

Testimony of the Human Trafficking Prevention Project

BILL NO: House Bill 802
TITLE: Wiretapping and Electronic Surveillance - Intercepted Communications - Admissibility of Evidence
COMMITTEE: Judiciary
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 Judiciary Committee on House Bill 802.

House Bill 802 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 protection order or other civil cases.*

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, HB 802 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 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.¹ 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.

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¹ 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, or abuse, or that a protection order in which they were the petitioner was about to be violated.

Survival Should Not Be Criminalized.