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RE: SUPPORT FOR SB 610

Dear Mr. Chairman and Members of the Judicial Proceedings Committee:

We are writing to express the Office of the State Prosecutor's support for SB 610, Intercepted Communications – Exception for Imminent Danger, which would legalize recordings by individuals who had a good faith basis that they were in imminent danger when they decide to record a person without that person's consent. This would allow the evidence to be used by victims of crimes of violence who use recording as a mechanism to obtain evidence in situations where they are concerned for their safety and concerned about a power disparity between them and their attacker. The State should have every tool available to prosecute perpetrators of criminal behavior and allow victims the opportunity to present evidence of a crime against them.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of state government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our state and local government institutions, officials, employees, and elections.

Limited Legality

Under current Maryland law, any person who intercepts and/or discloses communications without the consent of all parties in the recording is guilty of a felony and can be sentenced to up to five years in prison. Not only is the recording of someone without their consent a crime, but the recording itself is inadmissible in Court. There are no exceptions. Therefore, even in cases where a prosecutor would traditionally immunize a witness of the crime of recording to introduce evidence of their sexual assault, child sex abuse, etc. that option would still not result in the evidence being admitted.

When the wiretap statute was drafted, the only entities that were envisioned to have the capacity to violate the statute were law enforcement or very sophisticated operational entities. But now, with the advent of personalized cell phones, recording a conversation without the knowledge of another party is literally just a click away, and can be used by nearly everyone, including victims of violent crimes.

Conclusion

The most significant impact of this bill would be to safeguard the ability to admit into evidence a victim's recording of a violent crime, yet still dissuade individuals generally from engaging in illegal recordings of private communications.

To that end, we would encourage a favorable report from the Judiciary Committee on Senate Bill 610 if the bill is amended to be admissible in a criminal proceeding.

Sincerely,

Charlton T. Howard, III
Maryland State Prosecutor