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

Dear Chair Smith and Committee Members:

We write on behalf of the Maryland State's Attorney's Association in support of SB661—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, along with Joyce King, Deputy State's Attorney for Frederick County, of the MSAA Special Victims Legislative Subcommittee.

Senate Bill 661 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 661 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.

We can point to many cases where this law would make a difference. In one 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.

We urge this committee to promote justice for victims of crime by supporting SB661.

Sincerely,

Debbie Feinstein  
Debbie Feinstein  
Montgomery County State's Attorney's Office

Joyce King  
Joyce King  
Frederick County State's Attorney's Office