



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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

Chair Bartlett, Vice Chair Davis, members of the Judiciary Committee:

SB 661 is a narrowly-tailored exception to our two-party consent rule in order to address limited circumstances where the recording is of or part of a recording of the commission or attempted commission of murder, rape, or domestically-related first degree assault.

This bill will allow survivors of rape or domestic violence, who record their attack, to be able to offer that evidence at trial without being charged with a felony. In these cases where evidence is often limited, having such recordings can be key to holding offenders accountable for their crimes. Too often now, victims come forward with such recordings, only to find out they cannot be used. Imagine the devastation of someone who has clear proof of their attack, only to learn not only that they cannot use it to hold their attacker accountable, but also that they are now at risk of being charged with a felony.

SB 661 does four things: First, it creates an exception to our wiretapping law for recordings of these crimes. Second, it provides an affirmative defense to criminal prosecution in the event someone is recorded because they reasonably believe they were in imminent danger of becoming a victim of one of the crimes listed, but the crime did not occur.

Third, SB 661 provides that the recording may be admissible as evidence if:

1. It is a recording of one of the listed crimes;
2. It is used as evidence in the charge of one of those crimes; and
3. The person who was unknowingly recorded has at least 14 calendar days advance notice of the intended use of the evidence.

Finally, SB 661 ensures that the recording may not be used for evidence of any other crime.

Our two-party consent law is an important rule for many of us, and an exception to it is not made lightly. In this age of cell phones, smart watches, and other devices, we must balance our law with justice for victims. SB 661 is a careful, narrow bill that strikes that balance.

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