

Bill Number: SB 629
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 629
INTERCEPTED COMMUNICATIONS – PENALTIES AND ADMISSIBILITY OF
EVIDENCE

I write in support of Senate Bill 629 that updates an out of date law concerning the recording of oral communications particularly over the telephone. Maryland Wire Tap Statute is found at Court and Judicial Proceedings (CJ) §10-406. It is an out of date vestige of a past time when switch boards were the mode of communication.

Maryland is a two party consent state when it comes to the recording of oral communications especially through the telephone. Thirty-eight States are one party consent states that require only one party to a conversation “consent” to the recording. Maryland has long had a statutory scheme in which law enforcement, under a judges supervision, are permitted to record telephone conversations when they have probable cause to believe telephones are being use to commit crimes.

Because CJ is a vestige of the past, recording someone orally both over the telephone and in person has been labeled a felony punishable up to 5 years in jail. Recording visually has never been against the law.

In today's reality people record everything both visually and orally. Most people are unaware when they break out their phones and hit camera/record they are breaking the law in Maryland.

Senate Bill 629 does not change Maryland to a one party consent State. But what it does do is bring us into this decade. Changing audio recording from a felony to a misdemeanor makes logical sense in today's world. It keeps it a crime preserving Maryland's decision to be two party consent State but brings it to a more reasonable penalty in a time when everyone more readily accepts audio recording.

Most importantly, Senate Bill 629 eliminates the ban on using the recording when prosecutors want to introduce it into evidence when prosecuting a crime of violence or a domestically related crime.

My office has had countless cases of domestic abuse where a victim will have an audio recording of the crime or a confession and we not only are unable to play it but we have to tell the victim not to do it again because it is a crime.

Senate Bill 629 outlines the careful steps prosceutors must go through to prove the materiality, probativeness, and justice in the reason for admitting the recording into

evidence. The disclosure requirements assure that a Defendant will have time to prepare for trial.

Senate Bill 629 is a bill whose time is long overdue and brings Maryland into the reality of this decade. I urge a favorable report.