

# **SB0061 Wiretapping and Electronic Surveillance - A**

Uploaded by: Catherine OMalley

Position: FAV

BILL NO: Senate Bill 0061  
TITLE: Authorized Interception of Oral Communications - Cellular Telephones and Security Cameras  
COMMITTEE: Judicial Proceedings  
HEARING DATE: January 16, 2025  
POSITION: **SUPPORT**

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SB0061 would establish two exceptions to Maryland's wiretap law (Section 10-402 of the Courts and Judicial Proceedings Article); it would deem lawful for a person to use a cellular telephone or another device to intercept an oral communication in public if the speaker should *reasonably anticipate* their oral communication *might be* overheard, and it establishes that it is lawful for a person to use a security camera or another device installed on or about certain real property to intercept an oral communication *on that property*.

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. The Women's Law Center supports this bill as it will recognize the ubiquity of cell phones and security cameras that often are used to record acts of abuse, but under current law are not allowed into evidence and are actually a felony.

Victims in domestic violence cases experience a variety of challenges when making decisions about testifying against their abusers. Some of those challenges are as a direct result of the abuser threatening the well-being of the victim. This bill will allow a holistic examination of personally recorded evidence, the admissibility of which would still be subject to the rules of evidence.

For these reasons the Women's Law Center of Maryland urges a favorable report on SB0061.

***The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.***

## **SB61 FAV.pdf**

Uploaded by: Christopher West

Position: FAV



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.

# **SB 61 - MNADV - FAV.pdf**

Uploaded by: Laure Ruth

Position: FAV



**BILL NO:** Senate Bill 61  
**TITLE:** Wiretapping and Electronic Surveillance - Authorized Interception of Oral Communications - Cellular Telephones and Security Cameras  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** January 16, 2025  
**POSITION:** **SUPPORT**

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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 COMMITTEE to favorably report on SB61.**

Senate Bill 61 is one of several bills seeking to update and modify Maryland's' wiretap laws. The bill would allow a person may use a cell phone or other device to record audio in public if the speaker should reasonably know that the communication could be overheard or intercepted. In addition, if a person is in their home (as defined in the bill) it would not be a crime to record audio via security cameras such as Ring. Cell phones and security cameras, ubiquitous on today's world, would be able to be used legally in these circumstances. Our "wiretap laws" are not modernized for the world we live in today, with cell phones, Ring cameras at peoples' front doors, etc. In fact, we might all be recording audio that could expose us to a felony charge (and see companion bill SB 38, changing it from a felony to a misdemeanor). However, as drafted, SB 61 may not be construed to include use of a cell phone to record audio. The language of the bill suggests that only a security type product would be acceptable. Perhaps an amendment can clarify that it would included use of a cell phone to record if one is in one's own home.

We often recommend that victims of domestic violence install a Ring camera or similar product around their home. SB 61 makes it that audio recording by this type of technology on real property is allowable. If these safety measures provide audio evidence that can't be used in court and subjects the person making the recording to criminal charges, their value is greatly reduced (other than viewing cute wild animals in the dead of night).

We commend you to HB 314, as another attempt to allow probative evidence into a trial. Currently there is no cross-file.

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For further information contact Laure Ruth ■ Public Policy Director ■ 301-852-3930 ■ [lruth@mnadv.org](mailto:lruth@mnadv.org)

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While the legislature grapples with an overhaul of the wiretap laws, SB 61 will at least make these everyday occurrences no longer be criminal.

For the above stated reasons, the Maryland Network Against Domestic Violence urges a favorable report on SB61.

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## **SB 61 - Authorized Interception of Oral Communicat**

Uploaded by: Scott Shellenberger

Position: FAV

**Bill Number: SB 61**  
**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 61**  
**AUTHORIZED INTERCEPTION OF ORAL COMMUNICATION – CELLULAR**  
**TELEPHONES AND SECURITY CAMERAS**

I write in support of Senate Bill 61. 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.

SB 61 would legalize what everyone naturally does nowadays when they see an incident. Pull out their phone and record. That is what everyone in this modern age is used to and should we not make it the Law. In addition, what about Ring cameras. You install one that records sound and you are breaking the law.

SB 61 is a common sense change to a Law written decades ago.

I urge a favorable report.

## **2025-01-16 SB 61 - Wiretapping and Electronic Surv**

Uploaded by: Hannibal Kemerer

Position: INFO



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
DIRECTOR OF GOVERNMENT RELATIONS

**INFORMATIONAL ONLY**

**BILL: Senate Bill 61– Wiretapping and Electronic Surveillance – Authorized Interception of Oral and Security Cameras**

**FROM: Maryland Office of the Public Defender**

**POSITION: Informational**

**DATE: January 16, 2025**

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The Maryland Office of the Public Defender (“OPD”) submits this letter of information regarding SB61, Senator West’s legislation creating two exceptions to Maryland’s all-party consent requirement for recording conversation audio.

Senate Bill 61 makes it lawful for a person to use a cellular telephone or other device to intercept oral communications in public if the speaker should reasonably anticipate that the oral communication would be overheard or intercepted; and establishes that it’s lawful for a person to use a security camera or other device installed on real property to intercept and record oral communication.

While OPD generally supports decriminalization efforts and SB 61 arguably meets that test, it bears remembering that if this legislation passes Marylanders will, once again, be subject to the types of persistent surveillance successfully challenged on constitutional grounds in *Leaders of the Beautiful Struggle v. Baltimore Police Dept.*, 2 F.4th 330 (4th Cir. 2021) (en banc). In that case, a divided en banc Fourth Circuit held that “grassroots community advocates in Baltimore” were likely to succeed on the merits of their Fourth Amendment unreasonable search claim. *Id.* at 334. Put simply, the en banc majority held that “[b]ecause the [Aerial Investigation Research] program enables police to deduce from the whole of individuals’ movements, we hold that accessing its data is a search, and its warrantless operation violates the Fourth Amendment.” *Id.* at 346.

So, too, here SB 61 legalizes the collection of audio and video footage of individuals who appear on real property equipped with cameras. If the resulting footage is provided to law enforcement without a warrant, its provenance may prove constitutionally suspect. That conclusion is beyond the scope of this informational-only testimony. However, it bears remembering the pitfalls of constant surveillance lest we be relegated to dwell in a world where that is the reality.

OPD remains committed to advocating for the rights of individuals to be free from uninhibited and persistent surveillance. We appreciate the opportunity to provide this perspective and welcome any further discussion to refine SB 61.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Hannibal Kemerer (hannibal.kemerer1@maryland.gov).