



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 23, 2023

HEARING TESTIMONY FOR HOUSE BILL 714

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 House Bill 714, 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.

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, one-party consent recordings should be legal and admissible, particularly when victims are in imminent danger, are being stalked or seek to prove a violation of an existing protective order.

Although not perfect, HB714 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 HB714 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 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 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, consent required 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)

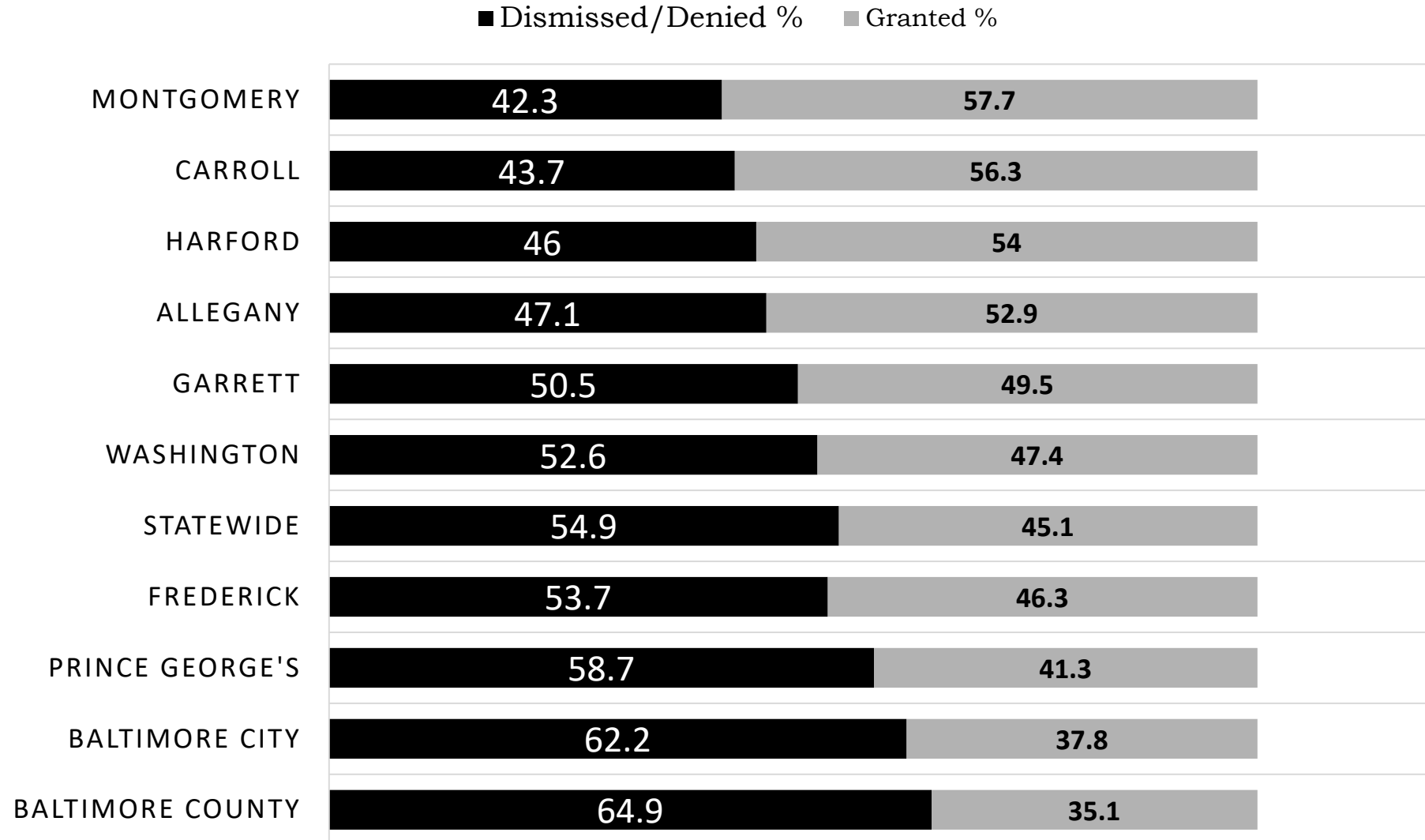
Delaware

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 DISPOSITIONS IN MARYLAND: DISMISSED/DENIED VS. GRANTED (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)

