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## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB0375 - Crimes - Interception of Wire, Oral, or Electronic Communications -  
Exception for Imminent Danger**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 2/4/2022**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 375.

Consistent with the state's commitment to personal privacy, the Maryland Wiretap Act prohibits the interception of wire, oral, or electronic communications except in very limited circumstances. This bill would dramatically expand the Wiretap Act to allow private individuals to intercept communications in no official capacity based on criteria that are overly broad.

Currently, authorized interceptions are limited to (a) recordings consented to by all parties, (b) law enforcement or other government officials pursuant to specified types of investigations or emergencies; (c) court order; and (d) incidental to rendering of services within the normal course of business of a wire or electronic communication service. For each exception, any nonconsensual recording is conducted by a trained professional for a clearly defined purpose. The interceptor is aware of the competing interests, the limitations of their scope and authority, and is subject to accountability measures within their chain of command. In comparison, this bill will require a layperson to assess what is a reasonable fear of imminent danger and whether the actions to be recorded arise to one of the enumerated offenses. If their assessment is wrong (or otherwise inconsistent with the State's Attorney's interpretation), they may be subject to prosecution.

If enacted, this bill is likely to significantly increase the amount of intercepted communications. Our culture has become increasingly digital, with recordings commonplace wherever permitted, even when ill-advised or disrespectful. Under this law, individuals who intercept communications can claim they were in fear of imminent danger of being the victim of one of the specified crimes whether or not the underlying offense is ever prosecuted or results in conviction. While the reasonableness standard suggests

a construct of objectivity, it does not sufficiently limit the parameters of otherwise illegal behavior for an actual person.

Unlike the current exceptions, which limit the use of nonconsensual intercepted communications to investigations, emergencies, or the course of business, this bill provides no parameters for the use of intercepted communication. Whether the intercepted communication and its fruits can be used as evidence, despite Crim. Jud. Proc. § 10-402(a), will require extensive litigation. More public uses through the internet or media will have no such check.

“The requirement of consent by all parties for the recording of a telephone conversation by a private individual has been a fundamental part of Maryland law since at least 1956,” and protects the privacy interests of all individuals, even when accused of serious crimes. *Perry v. State*, 357 Md. 37, 61 (1999) (reversing murder conviction that relied on wiretap by co-conspirator). This bill seeks to exclude people in certain circumstances from these deep rooted privacy protections, by relying on the perspective of the interceptor for whether these circumstances exist. This will significantly weaken the privacy protections the Wiretap Act was enacted to secure.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 375.**

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

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