

**SB 661 FAV MDHTTF + TA.pdf**

Uploaded by: Amanda Rodriguez

Position: FAV



**BILL NUMBER:** SB 661

**TITLE:** Wiretapping and Electronic Surveillance - Intercepted Communications - Admissibility of Evidence

**COMMITTEE:** Judicial Proceedings

**HEARING DATE:** 2/24/2026

**POSITION:** FAV

TurnAround, Inc. is the designated rape crisis center for Baltimore City and Baltimore County and a comprehensive domestic violence service provider, offering crisis response, survivor-centered advocacy, legal referrals, trauma-informed therapy, and community education. TurnAround also serves as the Regional Navigator for Baltimore County and Howard County, providing specialized services to survivors of human trafficking, and is a member of the Maryland Coalition Against Sexual Assault (MCASA), the Maryland Network Against Domestic Violence (MNADV), and the Maryland Human Trafficking Task Force (MDHTTF).

The Maryland Human Trafficking Task Force Legislative Subcommittee brings together federal, state, and local law enforcement, government agencies, and nongovernmental organizations to identify and support survivors and hold traffickers accountable. Its Legislative Subcommittee—comprised of representatives from law enforcement, victim advocacy organizations, service providers, government entities, and faith-based partners—works to strengthen Maryland’s human trafficking laws, collaborate with legislators, and provide testimony on key legislation each session. On behalf of TurnAround, Inc. and the Maryland Human Trafficking Task Force Legislative Subcommittee, we respectfully submit this testimony in support of Senate Bill 661.

SB 661 clarifies that the contents of certain intercepted wire, oral, or electronic communications, and evidence derived from those communications, may be received in evidence in specified criminal proceedings when the court makes particular findings, including that the case involves a crime committed against at least one individual and that admission serves the interests of justice. The bill preserves core safeguards by requiring that the interception was not conducted by or on behalf of Maryland law enforcement and that the communications are more probative than other evidence reasonably available, while also requiring timely notice to the adverse party.

For survivors of sexual assault, human trafficking, intimate partner violence, and domestic violence, abuse and coercion are frequently documented in electronic communications, including

threats, admissions, and patterns of control that can be critical to establishing what happened and why a victim could not safely seek help sooner. When those communications are categorically excluded, even where they were lawfully intercepted under another jurisdiction's law or by a private party, survivors may lose key evidence that corroborates their accounts and helps courts understand the severity and context of the violence. SB 661 offers a narrow, case-by-case path for courts to consider such evidence where appropriate, subject to judicial oversight and notice to all parties.

From our direct service experience, we know that survivors often face skepticism, minimization, and attacks on their credibility when they engage with the criminal legal system. Electronic communications that capture threats, harassment, or admissions of abuse can be uniquely powerful in countering those dynamics, especially when other physical or eyewitness evidence is limited or no longer available. SB 661 appropriately balances privacy and due process concerns with the need to ensure that courts are not artificially barred from considering relevant, highly probative evidence in cases involving serious violence against individuals.

SB 661 aligns with Maryland's broader efforts to strengthen protections for survivors of sexual assault, human trafficking, intimate partner violence, and domestic violence by ensuring that courts can access critical evidence under carefully defined conditions while maintaining robust protections against unlawful surveillance. By allowing judges to admit such evidence only when it is necessary, more probative than reasonably available alternatives, and in the interests of justice, the bill provides an important tool for holding offenders accountable and supporting survivor centered prosecutions.

Far too many survivors in Maryland encounter overwhelming barriers when seeking justice after sexual violence. Only a small fraction of cases are ever fully investigated by law enforcement, and an even smaller percentage result in conviction. Survivors are often expected to prove what occurred in deeply private, traumatic circumstances—acts that rarely leave witnesses or physical evidence. Instead of being met with understanding, many are subjected to questioning that scrutinizes their behavior before and during the assault, rather than the actions of the perpetrator. Without a trauma-informed approach embedded in our systems, survivors are retraumatized by the very process meant to protect them. SB 661 is a critical step toward ensuring that investigations center survivor dignity, recognize the realities of trauma, and strengthen accountability for sexual violence.

For these reasons, TurnAround, Inc. and the Maryland Human Trafficking Task Force Legislative Subcommittee respectfully urge the Committee to issue a Favorable report on Senate Bill 661.

For further inquiries, please contact Amanda Rodriguez, Esq., Chief Executive Officer, TurnAround, Inc., and Chair, MDHTTF Legislative Subcommittee, at [arodriguez@turnaroundinc.org](mailto:arodriguez@turnaroundinc.org).

# **MSAA Letter of Support SB661--Wiretapping and Elec**

Uploaded by: Debbie Feinstein

Position: FAV

**Ivan Bates**  
President



**Kirsten N. Brown**  
Coordinator

Maryland State's Attorneys' Association  
3300 North Ridge Road, Suite 185  
Ellicott City, Maryland 21043  
[kbrown@mdsaa.org](mailto:kbrown@mdsaa.org) ~ 301-748-1312

February 20, 2026

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

**SB 661 - MNADV - FAV.pdf**

Uploaded by: Laure Ruth

Position: FAV



**BILL NO:** Senate Bill 661  
**TITLE:** Wiretapping and Electronic Surveillance - Intercepted Communications - Admissibility of Evidence  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** February 24, 2026  
**POSITION:** **FAVORABLE**

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The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that works to lead diverse community partners toward the common purpose of reducing the occurrence and impact of intimate partner violence. **MNADV urges the Senate Judiciary Committee to issue a favorable report on SB 661.**

Senate Bill 661 would mirror existing language in our evidence laws to allow audio recorded evidence to be introduced at trial. The language of the bill takes from the “catch-all” hearsay exception rule. The evidence could be admitted if the court determines that: the contents of the communication and evidence derived from the communication are offered as evidence of a material fact; the interception was not made as part of a law enforcement investigation; the contents of the communication are more probative on the point for which they are offered than any other evidence the proponent can obtain through reasonable efforts and the interests of justice will be served by admitting the evidence. *This would apply in criminal cases as well as in a hate crime case*, in either district or circuit court.

The fact that audio is recorded gives this type of evidence increased indicia of reliability than testimony by one party of a “statement against interest” by the other party, with no other objective evidence that that statement was actually made. It is illogical that our current wiretap laws prohibit courts from hearing this evidence, which is often incontrovertible. In domestic violence and sexual assault cases, we often have clients with this type of evidence – they have recorded their own assault – and it is currently inadmissible. That is hard for survivors to understand and is devastating to them. It is made more illogical and harder to explain when they are informed that video is allowed to come in (although if the audio and visual can’t be separated, it can’t be used).

SB 661 does not abrogate the crime of violating our wiretap laws. **We suggest SB 661 be considered at least with the bill (SB 680) that would change the crime from a felony to a misdemeanor**, or to create a narrow exception to the wiretap crime for this type of evidence.

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

1997 Annapolis Exchange Parkway, Suite 300 ■ Annapolis, MD 21401  
Tel: 301-429-3601 ■ E-mail: [info@mnadv.org](mailto:info@mnadv.org) ■ Website: [www.mnadv.org](http://www.mnadv.org)



Senate Bill 661 is an attempt to get relevant evidence in front of the fact-finder, which would in turn increase safety for survivors of domestic violence. For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB 661.**

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

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# **Wiretap - catchall hearsay model - testimony - sen**

Uploaded by: Lisae C Jordan

Position: FAV



## violence in Maryland

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Silver Spring, MD 20907  
Phone: 301-565-2277  
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## Working to end sexual

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

### **Testimony Supporting Senate Bill 661 Lisae C. Jordan, Executive Director & Counsel February 24, 2026**

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 661

#### **Senate Bill 661 - Allow Judges to Evaluate & Admit Evidence When Victims Record Crimes Against Individuals or Capture Evidence of Hate 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 for two categories of crime:

1. A CRIME COMMITTED AGAINST AT LEAST ONE INDIVIDUAL; OR
2. A HATE CRIME UNDER TITLE 10, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE.

**This is the same as last session's SB1007, passed by this Committee and the Senate, except that it adds recording of hate crimes.**

SB661 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 661 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.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on Senate Bill 661**



# **SB661.pdf**

Uploaded by: Rebecca Cordero

Position: FAV

Circuit Court Division: 175 Main Street • Courthouse • Prince Frederick, MD 20678  
410-535-1600 ext. 2369 • 301-855-1243 • MD Relay: 1-800-735-2258 • www.calvertstatesattorney.com

February 20, 2026

The Honorable William Smith & Members of the Senate Judicial Proceedings Committee  
Chairperson, Senate Judicial Proceedings Committee  
11 Bladen Street  
Annapolis, MD 21401

RE: SB661

Dear Chairperson Smith and Members of the Judicial Proceedings Committee:

I am a prosecutor in Calvert County, in charge of the Child Abuse, Child Exploitation, and Sexual Assault cases. I have been a prosecutor for the past 22 years. During my career I have handled numerous cases involving Domestic Violence, Murder, and Sexual Assaults. I write to you today in support of SB0661, Wiretapping & Electronic Surveillance- Intercepted Communications- Admissibility of Evidence.

Currently Courts & Judicial Proceedings Section 10-405 prohibits the use or derivative use of any evidence that is obtained in violation of the Maryland Wiretap Statute. Senate bill 661 allow the Court, after a hearing, to receive evidence obtained in violation of the Maryland Wiretap Statute if it involves a crime committed against at least one individual, or if it involves a hate crime.

Years ago, I had a rape case. The victim in this case was raped by her estranged husband during a visitation with their 2-year-old daughter. The victim hesitantly brought her daughter to the Defendant's home, but the Defendant used this visit as a time to confront the victim. The Defendant was angry because she would not consider reconciling. He begged her to reconsider, and when she wouldn't, he pulled out a gun and put it to her head. He then forcibly raped her while her 2-year-old lay sleeping in the next room. Because she knew of his violent tendencies, the victim turned on the recording function of her phone immediately prior to entering the house. Her phone recorded the entire encounter. After the rape, she was able to convince him to let her leave. She went immediately to the police station. The next several months prior to trial, the Defendant and his family disparaged the victim, called her a liar, claimed she was trying to get custody of their child, and claimed that they had consensual sex that evening. Sadly, I had to explain to her that even though the entire assault and rape was recorded, I could not use it in trial.

Violent crimes, especially those involving sexual assault and domestic violence, happen behind closed doors. Sometimes the only evidence is the Victim's statement. The victims of these crimes often face inappropriate questioning, victim-blaming, criticism of their behaviors, and challenges to their credibility.

Cell phones can give power to victims of violent crimes. I strongly urge this Committee to issue a favorable report on SB661.

Sincerely,

*Rebecca Cordero*

Rebecca Cordero  
Senior Assistant State's Attorney  
Calvert County State's Attorney's Office

# **Testimony in support of SB0661 - Intercepted Commu**

Uploaded by: Richard KAP Kaplowitz

Position: FAV

SB0661\_RichardKaplowitz\_FAV

02/24/2026

Richard Keith Kaplowitz  
Frederick, MD 21703

**TESTIMONY ON SB#0661- POSITION: FAVORABLE**

**Wiretapping and Electronic Surveillance - Intercepted Communications - Admissibility of Evidence**

**TO:** Chair Smith, Jr., Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Richard Keith Kaplowitz

My name is Richard Keith Kaplowitz. I am a resident of District 3, Frederick County. I am submitting this testimony in support of SB#0661, **Wiretapping and Electronic Surveillance - Intercepted Communications - Admissibility of Evidence**

This bill defines when intercepted communications are permitted so that the interest of justice will be best served by the admission into evidence of the contents of the communication and evidence derived from the communication.

It defines some of the cases in which communication is offered involve:

- A crime committed against at least one individual
- A hate crime ...

and states that the contents of the communication and evidence derived from the communication are offered as evidence of a material fact.

This bill will provide that the contents of a certain intercepted communication and evidence derived from the communication may be received in evidence in a criminal trial or hearing before the District Court or circuit court under certain circumstances.

**I respectfully urge this committee to return an favorable report on SB#0661.**

# **SB 661 - Wiretapping - wttm - Love.pdf**

Uploaded by: Sara Love

Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**SB 661 – Wiretapping and Electronic Surveillance – Intercepted Communications – Admissibility of Evidence**

Chair Smith, Vice Chair Waldstreicher, colleagues on Judicial Proceedings:

Last session this Committee and the full Senate unanimously passed SB 1007, Chair Smith’s bill that created an exception to our wiretapping law. Unfortunately, we passed it late, in April, so it did not have time to make it through the House. SB 661 is the same bill, with only the addition of ‘a hate crime’ as a case in which the recorded evidence could be offered.

As this body knows, Maryland is a two-party consent state. This bill does not change that, nor does it create an automatic exclusion for audio recordings in these two instances. Instead, it allows a Court to determine the admissibility of the recorded evidence in limited circumstances when:

- It is a case of a crime against an individual or a hate crime
- The contents of the communication are offered as evidence of a material fact
- The interception was not made for/on behalf of law enforcement as part of an investigation
- The contents of the communication are more probative of the point than other evidence
- The interests of justice will be served by admission of the evidence

Further, the person who was unknowingly recorded has at least 14 calendar days advance notice of the intended use of the evidence.

This bill will allow survivors of rape or domestic violence, as well as victims of a hate crime, who record their attack, to be able to offer that evidence at trial without being charged with a felony. In these cases where the evidence may be limited, having these recordings can be key to holding offenders accountable for their crimes.

For these reasons, I respectfully request a favorable report on SB 661.

# **SupportOSPSB661.pdf**

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  
JOYCE K. McDONALD - BRITTANY DUNKLOW  
Senior Assistant State Prosecutors

STEPHANIE HADDAD  
Assistant State Prosecutor



## OFFICE OF THE STATE PROSECUTOR

40 W. Chesapeake Avenue  
Suite 300  
Towson, MD 21204  
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### **RE: Support for SB 661, 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 Senate Bill 661, 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 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 could testify that they never said words that were recorded by a victim, whether those words were threats, words that showed lack of consent, etc., and the recording would not be admissible as evidence to contradict the testimony. 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 determine admissibility 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 in critical matters, including alleged sexual violence and domestic abuse, especially when potential power dynamics are at play, can be admitted. This is a time when actions and emotions are heightened, and a person's first line of defense is often 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 or blackmailing that public official. If a woman is being sexually assaulted and records her own rape, her assailant can argue she consented even 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 to allow 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 Senate Bill 661.

Sincerely,

Charlton T. Howard, III  
Maryland State Prosecutor

# **SB 0661 Wiretapping and Electronic Surveillance -**

Uploaded by: Catherine OMalley

Position: FWA

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BILL NO: Senate Bill 0661  
TITLE: Wiretapping and Electronic Surveillance – Intercepted Communications – Admissibility of Evidence  
COMMITTEE: Judicial Proceedings  
HEARING DATE: February 24, 2026  
POSITION: **SUPPORT WITH AMENDMENTS**

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The Women’s Law Center of Maryland is dedicated to ensuring the physical safety, economic security, and bodily autonomy of women throughout the State. Through direct legal services, policy advocacy, and education, we represent survivors of intimate partner violence in courts across Maryland. The clients we serve have experienced profound abuse and face significant barriers when seeking safety and justice. As a nonprofit organization providing direct legal services to survivors of intimate partner violence, we see firsthand the challenges survivors face in both criminal and civil proceedings. For these reasons, the Women’s Law Center of Maryland respectfully urges the House Judiciary Committee to issue a favorable report on SB661 with an amendment clarifying that the evidence be admissible in both **criminal and civil trials**.

SB661 would repeal Section 10-405 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland and permit the admission of certain wire, oral, or electronic communications that have been intercepted. Under the bill, the contents of the communication—and any evidence derived from it—may be admitted in a criminal or civil trial or hearing in the District or Circuit Court if the trial judge determines that the communication is offered as evidence of a material fact. The interception may not be part of or in furtherance of a law enforcement investigation. The court must also find that the communication and any derived evidence are more probative on the point for which they are offered than any other evidence reasonably available to the proponent. In addition, the party seeking to introduce the communication must provide advance notice to the opposing party before trial.

Survivors of intimate partner violence frequently possess audio or video recordings documenting threats, assaults, or other abusive conduct. In today’s world, cell phones, doorbell cameras, and other security devices routinely capture evidence of abuse. Yet under current Maryland law, survivors who record their own abuse risk criminal prosecution, including felony charges punishable by up to five years’ imprisonment and a \$10,000 fine. At the same time, courts are deprived of critical, often highly reliable evidence.

Survivors already face tremendous obstacles when deciding whether to testify against an abusive partner. Fear of retaliation, financial dependence, immigration concerns, and trauma all weigh heavily on that decision. The current wiretap statute compounds those challenges by discouraging survivors from preserving evidence and by excluding highly probative recordings that may corroborate their testimony. This barrier undermines access to justice and impedes courts from considering the full picture of abuse.

SB661 reflects a thoughtful and measured approach. It does not create a blanket rule of admissibility. Rather, it requires judicial findings regarding materiality and probative value, and it preserves the application of the Maryland Rules of Evidence. By allowing courts to evaluate personally recorded evidence within established evidentiary safeguards, the bill strikes an appropriate balance between privacy concerns and the urgent need to protect survivors.

We also respectfully ask the Committee to consider HB688, which would reclassify violations of the wiretap statute from a felony to a misdemeanor. Reducing the severity of the penalty would further mitigate the disproportionate harm faced by survivors who record abuse in an effort to protect themselves.

For these reasons, the Women’s Law Center of Maryland urges the House Judiciary Committee to issue a favorable report on SB661 with amendments.

**SB 661\_UNFAV\_ACLU-MD.pdf**

Uploaded by: Dara Johnson

Position: UNF



## Testimony for the Senate Judicial Proceedings Committee

February 24, 2026

### SB 661 – Wiretapping and Electronic Surveillance - Intercepted Communications - Admissibility of Evidence

#### UNFAVORABLE

DARA JOHNSON

ASSOCIATE STAFF  
ATTORNEY

AMERICAN CIVIL  
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OFFICERS AND DIRECTORS  
COREY STOTTEMYER  
PRESIDENT

DANA VICKERS SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

The ACLU of Maryland opposes SB 661, which carves a wide exception to the Wiretap Act allowing private communications to be admitted as material evidence in a criminal trial or hearing before a district or circuit court, subject to minimal criteria. While there is certainly a need for adequate legal means to raise clear evidence of harm that may be captured in certain oral communications, the provisions proposed here are overly broad and do not readily offer a fair pathway to achieve this. Especially with the cost this weighs against the Wiretap Act's longstanding and valuable requirement of two-party consent to recording oral communications, the risks posed here are too significant to accept.

**As a general concern, this bill proposes a judicial standard for allowing admission that goes far beyond the court's traditional role.** This would have the court consider whether the communication is more probative than any other evidence the proponent can procure through "reasonable efforts." While a judge's role at this stage is normally focused on weighing the probative value of the evidence against the danger of unfair prejudice, this bill would allow the court to determine the *actual weight* of the evidence, a role typically reserved for the jury at a later stage.

**This concern is compounded by the lack of safeguards to ensure this exception would be applied appropriately and without a severe risk of prejudice.** This includes:

- (1) **This exception's application to any hate crime or crime against a person, regardless of how minor the allegation.** This opens the door to incentivizing surreptitious recordings to aid in the prosecution of minor offenses, which does not balance

with the major infringement of such recordings on the important personal privacy protections provided by the Wiretap Act.

- (2) **The risk of severe prejudice posed by this bill’s creation of a new hearsay exception without sufficient guardrails.** As the out-of-court communications this bill allows to establish a material fact would presumably include those offered for their truth, such statements would be considered hearsay. Hearsay is generally inadmissible in criminal trials and hearings unless it falls under an existing exception or exemption, so this bill creates a new exception that borrows language from the existing “residual hearsay” exception under Md. Rule 5-803 (b)(24). In the notes on the residual hearsay exception by the Standing Committee on Rules of Practice and Procedure, it is explicitly stated that this intended to “be used very rarely, and only in exceptional circumstances.”

As currently written, this bill lacks sufficient safeguards constraining its application to such exceptional circumstances. This includes the absence of limits on applicable criminal allegations; the lack of any included restriction on deceptive, stale, confidential, or otherwise harmful oral communications; and the failure to offer any language defining the level of “reasonable efforts” the proponent could undertake to obtain other evidence.

The limited existing exception to the Wiretap Act recognizes the need for narrower carveouts and only applies to communications between people found to be co-conspirators in a violent offense. While SB 661 is motivated by the important underlying goal of providing a viable pathway for domestic violence survivors to seek accountability, this can and must be achieved in a way that is fair and protective of the significant privacy interests secured by the Wiretap Act.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on SB 661.

**2026 20 2 SB 661 Wiretap INFO OPD .pdf**

Uploaded by: Elizabeth Hilliard

Position: INFO



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**ELIZABETH HILLIARD**  
DIRECTOR OF GOVERNMENT RELATIONS

**BILL: Senate Bill 661 – Wiretap**

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

**POSITION: Informational**

**DATE: February 24, 2026**

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The Office of Public Defender asks this Committee to consider the following information during its contemplation of Senate Bill 661. Maryland’s two-party consent provision is an intentional measure to provide greater privacy protections than available under federal law. *Mustafa v. State*, 323 Md. 65, 74 (1991). “The requirement of consent by all parties for the recording of a telephone conversation by a private individual has been a fundamental part of Maryland law since at least 1956,” and protects the privacy interests of all individuals, even when accused of serious crimes. *Perry v. State*, 357 Md. 37, 61 (1999) (reversing murder conviction that relied on wiretap by co-conspirator). Current exceptions authorizing interceptions, procurements, disclosures, or use of communications in Courts and Judicial Proceedings § 10-402(C) are extremely limited in order to ensure that privacy interests retain as much protection as possible.

For example, § 10-402(C)(6), which authorizes “law enforcement personnel to utilize body wires to intercept oral communications in the course of a criminal investigation if there is reasonable cause to believe that a law enforcement officer's safety may be in jeopardy,” does not allow for these communications to be recorded or used against a defendant in a criminal proceeding. These bills seek to permit electronic communication if the contents of the communication and evidence derived from the communication are:

- (i) are offered as evidence of a material;
- (ii) offered in a proceeding regarding a crime committed against at least one individual (or a Hate Crime);
- (iii) not intercepted as part of or in furtherance of an investigation conducted by or on Behalf of law enforcement officials of this state; and
- (iv) more probative than any other evidence that can be procured through reasonable efforts; and

(v) going to serve the interest of justice by being admitted.

We encourage the Committee to consider further restrictions on the admissibility of this evidence. One example of honing in this erasure of the two party consent law would be limiting the admissibility of evidence only to particular cases. Another example would be ensuring that no law enforcement are involved in the interception, not merely Maryland state law enforcement. We would be happy to discuss potential amendments further with the sponsor and the Committee.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to consider limiting amendments for Senate Bill 661.**

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

# **HPP Testimony SB 661- INFO.pdf**

Uploaded by: Jessica Emerson

Position: INFO

## Testimony of the Human Trafficking Prevention Project

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**BILL NO:** Senate Bill 661  
**TITLE:** Wiretapping and Electronic Surveillance - Intercepted Communications - Admissibility of Evidence  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** February 24, 2026  
**POSITION:** **INFORMATION**

The Human Trafficking Prevention Project (“HTPP”) is dedicated to ending the criminalization of sex workers and survivors of human trafficking through access to civil legal services and support for policies that dismantle harmful systems and increase access to basic human rights and legal relief. The HTPP respectfully provide this **INFORMATION** to the Judicial Proceedings Committee on Senate Bill 661.

Senate Bill 661 would mirror existing language in our evidence laws to allow audio recorded evidence to be introduced at trial. The language of the bill borrows from the “catch-all” hearsay exception rule, in that the evidence could be admitted if the court determines that: a) the contents of the communication and evidence derived from the communication are offered as evidence of a material fact; b) the interception was not made as part of a law enforcement investigation; c) the contents of the communication are more probative on the point for which they are offered than any other evidence the proponent can obtain through reasonable efforts; and, d) the interests of justice will be served by admitting the evidence. *This would apply in criminal cases as well as in a hate crime case, in either district or circuit court.*

Current wiretap laws prevent what is often incontrovertible evidence of sexual assault, domestic violence, or hate crime offenses recorded by the victims themselves from being admissible at trial. While this is often devastating to survivors, it is made more illogical and harder to explain when they are informed that video *is* allowed to come in, but that if the audio and visual can’t be separated, it can’t be used.

However, SB 661 does not abrogate the crime of violating Maryland’s wiretap laws, meaning that even if this bill were passed and the evidence a victim recorded of their own assault were able to be admitted in a case against their perpetrator, the victim would still be violating § 10–402 of the Cts. & Jud. Proc. Article, known colloquially as Maryland’s “all-party” or two-party consent law, which makes it is a crime to record any private conversation, in-person or on the phone, without the consent of everyone involved.

Forcing a crime victim to choose between justice in their criminal case and potentially being charged with a felony is frankly, unconscionable. Additionally, the HTPP has significant concerns, as should every organization working with crime victims, that this law change will result in victims being forced into testifying by overzealous prosecutors who would now be able to threaten a victim with a felony charge in order to gain access to evidence they would now be able to use in a criminal case against a perpetrator

they were seeking to bring to justice. This then ushers in a cycle of criminalization that is incredibly destructive to crime victims, and often results in fewer options for them to escape their abusers and/or puts them at increased risk of additional victimization, [given the impact that criminal records have on an individual's ability to obtain safe housing and gainful employment](#). Furthermore, the impact of complex trauma often “plays” very poorly in the context of criminal trials, [resulting in poorer outcomes for traumatized victim-defendants](#). Additionally, it is absolutely assured that the *perpetrators of abuse* would use this felony violation of their rights to file false civil charges against their victims as a method of coercive control. This analysis *does not change* with the passage of [SB 680/ HB 688](#), as this would merely change the classification of the crime from a felony to a misdemeanor, with no change in penalty or statute of limitations.

The HTPP recognizes how victims can suffer abuses on *both sides* of the system; therefore, we strongly encourage lawmakers and advocates to come together to consider how best to ensure that victims do not have to choose between justice in the criminal case against their perpetrator while at the same time risking becoming a defendant in a criminal or civil case stemming from the same incident of abuse.<sup>1</sup> To force them to make such a choice is not justice at all; it is continued abuse, this time by the system that allegedly exists to protect them.

***[The Human Trafficking Prevention Project](#) is dedicated to ending the criminalization of sex workers and survivors of human trafficking through access to civil legal services and support for policies that dismantle harmful systems and increase access to basic human rights and legal relief.***

***For more information, please contact:  
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<sup>1</sup> We direct the Committee's attention to [SB610/HB290](#) from 2024, which would have established an exception to the current two-party system if a person had a good faith belief that they were in imminent danger of becoming the victim of a crime of violence, stalking, and/or abuse, or that a protection order in which they were the petitioner was about to be violated.

**sb661.pdf**

Uploaded by: Will Vormelker

Position: INFO

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CIRCUIT COURT  
JUDGE  
BALTIMORE COUNTY  
CHAIR

HON. RICHARD SANDY  
CIRCUIT COURT  
JUDGE  
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## MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 661  
Wiretapping and Electronic Surveillance – Intercepted  
Communications – Admissibility of Evidence  
**DATE:** February 18, 2026  
(2/24)

### INFORMATIONAL COMMENT PAPER

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The Judiciary respects the separation of powers doctrine and acknowledges the policy-making authority of the legislative branch. As such, the Judiciary has no position on the policy aims of this legislation.

The Judiciary only writes to note that under the bill, intercepted communications would be admissible, but under the existing Wiretap Act, Courts and Judicial Proceedings Article § 10-402, it would still be unlawful to intercept such communications absent two-party consent. This statutory conflict could affect litigants' penal interests during proceedings and may be worth consideration by the Committee.

cc. Hon. Sara Love  
Judicial Council  
Legislative Committee  
Kelley O'Connor