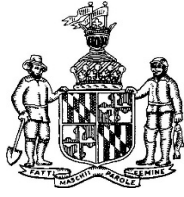


# **Feinstein Letter of Support SB1007 .pdf**

Uploaded by: Debbie Feinstein

Position: FAV



STATE'S ATTORNEY  
JOHN J. MCCARTHY

## State's Attorney for Montgomery County

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DEPUTY STATE'S ATTORNEYS  
PETER A. FEENEY  
RYAN S. WECHSLER

April 1, 2025

The Honorable Will Smith  
Chair, Judicial Proceedings Committee  
11 Bladen Street  
Annapolis, MD 21401

Dear Chair Smith and Committee Members:

I write in support of SB1007—Criminal Law—Wiretapping and Electronic Surveillance—Intercepted Communications—Admissibility of Evidence. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and co-chair of the Maryland State's Attorney Association's Special Victims Legislative Subcommittee.

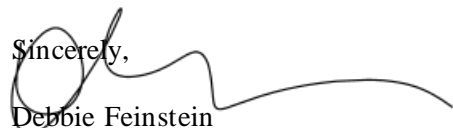
Senate Bill 1007 will open a path to justice for victims of crime by allowing for the admissibility of evidence that would otherwise violate the wiretap law. Senate Bill 1007 delineates the circumstances that warrant admissibility. The proponent must show: (1) the content of the communication is offered as evidence of a material fact, (2) the interception was not made as a part of a law enforcement investigation, (3) evidence as to the content of the communication is more probative than any other evidence the proponent can procure through reasonable efforts, and (4) the interests of justice will be served by the admissibility of this evidence.

I can point to many cases where this law would make a difference. One case in particular stands out. In this case, an uber driver was charged with raping a passenger incapacitated by alcohol. The victim passed out in the back of an uber that was called to take her home safely. She woke up alone in the back of the uber. She had no memory of what happened, but she suspected the offender had sex with her in the car. To confirm her suspicion, she asked the offender for another ride home so that she could confront him and record their conversation. During the recorded conversation, the offender admitted that she was "wasted," and that they had sex. The offender did not deny that he had sex with the victim while she was passed out. DNA confirmed that the offender had sex with her in the car. The DNA could not show, however, that she was incapacitated.

The Court excluded the recorded conversation under the current law. At trial, the Defendant, testified that they had sex, that she wasn't that drunk, and that she was not passed out. He said that the victim accused him of rape because he turned her down for a date. His word against hers.

I urge this committee to vote in support of SB375 to ensure justice for victims of crime.  
I strongly urge this Committee to issue a favorable report.

Sincerely,

  
Debbie Feinstein  
Senior Assistant State's Attorney  
Montgomery County, Maryland

# **SB1007 MSAA Testimony.pdf**

Uploaded by: Joyce King

Position: FAV



## Maryland State's Attorneys' Association

3300 North Ridge Road, Suite 185

Ellicott City, Maryland 21043

410-203-9881

FAX 410-203-9891

Richard Gibson  
President

Steven I. Kroll  
Coordinator

DATE: April 1, 2025

TO: Judicial Proceedings Committee

FROM: Joyce King, Chief Counsel Frederick County State's Attorney's Office

BILL NUMBER: HB 533

POSITION: Favorable

As Co-Chair of the Maryland State's Attorneys' Association Special Victims Unit, I strongly support Senate Bill 1007 Wiretapping and Electronic Surveillance - Intercepted Communications - Admissibility of Evidence. This legislation seeks to permit the admissibility of certain intercepted communications as evidence in legal proceedings under specified circumstances.

In the realm of prosecuting crimes against vulnerable individuals—including cases of sexual assault, child abuse, domestic violence, and human trafficking—evidence is often scarce and primarily reliant on victim testimony. This limitation can hinder our ability to hold offenders accountable and ensure justice for victims.

SB1007 addresses this challenge by allowing the contents of specific intercepted communications to be admissible in court. We have several instances throughout the state where victims capture their victimization on video and audio recording. Prosecutors in our Special Victim Committee bring forth examples of audio recording of a rape, a domestic assault, a beating of child which all could not come in as evidence. This is unjust as this is the evidence that can be pivotal in corroborating victim statements, illustrating the severity of offenses, and providing clear insights into the dynamics of abusive relationships. As the mandate of Body Worn Camera, we see that recordings are the most compelling evidence, capturing real-time incidents that might otherwise be difficult to substantiate.

It's important to note that while Maryland law typically prohibits the recording of private conversations without the consent of all parties, there are exceptions, particularly when one party consents and the recording is made to gather evidence of a crime. SB1007 seeks to clarify and expand the circumstances under which such evidence is admissible, ensuring that victims who record their victimization can have their evidence considered in court.

By enacting SB1007, Maryland would enhance the tools available to prosecutors, thereby strengthening our capacity to protect and advocate for the state's most vulnerable citizens. This legislation represents a significant advancement in our collective efforts to deliver justice and support to victims of serious crimes.

## **Wiretap - catch hearsay model - testimony - senate**

Uploaded by: Lisae C Jordan

Position: FAV



## violence in Maryland

P.O. Box 8782  
Silver Spring, MD 20907  
Phone: 301-565-2277  
Fax: 301-565-3619

## Working to end sexual

For more information contact:  
Lisae C. Jordan, Esquire  
443-995-5544  
mcasa.org

### **Testimony Supporting Senate Bill 1007** **Lisae C. Jordan, Executive Director & Counsel** April 2, 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 1007

#### **Senate Bill 1007 – Maryland Wiretap and Electronic Surveillance – Allow Judges to Evaluate & Admit Evidence When Victims Record Crimes**

Maryland currently requires all parties to an audio recording (but not a video recording) to consent to the recording. Recordings obtained in violation of this law prevents admission of the recording into evidence unless the recording is of co-conspirators and one is out of state. MCASA and its members have encountered multiple cases – including rapes – where recordings of the crime can not be used as evidence.

This bill would allow judges to evaluate whether an audio recording should be admitted into evidence. It would require that judges use the same standard currently included in the Rules of Evidence, *R.5-803(24) other exceptions*, commonly referred to as the “catch-all” exception to hearsay rules. Senate Bill 1007 adds the additional restriction that the recording may NOT be “MADE AS PART OF OR IN FURTHERANCE OF AN INVESTIGATION CONDUCTED BY OR ON BEHALF OF LAW ENFORCEMENT OFFICIALS OF THIS STATE”; this is appropriate and would ensure that law enforcement must continue to obtain a court order prior to recording others. This would not permit every recording to be routinely admitted. Admission would be permitted only when they relate to a material fact, are more probative on the point than other evidence that can be reasonably obtained, and admission will serve the interests of justice. This bill also does not change the criminal prohibition against recording another person without consent. While MCASA believes the current felony classification of recording another should be changed, creating an avenue for admissibility is by far the greater concern.

This is a real issue in our state: there have been cases where rape survivors have recorded the crime and the recording was inadmissible. In the era of ubiquitous cell phones, the provisions of the code making taping of another without consent are depriving our justice system of the best evidence available in rape, sexual assault and other cases. This bill would continue to protect privacy and allow reasonable exceptions to the wiretap law to serve the interests of justice.

MCASA notes that there have been discussions of taking an incremental step forward and limiting application of this exception to criminal proceedings involving crimes against a person. This is a reasonable approach that would help victims access justice while the discussion about the all-party consent law continues.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on Senate Bill 1007**



## **Support HB1007**

Uploaded by: Sarah David

Position: FAV



## STATE OF MARYLAND

CHARLTON T. HOWARD III  
State Prosecutor

SARAH R. DAVID  
Deputy State Prosecutor

ABIGAIL E. TICSE - MARY W. SETZER  
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### **RE: Support for SB 1007, Maryland Office of the State Prosecutor**

Dear Mr. Chairman and Members of the Judicial Proceedings Committee:

We are writing to express the Office of the State Prosecutor's support for SB 1007, Intercepted Communications – Penalties and Admissibility of Evidence, which would allow a judge to decide whether or not to admit recordings by one party if it would serve the interests of justice. This would allow the evidence to be used by victims of crimes of violence who use recording as a mechanism to obtain evidence in situations where they are concerned for their safety and concerned about a power disparity between them and their attacker.

Under current Maryland law, any unconsented to recording would not be admissible in court for any reason, including impeachment. This means a person testify that they never said words that were recorded—whether those were threats, words that showed lack of consent, etc and the evidence would still not be admissible. This bill would change that. The State should have every tool available to prosecute perpetrators of criminal behavior and allow victims the opportunity to present evidence of a crime against them.

### **The Office of the State Prosecutor**

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of state government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our state and local government institutions, officials, employees and elections.

### **Exclusionary Rule**

Under current Maryland law, any person who intercepts and/or discloses communications without the consent of all parties in the recording is guilty of a felony and can be sentenced up to five years in prison. When the wiretap statute was drafted, the only entities that were envisioned to have the capacity to violate the statute were law enforcement or very sophisticated operational entities. But now, with the advent of personalized cell phones, recording a conversation without the knowledge of another party is literally just a click away, and can be used by nearly everyone, including victims of violent crimes.

Currently all illegal wiretaps, or recordings without the consent of both parties, are inadmissible in court. This bill would amend that exclusionary rule, so that a judge may decide to admit evidence obtained from a surreptitious recording if it met certain criteria, similar to provisions in Maryland law allowing the admission of certain hearsay evidence.

The language for this part of the bill, borrowed as noted from existing Maryland law, places the decision to admit such evidence in the hands of a judge, in the same way a judge would make a determination on a hearsay issue. The language for the bill mirrors that of Maryland's "residual hearsay" rule. Hearsay is defined as an out-of-court statement that is offered for its truth. Normally, hearsay is inadmissible in court. There are, however a litany of exceptions. One exception, outlined in Rule 5-803(b)(24), directs judges to evaluate and admit evidence that does not fit into one of the enumerated hearsay exceptions, but which has equivalent guarantees of trustworthiness. The rationale for the language from the "residual hearsay" rule coincides with the interests of admitting illegal recordings because recordings are inherently more trustworthy and reliable than other forms of hearsay. While we want to continue to dissuade their general admissibility, we want to make sure there is a mechanism for them to be admitted in special contexts.

It is important to note that this bill does not allow for all recordings to automatically be admitted. Pursuant to the bill, the recording can only be admitted once a judge makes a determination based on a showing by the moving party that: (1) the evidence is offered as evidence of a material fact in the criminal proceeding; (2) the contents of the recording are more probative than other available evidence; (3) the interests of justice will be best served by the recording being entered into evidence; and (4) the recording must be disclosed to the opposing party sufficiently in advance of the trial date. And of course, all evidence, including recordings, are subject to the other rules of evidence.

This is an important step in ensuring recordings that reflect the truth, especially when power dynamics are at play, can be admitted. This is time when actions and emotions are heightened, and a person's first line of defense is to record an uncomfortable or threatening interaction on their cell phone. Right now, if a public official recorded a person threatening to blackmail them or hurt their family, the recording could not be used in a hearing for threatening a public official. If a woman is being sexually assaulted and records her own rape, her assailant can argue she consented while she holds a recording showing she did not. If an elderly person's caretaker threatens and abuses them when they are alone in a medical facility and the elderly person records the interaction it is not admissible in court for any reason. The examples are endless of how important these recordings are in achieving justice and discovering truth.

## **Conclusion**

The most significant impact of this bill would be the ability to admit into evidence a victim's recording of a violent crime, yet still dissuade individuals generally from engaging in illegal recordings of private communications.

To that end, we would encourage a favorable report from the Judiciary Committee on House Bill 314 if the bill is amended to be admissible in a criminal proceeding.

Sincerely,

Charlton T. Howard, III  
Maryland State Prosecutor