



## Testimony for the Judiciary Committee

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### HB290- Interception of Wire, Oral, or Electronic Communications – Exception for Imminent Danger

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#### UNFAVORABLE

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The ACLU of Maryland opposes HB290, 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 entity<sup>1</sup>. 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

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<sup>1</sup> <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcyj&section=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. HB290 lacks the proper safeguards against this form of misuse.

For the forgoing reasons, we urge an unfavorable report on HB290.

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