

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 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.