



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 16, 2025

The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 61: *Wiretapping and Electronic Surveillance – Authorized Interception of Oral Communications – Cellular Telephones and Security Cameras*

Dear Chairman Smith and Members of the Committee,

This bill is a companion bill to SB38, which alters the law to characterize any violations of Section 10-402 of the Courts and Judicial Proceedings Article as misdemeanors instead of as felonies.

Section 10-402 creates the crime of intercepting a communication, whether oral, wire or electronic, without the consent of the other parties to the communication. This criminal statute was adopted before the invention of cellphones and home security systems using cameras and other sophisticated electronic devices to record people entering upon someone's property. In today's world, with ubiquitous cellphones and security systems protecting private property, the Maryland statute is increasingly innocently violated by ordinary citizens and homeowners.

The use of cellphones to record people occurs all the time, frequently (and possibly most frequently) without the consent of the people being recorded. Of course cellphones record both images and audio. So it is probably not an exaggeration to state that most people possessing cellphones at one time or another have committed a crime under Section 10-402.

Similarly, many homeowners have installed more or less elaborate home security systems that capture the images and sounds of people entering upon the homeowner's property. The rapid proliferation of doorbells that capture the images and sounds of people approaching the door and seeking to speak to the homeowner is well known. Other even more sophisticated systems protect the back yards, garages and other points of possible entry of private homes. Any such systems that capture sounds render the homeowner and person installing the system in inadvertent violation of Section 10-402.

Senate Bill 61 addresses this problem. It creates an exception to the prohibition contained in Section 10-402(a) by establishing that it is lawful for a person to use a cell phone or another device to intercept an oral communication in public if the person speaking in public should reasonably anticipate that the oral communication could be overheard or intercepted.

Senate Bill 61 further provides that a person can lawfully use a security camera or other device installed on or about real property owned, leased or otherwise lawfully controlled by the person to intercept an oral communication on the property.

Thus, under this bill, the everyday conduct of law-abiding citizens will no longer be illegal, and those citizens will no longer be subject to criminal prosecution for their innocent everyday conduct.

I appreciate the Committee's consideration of Senate Bill 61 and will be happy to answer any questions the Committee may have.