

Bill Number: HB 314
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 HOUSE BILL 314
WIRETAPPING AND ELECTRONIC SURVEILLANCE – INTERCEPTED
COMMUNICATIONS – ADMISSIBILITY OF EVIDENCE

I write in support of House Bill 314 that updates an out-of-date law concerning the recording of oral communications. This Body in 2024 passed HB 290 which is very similar to the current HB 314. Maryland Wire Tap Statute is found at Court and Judicial Proceedings (CJ) §10-406. It is an out-of-date vestige of a past time when switch boards were the mode of communication.

Maryland is a two-party consent state when it comes to the recording of oral communications especially through the telephone. 38 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 judge’s 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. Something happens on the street they all break out their phones. Most people are unaware when they break out their phones and hit camera/record they are breaking the law in Maryland.

House Bill 314 does not change Maryland to a one party consent State. But what it does do is bring us closer into this decade. House Bill 314 keeps it a crime preserving Maryland’s decision to be two party consent State but allows for the recording to come into evidence as long as the content is:

- evidence of a material fact;
- was not part of action by Law Enforcement;
- more probative than other evidence;
- the interest of justice will best be served

This Statute will preserve the Wire Tap Statute. It makes explicitly clear that Law Enforcement must comply with the Wire Tap Statute and cannot use this exception.

Should not the best evidence of certain crimes be permitted to be introduced into court. This is evidence of what actually happened in the case. We should be able to present the best evidence in all crimes. It will likely be the words of a Defendant.

House Bill 314 is a bill whose time is long overdue and brings Maryland partly into the reality of this decade. I urge a favorable report.