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MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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Senate Judicial Proceedings Committee

Senate Bill 569- Intercepted Communications - Penalties and Admissibility of Evidence

Senate Bill 569 finally alters the dated “two-party consent” requirement associated with wiretapping. This change allows a particularly vulnerable group, domestic violence survivors, to provide evidence of their abuse. The current wiretap law is written for a bygone era, and technology has surpassed the law’s usefulness. In fact, it is harmful and prevents important evidence from reaching the ears of fact finders, and in many circumstances, prevents victims of crime from attaining justice or safety.

Currently, 38 other states, including Virginia, Delaware, as well as the District of Columbia and military courts have single party consent laws. Our bill is a hybrid because it requires independent considerations to avoid the abuse of one-party consent circumstances because people don’t want to be constantly recorded. As a way to avoid the concerns associated with unapproved recording of personal conversations, we have built this legislation on the existing hearsay exceptional circumstances Rule 5-803(b)(24). Mirroring the rule, this legislation would allow the admissibility of a one-party consent recording under exceptional circumstances if it has equivalent circumstantial guarantees of trustworthiness, and the court makes determinations that it is more probative than prejudicial and promotes the interests of justice. A statement may not be admitted under this exception unless the proponent of it provides notice meeting specified criteria to the adverse party.

In addition to allowing evidence to be admitted under the required exceptional circumstances. This bill would take away jail time associated with unlawful recording of the other party, while retaining the criminal fine. This would allow for use in court without encouraging the use of recording devices to unwittingly capture embarrassing moments that are not relevant to legal matters that would allow the evidence to be admissible.

Domestic violence survivors will particularly benefit from this bill and the changes it brings. Evidence of their abuse may be recorded and offered as evidence in proceedings against their abuser. No longer will fresh bruises and scrapes be the only means of proof. In a 24-hour period, over 500 calls were made to DV hotlines in MD. ¹ With such a staggering number of DV survivors, we must give them every tool possible to allow for the prosecution of their abusers if they so choose.

This bill was brought to us from many directions, but we think it is especially important to protect children from abuse. For these reasons, we respectfully request a favorable report on SB 569.

¹ *2016 Maryland*, National Network to End Domestic Violence, https://nnedv.org/mdocs-posts/census_2016_handout_state-summary_maryland/ (last visited February 18, 2020).