

Perrrelli_Written Testimony_2023 SB 749.pdf

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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**

March 8, 2023

**WRITTEN TESTIMONY IN SUPPORT
SENATE BILL 749**

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 pleased to offer this testimony in support of Senate Bill 749 entitled: “Crimes - Interception of Wire, Oral, or Electronic Communications - Exception for Imminent Danger and Admission as Evidence”

I view the benefits of this bill from two different perspectives, as informed by my varied career experiences as a Maryland attorney. I have worked as a public interest attorney representing victims of domestic violence, and also as a public defender representing those accused of committing acts of violence.

The exception offered in this bill would greatly impact domestic violence victims and survivors. In representing and advising clients in domestic violence situations, practitioners are often confronted with questions regarding their ability to record communications with their abuser and use this information in court. Abusive acts, more often than not, take place in an environment, such as the individual’s home, where there are no independent eyewitnesses for corroboration. When appearing in Court and confronting their abuser, either in seeking a protective order or during prosecution of a criminal matter in order to protect their safety, victims often are left in a “he said, she said” situation without any corroborating evidence.

Protective orders may only be granted based upon a showing of abuse by a “preponderance of the evidence,” meaning that a judge must find the victim’s evidence more convincing than the abuser’s evidence. Abusers are often adept at presently a convincing defense. Alternatively, in a criminal proceeding, a judge must have to find an abuser guilty of a crime “beyond a reasonable doubt” – a high bar for any victim to hurdle armed with only “he said, she said” evidence. Allowing this limited exception for recordings would greatly impact victims in seeking protection.

From a criminal defense perspective, this bill’s limited exception would allow additional protections against wrongful convictions or erroneously issued protective orders. Abusers often falsely accuse their victims of crimes, such as assaults, to deflect attention from their own actions or as a counter-measure to charges pending against them. The ability to provide exculpatory evidence in the form of audio recordings would provide further evidence in the situations where only the two parties were present. Frequently, criminal defendants are extremely hesitant to testify in their own trials for a variety of reasons including a significant fear that they will not be believed particularly, when there are no independent witnesses or independent evidence to corroborate their version of events. Considering the extreme risk of testifying, they understandably will not take the stand in their own defense.

In my practice representing both sides in domestic violence matters, I have seen incidents where audio recordings would have shed new light on the available evidence and be beneficial to the court in deciding the appropriate outcome. Therefore, I am writing in support of this limited exception as presented.

Thank you for your time and attention.

Amber M. Perrelli
Legal Assistance Attorney
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Amber.M.Perrelli.civ@army.mil

Ms. Perrelli has been serving as Legal Assistance Attorney at Fort Meade since 2023. Prior to joining Fort Meade, she was a trial attorney at Katie C. Glasgow & Associates. She is also a former staff attorney at Maryland Legal Aid. She began her career as an Assistant Public Defender in Charles County followed by Anne Arundel County. She is licensed to practice law in Maryland and Washington DC. Ms. Perrelli is a graduate of Bucknell University and the University of Richmond School of Law.

Fort Meade's 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 has repeatedly been awarded the Army's Chief of Staff Award for Excellence in Legal Assistance.

Bailey_Testimony_SB749_Imminent Danger_20230309.pd

Uploaded by: Anita Bailey

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

March 9, 2023

TESTIMONY FOR SENATE BILL 749

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

I am writing in support of Senate Bill 749, entitled “Crimes – Interception of Wire, Oral, or Electronic Communications – Exception for Imminent Danger and Admission of Evidence.” This bill will benefit victims of domestic violence, among others.

I have been advising and representing clients in civil protective order and family law proceedings for over 26 years. I am currently the Chief of Legal Assistance at Fort Meade and have been the main service provider for Fort Meade’s Domestic Violence Victim Representation Program, established in accordance with Section 548 of the Fiscal Year 2020 National Defense Authorization Act, which is the only such program in Maryland so far, amongst all of the Military legal offices.

Throughout my career, I have had the opportunity to counsel and/or represent victims of domestic violence who were either fearful of or unsuccessful in obtaining a protective order or pursuing violations of a protective order due to lack of admissible evidence.

Evan Stark outlines the four elements a coercively controlling perpetrator uses to subjugate his partner and make the victim dependent, using a “strategic course of self-interested behavior designed to secure and expand gender-based privilege by establishing a regime of domination in personal life.” These four elements are (1) violence, (2) intimidation, (3) isolation, and (4) deprivation, exploitation, and regulation.¹ One of the key elements is isolation. Abusers rarely commit acts of violence against a victim with witnesses present. Often, the only evidence of a violent act is an audio recording that the victim as made or the eye-witness testimony of very young children. Under the current law, such recordings would not be admissible in court and young witnesses are legally incompetent to testify. These limitations create a great chilling effect on victims, who fear further reprisal if their efforts to pursue legal remedies fail.

During my 22-year tenure at Maryland Legal Aid, I represented hundreds of domestic violence victims in varying capacities. One particularly heart-wrenching case stands out. The client’s husband was one such coercively controlling perpetrator who isolated her by moving away from friends and family, refusing to allow her access to an individual means of transportation, and restricting her access to money, including money she earned. He routinely used intimidation – threatening to charge her with crimes, threatening to kill himself if she left him, threatening to “take her up into the mountains and cut her into little pieces and no one would care,” and threatening to “burn her family and friends down in their homes.” During one incident, when they were alone in their house with their 6-year-old son, her husband grabbed her by the throat and pushed her off of her feet up against a closet. She could not breathe and almost passed out. Their son was watching and attempted to escape and call the police. Her husband returned their son to his bed and eventually took him downstairs to watch TV. He continued to

¹ Stark, Evan, *Coercive Control. Violence Against Women: Current Theory and Practice in Domestic Abuse, Sexual Violence and Exploitation*, pp. 17-33 (2013).

intermittently strangle and scream at her for 3 hours, after which he attempted to rape her. The episode ended with him crying and apologizing and promising not to do it again. He allowed her to leave the house to get some air, but retained her purse and their son. She called a domestic violence program and made plans to leave the next day with her son. She picked up her son from school the next day and entered a domestic violence shelter. She was able to obtain a protective order, but her husband was awarded visitation with their son and he used those opportunities to turn their son against her and continue to verbally threaten her. When her son's behavior became increasingly aggressive toward her and at school, and she could not get him to cooperate with therapy, she agreed to give her husband primary custody of their son. During the divorce and custody proceeding, our office engaged a domestic violence expert who was prepared to confirm, at trial, the client's status as a domestic violence victim. However, both the client and the expert concluded that if the court awarded the client full custody of their son and restricted access for her husband, there was a high likelihood that he would eventually kill her. The client therefore made the heart-breaking decision to leave her son in the primary care of his father.

I believe that had the current two-party wiretapping consent law been amended in accordance with Senate Bill 749 at that time, the results in this case would have been radically different. The client would have been able to use audio recordings of her husband's abusive behavior to pursue criminal charges against him for both his abusive actions and violations of the protective order. She would therefore have been able to retain custody of her son and obtain for him the counseling that he needed.

In my current position at Fort Meade, I continue to counsel clients who are fearful of taking action against their abusers due to lack of admissible audio recording evidence. The stakes are high for military abusers as they could face not only criminal charges under state law, but the loss of their career in the form of courts martial. They are therefore careful to ensure that any violent actions occur in isolation.

Senate Bill 749 is a strong step in the right direction to help military victims of domestic violence present credible corroborating evidence against the offenders. I urge you to pass HB174 in an attempt to benefit all domestic violence victims, including those in military families.

Thank you.

/s/ Anita M. Bailey
Anita M. Bailey, Esq.
Chief, Legal Assistance
(301) 677-9086
anita.m.bailey6.civ@army.mil

Ms. Bailey has been representing clients in civil protective order proceedings and family law cases for over 26 years. She has been serving as a Legal Assistance Attorney at Fort Meade since 2021, and as the Chief of Legal Assistance since 2022. Prior to joining Fort Meade, she was the Chief of Maryland Legal Aid's Anne Arundel County office, where she practiced for 22 years. She is also a former State Assistant Attorney General for the Department of Human Services and ran a private practice. Ms. Bailey is licensed to practice law in Maryland and Washington, D.C. She is a member of the Anne Arundel County Bar Association and Maryland State Bar Association's Veteran's Affairs and Military Law Committee and is a graduate of Syracuse University and the University of Baltimore School of Law.

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SB 749 - Intercepted Communications Exception for

Uploaded by: Scott Shellenberger

Position: FAV

Bill Number: SB 749
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 749
INTERCEPTED COMMUNICATIONS – EXCEPTION FOR IMMINENT DANGER

I write in support of Senate Bill 749 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 judge's supervision, are permitted to record telephone conversations when they have probable cause to believe telephones are being use to commit crimes.

Because CJ §10-406 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. Something happens on the street they all break out their phones. Most people are unaware when they break out their phones and hit camera/record they are breaking the law in Maryland.

Senate Bill 749 does not change Maryland to a one party consent State. But what it does do is bring us closer into this decade. House Bill 714 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, domestic violence 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. This is evidence of what actually happened in the case. We should be able to present the best evidence in crimes of violence, stalking, domestic violence cases and violation of protective orders.

Senate Bill 749 is a bill whose time is long overdue and brings Maryland partly into the reality of this decade.

I urge a favorable report.

Senate Bill 749 Testimony 9 Mar 2023 for Senate Ju

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:

March 9, 2023

HEARING TESTIMONY FOR SENATE BILL 749

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 749, entitled: "Crimes- Interception of Wire, Oral, or Electronic Communications- Exception for Imminent Danger and Admission as Evidence". 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 2022, there were 41 Army domestic violence cases at Fort Meade.

The current all-party consent statutory requirement to make audio recordings in Maryland results in the automatic exclusion of evidence – **often, the best accurate evidence available in domestic violence cases** -- even if the proponent could otherwise meet all of the evidentiary admissibility requirements. Judges, Juries, Commissioners, Magistrates and Grand Juries are currently barred from hearing the recordings when they perform their duty to reach the truth and ensure justice.

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 seven (7) states requiring all-party consent for audio recordings that do not authorize exceptions such as for imminent danger. The Federal Wiretapping statute and Military Rules of Evidence along with thirty-five (35) states and the District of Columbia currently have one-party consent laws. Three (3) other all-party consent states have exceptions that make audio recordings at civil protective order hearings or in emergency situations admissible and three (3) other all-party consent states allow recordings when the sole consenting party is the recorder who is present during the conversation. It is long overdue that in cases of domestic violence, a victim's recordings should be legal and admissible when they are in imminent danger, are being stalked or seek to prove a violation of an existing protective order.

Furthermore, **the all-party consent requirement is not a constitutional protection, but merely a statutory one.** Admitting audio recordings made by a participant to a conversation does not implicate the 4th Amendment: the U.S. Supreme Court ruled that such recordings are legal under a “misplaced trust” theory. A criminal does not have a constitutional right to a reasonable expectation of privacy in conversations they voluntarily have with someone who was invited in by the criminal (no trespass or surreptitious entry) who unbeknownst to them is recording the conversation. United States v. White, 401 U.S. 745 (1971). The court added that for 4th amendment constitutional purposes, there is no difference between an agent instead of immediately reporting and transcribing her conversations with the defendant, either simultaneously recording them with electronic equipment she carries (cell phone) or transmitting the conversation to recording equipment located elsewhere or to other individuals monitoring the conversation. That’s why the federal rules of evidence, military rules of evidence and majority of states deem recordings legal and admissible.

As well, the U.S. Supreme Court added that such audio recordings provide the most reliable evidence possible of the conversation and do not see nor hear more than the individual who was a party to the conversation. See Lopez v. United States, 373 U.S. 427, 438-439 (1963). The Court added that to bar the recording affords the defendant the right to rely on flaws in the witness’ memory or to challenge their credibility without being beset by the corroborating evidence (recording). There is no other argument to exclude an accurate recorded version of a conversation that the witness can legally testify to from memory. Lopez at 439. The function of a criminal trial is to seek out and determine the truth or falsity of the charges brought against the defendant. Proper fulfillment of this function requires that, constitutional limitations aside, all relevant, competent evidence be admissible, unless the manner in which it has been obtained compels the formulation of a rule excluding its introduction in court. Lopez at 440.

To be clear: **this bill will not make Maryland a “one-party consent” state, nor does it fast-track admissibility of audio recordings. SB749 create a limited exception that would enable domestic violence victims** and others to legally make audio recordings when they reasonably believe they are in imminent danger of a violent crime, stalking, crime of domestic violence or violation of a protective order, in compliance with the referenced Code Sections. The terms “reasonably believes” and “imminent danger” are clearly defined terms in the Maryland Code and Maryland Appellate Court jurisprudence and would therefore present no difficulties in interpretation and application. Moreover, anyone seeking to introduce such imminent danger recordings would still need to comply with all of the existing evidentiary requirements before they would be admitted in a Maryland hearing or court proceeding: authentication, foundation, relevance, probative value outweighs prejudice, hearsay protocols, etc. Maryland judges would be the final arbiters as to whether the evidence meets all of these requirements and should be admissible in Maryland court proceedings and protective order hearings. The opponent of the recordings would always have the opportunity to challenge the evidence as to admissibility and cross-examine the proponent in contested hearings and court proceedings, the same as in all other hearings and court proceedings.

The General Assembly can easily and immediately remedy this statutory exclusionary rule by enacting the provisions contained in SB749. Although not perfect, SB749 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 SB749 will benefit military families.

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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 domestic relations, domestic violence, estate planning, consumer law, tax assistance, military administrative appeals and the like. The Fort Meade office was awarded the Army's Chief of Staff Award for excellence in Legal Assistance three of the last four 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 from 2018 to 2021. He is a former federal and state prosecutor. Mr. Seltzer is licensed to practice law in Maryland, Washington, D.C., Georgia and New York. He is a 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 (35+ DC)

Alabama	New Mexico
Alaska	New York
Arizona	North Carolina
Arkansas	North Dakota
Georgia	Ohio
Hawaii	Oklahoma
Idaho	Rhode Island
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Maine	Vermont
Minnesota	Virginia
Mississippi	Washington,DC
Missouri	West Virginia
Nebraska	Wisconsin
New Jersey	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 if Recorder is a Participant, Otherwise All Party Consent (3)

Colorado (if the recorder is not present, must have consent from at least one party who is present)
Connecticut
Michigan (per Court of Appeals)

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

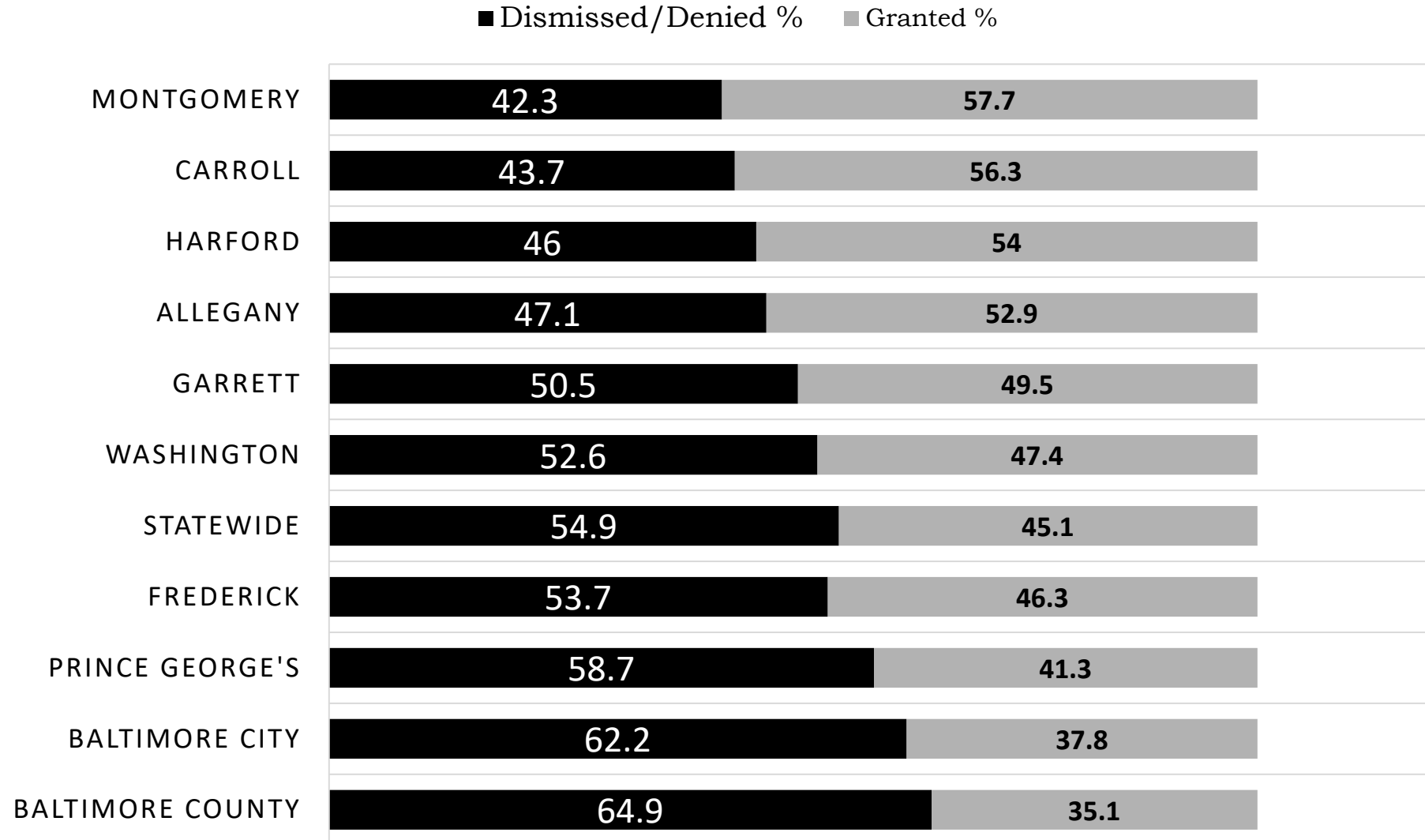
Delaware

All Party Consent Required, No Exceptions (7)

Illinois
Maryland
Massachusetts
Montana
New Hampshire¹
Oregon
Pennsylvania

¹Felony to intercept without consent of all parties; misdemeanor if recorder was a party to the recording.

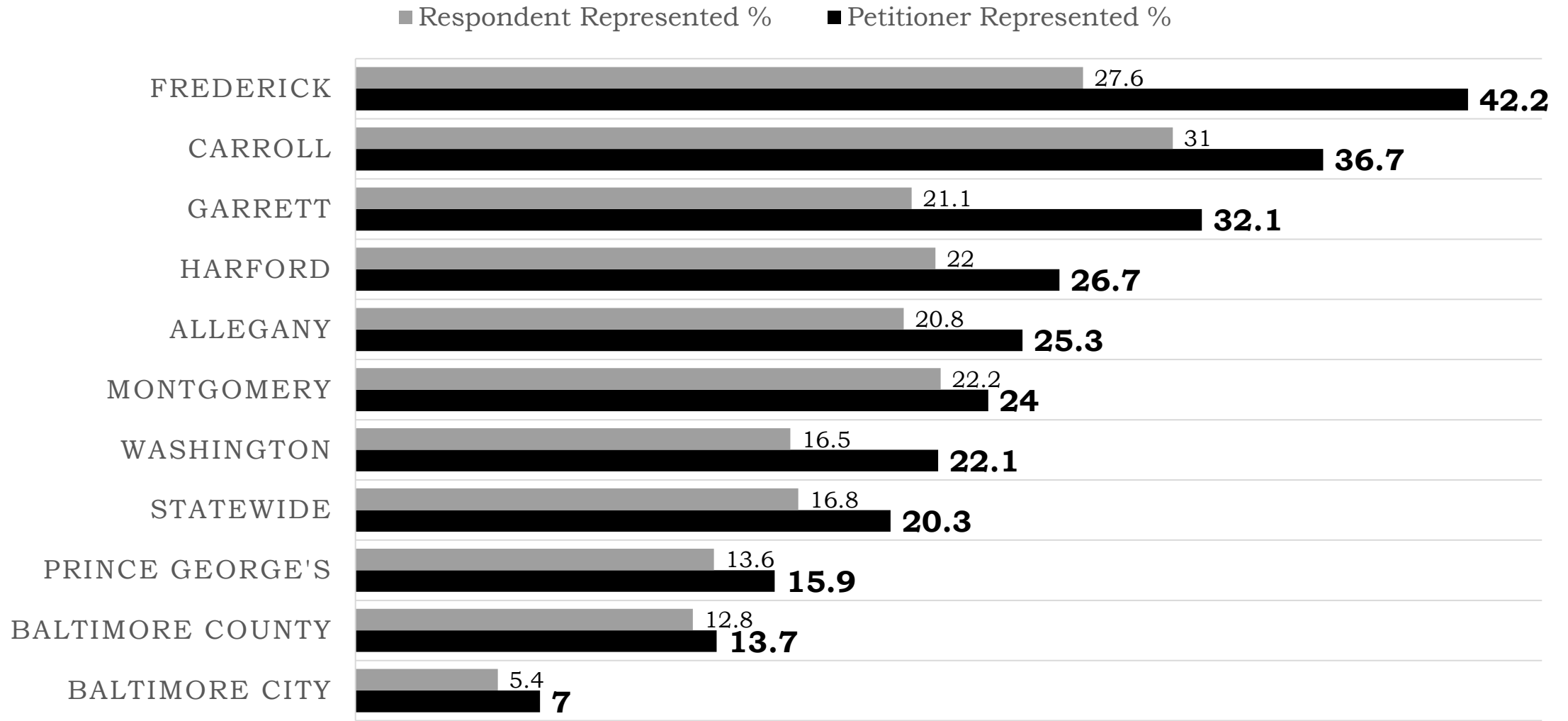
CIVIL PROTECTIVE ORDERS DISMISSED/DENIED VS. GRANTED BY MARYLAND JURISDICTION (2022)



Civil Protective Order Dismissed/Denied vs. Granted Cases in Maryland (2022)

Jurisdiction	Dismissed/Denied # and %	Granted # and %
Montgomery	1073 (42.3%)	1469 (57.7%)
Carroll	214 (43.7%)	276 (56.3%)
Harford	417 (46%)	489 (54%)
Allegany	145 (47.1%)	163 (52.9%)
Garrett	55 (50.5%)	54 (49.5%)
Washington	428 (52.6%)	386 (47.4%)
STATEWIDE	12,828 (54.9%)	10,550 (45.1%)
Frederick	484 (53.7%)	418 (46.3%)
Prince George's	2864 (58.7%)	2016 (41.3%)
Baltimore City	1782 (62.2%)	1085 (37.8%)
Baltimore County	2061 (64.9%)	1117 (35.1%)

REPRESENTATION IN CIVIL PROTECTIVE ORDERS BY MARYLAND JURISDICTION (2022)



SB0749-123425-01.pdf

Uploaded by: William Folden

Position: FWA



SB0749/123425/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

01 MAR 23
08:43:41

BY: Senator Folden
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 749
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, strike “**and Admission as Evidence**”; and strike beginning with “establishing” in line 6 down through “requirements;” in line 8.

AMENDMENT NO. 2

On page 2, in line 30, strike the brackets; in the same line, strike “SUBSECTIONS”; and in the same line, strike “AND (C)”.

On pages 3 and 4, strike in their entirety the lines beginning with line 18 on page 3 through line 5 on page 4, inclusive.

SB 749 Unfavorable.pdf

Uploaded by: Gregory Brown

Position: UNF



Testimony for the Judicial Proceedings Committee

March 9th, 2023

SB 749- Interception of Wire, Oral, or Electronic Communications – Exception for Imminent Danger and Admission as Evidence

GREGORY BROWN
PUBLIC POLICY
COUNSEL

UNFAVORABLE

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OFFICERS AND
DIRECTORS
HOMAYRA ZIAD
PRESIDENT

DANA VICKERS
SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The ACLU of Maryland opposes SB 749, which would allow wiretaps and other communication interceptions in certain instances, specifically if the person believes they are about to become a victim of a crime of violence, stalking, or abuse. This bill would impede the privacy rights of Marylanders and create another tool of incarceration by allowing these communication interceptions to be used as evidence in a court of law. This bill has inadequate safeguards for potential misuse and could lead to instances of interception for illegitimate reasons.

Maryland is currently a two party consent state that requires the consent of all parties in order for a conversation to be legally recorded. Carving out an exception for potential victims of violence is a noble pursuit, however, it would trample on the right to privacy that Marylanders currently enjoy by taking away the element of consent. Current law already provides carve outs for interception of wire communications if a person is under criminal investigation by a law enforcement entity¹. Art. Courts and Judges, §10–402, (c), (1), (ii), (1). There is also a carve out for communication providers to intercept wire communications upon receiving a court order signed by a judge. Art. Courts and Judges, §10–402, (c), (2), (ii). This standard at least requires judicial approval before the element of consent is taken away from the subject to be recorded. While providing tools for victims of domestic violence is essential to their protection, this bill goes too far in stripping a party of their individual autonomy and right to not be recorded without consent. Allowing one way consent in communications recording sets a precedent that is ripe for misuse by

¹ <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcyj§ion=10-402&enactments=false>

private citizens. All one would have to do for their interception to be legal is to make a claim of fear of being the victim of one of the enumerated crimes, whether that fear be real or imagined. So long as that claim is made the recording would be deemed legal regardless if the basis for the claim is ever prosecuted or ends in conviction. SB 749 lacks the proper safeguards against this form of misuse.

Evidentiary Use

The bill would also allow these interceptions by private citizens, not authorized by a judge, to be used as evidence at trial for the crimes they are alleged to have committed. While the bill would require that the proponent give notice to the adverse party, there are no other safeguards or exclusionary provisions in place should the adverse party object to the interception of the wire's use as evidence.

Further, the bill allows the recording to be introduced as evidence if "the probative value of the communication is greater than other evidence the proponent is able to procure through reasonable efforts." This new standard would ask the Court to determine the relevance, or probative value, of evidence and have it determine the weight it should be afforded, which has always been the duty of the trier of fact, not the court.

For the foregoing reasons we oppose SB 749.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

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MARYLAND

sb749.pdf

Uploaded by: Matthew Pipkin

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

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 749
Crimes – Interception of Wire, Oral or Electronic Communications
– Exception for Imminent Danger and Admission as Evidence
DATE: February 22, 2023
(3/9)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 749.

This bill contains vague or otherwise unworkable language and standards. At Courts and Judicial Proceedings § 10-405(c)(1)(ii), the bill requires courts to determine if a recording’s probative value is superior to “other evidence that the proponent is able to procure through reasonable efforts[.]” It is unclear how courts would determine what other evidence that proponents could “procure” and the bill gives no guidance on that issue. While courts are required to make admissibility determinations, the process more routinely involves considering whether the probative value of the evidence is outweighed by the danger of unfair prejudice. The language of this bill departs from evidentiary norms in this regard. Nor does the bill give an explanation for courts to determine under subsection (c)(2) whether the notice required is “sufficiently in advance of the trial, hearing, or other proceeding...”

cc. Hon. William Folden
Judicial Council
Legislative Committee
Kelley O’Connor

SB 749_MNADV_INFO.pdf

Uploaded by: Melanie Shapiro

Position: INFO



BILL NO: Senate Bill 749
TITLE: Crimes – Interception of Wire, Oral, or Electronic Communications –
Exception for Imminent Danger and Admission as Evidence
COMMITTEE: Judicial Proceedings
HEARING DATE: March 9, 2023
POSITION: **INFORMATION**

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 749.**

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 749 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.

For the above stated reasons, the **Maryland Network Against Domestic Violence provides Information on SB 749.**

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