



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 38: Intercepted Communications - Penalty

Dear Chairman Smith and Members of the Committee,

Senate Bill 38 is a bill which has passed the House three years in a row but has always failed to get a vote in the Senate. It is also that rare criminal bill that has the support of both the Maryland States Attorneys Association and the Office of Public Defender. Further, this bill has no fiscal note.

Senate Bill 38 changes a single word in a single criminal statute. In Section 10-402 of the Courts and Judicial Proceedings Article, it changes the word “felony” to “misdemeanor”. The penalty for the crime is left unchanged. All that changes is the characterization of the crime from a felony to a misdemeanor.

The crime set out in the statute is the crime of intercepting a communication, whether oral, wire or electronic, without the consent of the other parties to the communication. Unlike in most other states, Maryland has a two-party consent rule. Both parties to a communication must consent to its being intercepted. So this bill would changed the characterization of that crime from a felony to a misdemeanor.

Let me give you two hypothetical instances which this bill would impact. First, two gang members are standing on a corner discussing a crime they are about to commit. Someone standing nearby waiting for a bus takes out his cellphone and makes a video recording of their conversation, including an audio recording of the words they use, and then turns the recording over to the police. Under current law, that bystander has committed a felony. Second, a battered wife sits her cellphone in a location that can capture video and audio images of her husband and captures footage of him screaming at her and beating her and then turns the footage over to the authorities. Once again, under current law, the battered wife is guilty of a felony.

Senate Bill 38 is a simple but necessary step to align Maryland law with the reality that cell phones and cell phone recordings are commonplace. The felony criminal liability imposed by CJP § 10-402 is out-of-touch with the expectations and experiences of Marylanders.

Reclassifying the violation as a misdemeanor brings the additional benefit of permitting these cases to be tried in the District Court of Maryland, a more efficient and appropriate venue for most of these matters. It thus reduces the strain on resources of the circuit courts.

In the House last year, this bill drew no opposition testimony. In support of the bill were the Maryland States Attorneys Association, the States Attorneys of Baltimore County, Frederick County and Prince George's County, the Office of Public Defender, the Maryland State Bar Association, the Women's Law Center and the Maryland Network Against Domestic Violence.,

I appreciate the Committee's consideration of Senate Bill 38 and will be happy to answer any questions the Committee may have.