

Bill Number: HB 714
Maryland States Attorneys Association
Support with Amendments

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS ASSOCIATION
IN SUPPORT WITH AMENDMENTS OF HOUSE BILL 714
CRIMES-INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS-
EXCEPTION FOR IMMINENT DANGER AND ADMISSION OF EVIDENCE

The Maryland States Attorneys Association supports (with amendment) House Bill 714 Crimes-Interception of Wire, Oral, or Electronic Communications-Exception for Imminent Danger and Admission of Evidence. This Bill will properly allow evidence of a violent crime and remove the unfairness of its exclusion in many circumstances.

This Bill will create an exception to the “wiretap” prohibition for circumstances where an individual is reasonably in fear of imminently becoming the victim of a crime of violence, stalking, abuse or violation of a protective order. We live in a world now where so much is recorded. It makes no sense that if a person reasonably feels they are about to be robbed, raped or even killed that they are committing a crime if they turn on the recording device on their cell phone right before the crime. It makes even less sense that the recording cannot be used to prosecute the person who committed that violent crime.

Courts and Judicial Proceedings Article Title 10, Subtitle 4 addresses in detail the limitations on recording of a wire, oral or electronic communication. The restriction or prohibition on recording contains a number of exceptions. The statutes then contain a prohibition on the use of a recording which is illegally recorded and/or disseminated. The prohibition does not contain any parameters restricting the admission of a legally recorded communication within the exceptions until this bill. The amendment the States Attorneys Association proposes is to remove the restrictions set forth in the Bill for CJ §10-405(c). If a person has lawfully recorded their crime which was just committed upon them, there shouldn't be restrictions on the use of the evidence at trial. There are already rules of evidence for Judges to apply to the admission of evidence which should address any legitimate concerns regarding the admission of the evidence. The evidence must be relevant to a material fact at trial. The probative value of the evidence cannot be outweighed by any unduly prejudicial affect. There should not be additional restriction for this evidence which doesn't apply to any other lawfully obtained recording.

The Maryland States Attorneys Association recommends a favorable report with an amendment to remove the addition of (c) of CJ §10-405.