

This bill, with some modification, enacts as State law, and therefore as an expression of State policy, the basic provisions of the Federal Wiretap Law (Title 18, U.S.C. §2510 et seq.), and repeals the existing State laws relating to wiretapping.

The probable genesis of H.B. 962 was a decision by the Maryland Court of Special Appeals in *State v. Siegel*, 13 Md. App. 444 (1971), *aff'd*. 266 Md. 256, which, in effect, invalidated certain procedures relating to Court ordered interception of electronic communications theretofore authorized under State law.

The existing Maryland law relating to wiretaps is found in Article 27, §§ 125A—125D and Article 35, §§ 92-99 of the Annotated Code. Sections 125A of Article 27 makes it unlawful for any person in the State to use any device or equipment 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 of that other person. Only upon a showing to a court of probable cause that a crime may be, or is being or has been committed, and that the use of such device is necessary to prevent the commission of the crime or to secure evidence thereof, may a wiretap lawfully be permitted. Section 92 of Article 35 expresses the same sentiment as follows:

“The right of the people to be secure against unreasonable interception of telephonic and telegraphic communications shall 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 this State, and shall not be permitted except by court order in unusual circumstances to protect the people. It is further declared to be the public policy of this State that detection of the guilty does not justify investigative methods which infringe upon the liberties of the innocent.”

In *State v. Siegel*, *supra*, the Court was dealing with the validity of Court ordered interceptions under Section 94(a) of Article 35 and Section 125D of Article 27. The orders did not specify that the authority to intercept would terminate when the desired communication had been obtained; they did not require the interception to be executed as soon as practicable; and they did not require that the interception be conducted so as to minimize the interception of communications not otherwise subject to interception. Each of these provisions is required by § 2518 of Title 18 (U.S.C.), which the Court held applicable; and for that reason, the orders were held invalid.

The underlying theory expressed by the Court is that: (1) in order for wiretaps to be conducted by State or local law enforcement officers in Maryland, there must be a State statute authorizing such conduct, which is provided at present by sections of Article 27 and 35; (2) the State statutory authority may be more restrictive, but not more liberal than the federal authority contained in Title 18 of the United States Code; and (3) to the extent the State statutory authority is broader than the federal, it is invalid and the federal provisions will control. I do not read the *Siegel* case as abrogating Section 125A of Article 27 or Sections 92 of Article 35, but only those procedures relating to Court ordered interceptions that exceed what is permitted in corresponding sections of the federal law, and the types of crimes, in excess of those stated in the federal law, for which wiretaps may be authorized.

H.B. 962 does repeal those two sections designed to preserve the privacy of Maryland citizens as well as Section 93 of Article 35, which, *inter alia*,