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Judicial Proceedings Committee

Joint Committee on
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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Senate Judicial Proceedings Committee
**Senate Bill 629 - Intercepted Communications - Penalties and Admissibility of
Evidence**

Senate Bill 629 maintains Maryland as a two-party consent state but provides an exception to allow evidence of an audio recording to be presented in court under specific conditions that the crime is domestic violence related or a crime of violence. 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 sphere of impact. In fact, it is harmful and prevents important evidence from reaching the ears of fact finders. In many circumstances it even 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. Notably, the federal government has a one-party consent provision. Under those laws, there would be no need for this legislation, because any individual party to the conversation could record and use that evidence in court. In addition to Maryland, there are 10 other states with "two-party consent." But many states provide exceptions to the rule to protect victims of crime. We want to protect victims in Maryland.

Our bill is similar to carve-outs in other two-party consent states where there are criminal or emergency circumstances. For instance, our neighbor to the north is also a two-party consent state, but Pennsylvania has a carve out if a person is "under a reasonable suspicion that the intercepted party is committing, about to commit or has committed a crime of violence and there

is reason to believe that evidence of the crime of violence may be obtained from the interception.”

California has a larger carve out for domestic violence that crosses into civil proceedings as well. Washington state provides that “wire communications or conversations (a) of an emergency nature, such as the reporting of a fire, medical emergency, crime, or disaster, or (b) which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands, or (c) which occur anonymously or repeatedly or at an extremely inconvenient hour, or (d) which relate to communications by a hostage holder or barricaded person ... may be recorded with the consent of one party to the conversation.” Both California and Washington are not only two-party consent states, they both have constitutional amendments for privacy. This bill does not infringe privacy. It simply clarifies an outdated law written for archaic technology, and in response to police misconduct. The technology that every American now has access to was entirely unforeseen when the law was passed and replicated.

Unique to Maryland, we have built this legislation on the existing hearsay exceptional circumstances of Maryland’s Rule 5-803(b)(24). Mirroring the rule, this legislation would allow the admissibility of a one-party consent recordings under exceptional circumstances if it has equivalent circumstantial guarantees of trustworthiness. Then the court must separately turn to whether 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. Unlike the bill I sponsored last year, this legislation would merely reduce jail time associated with unlawful recording of the other party to a maximum 90 day misdemeanor, from a 5 year felony. Those victims of crime could become states evidence and get immunity for prosecution if they bring evidence of a serious crime forward.

Domestic violence survivors particularly benefit from this legislation. 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. 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 as filed was intended to apply to civil proceedings, but there is a problem with granting immunity in those cases, so we want to limit this to only those civil cases that occur with the same evidence that was already admitted during a prior criminal proceeding. We are willing to work with the committee and counsel to fine-tune this approach, but it would be an injustice to prohibit audio evidence of child abuse in a child custody proceeding for instance, if there was already a criminal prosecution where that specific audio capturing the abuse was admitted. The other civil proceedings where this could be helpful will have to be reviewed at a later date.

For these reasons, we respectfully request a favorable report on SB 629, as amended.