

SB 38 FAV.pdf

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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.

SB 38 - MNADV - FAV.pdf

Uploaded by: Laure Ruth

Position: FAV



BILL NO: Senate Bill 38
TITLE: Intercepted Communications - Penalty
COMMITTEE: Judicial Proceedings
HEARING DATE: January 16, 2025
POSITION: **Support**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on SB 38.**

Maryland requires the consent of every party to a phone call or conversation to make a recording lawful. 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.

Senate Bill 38 would reclassify a violation of the wiretap law from a felony to a misdemeanor. MNADV supports a victim's ability to use a recording of the violence they suffered in court proceedings. Currently it is a felony for a victim, including victims of domestic violence, to record and document the abuse and violence they experienced and use it to obtain relief from the courts. So many times, people experiencing domestic violence or sexual assault have to be told that they can use audio recording of the assault lest they be charged with a felony. And, perhaps even worse, although they have incontrovertible evidence of the assault perpetrated, they cannot use it as evidence in court.

SB 38 is an important attempt to remediate Maryland's wiretap laws.

For the above stated reasons, the Maryland Network Against Domestic Violence urges a **favorable report on SB 38.**

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Wiretap - felony to misdemeanor - testimony - sena

Uploaded by: Lisae C Jordan

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Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 38
Lisae C. Jordan, Executive Director & Counsel
January 16, 2025

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 38.

Senate Bill 38 – Wiretap – Change to Misdemeanor

This bill would reclassify violation of the all party consent law for audio recordings from a felony to a misdemeanor.

Victims of violent crime, including sex crimes, have recorded their assaults in an attempt to document what has occurred. Current law prohibits use of these audio recordings in court proceedings and classifies the victims as felons. This discourages reporting of violent crime. HB38 is a modest step towards reducing the penalty for these crime victims. It also more appropriately responds to this type of recording in an era of ubiquitous cell phones and the ability to record at almost any time.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 38**

SB 38 - Intercepted Communications - Penalty.pdf

Uploaded by: Scott Shellenberger

Position: FAV

Bill Number: SB 38
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 38
INTERCEPTED COMMUNICATIONS – PENALTY

I write in support of Senate Bill 38 Intercepted Communications – Penalty. For years I have attempted to amend or strike Courts and Judicial Proceeding Article (CJ) §10-406 Maryland's Wire Tap Statute.

Maryland is a two party consent state when it comes to the recording of oral communications especially through the telephone. Thirty-eight States are one party consent states that require only one party to a conversation to consent to the recording. Maryland has long had a statutory scheme in which law enforcement, under a judges supervision, are permitted to record telephone conversations when they have probable cause to believe telephones are being use to commit crimes.

Because CJ 10-406 is a vestige of the past, recording someone orally both over the telephone and in person has been labeled a felony punishable up to 5 years in jail. Recording visually has never been against the law.

In today's reality people record everything both visually and orally. Most people are unaware when they pull out their phones and hit camera/record they are breaking the law in Maryland.

While I have been unsuccessful in repeating the statute it seems reasonable to at least take a baby step forward and make it a misdemeanor instead of a felony. We should not subject someone to such a harsh potential penalty when doing something everyone does every day and everyone accepts. That is taking out a phone & recording.

I urge a favorable report.