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**REPORTS OF COMMITTEES
TO THE
GENERAL ASSEMBLY
OF
MARYLAND
1977 SESSION**



Annapolis, Maryland

SENATE CONSTITUTIONAL

AND

PUBLIC LAW COMMITTEE

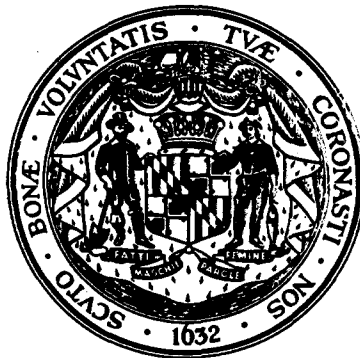
1976 REPORT

to the

GENERAL ASSEMBLY

of

MARYLAND



Annapolis, Maryland

CONSTITUTIONAL AND PUBLIC LAW COMMITTEE REPORT
SENATE CONSTITUTIONAL AND PUBLIC LAW COMMITTEE

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HONORABLE NORMAN R. STONE, Vice Chairman

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Eleanor Mahoney - Administrative Assistant
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CONSTITUTIONAL AND PUBLIC LAW COMMITTEE REPORT

1976 Report of the
Senate Committee on Constitutional and Public Law
to the
Legislative Policy Committee of the Maryland
General Assembly

Introduction

Favorable Reports:

- S.B. 1007 - Wiretapping and Electronic Surveillance
- S.B. 1010 - Freedom of Information Act
- S.B. 1011 - General Assembly - Perjury
- S.B. 1012 - Legal Counsel - Agencies Under Investigation
- S.B. 1013 - General Assembly - State Police Assistance
- S.B. 1014 - General Assembly - Legal Counsel
- S.B. 1015 - Investigating Committees - Witnesses

Unfavorable Reports:

- S.B. 388 - Ombudsman
- S.B. 642 - State Data Collection
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- S.B. 783 - County Home Rule
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Re-referred:

Veterans - Definition of Term

Held:

Executive Agencies - Boards of Reviews

CONSTITUTIONAL AND PUBLIC LAW COMMITTEE REPORT

Report of
the Senate Committee on Constitutional and Public Law
to the Legislative Policy Committee of the Maryland
General Assembly
October 19, 1976

The Legislative Policy Committee referred the following matters to the committee for its consideration:

1. Ombudsman (S.B. 388 - Wiser, et al)
2. State Data Collection (S.B. 642 - Abrams)
3. Chartered Counties - Home Rule (S.B. 782, 783 - Cade)
4. Automotive Repair Facilities (S.B. 890 - Blount and Levitan)
5. Veterans - Definitions in Annotated Code
6. Executive Agencies - Boards of Review - Functions
7. Police Department Investigation - Review of Bills Introduced as Result of Investigating Committee's Recommendations (Except S.B. 1008, Consumer Credit Reporting Act, and S.B. 1009, Baltimore City - Police Department. An alternative bill to S.B. 1008, Chapter 584, and an alternative bill to S.B. 1009, Chapter 920, were enacted.)
 - A. S.B. 1007 - Wiretapping and Electronic Surveillance - Conroy, et al.
 - B. S.B. 1010 - Freedom of Information Act - Conroy, et al.
 - C. S.B. 1011 - General Assembly - Perjury - Conroy, et al.
 - D. S.B. 1012 - Legal Counsel - Agencies Under Investigation - Conroy, et al.
 - E. S.B. 1013 - General Assembly - State Police Assistance
 - F. S.B. 1014 - General Assembly - Legal Counsel - Conroy, et al.
 - G. S.B. 1015 - Investigating Committees - Witnesses - Conroy, et al.

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The Committee held a hearing on June 15, 1976 on S.B. 642, S.B. 782, S.B. 783, and S.B. 890. A second hearing was held on August 10, 1976 concerning S.B. 1007, S.B. 1010, S.B. 1011, S.B. 1012, S.B. 1013, S.B. 1014, and S.B. 1015. A final hearing was held on September 14, 1976 on the powers and operations of the various Boards of Reviews. The committee held a working session on October 5, 1976 to review all of the matters referred to it and to make the following disposition of these matters.

Favorable Reports:

S.B. 1007 - Wiretapping and Electronic Surveillance

This bill repeals existing statutory provisions concerning wiretapping and electronic surveillance and substitutes provisions which are closely modelled after the Federal law on this subject. Generally, the bill makes it a felony to intercept wire or oral communications. It is also a felony to disclose or use such communications which were illegally obtained. Exceptions are made for communications carriers for certain purposes, if a person acting under color of law is a party or has the consent of a party to intercept a communication in order to obtain evidence of certain crimes, or if all the parties consent. The bill also makes it a felony to manufacture, possess or sell devices to intercept oral or wire communications. Exceptions are made for common carriers, manufacturers with contracts with a communications carrier or government agencies, and government personnel. Illegal devices are subject to confiscation.

The bill also prohibits the use of intercepted evidence, the disclosure of which would be illegal. Upon the request of the Attorney General or a State's Attorney, a court, in accordance with procedures specified in the bill, may issue an order authorizing an interception for a limited period, which is renewable, for the purpose of gathering evidence on certain serious offenses. The bill also provides for the protection, disclosure, and suppression of these communications, requires reports by the court on the authorization of these interceptions, provides for the recovery of civil damages, and requires the registration of interception devices.

During the course of the committee's investigation of police department activities, it became apparent that the availability and use of wiretapping and electronic surveillance devices is widespread and represents a serious threat to the privacy of citizens. The committee concluded that present State laws are inadequate in form

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and substance, that they are not well integrated, and that they are constitutionally defective. Accordingly, the committee recommends a statute which closely follows the Federal law on this matter. See Report to the Senate of Maryland by the Senate Investigating Committee Established Pursuant to Senate Resolutions 1 and 151 of the 1975 Maryland General Assembly at 66-70.

S.B. 1010 - Freedom of Information Act

The recommended bill amends the Freedom of Information Act in three respects. First, it provides that the State and local governments may maintain only information about a person which is relevant to the lawful purposes of the governmental unit, as defined by statute or executive order. Secondly, it qualifies the absolute authority to withhold law enforcement information, so that the information may be withheld only for a valid law enforcement purpose or to protect another person. Thirdly, the bill revises provisions in the statute for judicial review, provides for an expedited proceeding, and authorizes an award of money damages.

The bill was drafted by the committee as a result of its investigation of police department activities. In its investigation the committee found that police personnel had engaged in unwarranted and unlawful surveillance activities. Essentially, the committee was concerned with striking the proper balance between legitimate surveillance activities and the right of privacy of the individual. The committee found it impossible to define the proper limits to these activities. Accordingly, it was felt that greater access to information gathered by law-enforcement agencies would inhibit the gathering of information for an improper purpose. See Report to the Senate of Maryland by the Senate Investigating Committee Established Pursuant to Senate Resolutions 1 and 151 of the 1975 Maryland General Assembly at 73-74.

S.B. 1011 - General Assembly - Perjury

This bill makes it a felony to commit perjury before an investigating committee of the General Assembly. The punishment provided is imprisonment for not more than ten years or a fine not exceeding \$10,000, or both. In the course of its investigation of police department activities, the committee concluded that it was handicapped by the absence of a specific statute making it an offense to commit perjury before an investigating committee. Accordingly, the committee recommends the adoption of this specific statute. See Report to the Senate of Maryland by the Senate Investigating Committee Established Pursuant to Senate Resolutions 1 and 151 of

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the 1975 Maryland General Assembly at 81-82.

S.B. 1012 - Legal Counsel - Agencies Under Investigation

This bill provides that an agency under investigation by a legislative investigating committee, subject to the approval of the State Board of Public Works, may retain separate counsel if the Attorney General finds there would be a conflict of interest in representing the agency and the committee.

Currently, the Attorney General is responsible for representing various agencies of the State government as well as the General Assembly. In the course of the committee's investigation of police department activities, the Attorney General was asked to represent the Baltimore City Police Department, as a State agency, and the committee. Because of the conflict in interest, the committee recommends legislation to allow the agencies under legislative investigation to employ separate counsel. See Report to the Senate of Maryland by the Senate Investigating Committee Established Pursuant to Senate Resolutions 1 and 151 of the 1975 Maryland General Assembly at 81.

S.B. 1013 - General Assembly - State Police Assistance

This bill provides for the assignment of personnel of the State Police to a legislative investigating committee at the request of the chairman of the committee. During the course of its investigation of police department activities, the committee concluded that it would strengthen the investigative capability of investigating committees to provide for assistance to such committees by the State Police. See Report to the Senate of Maryland by the Senate Investigating Committee Established Pursuant to Senate Resolutions 1 and 151 of the 1975 Maryland General Assembly at 82.

S.B. 1014 - General Assembly - Legal Counsel

This bill provides for the assignment, upon request, of personnel of the Department of Law to the General Assembly or its constituent bodies. During the course of the committee's investigation of police department activities, there arose some ambiguity over the duty of the Attorney General to represent the Legislature and its constituent bodies. The proposed bill clarifies the law on this matter. See Report of the Senate of Maryland by the Senate Investigating Committee Established Pursuant to Senate Resolutions 1 and 151 of the 1975 Maryland General Assembly at 82.

S.B. 1015 - Investigating Committees - Witnesses

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This bill authorizes an investigating committee to confer use immunity and provides that a witness, on the basis of his privilege against self-incrimination, may not refuse to comply with a judicial order compelling him to testify or give other information. Such a judicial order shall be granted when the court has found that the committee has requested the order by a two-thirds vote. No testimony or other information which a witness is compelled to give may be used against him in a criminal case, except a prosecution for perjury, giving a false statement, or failing to comply with the order.

During the course of its investigation of the police department activities, the committee found that it was handicapped in obtaining evidence by the refusal of witnesses to testify on the grounds of their privilege against self-incrimination. To assist an investigating committee in obtaining necessary evidence while still protecting witnesses against the consequences of giving incriminating evidence, the committee has proposed this statute to allow an investigating committee to obtain a judicial order compelling a witness to testify. The witness, however, would be protected from the consequences of incriminating statements by providing that his testimony, in most instances, could not be used against him. See Report to the Senate of Maryland by the Senate Investigating Committee Established Pursuant to Senate Resolutions 1 and 151 of the 1975 Maryland General Assembly at 79-80.

Unfavorable Reports:

- S.B. 388 - Cmbudsman
- S.B. 642 - State Data Collection
- S.B. 782 - Charter Counties - Governing Powers
- S.B. 783 - County Home Rule
- S.B. 890 - Commercial Law - Automotive Repair Facilities

Re-referred:

Veterans - Definitions in the Annotated Code - As a result of a request from the House Committee on Appropriations, the committee studied the matter of how the term "veterans" is defined in the Annotated Code. The committee found that this term is not defined in the Code. The committee also examined definitions of this term used in Federal statutes. This information has been

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forwarded to the House Committee on Appropriations. The committee recommends that this matter be re-referred to the House Committee on Appropriations.

Held:

Executive Agencies - Boards of Reviews - The committee is continuing its study of the functions and operations of the various Boards of Reviews.

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A BILL ENTITLED

AN ACT concerning

Wiretapping and Electronic Surveillance

FOR the purpose of repealing existing provisions of law relating to wiretapping and electronic surveillance and enacting new provisions relating to the same matters; defining various terms; prohibiting, with certain exceptions, the interception and disclosure of oral and wire communications and prescribing a criminal penalty; prohibiting, with certain exceptions, the manufacture, possession and sale of devices for surreptitiously intercepting oral and wire communications, and providing for the forfeiture of such devices; prohibiting, in certain circumstances, the use of intercepted communications in various proceedings; providing for the interception, under certain circumstances and with prior judicial authorization, of oral and wire communications by law-enforcement personnel; providing for the protection, disclosure, and suppression of such communications; requiring certain reports relating to the interception of such communications; creating certain civil liabilities and criminal offenses; requiring law-enforcement agencies to register devices for the interception of oral and wire communications; and generally relating to the interception of oral and wire communications.

BY repealing

Article 27 - Crimes and Punishments
Section 125A through 125D and the subheading
"Electronic Devices" and 585
Annotated Code of Maryland
(1976 Replacement Volume and 1976 Supplement)

BY repealing

Article - Courts and Judicial Proceedings
Section 10-401 through 10-408
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

BY adding to

Article - Courts and Judicial Proceedings
Section 10-401 through 10-412
Annotated Code of Maryland
(1974 Volume and 1976 Supplement)

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SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 125A through 125D and the subheading "Electronic Devices" and 585 of Article 27 - Crimes and Punishments, of the Annotated Code of Maryland (1976 Replacement Volume and 1976 Supplement) be and they are hereby repealed:

Article 27 - Crimes and Punishments

[Electronic Devices]

[125A.]

(a) It is unlawful for any person in this State to use any electronic device or other device or equipment of any type whatsoever in such manner as to overhear or record any part of the conversation or words spoken to or by any person in private conversation without the knowledge or consent, expressed or implied, of that other person.

(b) However, if it shall appear to a duly authorized public law enforcement officer of this State that a crime has been, or is being, or is about to be committed, and that the use of such electronic devices are required to prevent the commission of the said crime, or to apprehend the persons who shall have committed it, then the law enforcement officer or officers shall submit to the State's attorney of the county or of Baltimore City the evidence upon which the said law enforcement officer bases his contention that an ex parte order authorizing the use of the said electronic devices is necessary; and if it shall appear to the said State's attorney that there are reasonable grounds to believe that a crime has been committed or is being committed or may be committed then the said State's attorney shall apply to any of the judges of the circuit court of the county or of the Supreme Bench of Baltimore City, by means of a former ex parte petition for the issuance of an order authorizing the use of the said electronic devices or equipment, and shall make oath or affirm in the said petition that there is probable cause to believe that a crime may be, or is being, or has been committed and shall state the facts upon which said probable cause is based, and further, that the use of the said electronic devices or equipment is necessary in order to prevent the commission of, or to secure evidence of the commission of such crime. In such case the affiant shall identify, with reasonable particularity, the device or devices to be used, the place or places where they are to be used, the person or persons whose conversation is to be intercepted, the crime or crimes which are

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suspected to have been, or about to be committed, and that the evidence thus obtained will be used solely in connection with an investigation or prosecution of the said crimes before any such ex parte order shall be issued. The applicant must state whether any prior application has been made in the same matter and if such prior application exists the applicant shall disclose the present status thereof.

(C) The judge of the circuit court of the county or of the Supreme Bench of Baltimore City shall satisfy himself that the facts stated in the petition indicate that there is probable cause for the issuance of the said order. Such ex parte order shall be effective for the time specified in the order, but for not more than thirty days unless extended or renewed by the judge, upon proper petition meeting the same requirements as the original petition. Any ex parte order so issued shall be retained by the applicant as authority for the use of the electronic device or equipment therein set out and the interception of the conversation sought to be intercepted. A true copy of such order, together with any exhibits submitted with the petition shall be sealed and filed with the clerk of the court in which the order is issued, at the time of its issuance, provided, however, that such order shall be available to persons in interest after arrest, upon order of the court.]

[125B.

Any person or persons who shall use any electronic device or equipment or other devices or equipment or other devices or equipment of any type whatsoever, in such manner as to overhear or record any part of the conversation or words spoken to or by any person in private conversation, without their knowledge or consent, either expressed or implied, except in compliance with the terms of this subtitle, shall be deemed guilty of a misdemeanor, subject, upon conviction, to a fine not exceeding five hundred dollars (\$500), or to imprisonment for not exceeding one (1) year, or to both such fine and imprisonment, in the discretion of the court. Nothing herein contained shall be construed or implied to affect any employee of a telephone company or a telegraph company, as those terms are defined in Article 78 of the Annotated Code of Maryland, while in the regular course of his employment by such company, and engaged in company business.]

[125C. .

Nothing in this subtitle shall be construed or given effect to prevail over the wiretapping provisions in § 585 of this article and in §§ 10-401 through 10-408 of

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the Courts Article.]

[125D.

(a) Every person possessing any eavesdropping and/or wiretapping device shall register such device with the Superintendent of State Police or with a person designated by the superintendent. Information to be furnished with such registration shall include the name, address, identifying characteristics, and occupation of the possessor of such device, and of the owner or owners if different persons from the possessor, and an identifying description of each such device possessed, and such further information as the Superintendent may require.

(b) From and after June 1, 1965, it shall be unlawful for any person to manufacture or make any eavesdropping and/or wiretapping device unless he registers such device in accordance with subsection (a), before or immediately upon the completion of such device. From and after June 1, 1965, it shall be unlawful for any person to sell, loan, give, or otherwise transfer any such device, unless such device has been registered and the information required by subsection (a) furnished with respect both to the transferor and prospective transferee. From and after January 1, 1966, it shall be unlawful for any person to possess such a device which has not been registered in accordance with subsection (a).

(c) Violation of any provision of subsection (b) shall constitute a misdemeanor, punishable upon conviction thereof by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than one year or both. Any such device may be seized upon court order or under a warrant; and upon conviction of a violation of subsection (b), the device with respect to which such violation was committed shall be forfeited to the State of Maryland, the same to be delivered to the State Police.

(d) As used in this section, the terms "wiretapping and/or eavesdropping device" and "device" include every device, instrument, apparatus, or equipment, which is designed or especially redesigned to be adapted or actually adapted for the purpose of (1) secretly overhearing or reporting any part of the conversation or words spoken to or by any person in private conversation without the knowledge or consent, expressed or implied, of that person, (2) intercepting or obtaining or attempting to obtain the whole or any part of a telephonic or telegraphic communication without the knowledge and consent of the participants thereto. As

used in the preceding subsections of this section "person" includes any firm, association, or corporation; provided, however, that nothing in this section shall be construed or applied to affect (1) a public law enforcement officer of this State in the duly authorized performance of his duties, or (2) an employee of a telephone or telegraph company, as defined in Article 78 of this Code, while in the regular course of his employment by such company and engaged in company business.]

[585.

Any person or persons who shall willfully intercept or tap any telephonic or telegraphic communications in any manner other than pursuant to an order under the provisions of §§ 10-401 through 10-408 of the Courts Article of the Code, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than one thousand dollars (\$1,000.00) or to imprisonment for not more than ninety (90) days or to both such fine and imprisonment in the discretion of the court. Provided, however, that nothing in this section shall apply to the Federal Bureau of Investigation or to any other federal investigating agency; and provided further that nothing in this section shall apply to an employee or authorized agent of a telephone or telegraph company, while engaged in the official and authorized course of his employment.]

SECTION 2. AND BE IT FURTHER ENACTED, That Sections 10-401 through 10-408 of Article - Courts and Judicial Proceedings, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) be and they are hereby repealed:

Article - Courts and Judicial Proceedings

[10-401.

The right of the people to be secure against unreasonable interception of telephonic and telegraphic communications may not be violated. The interception and divulgence of a private communication by any person not a party thereto is contrary to the public policy of the State, and may not be permitted except by court order in unusual circumstances to protect the people. It is further declared to be the public policy of the State that detection of the guilty does not justify investigative methods which infringe upon the liberties of the innocent.]

[10-402.

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(a) Except as otherwise provided in § 10-403 and subsection (c) of this section, a person may not obtain or attempt to obtain the whole or any part of a telephonic or telegraphic communication to which the person is not a participant by means of a device, contrivance, machine, or apparatus, whether electrical, mechanical, or manual unless consent is given by the participants.

(b) Except as otherwise provided in § 10-403 and subsection (c) of this section, no person may tamper with the wires, connections, boxes, fuses, circuits, lines, or other equipment or facilities of a telephone or telegraph company over which messages are transmitted with the intent to obtain the contents of a telephonic or telegraphic communication to which the person is not a participant.

(c) The prohibition of this section does not apply to any officer, employee, or agent of a telephone or telegraph company who performs an act prohibited in this subtitle for the purpose of construction, maintenance, or conduct of the company's telephonic or telegraphic communications service, facilities, or equipment.]

[10-403.

(a) An ex parte order for the interception of telephonic and telegraphic communications may be issued by a judge of a circuit court, the Supreme Bench of Baltimore City, or the District Court upon the verified application of the Attorney General or a State's Attorney setting forth fully the facts and circumstances upon which the application is based and stating that:

(1) There are reasonable grounds to believe that a crime has been committed or is about to be committed.

(2) There are reasonable grounds to believe that evidence will be obtained essential to the solution of a crime, or which may enable the prevention of a crime.

(3) There are no other means readily available for obtaining the information.

(b) Where statements are solely upon the information and belief of the applicant, the grounds for the belief must be given.

(c) The applicant must state whether any prior application has been made to obtain telephonic and telegraphic communications on the same instrument or for

CONSTITUTIONAL AND PUBLIC LAW COMMITTEE REPORT

the same person and if a prior application exists the applicant shall disclose its current status.

(d) The application and any order issued under this section shall identify as fully as possible the particular telephone or telegraph line from which the information is to be obtained and the purpose.

(e) The court shall examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(f) No order issued under this section shall be effective for longer than 30 days.

(g) Upon application of the officer who secured the original order, the court which issued the order may renew or continue the order for an additional period not to exceed 30 days.]

[10-404.

An officer who knowingly proceeds under an order which has expired and has not been renewed acts without authority and is subject to the penalties provided in this subtitle or in § 585 of Article 27 of this Code as though he had never obtained an order.]

[10-405.

The application for an order and supporting documents and testimony in connection with it are not public records and shall remain confidential in the custody of the court. These materials may not be released or information concerning them in any manner disclosed except upon written order of the court.]

[10-406.

Only evidence obtained in conformity with the provisions of this subtitle is admissible, and then only in a prosecution for the crime or crimes specified in the order of court.]

[10-407.

(a) This subtitle does not apply to the Federal Bureau of Investigation or to any other federal investigating agency.

(b) An order issued under the provisions of this subtitle may not direct or compel an employee of a telephone or telegraph company to an act or furnish information in violation of federal law.]

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[10-408.

A person who violates the provisions of this subtitle is guilty of a misdemeanor and upon conviction subject to a fine of not more than \$1,000 or imprisonment for not more than 90 days or both.]

SECTION 3. AND BE IT FURTHER ENACTED, That new Sections 10-401 through 10-412 be and they are hereby added to Article - Courts and Judicial Proceedings, of the Annotated Code of Maryland (1974 Volume and 1976 Supplement) to read as follows:

Article - Courts and Judicial Proceedings

10-401.

AS USED IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

(1) "WIRE COMMUNICATION" MEANS ANY COMMUNICATION MADE IN WHOLE OR IN PART THROUGH THE USE OF FACILITIES FOR THE TRANSMISSION OF COMMUNICATIONS BY THE AID OF WIRE, CABLE, OR OTHER LIKE CONNECTION BETWEEN THE POINT OF ORIGIN AND THE POINT OF RECEPTION FURNISHED OR OPERATED BY ANY PERSON ENGAGED AS A COMMON CARRIER IN PROVIDING OR OPERATING SUCH FACILITIES FOR THE TRANSMISSION OF COMMUNICATIONS;

(2) "ORAL COMMUNICATION" MEANS ANY ORAL COMMUNICATION UTTERED BY A PERSON EXHIBITING AN EXPECTATION THAT THE COMMUNICATION IS NOT SUBJECT TO INTERCEPTION UNDER CIRCUMSTANCES JUSTIFYING THIS EXPECTATION;

(3) "INTERCEPT" MEANS THE AURAL ACQUISITION OF THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION THROUGH THE USE OF ANY ELECTRONIC, MECHANICAL, OR OTHER DEVICE.

(4) "ELECTRONIC, MECHANICAL, OR OTHER DEVICE" MEANS ANY DEVICE OR APPARATUS WHICH CAN BE USED TO INTERCEPT A WIRE OR ORAL COMMUNICATION OTHER THAN;

(I) ANY TELEPHONE OR TELEGRAPH INSTRUMENT, EQUIPMENT OR FACILITY, OR ANY COMPONENT THEREOF, (A) FURNISHED TO THE SUBSCRIBER OR USER BY A COMMUNICATIONS COMMON CARRIER IN THE ORDINARY COURSE OF ITS BUSINESS AND BEING USED BY THE SUBSCRIBER OR USER IN THE ORDINARY COURSE OF ITS BUSINESS; OR (B) BEING USED BY A COMMUNICATIONS COMMON CARRIER IN THE ORDINARY COURSE OF ITS BUSINESS, OR BY AN INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER IN THE ORDINARY COURSE OF HIS DUTIES;

(II) A HEARING AID OR SIMILAR DEVICE BEING

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USED TO CORRECT SUBNORMAL HEARING TO NOT BETTER THAN NORMAL;

(5) "PERSON" MEANS ANY EMPLOYEE OR AGENT OF THIS STATE OR A POLITICAL SUBDIVISION THEREOF, AND ANY INDIVIDUAL, PARTNERSHIP, ASSOCIATION, JOINT STOCK COMPANY, TRUST, OR CORPORATION;

(6) "INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER" MEANS ANY OFFICER OF THIS STATE OR A POLITICAL SUBDIVISION THEREOF, WHO IS EMPOWERED BY LAW TO CONDUCT INVESTIGATIONS OF OR TO MAKE ARRESTS FOR OFFENSES ENUMERATED IN THIS SUBTITLE, AND ANY ATTORNEY AUTHORIZED BY LAW TO PROSECUTE OR PARTICIPATE IN THE PROSECUTION OF SUCH OFFENSES;

(7) "CONTENTS", WHEN USED WITH RESPECT TO ANY WIRE OR ORAL COMMUNICATION, INCLUDES ANY INFORMATION CONCERNING THE IDENTITY OF THE PARTIES TO THE COMMUNICATION OR THE EXISTENCE, SUBSTANCE, PURPOSE, OR MEANING OF THAT COMMUNICATION;

(8) "JUDGE OF COMPETENT JURISDICTION" MEANS A JUDGE OF A CIRCUIT COURT OR THE SUPREME BENCH OF BALTIMORE CITY.

(9) "COMMUNICATIONS COMMON CARRIER" MEANS ANY TELEGRAPH COMPANY, AS DEFINED IN ARTICLE 78, SECTION 2(X) OF THIS CODE, TELEPHONE COMPANY, AS DEFINED IN ARTICLE 78, SECTION 2(Z) OF THIS CODE, AND ANY RADIO COMMON CARRIER, AS DEFINED IN ARTICLE 78, SECTION 2(II) OF THIS CODE; AND

(10) "AGGRIEVED PERSON" MEANS A PERSON WHO WAS A PARTY TO ANY INTERCEPTED WIRE OR ORAL COMMUNICATION OR A PERSON AGAINST WHOM THE INTERCEPTION WAS DIRECTED.

10-402.

(A) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS SUBTITLE IT IS UNLAWFUL FOR ANY PERSON TO:

(1) WILFULLY INTERCEPT, ENDEAVOR TO INTERCEPT, OR PROCURE ANY OTHER PERSON TO INTERCEPT OR ENDEAVOR TO INTERCEPT, ANY WIRE OR ORAL COMMUNICATION;

(2) WILFULLY DISCLOSE, OR ENDEAVOR TO DISCLOSE, TO ANY OTHER PERSON THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION, KNOWING OR HAVING REASON TO KNOW THAT THE INFORMATION WAS OBTAINED THROUGH THE INTERCEPTION OF A WIRE, OR ORAL COMMUNICATION IN VIOLATION OF THIS SUBTITLE; OR

(3) WILFULLY USE, OR ENDEAVOR TO USE, THE

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CONTENTS OF ANY WIRE OR ORAL COMMUNICATION, KNOWING OR HAVING REASON TO KNOW THAT THE INFORMATION WAS OBTAINED THROUGH THE INTERCEPTION OF A WIRE OR ORAL COMMUNICATION IN VIOLATION OF THIS SUBTITLE.

(B) ANY PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A FELONY AND IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR A FINE OF NOT MORE THAN \$10,000, OR BOTH.

(C) (1) (I) IT IS NOT UNLAWFUL UNDER THIS SUBTITLE FOR AN OPERATOR OF A SWITCHBOARD, OR AN OFFICER, EMPLOYEE, OR AGENT OF ANY COMMUNICATION COMMON CARRIER, WHOSE FACILITIES ARE USED IN THE TRANSMISSION OF A WIRE COMMUNICATION TO INTERCEPT, DISCLOSE, OR USE THAT COMMUNICATION IN THE NORMAL COURSE OF HIS EMPLOYMENT WHILE ENGAGED IN ANY ACTIVITY WHICH IS A NECESSARY INCIDENT TO THE RENDITION OF HIS SERVICE OR TO THE PROTECTION OF THE RIGHTS OR PROPERTY OF THE CARRIER OF THE COMMUNICATION. PROVIDED, THE COMMUNICATION COMMON CARRIERS MAY NOT UTILIZE SERVICE OBSERVING OR RANDOM MONITORING EXCEPT FOR MECHANICAL OR SERVICE QUALITY CONTROL CHECKS.

(II) IT IS NOT UNLAWFUL UNDER THIS SUBTITLE FOR AN OFFICER, EMPLOYEE, OR AGENT OF ANY COMMUNICATION COMMON CARRIER TO PROVIDE INFORMATION, FACILITIES, OR TECHNICAL ASSISTANCE TO AN INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER WHO, PURSUANT TO THIS SUBTITLE, IS AUTHORIZED TO INTERCEPT A WIRE OR ORAL COMMUNICATION.

(2) IT IS NOT UNLAWFUL UNDER THIS SUBTITLE FOR A PERSON ACTING UNDER COLOR OF LAW TO INTERCEPT A WIRE OR ORAL COMMUNICATION IN ORDER TO PROVIDE EVIDENCE OF THE COMMISSION OF THE OFFENSES OF MURDER, KIDNAPPING, GAMBLING, ROBBERY, BRIBERY, EXTORTION, OR DEALING IN CONTROLLED DANGEROUS SUBSTANCES, OR ANY CONSPIRACY TO COMMIT ANY OF THESE OFFENSES, WHERE THE PERSON IS A PARTY TO THE COMMUNICATION OR ONE OF THE PARTIES TO THE COMMUNICATION HAS GIVEN PRIOR CONSENT TO THE INTERCEPTION.

(3) IT IS NOT UNLAWFUL UNDER THIS SUBTITLE FOR A PERSON NOT ACTING UNDER COLOR OF LAW TO INTERCEPT A WIRE OR ORAL COMMUNICATION WHERE THE PERSON IS A PARTY TO THE COMMUNICATION AND WHERE ALL OF THE PARTIES TO THE COMMUNICATION HAVE GIVEN PRIOR CONSENT TO THE INTERCEPTION UNLESS THE COMMUNICATION IS INTERCEPTED FOR THE PURPOSE OF COMMITTING ANY CRIMINAL OR TORTIOUS ACT IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES OR OF THIS STATE OR FOR THE PURPOSE OF COMMITTING ANY OTHER INJURIOUS ACT.

10-403.

(A) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS SUBTITLE, ANY PERSON WHO MANUFACTURES, ASSEMBLES, POSSESSES, OR SELLS ANY ELECTRONIC, MECHANICAL, OR OTHER DEVICE, KNOWING OR HAVING REASON TO KNOW THAT THE DESIGN OF THE DEVICE RENDERS IT PRIMARILY USEFUL FOR THE PURPOSE OF THE SURREPTITIOUS INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS, IS GUILTY OF A FELONY AND IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR A FINE OF NOT MORE THAN \$10,000, OR BOTH.

(B) IT IS NOT UNLAWFUL UNDER THIS SECTION FOR:

(1) A COMMUNICATIONS COMMON CARRIER OR AN OFFICER, AGENT, OR EMPLOYEE OF, OR A PERSON UNDER CONTRACT WITH, A COMMUNICATIONS COMMON CARRIER, IN THE NORMAL COURSE OF THE COMMUNICATIONS COMMON CARRIER'S BUSINESS, OR

(2) A PERSON UNDER CONTRACT WITH THE UNITED STATES, A STATE, A POLITICAL SUBDIVISION OF A STATE, OR THE DISTRICT OF COLUMBIA, IN THE NORMAL COURSE OF THE ACTIVITIES OF THE UNITED STATES, A STATE, A POLITICAL SUBDIVISION THEREOF, OR THE DISTRICT OF COLUMBIA, TO MANUFACTURE, ASSEMBLE, POSSESS, OR SELL ANY ELECTRONIC, MECHANICAL, OR OTHER DEVICE KNOWING OR HAVING REASON TO KNOW THAT THE DESIGN OF THE DEVICE RENDERS IT PRIMARILY USEFUL FOR THE PURPOSE OF THE SURREPTITIOUS INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.

(3) AN OFFICER, AGENT, OR EMPLOYEE OF THE UNITED STATES IN THE NORMAL COURSE OF HIS LAWFUL ACTIVITIES TO MANUFACTURE, ASSEMBLE, POSSESS OR SELL ANY ELECTRONIC, MECHANICAL, OR OTHER DEVICE KNOWING OR HAVING REASON TO KNOW THAT THE DESIGN OF THE DEVICE RENDERS IT PRIMARILY USEFUL FOR THE PURPOSE OF THE SURREPTITIOUS INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.

(4) AN OFFICER, AGENT, OR EMPLOYEE OF A LAW-ENFORCEMENT AGENCY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE IN THE NORMAL COURSE OF HIS LAWFUL ACTIVITIES TO MANUFACTURE, ASSEMBLE, POSSESS OR SELL ANY ELECTRONIC, MECHANICAL, OR OTHER DEVICE KNOWING OR HAVING REASON TO KNOW THAT THE DESIGN OF THE DEVICE RENDERS IT PRIMARILY USEFUL FOR THE PURPOSE OF THE SURREPTITIOUS INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS, PROVIDED, HOWEVER, THAT THE PARTICULAR OFFICER, AGENT, OR EMPLOYEE IS SPECIFICALLY AUTHORIZED BY THE CHIEF ADMINISTRATOR OF THE EMPLOYER LAW-ENFORCEMENT AGENCY TO MANUFACTURE, ASSEMBLE OR POSSESS THE DEVICE FOR A PARTICULAR LAW-ENFORCEMENT PURPOSE AND THE DEVICE IS REGISTERED IN ACCORDANCE WITH SECTION 10-411 OF THIS SUBTITLE.

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10-404.

ANY ELECTRONIC, MECHANICAL, OR OTHER DEVICE USED, MANUFACTURED, ASSEMBLED, POSSESSED, OR SOLD, IN VIOLATION OF SECTION 10-402 OR SECTION 10-403 OF THIS SUBTITLE MAY BE SEIZED AND FORFEITED TO THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES OF THE STATE OF MARYLAND.

10-405.

WHENEVER ANY WIRE OR ORAL COMMUNICATION HAS BEEN INTERCEPTED, NO PART OF THE CONTENTS OF THE COMMUNICATION AND NO EVIDENCE DERIVED THEREFROM MAY BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING, OR OTHER PROCEEDING IN OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY, LEGISLATIVE COMMITTEE, OR OTHER AUTHORITY OF THIS STATE, OR A POLITICAL SUBDIVISION THEREOF IF THE DISCLOSURE OF THAT INFORMATION WOULD BE IN VIOLATION OF THIS SUBTITLE.

10-406.

THE ATTORNEY GENERAL OR ANY STATE'S ATTORNEY MAY APPLY TO A JUDGE OF COMPETENT JURISDICTION, AND THE JUDGE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 10-408 OF THIS ARTICLE, MAY GRANT AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS BY INVESTIGATIVE OR LAW-ENFORCEMENT OFFICERS WHEN THE INTERCEPTION MAY PROVIDE OR HAS PROVIDED EVIDENCE OF THE COMMISSION OF THE OFFENSE OF MURDER, KIDNAPPING, GAMBLING, ROBBERY, BRIBERY, EXTORTION, OR DEALING IN CONTROLLED DANGEROUS SUBSTANCES, OR ANY CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

10-407.

(A) ANY INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER WHO, BY ANY MEANS AUTHORIZED BY THIS SUBTITLE, HAS OBTAINED KNOWLEDGE OF THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, MAY DISCLOSE THE CONTENTS TO ANOTHER INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER TO THE EXTENT THAT THE DISCLOSURE IS APPROPRIATE TO THE PROPER PERFORMANCE OF THE OFFICIAL DUTIES OF THE OFFICER MAKING OR RECEIVING THE DISCLOSURE.

(B) ANY INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER WHO, BY ANY MEANS AUTHORIZED BY THIS SUBTITLE, HAS OBTAINED KNOWLEDGE OF THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION OR EVIDENCE DERIVED THEREFROM MAY USE THE CONTENTS TO THE EXTENT THE USE IS APPROPRIATE TO THE PROPER PERFORMANCE OF HIS OFFICIAL DUTIES.

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(C) ANY PERSON WHO HAS RECEIVED, BY ANY MEANS AUTHORIZED BY THIS SUBTITLE, ANY INFORMATION CONCERNING A WIRE OR ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM INTERCEPTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE, MAY DISCLOSE THE CONTENTS OF THAT COMMUNICATION OR THE DERIVATIVE EVIDENCE WHILE GIVING TESTIMONY UNDER OATH OR AFFIRMATION IN ANY PROCEEDING HELD UNDER THE AUTHORITY OF THE UNITED STATES OR OF THIS STATE OR ANY POLITICAL SUBDIVISION THEREOF.

(D) AN OTHERWISE PRIVILEGED WIRE OR ORAL COMMUNICATION INTERCEPTED IN ACCORDANCE WITH, OR IN VIOLATION OF, THE PROVISIONS OF THIS SUBTITLE, DOES NOT LOSE ITS PRIVILEGED CHARACTER.

(E) WHEN AN INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER, WHILE ENGAGED IN INTERCEPTING WIRE OR ORAL COMMUNICATIONS IN THE MANNER AUTHORIZED HEREIN, INTERCEPTS WIRE OR ORAL COMMUNICATIONS RELATING TO OFFENSES OTHER THAN THOSE SPECIFIED IN THE ORDER OF AUTHORIZATION, THE CONTENTS THEREOF, AND EVIDENCE DERIVED THEREFROM, MAY BE DISCLOSED OR USED AS PROVIDED IN SUBSECTIONS (A) AND (B) OF THIS SECTION. THE CONTENTS AND ANY EVIDENCE DERIVED THEREFROM MAY BE USED UNDER SUBSECTION (C) OF THIS SECTION WHEN AUTHORIZED OR APPROVED BY A JUDGE OF COMPETENT JURISDICTION WHERE THE JUDGE FINDS ON SUBSEQUENT APPLICATION THAT THE CONTENTS WERE OTHERWISE INTERCEPTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE. THE APPLICATION SHALL BE MADE AS SOON AS PRACTICABLE.

10-408.

(A) EACH APPLICATION FOR AN ORDER AUTHORIZING THE INTERCEPTION OF A WIRE OR ORAL COMMUNICATION SHALL BE MADE IN WRITING UPON OATH OR AFFIRMATION TO A JUDGE OF COMPETENT JURISDICTION AND SHALL STATE THE APPLICANT'S AUTHORITY TO MAKE THE APPLICATION. EACH APPLICATION SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE IDENTITY OF THE INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER MAKING THE APPLICATION, AND THE OFFICER AUTHORIZING THE APPLICATION;

(2) A FULL AND COMPLETE STATEMENT OF THE FACTS AND CIRCUMSTANCES RELIED UPON BY THE APPLICANT, TO JUSTIFY HIS BELIEF THAT AN ORDER SHOULD BE ISSUED, INCLUDING (I) DETAILS AS TO THE PARTICULAR OFFENSE THAT HAS BEEN, IS BEING, OR IS ABOUT TO BE COMMITTED, (II) A PARTICULAR DESCRIPTION OF THE NATURE AND LOCATION OF THE FACILITIES FROM WHICH OR THE PLACE WHERE THE COMMUNICATION IS TO BE INTERCEPTED, (III) A PARTICULAR DESCRIPTION OF THE TYPE OF COMMUNICATIONS SOUGHT TO BE INTERCEPTED, (IV) THE IDENTITY OF THE PERSON, IF KNOWN,

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COMMITTING THE OFFENSE AND WHOSE COMMUNICATIONS ARE TO BE INTERCEPTED;

(3) A FULL AND COMPLETE STATEMENT AS TO WHETHER OR NOT OTHER INVESTIGATIVE PROCEDURES HAVE BEEN TRIED AND FAILED OR WHY THEY REASONABLY APPEAR TO BE UNLIKELY TO SUCCEED IF TRIED OR TO BE TOO DANGEROUS;

(4) A STATEMENT OF THE PERIOD OF TIME FOR WHICH THE INTERCEPTION IS REQUIRED TO BE MAINTAINED. IF THE NATURE OF THE INVESTIGATION IS SUCH THAT THE AUTHORIZATION FOR INTERCEPTION SHOULD NOT AUTOMATICALLY TERMINATE WHEN THE DESCRIBED TYPE OF COMMUNICATION HAS BEEN FIRST OBTAINED, A PARTICULAR DESCRIPTION OF FACTS ESTABLISHING PROBABLE CAUSE TO BELIEVE THAT ADDITIONAL COMMUNICATIONS OF THE SAME TYPE WILL OCCUR THEREAFTER;

(5) A FULL AND COMPLETE STATEMENT OF THE FACTS CONCERNING ALL PREVIOUS APPLICATIONS KNOWN TO THE INDIVIDUAL AUTHORIZING AND MAKING THE APPLICATION, MADE TO ANY JUDGE FOR AUTHORIZATION TO INTERCEPT WIRE OR ORAL COMMUNICATIONS INVOLVING ANY OF THE SAME PERSONS, FACILITIES OR PLACES SPECIFIED IN THE APPLICATION, AND THE ACTION TAKEN BY THE JUDGE ON EACH APPLICATION; AND

(6) WHERE THE APPLICATION IS FOR THE EXTENSION OF AN ORDER, A STATEMENT SETTING FORTH THE RESULTS THUS FAR OBTAINED FROM THE INTERCEPTION, OR A REASONABLE EXPLANATION OF THE FAILURE TO OBTAIN THE RESULTS.

(B) THE JUDGE MAY REQUIRE THE APPLICANT TO FURNISH ADDITIONAL TESTIMONY OR DOCUMENTARY EVIDENCE IN SUPPORT OF THE APPLICATION.

(C) UPON THE APPLICATION THE JUDGE MAY ENTER AN EX PARTE ORDER, AS REQUESTED OR AS MODIFIED, AUTHORIZING INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS WITHIN THE TERRITORIAL JURISDICTION OF THE COURT IN WHICH THE JUDGE IS SITTING, IF THE JUDGE DETERMINES ON THE BASIS OF THE FACTS SUBMITTED BY THE APPLICANT THAT:

(1) THERE IS PROBABLE CAUSE FOR BELIEF THAT AN INDIVIDUAL IS COMMITTING, HAS COMMITTED, OR IS ABOUT TO COMMIT A PARTICULAR OFFENSE ENUMERATED IN SECTION 10-406 OF THIS SUBTITLE.

(2) THERE IS PROBABLE CAUSE FOR BELIEF THAT PARTICULAR COMMUNICATIONS CONCERNING THAT OFFENSE WILL BE OBTAINED THROUGH THE INTERCEPTION;

(3) NORMAL INVESTIGATIVE PROCEDURES HAVE BEEN TRIED AND HAVE FAILED OR REASONABLY APPEAR TO BE UNLIKELY TO SUCCEED IF TRIED OR TO BE TOO DANGEROUS;

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(4) THERE IS PROBABLE CAUSE FOR BELIEF THAT THE FACILITIES FROM WHICH, OR THE PLACE WHERE, THE WIRE OR ORAL COMMUNICATIONS ARE TO BE INTERCEPTED ARE BEING USED, OR ARE ABOUT TO BE USED, IN CONNECTION WITH THE COMMISSION OF THE OFFENSE, OR ARE LEASED TO, LISTED IN THE NAME OF, OR COMMONLY USED BY THIS PERSON.

(D) (1) EACH ORDER AUTHORIZING THE INTERCEPTION OF ANY WIRE OR ORAL COMMUNICATION SHALL SPECIFY:

(I) THE IDENTITY OF THE PERSON, IF KNOWN, WHOSE COMMUNICATIONS ARE TO BE INTERCEPTED;

(II) THE NATURE AND LOCATION OF THE COMMUNICATIONS FACILITIES AS TO WHICH, OR THE PLACE WHERE, AUTHORITY TO INTERCEPT IS GRANTED;

(III) A PARTICULAR DESCRIPTION OF THE TYPE OF COMMUNICATION SOUGHT TO BE INTERCEPTED, AND A STATEMENT OF THE PARTICULAR OFFENSE TO WHICH IT RELATES;

(IV) THE IDENTITY OF THE AGENCY AUTHORIZED TO INTERCEPT THE COMMUNICATIONS, AND OF THE PERSON AUTHORIZING THE APPLICATION; AND

(V) THE PERIOD OF TIME DURING WHICH THE INTERCEPTION IS AUTHORIZED, INCLUDING A STATEMENT AS TO WHETHER OR NOT THE INTERCEPTION SHALL AUTOMATICALLY TERMINATE WHEN THE DESCRIBED COMMUNICATION HAS BEEN FIRST OBTAINED.

(2) AN ORDER AUTHORIZING THE INTERCEPTION OF A WIRE OR ORAL COMMUNICATION, UPON REQUEST OF THE APPLICANT, SHALL DIRECT THAT A COMMUNICATION COMMON CARRIER, LANDLORD, CUSTODIAN OR OTHER PERSON FURNISH THE APPLICANT FORTHWITH ALL INFORMATION, FACILITIES, AND TECHNICAL ASSISTANCE NECESSARY TO ACCOMPLISH THE INTERCEPTION UNOBTRUSIVELY AND WITH A MINIMUM OF INTERFERENCE WITH THE SERVICES THAT THE CARRIER, LANDLORD, CUSTODIAN, OR PERSON IS ACCORDING TO THE PERSON WHOSE COMMUNICATIONS ARE TO BE INTERCEPTED. ANY COMMUNICATION COMMON CARRIER, LANDLORD, CUSTODIAN OR OTHER PERSON FURNISHING THE FACILITIES OR TECHNICAL ASSISTANCE SHALL BE COMPENSATED THEREFOR BY THE APPLICANT AT THE PREVAILING RATES.

(E) AN ORDER ENTERED UNDER THIS SECTION MAY NOT AUTHORIZE THE INTERCEPTION OF ANY WIRE OR ORAL COMMUNICATION FOR ANY PERIOD LONGER THAN IS NECESSARY TO ACHIEVE THE OBJECTIVE OF THE AUTHORIZATION, NOR IN ANY EVENT LONGER THAN 30 DAYS. EXTENSIONS OF AN ORDER MAY BE GRANTED, BUT ONLY UPON APPLICATION FOR AN EXTENSION MADE IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION AND THE COURT MAKING THE FINDINGS REQUIRED BY SUBSECTION (C) OF

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THIS SECTION. THE PERIOD OF EXTENSION SHALL BE NO LONGER THAN THE AUTHORIZING JUDGE DEEMS NECESSARY TO ACHIEVE THE PURPOSES FOR WHICH IT WAS GRANTED AND IN NO EVENT FOR LONGER THAN 30 DAYS. EVERY ORDER AND EXTENSION THEREOF SHALL CONTAIN A PROVISION THAT THE AUTHORIZATION TO INTERCEPT SHALL BE EXECUTED AS SOON AS PRACTICABLE, SHALL BE CONDUCTED IN SUCH A WAY AS TO MINIMIZE THE INTERCEPTION OF COMMUNICATIONS NOT OTHERWISE SUBJECT TO INTERCEPTION UNDER THIS SUBTITLE, AND MUST TERMINATE UPON ATTAINMENT OF THE AUTHORIZED OBJECTIVE, OR IN ANY EVENT IN 30 DAYS.

(F) WHENEVER AN ORDER AUTHORIZING INTERCEPTION IS ENTERED PURSUANT TO THIS SUBTITLE, THE ORDER MAY REQUIRE REPORTS TO BE MADE TO THE JUDGE WHO ISSUED THE ORDER SHOWING WHAT PROGRESS HAS BEEN MADE TOWARD ACHIEVEMENT OF THE AUTHORIZED OBJECTIVE AND THE NEED FOR CONTINUED INTERCEPTION. THE REPORTS SHALL BE MADE AT THE INTERVALS THE JUDGE REQUIRES.

(G) (1) THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION INTERCEPTED BY ANY MEANS AUTHORIZED BY THIS SUBTITLE, IF POSSIBLE, SHALL BE RECORDED ON TAPE OR WIRE OR OTHER COMPARABLE DEVICE. THE RECORDING OF THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION UNDER THIS SUBSECTION SHALL BE DONE IN THE WAY AS WILL PROTECT THE RECORDING FROM EDITING OR OTHER ALTERATIONS. IMMEDIATELY UPON THE EXPIRATION OF THE PERIOD OF THE ORDER, OR EXTENSIONS THEREOF, SUCH RECORDINGS SHALL BE MADE AVAILABLE TO THE JUDGE ISSUING SUCH ORDER AND SEALED UNDER HIS DIRECTIONS. CUSTODY OF THE RECORDINGS SHALL BE WHEREVER THE JUDGE ORDERS. THEY MAY NOT BE DESTROYED EXCEPT UPON AN ORDER OF THE ISSUING OR DENYING JUDGE AND IN ANY EVENT SHALL BE KEPT FOR TEN YEARS. DUPLICATE RECORDINGS MAY BE MADE FOR USE OR DISCLOSURE PURSUANT TO THE PROVISIONS OF SUBSECTIONS (A) AND (B) OF SECTION 10-407 OF THIS SUBTITLE FOR INVESTIGATIONS. THE PRESENCE OF THE SEAL PROVIDED FOR BY THIS SUBSECTION, OR A SATISFACTORY EXPLANATION FOR THE ABSENCE THEREOF, SHALL BE A PREREQUISITE FOR THE USE OR DISCLOSURE OF THE CONTENTS OF ANY WIRE OR ORAL COMMUNICATION OR EVIDENCE DEPICTED THEREFROM UNDER SUBSECTION (C) OF SECTION 10-407 OF THIS SUBTITLE.

(2) APPLICATIONS MADE AND ORDERS GRANTED UNDER THIS SUBTITLE SHALL BE SEALED BY THE JUDGE. CUSTODY OF THE APPLICATIONS AND ORDERS SHALL BE WHEREVER THE JUDGE DIRECTS. THE APPLICATIONS AND ORDERS SHALL BE DISCLOSED ONLY UPON A SHOWING OF GOOD CAUSE BEFORE A JUDGE OF COMPETENT JURISDICTION AND SHALL NOT BE DESTROYED EXCEPT ON ORDER OF THE ISSUING OR DENYING JUDGE, AND IN ANY EVENT SHALL BE KEPT FOR TEN YEARS.

(3) ANY VIOLATION OF THE PROVISIONS OF THIS

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SUBSECTION MAY BE PUNISHED AS CONTEMPT OF THE ISSUING OR DENYING JUDGE.

(4) WITHIN A REASONABLE TIME BUT NOT LATER THAN 90 DAYS AFTER THE TERMINATION OF THE PERIOD OF AN ORDER OR EXTENSIONS THEREOF, THE ISSUING JUDGE SHALL CAUSE TO BE SERVED, ON THE PERSONS NAMED IN THE ORDER, AND THE OTHER PARTIES TO INTERCEPTED COMMUNICATIONS AS THE JUDGE MAY DETERMINE IN HIS DISCRETION THAT IS IN THE INTEREST OF JUSTICE, AN INVENTORY WHICH SHALL INCLUDE NOTICE OF:

(I) THE FACT OF THE ENTRY OF THE ORDER;

(II) THE DATE OF THE ENTRY AND THE PERIOD OF AUTHORIZED INTERCEPTION; AND

(III) THE FACT THAT DURING THE PERIOD WIRE OR ORAL COMMUNICATIONS WERE OR WERE NOT INTERCEPTED.

THE JUDGE, UPON THE FILING OF A MOTION, IN HIS DISCRETION MAY MAKE AVAILABLE TO THE PERSON OR HIS COUNSEL FOR INSPECTION PORTIONS OF THE INTERCEPTED COMMUNICATIONS, APPLICATIONS AND ORDERS AS THE JUDGE DETERMINES TO BE IN THE INTEREST OF JUSTICE. ON AN EX PARTE SHOWING OF GOOD CAUSE TO A JUDGE OF COMPETENT JURISDICTION THE SERVING OF THE INVENTORY REQUIRED BY THIS SUBSECTION MAY BE POSTPONED.

(H) THE CONTENTS OF ANY INTERCEPTED WIRE OR ORAL COMMUNICATION OR EVIDENCE DERIVED THEREFROM MAY NOT BE RECEIVED IN EVIDENCE OR OTHERWISE DISCLOSED IN ANY TRIAL, HEARING, OR OTHER PROCEEDING IN THE COURTS OF THIS STATE UNLESS EACH PARTY, NOT LESS THAN TEN DAYS BEFORE THE TRIAL, HEARING, OR PROCEEDING, HAS BEEN FURNISHED WITH A COPY OF THE COURT ORDER, AND ACCOMPANYING APPLICATION, UNDER WHICH THE INTERCEPTION WAS AUTHORIZED. THIS TEN-DAY PERIOD MAY BE WAIVED BY THE JUDGE IF HE FINDS THAT IT WAS NOT POSSIBLE TO FURNISH THE PARTY WITH THE ABOVE INFORMATION TEN DAYS BEFORE THE TRIAL, HEARING, OR PROCEEDING AND THAT THE PARTY WILL NOT BE PREJUDICED BY THE DELAY IN RECEIVING THE INFORMATION.

(I) (1) ANY AGGRIEVED PERSON IN ANY TRIAL, HEARING, OR PROCEEDING IN OR BEFORE ANY COURT, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY, OR OTHER AUTHORITY OF THIS STATE OR A POLITICAL SUBDIVISION THEREOF, MAY MOVE TO SUPPRESS THE CONTENTS OF ANY INTERCEPTED WIRE OR ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, ON THE GROUNDS THAT:

(I) THE COMMUNICATION WAS UNLAWFULLY INTERCEPTED;

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(II) THE ORDER OF AUTHORIZATION UNDER WHICH IT WAS INTERCEPTED IS INSUFFICIENT ON ITS FACE; OR

(III) THE INTERCEPTION WAS NOT MADE IN CONFORMITY WITH THE ORDER OF AUTHORIZATION.

(2) THIS MOTION SHALL BE MADE BEFORE THE TRIAL, HEARING, OR PROCEEDING UNLESS THERE WAS NO OPPORTUNITY TO MAKE IT OR THE PERSON WAS NOT AWARE OF THE GROUNDS OF THE MOTION. IF THE MOTION IS GRANTED, THE CONTENTS OF THE INTERCEPTED WIRE OR ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, SHALL BE TREATED AS HAVING BEEN OBTAINED IN VIOLATION OF THIS SUBTITLE. THE JUDGE, UPON THE FILING OF THE MOTION BY THE AGGRIEVED PERSON, IN HIS DISCRETION MAY MAKE AVAILABLE TO THE AGGRIEVED PERSON OR HIS COUNSEL FOR INSPECTION SUCH PORTIONS OF THE INTERCEPTED COMMUNICATION OR EVIDENCE DERIVED THEREFROM AS THE JUDGE DETERMINES TO BE IN THE INTERESTS OF JUSTICE.

(3) IN ADDITION TO ANY OTHER RIGHT TO APPEAL, THE STATE SHALL HAVE THE RIGHT TO APPEAL FROM AN ORDER GRANTING A MOTION TO SUPPRESS MADE UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION, OR THE DENIAL OF AN APPLICATION FOR AN ORDER OF APPROVAL, IF THE PROSECUTING ATTORNEY SHALL CERTIFY TO THE JUDGE OR OTHER OFFICIAL GRANTING THE MOTION OR DENYING THE APPLICATION THAT THE APPEAL IS NOT TAKEN FOR PURPOSES OF DELAY. THE APPEAL SHALL BE TAKEN WITHIN 30 DAYS AFTER THE DATE THE ORDER WAS ENTERED AND SHALL BE DILIGENTLY PROSECUTED.

10-409.

(A) WITHIN 30 DAYS AFTER THE EXPIRATION OF AN ORDER (OR EACH EXTENSION THEREOF) ENTERED UNDER SECTION 10-408 OF THIS SUBTITLE, THE ISSUING JUDGE SHALL REPORT TO THE ADMINISTRATIVE OFFICE OF THE COURTS:

(1) THE FACT THAT AN ORDER OR EXTENSION WAS APPLIED FOR;

(2) THE KIND OF ORDER OR EXTENSION APPLIED FOR;

(3) THE FACT THAT THE ORDER OR EXTENSION WAS GRANTED AS APPLIED FOR, WAS MODIFIED, OR WAS DENIED;

(4) THE PERIOD OF INTERCEPTIONS AUTHORIZED BY THE ORDER, AND THE NUMBER AND DURATION OF ANY EXTENSIONS OF THE ORDER;

(5) THE OFFENSE SPECIFIED IN THE ORDER OR APPLICATION, OR EXTENSION OF AN ORDER;

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(6) THE IDENTITY OF THE APPLYING INVESTIGATIVE OR LAW-ENFORCEMENT OFFICER AND AGENCY MAKING THE APPLICATION AND THE PERSON AUTHORIZING THE APPLICATION; AND

(7) THE NATURE OF THE FACILITIES FROM WHICH OR THE PLACE WHERE COMMUNICATIONS WERE TO BE INTERCEPTED.

(B) IN JANUARY OF EACH YEAR THE ATTORNEY GENERAL AND THE STATE'S ATTORNEYS SHALL REPORT TO THE ADMINISTRATIVE OFFICE OF THE COURTS:

(1) THE INFORMATION REQUIRED BY PARAGRAPHS (1) THROUGH (7) OF SUBSECTION (A) OF THIS SECTION WITH RESPECT TO EACH APPLICATION FOR AN ORDER OR EXTENSION MADE DURING THE PRECEDING CALENDAR YEAR;

(2) A GENERAL DESCRIPTION OF THE INTERCEPTIONS MADE UNDER THE ORDER OF EXTENSION, INCLUDING (I) THE APPROXIMATE NATURE AND FREQUENCY OF INCRIMINATING COMMUNICATIONS INTERCEPTED, (II) THE APPROXIMATE NATURE AND FREQUENCY OF OTHER COMMUNICATIONS INTERCEPTED, (III) THE APPROXIMATE NUMBER OF PERSONS WHOSE COMMUNICATIONS WERE INTERCEPTED, AND (IV) THE APPROXIMATE NATURE, AMOUNT, AND COST OF THE MANPOWER AND OTHER RESOURCES USED IN THE INTERCEPTIONS;

(3) THE NUMBER OF ARRESTS RESULTING FROM INTERCEPTIONS MADE UNDER THE ORDER OR EXTENSION, AND THE OFFENSES FOR WHICH ARRESTS WERE MADE;

(4) THE NUMBER OF TRIALS RESULTING FROM THE INTERCEPTIONS;

(5) THE NUMBER OF MOTIONS TO SUPPRESS MADE WITH RESPECT TO THE INTERCEPTIONS, AND THE NUMBER GRANTED OR DENIED;

(6) THE NUMBER OF CONVICTIONS RESULTING FROM THE INTERCEPTIONS AND THE OFFENSES FOR WHICH THE CONVICTIONS WERE OBTAINED AND A GENERAL ASSESSMENT OF THE IMPORTANCE OF THE INTERCEPTIONS; AND

(7) THE INFORMATION REQUIRED BY PARAGRAPHS (2) THROUGH (6) OF THIS SUBSECTION WITH RESPECT TO ORDERS OR EXTENSIONS OBTAINED IN A PRECEDING CALENDAR YEAR.

(C) IN FEBRUARY OF EACH YEAR THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL TRANSMIT TO THE GENERAL ASSEMBLY A FULL AND COMPLETE REPORT CONCERNING THE NUMBER OF APPLICATIONS FOR ORDERS AUTHORIZING OR APPROVING THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS AND THE NUMBER OF ORDERS AND EXTENSIONS GRANTED OR DENIED DURING THE PRECEDING CALENDAR YEAR. THE REPORT SHALL

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INCLUDE A SUMMARY AND ANALYSIS OF THE DATA REQUIRED TO BE FILED WITH THE ADMINISTRATIVE OFFICE BY SUBSECTIONS (A) AND (B) OF THIS SECTION. THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS IS AUTHORIZED TO ISSUE BINDING REGULATIONS DEALING WITH THE CONTENT AND FORM OF THE REPORTS REQUIRED TO BE FILED BY SUBSECTIONS (A) AND (B) OF THIS SECTION.

10-410.

(A) ANY PERSON WHOSE WIRE OR ORAL COMMUNICATION IS INTERCEPTED, DISCLOSED, OR USED IN VIOLATION OF THIS SUBTITLE SHALL HAVE A CIVIL CAUSE OF ACTION AGAINST ANY PERSON WHO INTERCEPTS, DISCLOSES, OR USES, OR PROCURES ANY OTHER PERSON TO INTERCEPT, DISCLOSE, OR USE THE COMMUNICATIONS, AND BE ENTITLED TO RECOVER FROM ANY PERSON:

(1) ACTUAL DAMAGES BUT NOT LESS THAN LIQUIDATED DAMAGES COMPUTED AT THE RATE OF \$100 A DAY FOR EACH DAY OF VIOLATION OR \$1,000, WHICHEVER IS HIGHER;

(2) PUNITIVE DAMAGES; AND

(3) A REASONABLE ATTORNEY'S FEE AND OTHER LITIGATION COSTS REASONABLY INCURRED.

(B) A GOOD FAITH RELIANCE ON A COURT ORDER OR LEGISLATIVE AUTHORIZATION SHALL CONSTITUTE A COMPLETE DEFENSE TO ANY CIVIL OR CRIMINAL ACTION BROUGHT UNDER THIS SUBTITLE OR UNDER ANY OTHER LAW.

10-411.

(A) LAW-ENFORCEMENT AGENCIES IN THE STATE SHALL REGISTER WITH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES ALL ELECTRONIC, MECHANICAL OR OTHER DEVICES WHOSE DESIGN RENDERS THEM PRIMARILY USEFUL FOR THE PURPOSE OF THE SURREPTITIOUS INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS WHICH ARE OWNED BY THEM OR POSSESSED BY OR IN THE CONTROL OF THE AGENCY, THEN EMPLOYEES OR AGENTS. ALL SUCH DEVICES SHALL BE REGISTERED WITHIN TEN DAYS FROM THE DATE ON WHICH THE DEVICES CAME INTO THE POSSESSION OR CONTROL OF THE AGENCY, THEIR EMPLOYEES OR AGENTS.

(B) INFORMATION TO BE FURNISHED WITH SUCH REGISTRATION SHALL INCLUDE THE NAME AND ADDRESS OF THE AGENCY AS WELL AS A DETAILED DESCRIPTION OF EACH DEVICE REGISTERED AND THE FULLER INFORMATION AS THE DIRECTOR MAY REQUIRE.

(C) A SERIAL NUMBER SHALL BE ISSUED FOR EACH DEVICE REGISTERED PURSUANT TO THIS SECTION, WHICH NUMBER

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SHALL BE AFFIXED OR INDICATED ON THE DEVICE IN QUESTION.

10-412.

ANY PERSON WHO BREAKS AND ENTERS, ENTERS UNDER FALSE PRETENSES, OR TRESPASSES, UPON ANY PREMISES WITH THE INTENT TO PLACE, ADJUST OR REMOVE WIRETAPPING OR ELECTRONIC SURVEILLANCE OR EAVESDROPPING EQUIPMENT WITHOUT A COURT ORDER IS GUILTY OF A FELONY AND UPON CONVICTION MAY BE IMPRISONED FOR NOT MORE THAN TEN YEARS.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

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A BILL ENTITLED

AN ACT concerning

Freedom of Information Act

FOR the purpose of requiring State and local governments to maintain only necessary and relevant information about persons; providing greater access in certain circumstances to investigative, intelligence, and security records; providing for judicial enforcement; creating civil liability for violations; and authorizing the court to award attorneys' fees and other litigation costs to a plaintiff.

BY adding to

Article 76A - Public Information
Section 1A and 5A
Annotated Code of Maryland
(1975 Replacement Volume and 1976 Supplement)

BY repealing and reenacting, with amendments,

Article 76A - Public Information
Section 3(b) and (f)
Annotated Code of Maryland
(1975 Replacement Volume and 1976 Supplement)

BY repealing

Article 76A - Public Information
Section 3(e)
Annotated Code of Maryland
(1975 Replacement Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Sections 1A and 5A be and they are hereby added to Article 76A - Public Information, of the Annotated Code of Maryland (1975 Replacement Volume and 1976 Supplement); and that Sections 3(b) and (f), of said Article and Code be and they are hereby repealed and reenacted, with amendments; and that Section 3(e), of said Article and Code be and it is hereby repealed; and all to read as follows:

Article 76A - Public Information

1A.

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THE STATE, COUNTIES, MUNICIPALITIES AND POLITICAL SUBDIVISIONS, OR ANY AGENCIES THEREOF, SHALL MAINTAIN ONLY SUCH INFORMATION ABOUT A PERSON AS IS RELEVANT AND NECESSARY TO ACCOMPLISH A PURPOSE OF THE GOVERNMENTAL ENTITY OR AGENCY WHICH IS REQUIRED TO BE ACCOMPLISHED BY STATUTE OR EXECUTIVE ORDER OF THE GOVERNOR OR THE CHIEF EXECUTIVE OF A LOCAL JURISDICTION.

3.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest;

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, STATE'S ATTORNEY, the Attorney General, police department or any investigatory files compiled for any other law-enforcement or prosecution purposes[;], BUT THE RIGHT OF A PERSON OF INTEREST TO INSPECT THE RECORDS MAY BE DENIED ONLY TO THE EXTENT THAT THE PRODUCTION OF THEM WOULD (A) INTERFERE WITH VALID AND PROPER LAW ENFORCEMENT PROCEEDINGS, (B) DEPRIVE ANOTHER PERSON OF A RIGHT TO A FAIR TRIAL OR AN IMPARTIAL ADJUDICATION, (C) CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY, (D) DISCLOSE THE IDENTITY OF A CONFIDENTIAL SOURCE, (E) DISCLOSE INVESTIGATIVE TECHNIQUES AND PROCEDURES, OR (F) ENDANGER THE LIFE OF PHYSICAL SAFETY OF LAW-ENFORCEMENT PERSONNEL;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination, for employment or academic examination; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iii) The specific details of bona fide research projects being conducted by a State institution;

(iv) The contents of real estate appraisals made for the State or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the State or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by statute.

(v) Interagency or intraagency memorandums or letters which would not be available by law to a

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private party in litigation with the agency.

[(e) Any person denied the right to inspect any record covered by this article may apply to the circuit court of the county where the record is found for any order directing the custodian of such record to show cause why he should not permit the inspection of such record.]

[(f)](E) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the circuit court of the county where the record is located for an order permitting him to restrict such disclosure. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Rules of Procedure and shall have the right to appear and be heard.

5A.

(A) ON COMPLAINT, THE CIRCUIT COURT IN THE JURISDICTION IN WHICH THE COMPLAINANT RESIDES, OR HAS HIS PRINCIPAL PLACE OF BUSINESS, OR IN WHICH THE RECORDS ARE SITUATED, HAS JURISDICTION TO ENJOIN THE STATE, ANY COUNTY, MUNICIPALITY, OR POLITICAL SUBDIVISION, OR ANY AGENCY THEREOF, FROM WITHHOLDING RECORDS AND TO ORDER THE PRODUCTION OF ANY RECORDS IMPROPERLY WITHHELD FROM THE COMPLAINANT. IN SUCH A CASE, THE COURT MAY EXAMINE THE CONTENTS OF THE RECORDS IN CAMERA TO DETERMINE WHETHER THE RECORDS OR ANY PART THEREOF MAY BE WITHHELD UNDER ANY OF THE EXEMPTIONS SET FORTH IN SECTION 3, AND THE BURDEN IS ON THE DEFENDANT TO SUSTAIN ITS ACTION. IN CARRYING THIS BURDEN THE DEFENDANT MAY SUBMIT TO THE COURT FOR IN CAMERA REVIEW A MEMORANDUM JUSTIFYING THE WITHHOLDING OF THE RECORDS. THE MEMORANDUM SHALL BECOME PART OF THE COURT'S RECORD WHICH THE COURT SHALL SEAL.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DEFENDANT SHALL SERVE AN ANSWER OR OTHERWISE PLEAD TO ANY COMPLAINT MADE UNDER THIS SUBSECTION WITHIN 30 DAYS AFTER SERVICE UPON THE DEFENDANT OF THE PLEADING IN WHICH THE COMPLAINT IS MADE, UNLESS THE COURT OTHERWISE DIRECTS FOR GOOD CAUSE SHOWN.

(C) EXCEPT AS TO CASES THE COURT CONSIDERS OF GREATER IMPORTANCE, PROCEEDINGS BEFORE THE COURT, AS AUTHORIZED BY THIS SECTION AND APPEALS THEREFROM, TAKE PRECEDENCE ON THE DOCKET OVER ALL CASES AND SHALL BE

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ASSIGNED FOR HEARING AND TRIAL OR FOR ARGUMENT AT THE EARLIEST PRACTICABLE DATE AND EXPEDITED IN EVERY WAY.

(D) IN ANY SUIT BROUGHT UNDER THE PROVISIONS OF THIS SECTION IN WHICH THE COURT DETERMINES THAT THE DEFENDANT HAS KNOWINGLY AND WILFULLY FAILED TO DISCLOSE OR FULLY DISCLOSE RECORDS AND INFORMATION TO ANY PERSON WHO, UNDER THIS ARTICLE, IS ENTITLED TO RECEIVE IT, THE DEFENDANT JURISDICTION SHALL BE LIABLE TO THE COMPLAINANT IN AN AMOUNT EQUAL TO THE SUM OF THE ACTUAL DAMAGES SUSTAINED BY THE INDIVIDUAL AS A RESULT OF THE REFUSAL OR FAILURE, AND IN NO CASE SHALL A PERSON BE ENTITLED TO RECOVERY LESS THAN THE SUM OF \$1,000.

(E) THE COURT MAY ASSESS AGAINST THE DEFENDANT JURISDICTION REASONABLE ATTORNEYS' FEES AND OTHER LITIGATION COSTS REASONABLY INCURRED IN ANY CASE UNDER THIS SECTION IN WHICH THE COMPLAINANT HAS SUBSTANTIALLY PREVAILED.

(F) AN ACTION TO ENFORCE ANY LIABILITY CREATED UNDER THIS SECTION MAY BE BROUGHT WITHIN TWO YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION ARISES, EXCEPT THAT IF THE DEFENDANT HAS MATERIALLY AND WILFULLY MISREPRESENTED ANY INFORMATION REQUIRED UNDER THIS SECTION TO BE DISCLOSED TO A PERSON AND THE INFORMATION SO MISREPRESENTED IS MATERIAL TO THE ESTABLISHMENT OF LIABILITY OF THE DEFENDANT TO THE PERSON UNDER THIS SECTION, THE ACTION MAY BE BROUGHT AT ANY TIME WITHIN TWO YEARS AFTER DISCOVERY BY THE PERSON OF THE MISREPRESENTATION.

(G) IN THE EVENT OF NONCOMPLIANCE WITH AN ORDER OF THE COURT, THE COURT MAY PUNISH THE RESPONSIBLE EMPLOYEE FOR CONTEMPT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

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A BILL ENTITLED

AN ACT concerning

General Assembly - Perjury

FOR the purpose of making it a felony to wilfully give, under oath or affirmation, false testimony or an affidavit, to a legislative investigating committee; and prescribing a penalty for the offense.

BY adding to

Article 40 - General Assembly
Section 86A
Annotated Code of Maryland
(1971 Replacement Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 86A be and it is hereby added to Article 40 - General Assembly, of the Annotated Code of Maryland (1971 Replacement Volume and 1976 Supplement) to read as follows:

Article 40 - General Assembly

86A.

ANY PERSON WHO, UNDER OATH OR AFFIRMATION, WILFULLY (1) GIVES FALSE TESTIMONY OR, (2) MAKES A FALSE STATEMENT IN AN AFFIDAVIT, TO AN INVESTIGATING COMMITTEE IS GUILTY OF A FELONY AND, UPON CONVICTION, SHALL BE IMPRISONED FOR NOT MORE THAN TEN YEARS, OR FINED NOT MORE THAN \$10,000, OR BOTH.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

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A BILL ENTITLED

AN ACT concerning

Legal Counsel - Agencies Under Investigation

FOR the purpose of authorizing an agency under investigation by a legislative investigating committee to retain separate counsel upon being advised by the Attorney General of a conflict of interest in his representing the agency; and making the retaining of separate counsel subject to approval by the Board of Public Works.

BY repealing and reenacting, with amendments,

Article 32A - Department of Law
Section 5
Annotated Code of Maryland
(1976 Replacement Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 5 of Article 32A - Department of Law, of the Annotated Code of Maryland (1976 Replacement Volume and 1976 Supplement) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article 32A - Department of Law

5.

(A) It is unlawful for any board, commission, department, officer or institution of the State government to retain or employ or to continue the employment of any counsel or legal adviser whatever, in connection with the performance of their, its or his duties, or to be represented, in the performance of any of the duties imposed upon them, it or him, by any counsel or legal adviser whatever, other than the Attorney General, his deputies or assistants, or a special attorney or counsel appointed by the Attorney General.

(B) IF AN INVESTIGATING COMMITTEE OF THE GENERAL ASSEMBLY IS REPRESENTED BY THE ATTORNEY GENERAL AND IF, IN THE OPINION OF THE ATTORNEY GENERAL, REPRESENTATION OF AN INVESTIGATING COMMITTEE OF THE GENERAL ASSEMBLY AND AN AGENCY UNDER INVESTIGATION BY THAT COMMITTEE OR AFFECTED THEREBY, INVOLVES OR REASONABLY MAY INVOLVE A CONFLICT OF INTEREST, THE ATTORNEY GENERAL SHALL SO ADVISE IN WRITING THE AGENCY IN QUESTION AND THE STATE BOARD OF PUBLIC WORKS. THE AGENCY, UPON RECEIPT OF THE NOTICE, MAY

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RETAIN SEPARATE COUNSEL, SUBJECT TO APPROVAL BY THE STATE BOARD OF PUBLIC WORKS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

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A BILL ENTITLED

AN ACT concerning

General Assembly - State Police Assistance

FOR the purpose of providing for the assignment of State police employees to legislative investigating committees upon the request of the chairman.

BY repealing and reenacting, with amendments,

Article 40 - General Assembly
Section 76
Annotated Code of Maryland
(1971 Replacement Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 76 of Article 40 - General Assembly, of the Annotated Code of Maryland (1971 Replacement Volume and 1976 Supplement) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article 40 - General Assembly

76.

(A) Each investigating committee may employ professional, technical, clerical or other personnel as necessary for the proper performance of its duties, to the extent of funds made available to it for such purpose and subject to such restrictions and procedures relating thereto as may be provided by law or any applicable rules of the General Assembly.

(B) UPON THE REQUEST OF THE CHAIRMAN OF AN INVESTIGATING COMMITTEE, THE SUPERINTENDENT OF THE MARYLAND STATE POLICE, WITHIN THE LIMITS OF AVAILABLE MANPOWER, SHALL ASSIGN EMPLOYEES OF THE STATE POLICE TO THE COMMITTEE TO ASSIST THE COMMITTEE IN ITS WORK AS IT MAY DIRECT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

A BILL ENTITLED

AN ACT concerning

General Assembly - Legal Counsel

FOR the purpose of providing the General Assembly and its constituent bodies with legal counsel from the Department of Law.

BY adding to

Article 32A - Department of Law
Section 2A
Annotated Code of Maryland
(1976 Replacement Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 2A be and it is hereby added to Article 32A - Department of Law, of the Annotated Code of Maryland (1976 Replacement Volume and 1976 Supplement) to read as follows:

Article 32A - Department of Law

2A.

UPON THE REQUEST OF THE GENERAL ASSEMBLY, EITHER HOUSE OF THE GENERAL ASSEMBLY, ANY JOINT COMMITTEE, COMMITTEE OF THE GENERAL ASSEMBLY, THE LEGISLATIVE POLICY COMMITTEE, OR ANY COMMITTEE OF THE LEGISLATIVE POLICY COMMITTEE, THE ATTORNEY GENERAL SHALL ASSIGN MEMBERS OF THE DEPARTMENT OF LAW TO PROVIDE LEGAL ASSISTANCE AND REPRESENTATION IN LEGAL MATTERS. THESE PROVISIONS DO NOT PROHIBIT AN INDIVIDUAL MEMBER OF THE GENERAL ASSEMBLY FROM REQUESTING THE ATTORNEY GENERAL TO ISSUE A LEGAL OPINION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.

CONSTITUTIONAL AND PUBLIC LAW COMMITTEE REPORT

A BILL ENTITLED

AN ACT concerning

Investigating Committees - Witnesses

FOR the purpose of authorizing an investigating committee to confer use immunity; providing that a witness may not on the basis of his privilege against self-incrimination refuse to comply with a judicial order compelling his testimony or other information; providing for the issuance of such judicial orders; and providing, with certain exceptions, for use immunity for such witnesses.

BY adding to

Article 40 - General Assembly
Section 80A
Annotated Code of Maryland
(1971 Replacement Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 80A be and it is hereby added to Article 40 - General Assembly, of the Annotated Code of Maryland (1971 Replacement Volume and 1976 Supplement) to read as follows:

Article 40 - General Assembly

80A.

(A) AN INVESTIGATING COMMITTEE, WHEN SO PROVIDED BY LAW OR BY THE RESOLUTION OR LAW BY WHICH IT WAS ESTABLISHED OR FROM WHICH IT DERIVES ITS INVESTIGATORY POWERS, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, MAY CONFER USE IMMUNITY.

(B) WHENEVER A WITNESS REFUSES, ON THE BASIS OF HIS PRIVILEGE AGAINST SELF-INCRIMINATION, TO TESTIFY OR PROVIDE OTHER INFORMATION IN A PROCEEDING OF AN INVESTIGATING COMMITTEE AND THE PERSON PRESIDING OVER THE PROCEEDING COMMUNICATES TO THE WITNESS AN ORDER ISSUED UNDER SUBSECTION (C) OF THIS SECTION, THE WITNESS MAY NOT REFUSE TO COMPLY WITH THE ORDER ON THE BASIS OF HIS PRIVILEGE AGAINST SELF-INCRIMINATION.

(C) (1) IN THE CASE OF ANY INDIVIDUAL WHO HAS BEEN OR MAY BE CALLED TO TESTIFY OR PROVIDE OTHER INFORMATION TO AN INVESTIGATING COMMITTEE, A CIRCUIT COURT SHALL ISSUE UPON THE REQUEST OF A DULY AUTHORIZED REPRESENTATIVE OF A COMMITTEE EMPOWERED TO GRANT IMMUNITY, AN ORDER REQUIRING THE INDIVIDUAL TO GIVE

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TESTIMONY OR PROVIDE OTHER INFORMATION WHICH HE REFUSES TO GIVE OR PROVIDE ON THE BASIS OF HIS PRIVILEGE AGAINST SELF-INCRIMINATION, THE ORDER TO BECOME EFFECTIVE AS PROVIDED IN SUBSECTION (B) HEREOF.

(2) AN ORDER MAY NOT BE ISSUED UNLESS THE CIRCUIT COURT FINDS THAT (1) THE REQUEST FOR THE ORDER HAS BEEN APPROVED BY AN AFFIRMATIVE VOTE OF TWO-THIRDS OF THE TOTAL MEMBERSHIP OF THE COMMITTEE AND, (2) TEN DAYS OR MORE PRIOR TO THE DAY ON WHICH THE REQUEST FOR THE ORDER WAS MADE, THE ATTORNEY GENERAL WAS SERVED WITH NOTICE OF THE INTENTION OF THE COMMITTEE TO REQUEST THE ORDER. UPON APPLICATION OF THE ATTORNEY GENERAL, THE CIRCUIT COURT SHALL DEFER THE ISSUANCE OF ANY ORDER FOR A PERIOD NOT LONGER THAN 20 DAYS FROM THE DATE OF THE REQUEST FOR THE ORDER.

(D) TESTIMONY OR OTHER INFORMATION COMPELLED UNDER AN ORDER ISSUED BY A COURT PURSUANT TO SECTION (C) HEREOF (OR ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM SUCH TESTIMONY OR OTHER INFORMATION) MAY NOT BE USED AGAINST THE WITNESS IN ANY CRIMINAL CASE, EXCEPT A PROSECUTION FOR PERJURY, GIVING A FALSE STATEMENT OR OTHERWISE FAILING TO COMPLY WITH THE ORDER.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1977.