



DEPARTMENT OF THE ARMY
US ARMY INSTALLATION MANAGEMENT COMMAND
OFFICE OF THE STAFF JUDGE ADVOCATE
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TESTIMONY FOR SENATE BILL 610

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 610, entitled "Crimes – Interception of Wire, Oral, or Electronic Communications – Exception for Imminent Danger." 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. That fear also often makes victims poor witnesses in court where they are facing their abusers, who appear more confident and credible in a he said/she said scenario.

The current all-party consent statutory requirement to make audio recordings in Maryland results in the automatic exclusion of evidence – often, the most 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.

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

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

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. Amendments to the Maryland statute are long overdue. To be clear: this bill will not make Maryland a “one-party consent” state, nor does it fast-track admissibility of audio recordings. SB610 creates a limited exception that would enable domestic violence victims and others to legally make audio recordings and admit them during court proceedings when they have a good faith belief that they are in imminent danger of becoming a victim of a violent crime, stalking, abuse, or violation of an existing protective order.

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 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’ 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 610 at that time, the results in this case would have been radically different. The client would have been able to use audio recordings she made 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. A recent client chose not to pursue a protective order because

the only evidence supporting her own testimony would have been an audio recording that she made without the knowledge or consent of her abuser.

The power of an audio recording cannot be underestimated. In a recent domestic violence-related courts martial case that was held at Fort Meade, the victim possessed audio recordings. Convictions were successfully obtained for the charges that had supporting audio recordings admitted into evidence, but were not obtained where the charges were supported only by testimony.

Senate Bill 610 is a strong step in the right direction to help military victims of domestic violence present credible corroborating evidence against their offenders. I urge you to pass SB610 to benefit all domestic violence victims, including those in military families.

Thank you.

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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.

Fort Meade's The Legal Assistance Office provides free legal services to Active-Duty service-members, retirees and dependents in a wide variety of areas including family law, estate planning, consumer law, landlord/tenant law, military administrative appeals and the like. The Office has repeatedly been awarded the Army's Chief of Staff Award for Excellence in Legal Assistance.