

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 869

(Delegate Carter, *et al.*) (By Request – Committee to Revise
Article 27 – Crimes and Punishments)

Judiciary

Judicial Proceedings

Admissibility of Evidence - Intercepted Communications - Electronic

This bill adds “electronic communications” to the existing prohibition on the admissibility of intercepted oral and wire communications that were obtained in violation of the Maryland Wiretapping and Electronic Surveillance Act. The bill adds “electronic communications” to the exception that allows for the admissibility of any oral or wire communication intercepted in another state or U.S. territory, in accordance with the laws of that jurisdiction, that would have been in violation of this State’s Act if (1) at least one of the parties to the communication was outside the State during the communication; (2) the interception was not made as part of or in furtherance of an investigation conducted by or on behalf of law enforcement officials in this State; and (3) all parties to the communication were co-conspirators in a crime of violence as defined by Maryland statute. The bill also repeals the exclusion of the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit from the definition of “electronic communication.”

Fiscal Summary

State Effect: None. The bill would not significantly impact the Judiciary.

Local Effect: None. The bill would not significantly impact circuit court operations.

Small Business Effect: None.

Analysis

Current Law: Generally, whenever any *wire or oral* communication has been intercepted, no part of the contents of the communication and no evidence derived from the contents may be used as evidence if disclosure of the information would be in violation of this Act. The contents of any wire or oral communication intercepted in another state or territory in accordance with the applicable laws of that jurisdiction may be admitted as evidence, even if the interception would have violated Maryland's laws had the interception been made in this State, if (1) at least one of the parties to the communication was outside this State during the communication; (2) the interception was not made as part of or in furtherance of an investigation conducted by or on behalf of law enforcement officials in this State; and (3) all parties to the communication were co-conspirators in a crime of violence as defined in Maryland Statute.

Except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; *and*
- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

However, it is lawful for law enforcement officers and persons acting with the prior direction and under the supervision of law enforcement officials to intercept communications as part of a criminal investigation to provide evidence of the commission of the following crimes:

- murder;
- kidnapping;
- rape;
- sexual offense in the first or second degree;
- child abuse in the first or second degree;
- child pornography;
- gambling;
- robbery;
- arson and related felonies;

- bribery;
- extortion;
- dealing in a controlled dangerous substance;
- fraudulent insurance act;
- manufacture or possession of destructive device;
- sexual solicitation or abuse of a minor;
- obstruction of justice; *and*
- a conspiracy or solicitation to commit any of the above crimes.

Wiretapping is also authorized if a person has created a barricade situation, and there is probable cause to believe a hostage or hostages may be involved.

Several other exceptions to the general prohibition against wiretapping exist, including:

- Providers of wire or electronic communications services may provide information or assistance to persons authorized by law to intercept communications, or conduct electronic surveillance if the provider has been provided with a court order.
- A person may intercept communications where all parties to the communication have given consent, unless the communication is intercepted for the purpose of committing a tortious or criminal act.
- An employee or agent of an emergency communications center may intercept communications concerning an emergency, where that person is a party to the communication.
- Law enforcement personnel may utilize body wires to intercept oral communication if there is reasonable cause to believe a law enforcement officer's safety may be jeopardy.
- A person may intercept electronic or radio communications through a communications system accessible to the general public.
- Law enforcement may place a device within a vehicle to intercept communication in order to provide evidence of vehicle theft.

Background: The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims' rights representative. In past sessions, the committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, bribery of public officials, burglary, criminal penalty enhancements, destructive devices, disorderly

conduct, escape, leased or rented goods, Medicaid fraud, offensive contact, prostitution, restitution, robbery, sabotage, trespass, and victims' rights.

Additional Information

Prior Introductions: None.

Cross File: SB 271 (Senator Stone) (By Request – Committee to Revise Article 27 – Crimes and Punishments) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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