



## Testimony for the Senate Judicial Proceedings Committee

February 8, 2022

OLIVIA SPACCASI  
PUBLIC POLICY INTERN

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND

3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS  
HOMAYRA ZIAD  
PRESIDENT

DANA VICKERS SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

### SB 375 Crimes - Interception of Wire, Oral, or Electronic Communications - Exception for Imminent Danger

#### UNFAVORABLE

The ACLU of Maryland urges an unfavorable report on Senate Bill 375. This bill would make immune from criminal prosecution a person who violates Maryland's wiretapping law if the person is in imminent danger of becoming the victim of stalking, violent crimes, and the violation of a protective order. By so doing, the bill effectively de-criminalizes wiretapping, eavesdropping, and electronic surveillance, essentially repealing Maryland's wiretap act. It also legalizes and encourages vigilante justice, taking legitimate criminal investigation out of the purview of law enforcement and placing it the hands of any person who chooses to illegally intercept the communications of others.

It should be noted that under Maryland law, any person who unlawfully intercepts or discloses the communications of others is guilty of a felony. *See* Courts and Judicial Proceedings Article, § 10-402(b). Under this bill, the act of the illegal interception itself provides "evidence of the commission of a felony" thereby legalizing all interceptions by anyone, rendering the law a nullity.

Under Maryland law, it is unlawful for any person to intercept or attempt to intercept any wire, oral or electronic communication or to disclose or endeavor to disclose the contents of any wire, oral or electronic communication. *See* Courts and Judicial Proceedings Article, § 10-402(a). Civilians can never intercept communications or disclose the contents of communications to which they are not a party. *See* Courts and Judicial Proceedings Article, §§ 10-402 et seq. Even a telecommunications company itself is strictly limited to the necessities of providing communication service. *See, e.g.* Courts and Judicial Proceedings Article, § 10-402(c).

Only law enforcement can obtain access to communications under Maryland law and only investigate specified crimes under highly supervised circumstances. This supervision includes independent judicial oversight. Law enforcement must obtain a warrant or court order based on heightened standards of probable cause with strict time limits and notice requirements and must regularly report to the court on the execution of the warrant. *See generally*, Courts and Judicial Proceedings Article, § 10-402(c), §10-406, and §10-408. Law enforcement

departments must also submit an annual report on their wiretapping activities to the Administrative Office of the Courts. *See* Courts and Judicial Proceedings Article, § 10-409.

The bill proposes to toss this carefully crafted framework that has served Maryland well for decades aside in favor of a free-for-all that will ill serve law enforcement's purposes, hinder public safety, and erode the cherished privacy of Marylanders. For those reasons, SB 375 should receive an unfavorable report.