

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 766

(Senator Gladden, *et al.*)

Judicial Proceedings

Wiretapping and Electronic Surveillance - Location of a Mobile Communications Device

This bill expands the definition of “contents” under provisions relating to wiretapping and electronic surveillance, stored wire and electronic communications, and transactional records access to include the location of a mobile communications device. This change would effectively require the issuance of a court order before a wireless telecommunications service provider may release records reflecting the location of a mobile communications device.

The bill creates an exception for a wireless telecommunications service provider who discloses location information transmitted by a mobile communications device to a public safety official or emergency service provider if an emergency involving danger of death or serious physical injury requires disclosure without delay. The disclosure remains legal for a period of 24 hours and the public safety official or emergency service provider must provide notice of the disclosure to the mobile communications device customer within 10 days after the conclusion of the disclosure.

Fiscal Summary

State Effect: The bill is technical and is not expected to materially affect State finances.

Local Effect: The bill is technical and is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Generally, whenever any wire, oral, or electronic communication has been intercepted, no part of the communications contents and no evidence derived from the contents may be used as evidence if disclosure of the information would be in violation of the Maryland Wiretapping and Electronic Surveillance Act. The contents of any wire, oral, or electronic communication intercepted in another state or U.S. 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 by Maryland law.

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 an 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; or
- law enforcement may place a device within a vehicle to intercept a communication to provide evidence of vehicle theft.

In accordance with a search warrant issued by a court of competent jurisdiction, an investigative or law enforcement officer may require a provider of a wire or electronic communication service to disclose the "contents" of a wire or electronic communication that is in electronic storage in a wire or electronic communications system for 180 days or less. The disclosure may apply to communication that has been in storage for more than 180 days if certain procedures are followed. A provider of an electronic

communications service or remote computing service may disclose a record or other information pertaining to a subscriber or other customer to an investigative or law enforcement officer only under subpoena, pursuant to a warrant or court order, or with consent from the customer or subscriber. The location of a mobile communications device is not specifically included in the statutory definition of “contents.”

In the Criminal Law Article, “serious physical injury” means a physical injury that creates a substantial risk of death or causes permanent or protracted serious disfigurement or the functional loss or impairment of any bodily member or organ.

Additional Information

Prior Introductions: None.

Cross File: HB 826 (Delegate Rosenberg, *et al.*) - Judiciary.

Information Source(s): Carroll, Harford, Montgomery, and St. Mary’s counties; Judiciary (Administrative Office of the Courts); Public Service Commission; Department of Legislative Services

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