

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 125

(Senator Zirkin)

Judicial Proceedings

Courts and Judicial Proceedings - Interception of Communications - Firearms
Crimes

The bill adds the following offenses under the Public Safety Article to the list of crimes for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications: § 5-134 (restrictions on sale, rental, or transfer of regulated firearms); § 5-136 (straw purchases); § 5-138 (sale, transfer, or disposal of stolen regulated firearms); § 5-140 (transporting regulated firearm for unlawful sale or trafficking); § 5-141 (knowing participation in straw purchase); and § 5-144 (knowing participation in a violation of Title 5, Subtitle 1 of the Public Safety Article). The bill also adds these offenses to the list of crimes for which a judge may grant an order authorizing the interception of wire, oral, or electronic communications.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from fines. Minimal increase in general fund expenditures to the extent that the bill results in more convictions for applicable wiretap offenses.

Local Effect: Minimal increase in local revenues from fines. Minimal increase in local incarceration expenditures to the extent that the bill results in additional convictions for the applicable offenses.

Small Business Effect: None.

Analysis

Current 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;
- human trafficking;
- sexual solicitation or abuse of a minor;
- obstruction of justice;
- a theft scheme or continuing course of conduct involving an aggregate value of property or services of at least \$10,000;
- abuse or neglect of a vulnerable adult;

- an offense relating to Medicaid fraud; or
- 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.

The exception applies so long as the investigative or law enforcement interceptor is a party to the communication or one of the parties to the communication has given prior consent to the interception.

The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction to grant an order authorizing interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of specified crimes. However, no application or order is required if the interception is lawful under the general wiretap provisions.

State Revenues: General fund revenues increase minimally from fines imposed in District Court cases to the extent that the bill results in increased criminal fines for the applicable offenses. There is insufficient data to estimate the magnitude of the increase, as it depends on whether the availability of a wiretap results in successful prosecutions and fines/penalties are imposed and collected. The offenses included in the bill are misdemeanors, with maximum monetary penalties ranging from \$1,000 to \$25,000. However, given the relatively narrow range of cases to which the bill applies, the Department of Legislative Services advises that the impact is likely to be minimal.

State Expenditures: If the availability of wiretaps under the bill increases the number of individuals convicted of the applicable offenses, then general fund expenditures increase minimally due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of crimes as a result of this bill is expected to be minimal.

The offenses included in the bill are misdemeanors, with maximum incarceration penalties ranging from 1 year to 10 years.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides

assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Judiciary advises that it does not expect a significant fiscal or operational impact on the trial courts.

Local Revenues: To the extent that the bill results in more convictions, then local revenues increase minimally due to the expanded application of existing monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the expanded application of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Local government agencies have generally advised that the bill does not have a fiscal impact, likely due to the limited range of cases to which the bill applies, as noted below.

Anne Arundel County, Howard County, the Montgomery County Police Department, and the Office of the State's Attorney for Montgomery County advise that the bill does not have a fiscal impact. Similarly, Baltimore County reports that its police department indicates that, given the few wiretaps the department conducts, the department does not believe the bill has a significant fiscal impact beyond what current resources can handle. According to the City of Hagerstown, the bill enhances the investigative abilities of law enforcement but does not impact the city's government fiscally.

However, the Maryland State's Attorneys' Association advises that the effect of the bill on prosecutors is unknown.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Howard, and Montgomery counties; City of Hagerstown; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510