

2024-02-21 SB610 (Support).pdf

Uploaded by: Adam Spangler

Position: FAV

CANDACE McLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD HOWIE
Deputy Attorney General



ANTHONY G. BROWN
Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-7036

WRITER'S DIRECT DIAL NO
(410) 576-6588

February 21, 2024

TO: The Honorable Will Smith
Chair, Judicial Proceedings Committee

FROM: Adam Spangler
Legislative Aide, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 610 - Crimes - Interception of Wire, Oral, or Electronic
Communications - Exception for Imminent Danger- **Support**

The Maryland Office of the Attorney General requests your favorable vote on Senate Bill 610.

Senate Bill 610 would allow for audio recording by someone who believes that they or another person are in "imminent danger of becoming the victim of" a crime of violence, stalking, abuse, or a violation of protective order. Currently, absent certain exceptions that apply to law enforcement only, a member of the public cannot record audio of another person without that other person's consent. If you record audio without consent, you are subject to a 5-year felony.

While prosecutions for unlawful wiretapping are rare, the other side of the coin is that recordings made in violation of the wiretap statute are generally not admissible in court, even if the person who did the recording isn't prosecuted. Concerns arise where those who are victims of crimes record (usually with their cell phones, which record audio and video) their abuser, and then are unable to use that recording in criminal or civil proceedings, such as divorce, custody,

protective order, or criminal cases that stem from that abuse. Senate Bill 610 helps victims seek justice against their abusers, allows these recordings to be used and prevents the victims from being prosecuted for making the recordings.

For the foregoing reasons, the Maryland Office of the Attorney General requests your favorable vote on Senate Bill 610.

cc: Judicial Proceedings Committee Members

Bailey_Testimony_SB610_Imminent Danger_Final_20240

Uploaded by: Anita Bailey

Position: FAV



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

February 21, 2024

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.

/s/ Anita M. Bailey
Anita M. Bailey, Esq.
Chief, Legal Assistance
(301) 677-9086
anita.m.bailey6.civ@army.mil

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.

Wiretap - limited exception- testimony - senate -

Uploaded by: Carrie Tirrell

Position: FAV



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
mcasa.org

Testimony Supporting Senate Bill 610
Lisae C. Jordan, Executive Director & Counsel
February 21, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 610

**Senate Bill 610 – Maryland Wiretap and Electronic Surveillance –
Limited Exception for Crime Victims Who Record Crimes**

Maryland currently requires all parties to an audio recording (but not a video recording) to consent to the recording. Violation of the all-party consent rule is a felony and also prevents admission of the recording into evidence. MCASA and its members have encountered multiple cases – including rapes – where recordings of the crime can not be used as evidence.

This bill would create an exception to the prohibition against recording another without consent when the person making the recording has a good faith belief that they or another person was in imminent danger of becoming a victim of specific crimes including rape, other crimes of violence defined by Crim.L. §14-101, stalking, abuse as defined in the protective order statute, and violation of a protective order. This is an issue that needs to be addressed. There have been cases where rape survivors have recorded the crime and the recording was both inadmissible and the survivor could have been (but was not) charged with a felony.

Past versions of this legislation raised concerns that have been addressed in SB610. First, the standard for determining whether a crime is about to occur has been changed to a "good faith belief" of the person making the recording. Many survivors of abuse experience post-traumatic stress, hypervigilance, and a sophisticated understanding of when their abuser poses a danger. The reasonable person standard previously proposed raised concerns these survivors would believe themselves in danger but others would not share their assessment of risk. This could, in turn, expose the survivor to felony liability for making a recording. Using a "good faith" standard resolves this concern and still maintains the court's ability to prevent admissible of evidence made for malicious reasons.

Second, past iterations of this bill included a separate evidentiary standard for recordings. SB610 leaves this issue to the Rules of Evidence. While there may be cases where the recording is not admissible under the Rules, MCASA believes that the vast majority would fall under existing exceptions to the hearsay rules, such as excited utterances.

In the era of ubiquitous cell phones, provisions of the code making taping of another without consent are depriving our justice system of the best evidence available in many cases, including rape and sexual assault. This bill would continue to protect privacy and allow a reasonable and limited exception to the wiretap law and serve the interests of justice.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 610**

SB 610 - WLCMD - FAV.pdf

Uploaded by: Laure Ruth

Position: FAV

BILL NO: Senate Bill 610
TITLE: Crimes - Interception of Wire, Oral, or Electronic Communications - Exception for Imminent Danger
COMMITTEE: Judicial Proceedings
HEARING DATE: February 21, 2024
POSITION: **SUPPORT**

Senate Bill 610 would create an exception under § 10-402 of the Courts and Judicial Proceedings Article (interception of communications), making it lawful for a person to intercept a wire, oral, or electronic communication if the person has a good faith belief that they, or another person, are in imminent danger of a becoming the victim of a crime of violence, as defined under § 14-101 of the Criminal Law Article; stalking under § 3-802 of the Criminal Law Article; abuse, as defined under § 4-501 of the Family Law Article; or a violation of a protective order under § 4-509 of the Family Law Article. The Women's Law Center supports this bill as it will recognize the ubiquity of cell phones that often are used to record acts of abuse, but under current law are not allowed into evidence and are actually a felony.

Maryland is a "two-party" consent state, and any audio recording must be consented to by all involved in the recording. Currently, a violation of the wiretap law is a felony and subject to punishment including imprisonment for not more than 5 years or a fine of not more than \$10,000, or both. (There is another bill, HB 274, that would change the violation from a felony to a misdemeanor, which we support).

SB 610 seeks to create exceptions to the existing wiretap law if a person has a *good faith belief* that they are in imminent danger of becoming a victim of one of the named items above. Under existing law, if an individual is determined to have not been in imminent danger when they recorded an incident then they will have violated the law and be subject to criminal prosecution for a felony (for now). For example, if a person seeks an order of protection for domestic violence asserting imminent danger of serious bodily harm, but the Court finds no imminent danger and denies the order, a savvy abuser could then seek to file charges against the petitioner for having recorded the abuser's action in violation of the wiretap laws. Admissibility of any audio recordings under this exception would still be subject to the rules of evidence.

Most domestic violence cases are second degree assault. We suggest the bill be amended to replace the use of crime of violence as defined under § 14-101 of the Criminal Law Article to the definition found in the Public Safety Article in §5-101 (c). But we would not want the use of the Criminal Law Article to defeat this importance advancement of our laws.

For these reasons, the WLC urges a favorable report on SB 610.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women.

SB610 Written testimony - 2024 Interception of Wir

Uploaded by: Lindsey Carpenter

Position: FAV



J. CHARLES SMITH, III
STATE'S ATTORNEY

KIRSTEN N. BROWN
DEPUTY STATE'S ATTORNEY

STATE'S ATTORNEY'S OFFICE

County Courthouse
100 West Patrick Street
Frederick, Maryland 21701

www.statesattorney.us

CIRCUIT COURT DIVISION
301-600-1523

DISTRICT COURT DIVISION
301-600-2573

CHILD SUPPORT DIVISION
301-600-1538

JUVENILE DIVISION
301-600-2980

DATE: February 20, 2024

BILL NUMBER: SB 610

POSITION: Favorable

The Maryland State's Attorney's Association and the Frederick County State's Attorney's Office support SB 610.

SB 610 permits interception of communications if the person believes themselves or another are in imminent danger of becoming a victim of certain offenses. Currently, if an individual records communications during a crime involving themselves or another as the victim, they are subject to potential criminal prosecution and, further, that evidence is not permitted to be used in the prosecution of the case in which they are a victim.

Technology today permits an individual to record interactions with another person by simply pulling out a cell phone or other electronic recording device. During the commission of a crime, victims sometimes begin recording the abuse as a way to prove what happened to them. Unfortunately, that evidence is later unable to be used in a criminal prosecution even though it may be the best evidence that exists regarding the incident.

In Frederick County we have had several cases in which victims, their siblings, or a concerned member of the community recorded child abuse or domestic assault incidents. Unfortunately, due to the current statute some of these cases were unable to be charged, as the recorded evidence would be inadmissible in court. In other cases that were charged, we were unable to use the audio recorded evidence during the prosecution of those individuals.

Furthermore, not only is the recording unable to be used in the prosecution, that evidence cannot even be mentioned. For example, if the offender (or even victim) were to testify completely opposite of what is said in the recording, the fact finder would not be permitted to hear or even consider those inconsistent statements. Frequently, without these recordings, the evidence in these cases boils down to a he said/she said where the fact-finder is challenged with determining whose version of events they believe. Without allowing the fact-finder to consider all of the relevant evidence that exists in a case prior to making a determination of whether to convict or acquit an individual, they are unable to make a fully educated and informed decision.

SB 610 would provide the Court and/or jury with additional evidence during the fact-finding portion of a trial to assist in determining whether or not to convict an individual. For these reasons, the Maryland State's Attorney's Association and the Frederick County State's Attorney's Office request a favorable report on SB 610.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Lindsey M. Carpenter
Chief, Special Victims Unit
Frederick County State's Attorney's Office

Wiretap - limited exception- testimony - senate -

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
mcasa.org

Testimony Supporting Senate Bill 610
Lisae C. Jordan, Executive Director & Counsel
February 21, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 610

**Senate Bill 610 – Maryland Wiretap and Electronic Surveillance –
Limited Exception for Crime Victims Who Record Crimes**

Maryland currently requires all parties to an audio recording (but not a video recording) to consent to the recording. Violation of the all-party consent rule is a felony and also prevents admission of the recording into evidence. MCASA and its members have encountered multiple cases – including rapes – where recordings of the crime can not be used as evidence.

This bill would create an exception to the prohibition against recording another without consent when the person making the recording has a good faith belief that they or another person was in imminent danger of becoming a victim of specific crimes including rape, other crimes of violence defined by Crim.L. §14-101, stalking, abuse as defined in the protective order statute, and violation of a protective order. This is an issue that needs to be addressed. There have been cases where rape survivors have recorded the crime and the recording was both inadmissible and the survivor could have been (but was not) charged with a felony.

Past versions of this legislation raised concerns that have been addressed in SB610. First, the standard for determining whether a crime is about to occur has been changed to a “good faith belief” of the person making the recording. Many survivors of abuse experience post-traumatic stress, hypervigilance, and a sophisticated understanding of when their abuser poses a danger. The reasonable person standard previously proposed raised concerns these survivors would believe themselves in danger but others would not share their assessment of risk. This could, in turn, expose the survivor to felony liability for making a recording. Using a “good faith” standard resolves this concern and still maintains the court’s ability to prevent admissible of evidence made for malicious reasons.

Second, past iterations of this bill included a separate evidentiary standard for recordings. SB610 leaves this issue to the Rules of Evidence. While there may be cases where the recording is not admissible under the Rules, MCASA believes that the vast majority would fall under existing exceptions to the hearsay rules, such as excited utterances.

In the era of ubiquitous cell phones, provisions of the code making taping of another without consent are depriving our justice system of the best evidence available in many cases, including rape and sexual assault. This bill would continue to protect privacy and allow a reasonable and limited exception to the wiretap law and serve the interests of justice.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 610**

SB 610 testimony talking points.pdf

Uploaded by: Paul Schwartz

Position: FAV



Testimony of Paul Schwartz
February 21, 2024
Judicial Proceedings Committee
SB 610 – Crimes – Interception of Wire, Oral, or
Electronic Communications – Exception for Imminent
Danger

I am Paul Schwartz, State Legislation Chair for NARFE, National Active & Retired Federal Employees.

We strongly support passage of SB 610.

We are in the electronic age and not to fully use our electronic capabilities to protect the vulnerable among us is an abdication of the government's responsibility to protect its citizens – specifically our children and our elderly, two groups that often rely on home care services

It is not uncommon to hear about elder abuse or child abuse.

This bill simply attempts to address an oversight in our laws by authorizing single consent to intercept a wire, oral, or electronic communication if the person has a **good faith belief** that an individual is in imminent danger of becoming the victim of a crime of violence, stalking, abuse, or a protective order

If that person fails to demonstrate a good faith belief via evidence then that person will be in violation of this law

Currently there are some 35 or so states, D.C., and the Federal Wiretapping Statute as well as Military Rules of Evidence that require ONE PARTY consent.

Maryland is currently in the minority of just seven states that require ALL-PARTY consent for audio recordings AND do not authorize exceptions such as for imminent danger

Just think how different the country's political situation would be if the state of Georgia required TWO PARTY consent

This bill simply attempts to place the protection of the ABUSED above that of the ABUSER

I strongly support a favorable review of SB 610

WrittenSupportSB610Final.pdf

Uploaded by: Sarah David

Position: FAV

CHARLTON T. HOWARD III
State Prosecutor

SARAH R. DAVID
Deputy State Prosecutor

LETAM DUSON
ABIGAIL E. TICSE
MARY W. SETZER
CASSIE MATHIAS
Senior Assistant State Prosecutors

STATE OF MARYLAND



OFFICE OF THE STATE PROSECUTOR

Hampton Plaza
Suite 410
300 East Joppa Road
Towson, MD 21286-3152
Telephone (410) 321-4067
1 (800) 695-4058
Fax (410) 321-3851

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

SB 610 - Intercepted Communications Exception for

Uploaded by: Scott Shellenberger

Position: FAV

Bill Number: SB 610
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 610
INTERCEPTED COMMUNICATIONS – EXCEPTION FOR IMMINENT DANGER

I write in support of Senate Bill 610 that updates an out-of-date law concerning the recording of oral communications. Maryland Wire Tap Statute is found at Court and Judicial Proceedings (CJ) §10-406. It is an out-of-date vestige of a past time when switch boards were the mode of communication.

Maryland is a two-party consent state when it comes to the recording of oral communications especially through the telephone. Thirty-eight States are one party consent states that require only one party to a conversation "consent" to the recording. Maryland has long had a statutory scheme in which law enforcement, under a judge's supervision, are permitted to record telephone conversations when they have probable cause to believe telephones are being use to commit crimes.

Because CJ 10-406 is a vestige of the past, recording someone orally both over the telephone and in person has been labeled a felony punishable up to 5 years in jail. Recording visually has never been against the law.

In today's reality people record everything both visually and orally. Something happens on the street they all break out their phones. Most people are unaware when they break out their phones and hit camera/record they are breaking the law in Maryland.

Senate Bill 610 does not change Maryland to a one party consent State. But what it does do is bring us closer into this decade. Senate Bill 610 keeps it a crime preserving Maryland's decision to be two party consent State but allows for exceptions when recording crimes of violence, stalking crimes, domestic violence crimes and violating a protective order.

Should not the best evidence of certain crimes be permitted to be introduced into court especially for these types of crimes. This is evidence of what actually happened in the case. We should be able to present the best evidence in crimes of violence, stalking, domestic violence cases and violation of protective orders.

Senate Bill 610 is a bill whose time is long overdue and brings Maryland partly into the reality of this decade. I urge a favorable report.

SB 610_MNADV_FWA.pdf

Uploaded by: Melanie Shapiro

Position: FWA



BILL NO: Senate Bill 610
TITLE: Crimes - Interception of Wire, Oral, or Electronic Communications -
Exception for Imminent Danger
COMMITTEE: Judicial Proceedings
HEARING DATE: February 21, 2024
POSITION: **Support with Amendment**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report with amendment on SB 610.**

Maryland requires the consent of every party to a phone call or conversation to make the recording lawful. Currently, a violation of the wiretap law is a felony and subject to punishment including imprisonment for not more than 5 years or a fine of not more than \$10,000, or both.

SB 610 seeks to create exceptions to the existing wiretap law for certain offenses including when a person has a good faith belief that they are in imminent danger of becoming a victim of a crime of violence, stalking, abuse as defined in § 4-501 of the family law article, or a violation of a protective order. MNADV supports a victim's ability to use a recording of the violence they suffered.

MNADV suggests that the Public Safety Article definition of crimes of violence found in § 5-101(c) be used instead of the Criminal Law Article definition. The Public Safety Article definition includes assault in the second degree. Many victims of domestic violence are assaulted by their abusers, but it is not always recognized or even reported as domestic violence. Utilizing the Public Safety Article definition would ensure that any recording of an assault would be admissible.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report with amendment on SB 610.**

SB610_UNFAV_ACLUMD.pdf

Uploaded by: Olivia Spaccasi

Position: UNF



Testimony for the Senate Judicial Proceedings Committee

February 21, 2024

SB 610 - Crimes – Interception of Wire, Oral, or Electronic Communications – Exception for Imminent Danger

OLIVIA SPACCASI
PUBLIC POLICY
PROGRAM ASSOCIATE

UNFAVORABLE

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL
ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND
DIRECTORS
HOMAYRA ZIAD
PRESIDENT

DANA VICKERS
SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The ACLU of Maryland opposes SB 610, which would allow wiretaps and other communication interceptions in certain instances, specifically if the person believes they are about to become a victim of a crime of violence, stalking, or abuse. This bill would impede the privacy rights of Marylanders and create another tool of incarceration by allowing these communication interceptions to be used as evidence in a court of law. This bill has inadequate safeguards for potential misuse and could lead to instances of interception for illegitimate reasons.

Maryland is currently a two party consent state that requires the consent of all parties in order for a conversation to be legally recorded. Carving out an exception for potential victims of violence is a noble pursuit, however, it would trample on the right to privacy that Marylanders currently enjoy by taking away the element of consent. Current law already provides carve outs for interception of wire communications if a person is under criminal investigation by a law enforcement entity¹. Art. Courts and Judges, §10–402, (c), (1), (ii), (1). There is also a carve out for communication providers to intercept wire communications upon receiving a court order signed by a judge. Art. Courts and Judges, §10–402, (c), (2), (ii). This standard at least requires judicial approval before the element of consent is taken away from the subject to be recorded. While providing tools for victims of domestic violence is essential to their protection, this bill goes too far in stripping a party of their individual autonomy and right to not be recorded without consent. Allowing one way consent in communications recording sets a precedent that is ripe for misuse by

¹ <https://mgaleg.maryland.gov/mgawebbsite/Laws/StatuteText?article=gcj§ion=10-402&enactments=false>

private citizens. All one would have to do for their interception to be legal is to make a claim of fear of being the victim of one of the enumerated crimes, whether that fear be real or imagined. So long as that claim is made the recording would be deemed legal regardless if the basis for the claim is ever prosecuted or ends in conviction. SB 610 lacks the proper safeguards against this form of misuse.

For the foregoing reasons we oppose SB 610.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND