

BILL NO: House Bill 290
TITLE: Crimes - Interception of Wire, Oral, or Electronic Communications - Exception for Imminent Danger
COMMITTEE: Judiciary
HEARING DATE: January 30, 2024
POSITION: Favorable with Amendments

House Bill 290 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 with some amendments to improve the intent of the bill. We do also have some concerns about applicability of this law, should it pass, in certain situations.

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).

HB 290 seeks to create exceptions to the existing wiretap law 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. We are not sure of the ramifications, including how our attorneys should advice clients. Perhaps protective language could be added in this bill.

In addition, 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).

For these reasons, the WLC urges a favorable report with amendments on HB 290.

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.