

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1142  
Judiciary

(Delegate Malone, *et al.*)

Judicial Proceedings

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Interception of Oral Communication – Law Enforcement Officer

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This bill establishes that the failure of a law enforcement officer to provide notice, as specified, to an individual who is being recorded in accordance with requirements for lawful interception of an oral communication with a body-worn digital recording device does not affect the admissibility in court of the recording.

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Fiscal Summary

**State Effect:** None. The change is technical in nature and does not directly affect governmental finances.

**Local Effect:** None. The change is technical in nature and does not directly affect local governmental finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** Under Maryland’s Wiretap Act, it is unlawful to willfully intercept any wire, oral, or electronic communication. Under the Act, “intercept” is defined, in part, as “the... acquisition of the contents of any... oral communication through the use of any... device.” Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called “two-party consent”). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a “reasonable expectation of privacy.”

The Act does provide specified exceptions, including one for a law enforcement officer who intercepts an oral communication in the regular course of the officer's duty, so long as the officer (1) initially, lawfully detained a vehicle during a criminal investigation or for a traffic violation; (2) is a party to the oral communication; (3) has been identified as a law enforcement officer to the other parties to the communication prior to any interception; (4) informs all other parties to the communication of the interception at the beginning of the communication; and (5) makes the interception as part of a videotape recording. In addition, the interception of an oral communication by a law enforcement officer in the course of the officer's regular duties is lawful if (1) the officer is in uniform or prominently displaying the officer's badge or other insignia; (2) the officer is making reasonable efforts to conform to standards for the use of a body-worn digital recording device or an electronic control device capable of recording video and oral communications; (3) the officer is a party to the oral communication; (4) the officer notifies, as soon as practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and (5) the oral interception is being made as part of a videotape or digital recording.

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a \$10,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney's fees, and litigation costs.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 720 (Senator Lee) - Judicial Proceedings.

**Information Source(s):** Baltimore, Charles, and Montgomery counties; cities of Frederick and Havre de Grace; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of General Services; Department of Natural Resources; Department of State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2018  
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