

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 661

(Senator Love, *et al.*)

Judicial Proceedings

Judiciary

Wiretapping and Electronic Surveillance - Intercepted Communications -
Admissibility of Evidence

This bill makes it lawful for a person to intercept a wire, oral, or electronic communication that is a recording, or part of a recording, of the commission or attempted commission of murder, rape, or a first-degree assault that is a domestically related crime. The bill also establishes an affirmative defense to a criminal prosecution under Title 10, Subtitle 4 of the Courts and Judicial Proceedings Article (wiretapping and electronic surveillance) if the defendant intercepted the communication because the defendant reasonably believed that they were in imminent danger of becoming a victim of one of those crimes. Any wire, oral, or electronic communication that has been intercepted, as authorized above, may be received in a criminal trial or hearing before the District Court or circuit court if specified requirements are met. The bill may not be construed to abrogate or limit any rule relating to the admissibility of evidence under the Maryland Rules.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Any wire, oral, or electronic communication that has been intercepted, as authorized under the bill, may be received in a criminal trial or hearing before the District Court or circuit court if the communication is (1) a recording or part of a recording

of the commission or attempted commission of a murder, a rape, or a first-degree assault that is a domestically related crime and (2) used as evidence in the charge of one of those offenses. However, a court may not receive the communication and evidence derived from it into evidence unless the proponent gives the adverse party notice of their intention to offer the communication and evidence derived from it and provides the name and address of the party whose communication was intercepted. Notice must be given sufficiently in advance of the trial or hearing (but not later than 14 calendar days before the trial or hearing) to allow the adverse party a fair opportunity to prepare.

Current Law:

Interception of a Communication

Except as otherwise provided in § 10-402 of the Courts and Judicial Proceedings Article, it is unlawful for a person to:

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

A violator is guilty of a felony and on conviction is subject to imprisonment for up to five years and/or a maximum fine of \$10,000.

Section 10-402 provides various exceptions to this general prohibition, including where the interceptor is a party to the communication and all parties to the communication have given prior consent to the interception (sometimes called “two-party consent”), unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of State or federal law. Most of the exceptions, though, can only be utilized by investigative or law enforcement officers or under very specific circumstances.

Admissibility of Evidence Obtained through an Intercepted Communication

Except as specified, whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived from the communication may be received in evidence in any trial, hearing, or other proceeding if the disclosure of that information would be *in violation* of the State’s wiretap and electronic surveillance laws.

However, any person who has received information concerning a communication that was obtained through an authorized interception or evidence derived from an authorized interception may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any federal, State, or local proceeding.

Domestically Related Crime

Section 6-233 of the Criminal Procedure Article defines “domestically related crime” as a crime committed by a defendant against a victim who is a person eligible for relief under a domestic violence protective order or who had a sexual relationship with the defendant within 12 months before the commission of the crime.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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