evidence of certain crimes be permitted to be introduced into court especially for these types of crimes.

Senate Bill 375 is a bill whose time is long overdue and brings Maryland into the reality of this decade. I urge a favorable report.

**SB375\_SenLee\_jpr\_fav\_ml.pdf**

Uploaded by: Susan Lee

Position: FAV

SUSAN C. LEE  
Legislative District 16  
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on  
Cybersecurity, Information Technology,  
and Biotechnology

*Chair*

Maryland Legislative Asian American  
and Pacific Islander Caucus

*President Emeritus*

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Maryland General Assembly, Inc.



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 8, 2022

Judicial Proceedings Committee

Sponsor Testimony - FAVORABLE - SB 375 – Crimes – Interception of  
Wire, Oral, or Electronic Communications – Exception for Imminent Danger

SB 375 is a public safety measure to correct an imbalance in Maryland’s ability to protect vulnerable victims of serious crimes. The two party consent law at its worst empowers abusers to not only abuse with impunity, but re-victimizes those seeking help. Recording stalking, a violation of a protective order, or a crime of violence under 14-101, should not itself be a crime at all. My other 2 party consent bill you will hear today, SB 324 is a simple bill to lower the penalty for everyone who violates 2 party consent, but this legislation (SB 375) carves out an exception to these specific victims or reasonably imminent victims of these serious crimes.

We have an All-star group of witnesses today, representing victims of domestic violence, the prosecutors, and civil law academics, like the esteemed Professor John Myers who is a leading national expert on this issue and family matters more broadly. This bill is not just about criminal law, but certainly we should all agree that protecting yourself though recording a “private” conversation that is simultaneously a crime against you is justified, and it should be under our laws. That evidence should be admissible in civil proceedings – and as we will discuss in a subsequent bill in this space, there should be a balancing test whether it is allowed as criminal evidence (SB 382). This legislation is a simple exception to the 2 party consent law, which most of the states that have 2 party consent have already created, and much more broadly to include all emergency scenarios.

To fight crime, we need the tools to catch criminals, and most importantly, protect victims. This is an important tool to achieve justice when the status quo has not caught up to the realities of our technological advances. Our efforts to protect victims of

serious crimes must rise to the level of seriousness it deserves, and we must be able to fight back against technological exploitation with technological tools for victims. We must not only use technologies to protect victims, and not allow criminals to use it as a tool of submission, but also decriminalize common sense protection measures, such as recording your own abuse. To do less, is legislative neglect.

For these reasons, I respectfully request a favorable report on SB 375.

# **Seltzer, Yosefi Senate Bill 375 Favorable Testimon**

Uploaded by: Yosefi Seltzer

Position: FAV



DEPARTMENT OF THE ARMY  
US ARMY INSTALLATION MANAGEMENT COMMAND  
OFFICE OF THE STAFF JUDGE ADVOCATE  
4217 MORRISON STREET  
FORT GEORGE G. MEADE, MARYLAND 20755-5030

REPLY TO  
ATTENTION OF:

February 8, 2022

**HEARING TESTIMONY FOR SENATE BILL 375**

NOTE: This testimony is not intended as an official statement on behalf of the United States Army, the Department of Defense or the United States Government, but is limited to the personal opinions of the author.

**I am writing in support of Senate Bill 375**, entitled: "Crimes- Interception of Wire, Oral, or Electronic Communications- Exception for Imminent Danger". This bill will benefit victims of domestic violence, among others.

I have had clients who are victims of domestic violence ask whether they would be permitted to record their abusers using "one party consent" (their own consent when they agree to make a recording). I have had to advise them that under the current "all party consent" rule in the Maryland Wiretapping statute, they cannot because the recording would be inadmissible and they could be charged with a felony for making the recording if the abuser did not know about or consent to the recording.

Unfortunately, the military is not immune from domestic violence, although the frequency of incidents is significantly less than in the general civilian population. In 2021, there were 57 Army and Air Force domestic violence cases at Fort Meade.

As you are probably aware, crimes such as domestic violence often take place in the home where third-party adult witnesses are absent. Allowing victims to create recordings of their abuse and permitting these recordings to be admitted in Maryland courts in criminal prosecutions would go a long way towards protecting victims while bringing their abusers to justice. The current "all party consent" requirement, creates a safe harbor for abusers by rendering recorded evidence of abusive behavior inadmissible, while exposing the victim to felony charges. This bill helps reverse that miscarriage of justice by instead offering domestic violence survivors the safe harbor to make and admit recordings of their abuse.

Maryland is currently in the minority of ten (10) states requiring all-party consent for audio recordings. The Federal Wiretapping statute and Military Rules of Evidence along with thirty-seven (37) states and the District of Columbia currently have one-party consent laws. Three (3) other states have exceptions that make audio recordings at civil protective order hearings or in emergency situations admissible. It is long overdue that in cases of domestic violence, one-party consent recordings should be admissible, particularly when victims seek to prove a violation of an existing protective order.

Although not perfect, SB375 is a strong step in the right direction to help military victims of domestic violence present credible corroborating evidence against the offenders. I therefore conclude that SB375 will benefit military families.

Thank you for your attention.

Yosefi Seltzer, Esq.  
Attorney Advisor  
301-677-9205  
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**Fort George G. Meade, Maryland**, is an installation dedicated to providing quality support to service members, Department of Defense civilian employees, family members, and military retirees. Fort Meade strives to be the Nation's Preeminent Center for Information, Intelligence and Cyber.

Every day, more than 100,000 people seek the services Fort Meade offers. Its primary mission is to provide a wide range of services to more than 119 partner organizations from the Army, Navy, Air Force, Marines and Coast Guard, as well as to several federal agencies including the National Security Agency, Defense Media Activity, Defense Information Systems Agency, the Defense Courier Service and the U.S. Cyber Command.

The installation lies approximately five miles east of Interstate 95 and one-half mile east of the Baltimore-Washington Parkway, between Maryland State routes 175 and 198. Fort Meade is located near the communities of Odenton, Laurel, Columbia and Jessup, and is home to approximately 62,000 employees, both uniformed and civilian. Nearly 11,000 family members reside on-post. Fort Meade is Maryland's largest employer and is the second-largest workforce of any Army installation in the U.S. In response to the military's Base Realignment and Closure plan, construction of new facilities has now been completed for Defense Adjudication Activities, the Defense Information Systems Agency and the Defense Media Activity.

The **Legal Assistance Division** provides free legal services to Active-Duty service-members, retirees and dependents in a wide variety of areas including tax assistance, domestic relations, estate planning, consumer law, military administrative appeals and the like. It was awarded the Army's Chief of Staff Award for excellence in Legal Assistance two of the last three years.

**Mr. Seltzer** served for more than four years on Active Duty at the Third Infantry Division (Mechanized) and the U.S. Army Legal Services Agency's Environmental Law Division of the Headquarters, Department of the Army. He served as a Legal Assistance Attorney at Fort Meade and Fort Belvoir, Virginia from 2008 to 2018, and as the Chief of Legal Assistance at Fort Meade beginning in 2018. Mr. Seltzer is licensed to practice law in Maryland, Washington, D.C., Georgia and New York. He is an active member of the Maryland State Bar Association's Veteran's Affairs and Military Law Committee, is a graduate of the George Washington University (1993) and the University of Maryland School of Law (1999) and is a native of Silver Spring.



# Wiretapping Consent Jurisdictional Survey

## One Party Consent States (37+ DC)

Alabama	Nebraska
Alaska	New Jersey
Arizona	New Mexico
Arkansas	New York
Colorado	North Carolina
Connecticut	North Dakota
Washington, D.C.	Ohio
Georgia	Oklahoma
Hawaii	Rhode Island
Idaho	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	Utah
Louisiana	Vermont
Maine	Virginia
Minnesota	West Virginia
Mississippi	Wisconsin
Missouri	Wyoming

## Additional One Party Consent Jurisdictions (2)

Federal Rules of Evidence  
Military Rules of Evidence

## All Party Consent, but One Party Consent Exceptions for Civil Protective Order Hearings or Emergency Cases (3)

California  
Nevada  
Washington

## All Party Consent, but One Party Consent Exceptions for Child Abuse and Proving a Violation of a Protective Order (1)

Florida

## One Party Consent but State Privacy Law Requires All Party Consent (1)

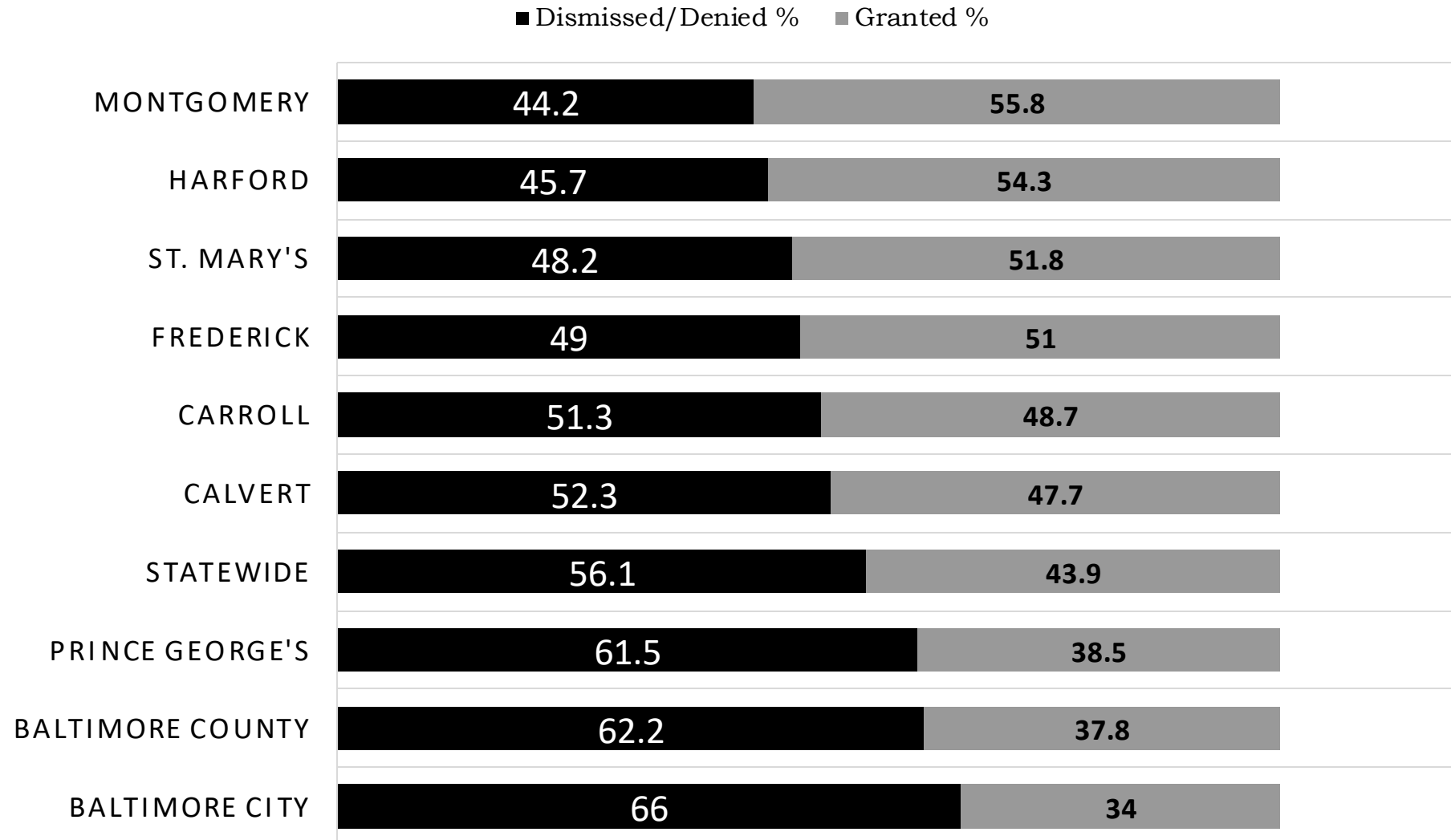
Delaware

## All Party Consent Required, No Exceptions (8)

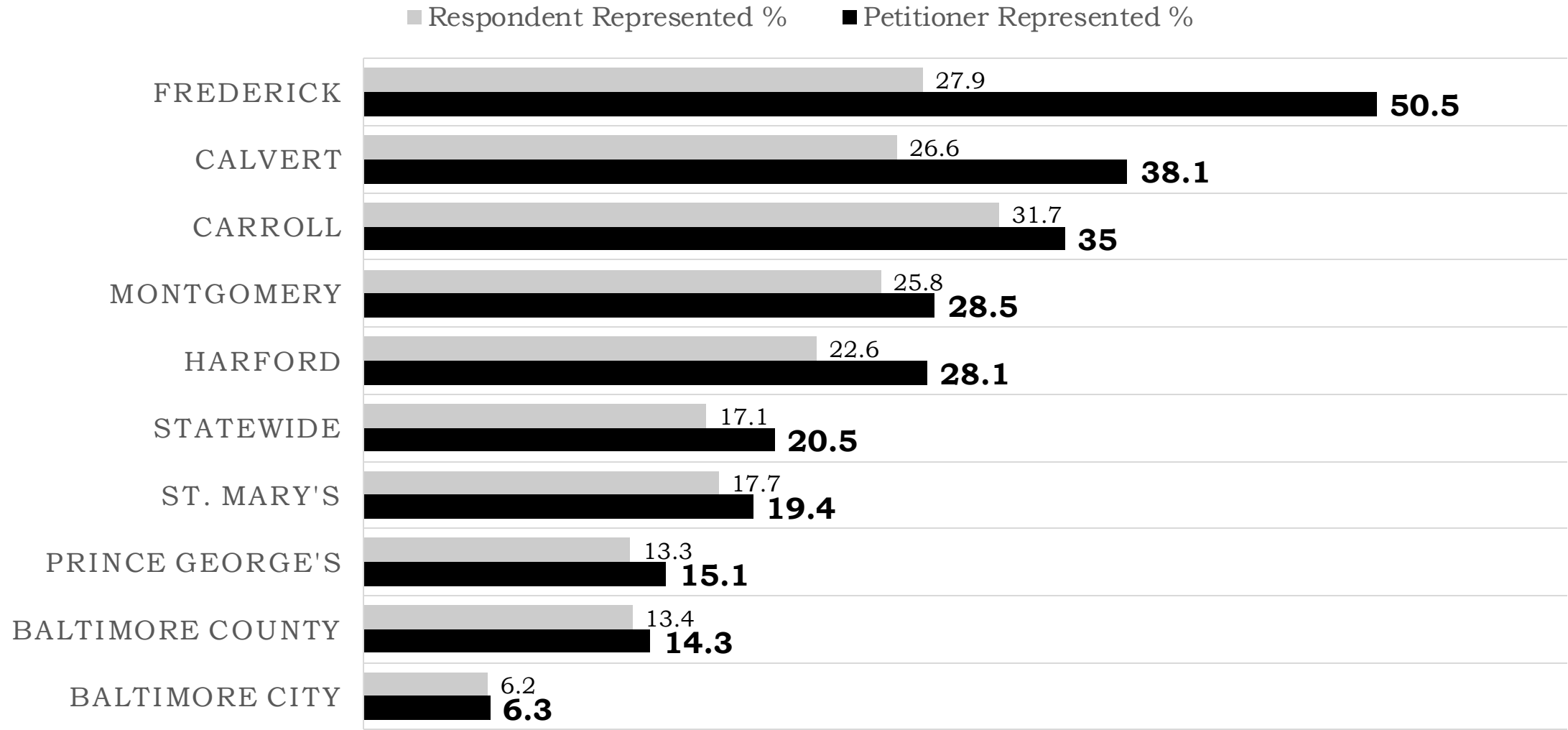
Illinois  
**Maryland**  
Massachusetts  
Michigan  
Montana  
New Hampshire\*  
Oregon  
Pennsylvania

\* Felony to intercept without consent of all parties; misdemeanor if recorder was a party to the recording.

## CIVIL PROTECTIVE ORDERS DISMISSED/DENIED VS. GRANTED IN 2021 BY MARYLAND JURISDICTION



## REPRESENTATION IN CIVIL PROTECTIVE ORDERS IN 2021 BY MARYLAND JURISDICTION



# **OPD Position on SB0375.pdf**

Uploaded by: Melissa Rothstein

Position: UNF



**PAUL DeWOLFE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
DIRECTOR OF POLICY AND DEVELOPMENT

**KRYSTAL WILLIAMS**  
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

**ELIZABETH HILLIARD**  
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB0375 - Crimes - Interception of Wire, Oral, or Electronic Communications -  
Exception for Imminent Danger**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 2/4/2022**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 375.

Consistent with the state's commitment to personal privacy, the Maryland Wiretap Act prohibits the interception of wire, oral, or electronic communications except in very limited circumstances. This bill would dramatically expand the Wiretap Act to allow private individuals to intercept communications in no official capacity based on criteria that are overly broad.

Currently, authorized interceptions are limited to (a) recordings consented to by all parties, (b) law enforcement or other government officials pursuant to specified types of investigations or emergencies; (c) court order; and (d) incidental to rendering of services within the normal course of business of a wire or electronic communication service. For each exception, any nonconsensual recording is conducted by a trained professional for a clearly defined purpose. The interceptor is aware of the competing interests, the limitations of their scope and authority, and is subject to accountability measures within their chain of command. In comparison, this bill will require a layperson to assess what is a reasonable fear of imminent danger and whether the actions to be recorded arise to one of the enumerated offenses. If their assessment is wrong (or otherwise inconsistent with the State's Attorney's interpretation), they may be subject to prosecution.

If enacted, this bill is likely to significantly increase the amount of intercepted communications. Our culture has become increasingly digital, with recordings commonplace wherever permitted, even when ill-advised or disrespectful. Under this law, individuals who intercept communications can claim they were in fear of imminent danger of being the victim of one of the specified crimes whether or not the underlying offense is ever prosecuted or results in conviction. While the reasonableness standard suggests

a construct of objectivity, it does not sufficiently limit the parameters of otherwise illegal behavior for an actual person.

Unlike the current exceptions, which limit the use of nonconsensual intercepted communications to investigations, emergencies, or the course of business, this bill provides no parameters for the use of intercepted communication. Whether the intercepted communication and its fruits can be used as evidence, despite Crim. Jud. Proc. § 10-402(a), will require extensive litigation. More public uses through the internet or media will have no such check.

“The requirement of consent by all parties for the recording of a telephone conversation by a private individual has been a fundamental part of Maryland law since at least 1956,” and protects the privacy interests of all individuals, even when accused of serious crimes. *Perry v. State*, 357 Md. 37, 61 (1999) (reversing murder conviction that relied on wiretap by co-conspirator). This bill seeks to exclude people in certain circumstances from these deep rooted privacy protections, by relying on the perspective of the interceptor for whether these circumstances exist. This will significantly weaken the privacy protections the Wiretap Act was enacted to secure.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 375.**

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

**Authored by: Melissa Rothstein, Director of Policy and Development,**

**[melissa.rothstein@maryland.gov](mailto:melissa.rothstein@maryland.gov), 410-767-9853.**

**SB375\_UNF\_SPACCASI.pdf**

Uploaded by: Olivia Spaccasi

Position: UNF



## Testimony for the Senate Judicial Proceedings Committee

February 8, 2022

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### SB 375 Crimes - Interception of Wire, Oral, or Electronic Communications - Exception for Imminent Danger

#### UNFAVORABLE

The ACLU of Maryland urges an unfavorable report on Senate Bill 375. This bill would make immune from criminal prosecution a person who violates Maryland's wiretapping law if the person is in imminent danger of becoming the victim of stalking, violent crimes, and the violation of a protective order. By so doing, the bill effectively de-criminalizes wiretapping, eavesdropping, and electronic surveillance, essentially repealing Maryland's wiretap act. It also legalizes and encourages vigilante justice, taking legitimate criminal investigation out of the purview of law enforcement and placing it the hands of any person who chooses to illegally intercept the communications of others.

It should be noted that under Maryland law, any person who unlawfully intercepts or discloses the communications of others is guilty of a felony. *See* Courts and Judicial Proceedings Article, § 10-402(b). Under this bill, the act of the illegal interception itself provides "evidence of the commission of a felony" thereby legalizing all interceptions by anyone, rendering the law a nullity.

Under Maryland law, it is unlawful for any person to intercept or attempt to intercept any wire, oral or electronic communication or to disclose or endeavor to disclose the contents of any wire, oral or electronic communication. *See* Courts and Judicial Proceedings Article, § 10-402(a). Civilians can never intercept communications or disclose the contents of communications to which they are not a party. *See* Courts and Judicial Proceedings Article, §§ 10-402 et seq. Even a telecommunications company itself is strictly limited to the necessities of providing communication service. *See, e.g.* Courts and Judicial Proceedings Article, § 10-402(c).

Only law enforcement can obtain access to communications under Maryland law and only investigate specified crimes under highly supervised circumstances. This supervision includes independent judicial oversight. Law enforcement must obtain a warrant or court order based on heightened standards of probable cause with strict time limits and notice requirements and must regularly report to the court on the execution of the warrant. *See generally*, Courts and Judicial Proceedings Article, § 10-402(c), §10-406, and §10-408. Law enforcement



departments must also submit an annual report on their wiretapping activities to the Administrative Office of the Courts. *See* Courts and Judicial Proceedings Article, § 10-409.

The bill proposes to toss this carefully crafted framework that has served Maryland well for decades aside in favor of a free-for-all that will ill serve law enforcement's purposes, hinder public safety, and erode the cherished privacy of Marylanders. For those reasons, SB 375 should receive an unfavorable report.

**SB 375\_MNADV\_INFO.pdf**

Uploaded by: Melanie Shapiro

Position: INFO



**BILL NO:** Senate Bill 375  
**TITLE:** Criminal Law - Stalking – Definition  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** February 8, 2022  
**POSITION:** **INFORMATION**

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The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV provides this INFORMATION to the Senate Judicial Proceedings Committee on SB 375.**

Maryland is one of eleven states that are “two-party” consent states and requires the consent of every party to a phone call or conversation to make the recording lawful. Currently, a violation of the wiretap law is a felony and subject to punishment including imprisonment for not more than 5 years or a fine of not more than \$10,000, or both.

SB 375 seeks to create exceptions to the existing wiretap law for certain offenses including when a person reasonably believes that they are in imminent danger of becoming a victim of a crime of violence, stalking, or a violation of a protective order. Both “reasonably believes” and “imminent danger” are legal terms of art that we would ask an individual in a potentially dangerous situation to discern in a moment's notice. Under existing law, if an individual is determined to have not been in imminent danger when they recorded an incident then they will have violated the law and be subject to criminal prosecution for a felony. For example, if there is an individual suffering from Post-Traumatic Stress Disorder from an abusive partner, and that partner arrives to pick up a child in common, this could trigger a heightened sense of vigilance and fight or flight response. That person's perception is not that of a “reasonable person” and they may not have been in “imminent danger,” but they would have committed a felony if they recorded a conversation that occurred at that time without consent.

MNADV would welcome an opportunity to examine the wiretap statute in Maryland as a whole. Addressing finite aspects of the law and carving out exceptions could result in unintentional harm to victims of violence.

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