

ANTHONY G. BROWN
Attorney General



CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-7036

WRITER'S DIRECT DIAL NO.
(410) 576-6584

March 14, 2023

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: SB 0754 – Maryland Wiretap and Electronic Surveillance Reform
Workgroup (**Support with Amendment**)

The Office of the Attorney General (“OAG”) recommends a favorable with amendment report on Senate Bill 754. This bill, sponsored by Senator Folden, proposes a workgroup to examine Maryland’s wiretapping laws that would include the Attorney General, or his designee, and require the OAG to provide staff for the workgroup. Among other things, the bill would task the workgroup with “examin[ing] ways to make the use of audio and visual recordings from wiretapping and electronic surveillance more available to assist with the prevention of, and admissible for use in proceedings relating to, domestic violence, child abuse, and the abuse of the elderly and other vulnerable adults.”¹

This task relates to concerns that the Department of Human Services has previously raised with our Office, because the current statute prohibits local departments of social services from considering and using essential evidence necessary to establish that children need the State’s assistance to assure their safety.

Maryland’s existing wiretapping law² “clearly and unambiguously prohibits all willful interceptions and endeavors to intercept any wire, oral, or electronic communication” without the consent of all participants to the communication.³ Evidence obtained in violation of the statute may not be used in any trial or other proceeding, including administrative decisions made by any “department, officer, agency, regulatory body, legislative committee, or other authority of this State.”⁴ This statute is extremely broad; it prohibits conduct that would otherwise be permissible

¹ S.B. 754 (Md. 2023), p 3, lines 1-4.

² MD. CODE, CTS. & JUD. PROC. § 10-402.

³ *Holmes v. State*, 236 Md. App. 636, 655 (2018) (quoting *Standiford v. Standiford*, 89 Md. App. 326, 335 (1991)).

⁴ MD. CODE, CTS. & JUD. PROC. § 10-405(a).

under the U.S. Constitution and the Maryland Declaration of Rights,⁵ and is “more restrictive than the analogous federal statute and other state laws.”⁶ Additionally, Maryland’s wiretapping law is exceptionally restrictive compared to most other states.⁷

For these reasons, the OAG supports the creation of a workgroup to seek out solutions to this restrictive statutory limitation. However, the OAG requests an amendment that the Attorney General, or his designee, serve as the chair, or may designate the chair, of the workgroup. Due to the OAG’s Organized Crime Unit’s specialized knowledge and expertise in wiretapping, the Attorney General (or his designee) is uniquely situated to lead the workgroup.

Therefore, the OAG urges a favorable with amendment report on Senate Bill 754.

cc: Members of the Judicial Proceedings Committee

⁵ Derry v. State, 358 Md. 325, 342 (2000).

⁶ Holmes, 236 Md. App. at 649-50.

⁷ Forty-one states, plus the District of Columbia, permit recordings with the consent of any party to the communication. Of the remaining nine states, five permit the use of recordings in cases involving violent or sexual abuse, and another permits recordings made without the consent of all parties to be received non-criminal proceedings. Montana and New Hampshire are the only other states that maintain blanket prohibitions similar to those in Maryland on the use of recordings that contain evidence of abuse or neglect made without the consent of the alleged perpetrator.