

# SENATE BILL 382

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2lr1614

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By: **Senator Lee**

Introduced and read first time: January 24, 2022

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Intercepted Communications – Admissibility of Evidence**

3 FOR the purpose of providing that a certain communication that was intercepted in  
4 violation of certain provisions of law may be admissible in certain proceedings under  
5 certain circumstances; prohibiting the admissibility of the contents of an intercepted  
6 communication or evidence derived from an intercepted communication as evidence  
7 unless certain conditions are met; and generally relating to intercepted  
8 communications and the admissibility of evidence.

9 BY repealing and reenacting, with amendments,  
10 Article – Courts and Judicial Proceedings  
11 Section 10–405  
12 Annotated Code of Maryland  
13 (2020 Replacement Volume and 2021 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article – Criminal Law  
16 Section 3–802  
17 Annotated Code of Maryland  
18 (2021 Replacement Volume and 2021 Supplement)

19 BY repealing and reenacting, without amendments,  
20 Article – Family Law  
21 Section 4–509  
22 Annotated Code of Maryland  
23 (2019 Replacement Volume and 2021 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
25 That the Laws of Maryland read as follows:

26 **Article – Courts and Judicial Proceedings**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 10-405.

2 (a) Except as provided in [subsection (b)] **SUBSECTIONS (B) AND (C)** of this  
3 section, whenever any wire, oral, or electronic communication has been intercepted, no part  
4 of the contents of the communication and no evidence derived therefrom may be received  
5 in evidence in any trial, hearing, or other proceeding in or before any court, grand jury,  
6 department, officer, agency, regulatory body, legislative committee, or other authority of  
7 this State, or a political subdivision thereof if the disclosure of that information would be  
8 in violation of this subtitle.

9 (b) If any wire, oral, or electronic communication is intercepted in any state or  
10 any political subdivision of a state, the United States or any territory, protectorate, or  
11 possession of the United States, including the District of Columbia in accordance with the  
12 law of that jurisdiction, but that would be in violation of this subtitle if the interception was  
13 made in this State, the contents of the communication and evidence derived from the  
14 communication may be received in evidence in any trial, hearing, or other proceeding in or  
15 before any court, grand jury, department, officer, agency, regulatory body, legislative  
16 committee, or other authority of this State, or any political subdivision of this State if:

17 (1) At least one of the parties to the communication was outside the State  
18 during the communication;

19 (2) The interception was not made as part of or in furtherance of an  
20 investigation conducted by or on behalf of law enforcement officials of this State; and

21 (3) All parties to the communication were co-conspirators in a crime of  
22 violence as defined in § 14-101 of the Criminal Law Article.

23 **(C) IF ANY WIRE, ORAL, OR ELECTRONIC COMMUNICATION IS INTERCEPTED**  
24 **IN THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE IN VIOLATION OF THIS**  
25 **SUBTITLE, THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED FROM**  
26 **THE COMMUNICATION MAY BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING, OR**  
27 **OTHER PROCEEDING IN OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT,**  
28 **OFFICER, AGENCY, REGULATORY BODY, LEGISLATIVE COMMITTEE, OR OTHER**  
29 **AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE IF:**

30 **(1) THE EVIDENCE IS OFFERED IN A TRIAL, HEARING, OR OTHER**  
31 **PROCEEDING THAT INVOLVES:**

32 **(I) A CRIME OF VIOLENCE, AS DEFINED UNDER § 14-101 OF**  
33 **THE CRIMINAL LAW ARTICLE;**

34 **(II) A VIOLATION OF § 3-802 OF THE CRIMINAL LAW ARTICLE;**  
35 **OR**

1 (III) A VIOLATION OF § 4-509 OF THE FAMILY LAW ARTICLE;  
2 AND

3 (2) A COURT DETERMINES THAT:

4 (I) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE  
5 DERIVED FROM THE COMMUNICATION ARE OFFERED AS EVIDENCE OF A MATERIAL  
6 FACT IN A CRIMINAL PROCEEDING;

7 (II) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE  
8 DERIVED FROM THE COMMUNICATION ARE MORE PROBATIVE ON THE POINT FOR  
9 WHICH THEY ARE OFFERED THAN ANY OTHER EVIDENCE THAT THE PROPONENT CAN  
10 PROCURE THROUGH REASONABLE EFFORTS; AND

11 (III) THE INTEREST OF JUSTICE WILL BE BEST SERVED BY  
12 ADMISSION OF THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED  
13 FROM THE COMMUNICATION INTO EVIDENCE.

14 (D) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED  
15 FROM THE COMMUNICATION MAY NOT BE RECEIVED IN EVIDENCE UNDER  
16 SUBSECTION (B) OR (C) OF THIS SECTION UNLESS:

17 (1) THE PROPONENT OF THE CONTENTS OF THE COMMUNICATION  
18 AND EVIDENCE DERIVED FROM THE COMMUNICATION DISCLOSES TO THE ADVERSE  
19 PARTY THE INTENTION TO OFFER THE CONTENTS OF THE COMMUNICATION AND  
20 EVIDENCE DERIVED FROM THE COMMUNICATION, INCLUDING THE NAME AND  
21 ADDRESS OF ANY PARTY WHOSE COMMUNICATION WAS INTERCEPTED; AND

22 (2) THE DISCLOSURE REQUIRED UNDER THIS SUBSECTION IS MADE  
23 SUFFICIENTLY IN ADVANCE OF THE TRIAL OR HEARING TO PROVIDE THE ADVERSE  
24 PARTY WITH A FAIR OPPORTUNITY TO PREPARE TO MEET THE CONTENTS OF THE  
25 COMMUNICATION AND EVIDENCE DERIVED FROM THE COMMUNICATION.

26 **Article – Criminal Law**

27 3-802.

28 (a) In this section, “stalking” means a malicious course of conduct that includes  
29 approaching or pursuing another where:

30 (1) the person intends to place or knows or reasonably should have known  
31 the conduct would place another in reasonable fear:

32 (i) 1. of serious bodily injury;

- 1                                    2.        of an assault in any degree;
- 2                                    3.        of rape or sexual offense as defined by §§ 3–303 through
- 3        3–308 of this title or attempted rape or sexual offense in any degree;
- 4                                    4.        of false imprisonment; or
- 5                                    5.        of death; or
- 6                                    (ii)     that a third person likely will suffer any of the acts listed in item
- 7        (i) of this item; or
- 8                                    (2)     the person intends to cause or knows or reasonably should have known
- 9        that the conduct would cause serious emotional distress to another.
- 10                                  (b)     The provisions of this section do not apply to conduct that is:
- 11                                    (1)     performed to ensure compliance with a court order;
- 12                                    (2)     performed to carry out a specific lawful commercial purpose; or
- 13                                    (3)     authorized, required, or protected by local, State, or federal law.
- 14                                  (c)     A person may not engage in stalking.
- 15                                  (d)     A person who violates this section is guilty of a misdemeanor and on conviction
- 16        is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.
- 17                                  (e)     A sentence imposed under this section may be separate from and consecutive
- 18        to or concurrent with a sentence for any other crime based on the acts establishing a
- 19        violation of this section.

## 20                                  **Article – Family Law**

21        4–509.

22                                  (a)     A person who fails to comply with the relief granted in an interim protective

23        order under § 4–504.1(c)(1), (2), (3), (4)(i), (7), or (8) of this subtitle, a temporary protective

24        order under § 4–505(a)(2)(i), (ii), (iii), (iv), (v), or (viii) of this subtitle, or a final protective

25        order under § 4–506(d)(1), (2), (3), (4), or (5), or (f) of this subtitle is guilty of a misdemeanor

26        and on conviction is subject, for each offense, to:

27                                  (1)     for a first offense, a fine not exceeding \$1,000 or imprisonment not

28        exceeding 90 days or both; and

29                                  (2)     for a second or subsequent offense, a fine not exceeding \$2,500 or

1 imprisonment not exceeding 1 year or both.

2 (b) For the purpose of second or subsequent offender penalties provided under  
3 subsection (a)(2) of this section, a prior conviction under § 3–1508 of the Courts Article shall  
4 be considered a conviction under this section.

5 (c) An officer shall arrest with or without a warrant and take into custody a  
6 person who the officer has probable cause to believe is in violation of an interim, temporary,  
7 or final protective order in effect at the time of the violation.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2022.