

HOUSE BILL 149

Unofficial Copy
J3

2003 Regular Session
(31r0932)

ENROLLED BILL

-- Health and Government Operations/Finance --

Introduced by **Delegates Goldwater, Boutin, Bromwell, Bronrott, Conroy, Conway, Cryor, Donoghue, Dumais, Franchot, Haynes, Hubbard, James, Kirk, Lee, Mandel, Marriott, McIntosh, Menes, Murray, Oaks, Pendergrass, Petzold, Rzepkowski, and Smigiel Smigiel, Love, and Weldon**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER 409

1 AN ACT concerning

2 **Vera's Law**

3 FOR the purpose of ~~creating an exception to the prohibition against willfully~~
4 ~~intercepting a wire or electronic communication for a person who intercepts~~
5 ~~wire, oral, or electronic communications in a related institution under certain~~
6 ~~circumstances; requiring a related institution to permit a resident or a resident's~~
7 ~~legal representative to monitor the resident through the use of video cameras or~~
8 ~~other electronic monitoring devices; requiring a resident who shares a room with~~
9 ~~another resident to obtain written consent before beginning electronic~~
10 ~~monitoring; requiring the related institution to provide power sources and~~
11 ~~mounting space to set up electronic monitoring devices; prohibiting a related~~
12 ~~institution from refusing to admit an individual to the related institution or~~
13 ~~removing a resident from the related institution because of a request to install~~

1 an electronic monitoring device; establishing certain penalties for violators;
 2 requiring that tapes created from electronic monitoring be admissible in
 3 criminal and civil actions brought in Maryland courts, subject to the Maryland
 4 Rules of Evidence; requiring the Department of Health and Mental Hygiene to
 5 develop guidelines for nursing homes that elect to use electronic monitoring
 6 with certain consent; requiring the Department to report on the guidelines to
 7 certain committees of the General Assembly on or before a certain date; and
 8 generally relating to guidelines for electronic monitoring in related institutions
 9 nursing facilities.

10 ~~BY adding to~~

11 ~~Article—Courts and Judicial Proceedings~~
 12 ~~Section 10-402(e)(10)~~
 13 ~~Annotated Code of Maryland~~
 14 ~~(2002 Replacement Volume)~~

15 ~~BY adding to~~

16 ~~Article—Health—General~~
 17 ~~Section 19-343.1~~
 18 ~~Annotated Code of Maryland~~
 19 ~~(2000 Replacement Volume and 2002 Supplement)~~

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

22 ~~**Article—Courts and Judicial Proceedings**~~

23 ~~10-402.~~

24 ~~(C) (10) (I) IN THIS PARAGRAPH, "RELATED INSTITUTION" HAS THE~~
 25 ~~MEANING STATED IN § 19-343.1 OF THE HEALTH—GENERAL ARTICLE.~~

26 ~~(H) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PERSON TO~~
 27 ~~INTERCEPT A WIRE, ORAL, OR ELECTRONIC COMMUNICATION IN A RELATED~~
 28 ~~INSTITUTION IF THE PERSON:~~

29 ~~1. IS A RESIDENT OF THE RELATED INSTITUTION OR THE~~
 30 ~~LEGAL REPRESENTATIVE OF A RESIDENT;~~

31 ~~2. CONDUCTS THE ELECTRONIC MONITORING IN THE~~
 32 ~~RESIDENT'S ROOM IN THE RELATED INSTITUTION; AND~~

33 ~~3. POSTS A NOTICE ON THE DOOR OF THE RESIDENT'S ROOM~~
 34 ~~STATING THAT THE ROOM IS BEING MONITORED BY AN ELECTRONIC MONITORING~~
 35 ~~DEVICE.~~

~~Article—Health—General~~

2 ~~19-343.1.~~

3 (A) (1) ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
4 ~~INDICATED.~~

5 (2) ~~"ELECTRONIC MONITORING DEVICE" INCLUDES A VIDEO~~
6 ~~SURVEILLANCE CAMERA, AN AUDIO DEVICE, A VIDEO TELEPHONE, AND AN~~
7 ~~INTERNET VIDEO SURVEILLANCE DEVICE.~~

8 (3) (4) ~~"RELATED INSTITUTION" MEANS AN ORGANIZED INSTITUTION,~~
9 ~~ENVIRONMENT, OR HOME THAT:~~

10 1. ~~MAINTAINS CONDITIONS OR FACILITIES AND EQUIPMENT~~
11 ~~TO PROVIDE DOMICILIARY, PERSONAL, OR NURSING CARE FOR TWO OR MORE~~
12 ~~UNRELATED INDIVIDUALS WHO ARE DEPENDENT ON THE ADMINISTRATOR,~~
13 ~~OPERATOR, OR PROPRIETOR FOR NURSING CARE OR THE SUBSISTENCE OF DAILY~~
14 ~~LIVING IN A SAFE, SANITARY, AND HEALTHFUL ENVIRONMENT; AND~~

15 2. ~~ADMITS OR RETAINS THE INDIVIDUALS FOR OVERNIGHT~~
16 ~~CARE.~~

17 (H) ~~"RELATED INSTITUTION" INCLUDES A NURSING FACILITY OR~~
18 ~~VISITING NURSE SERVICE THAT IS CONDUCTED ONLY BY OR FOR ADHERENTS OF A~~
19 ~~BONA FIDE CHURCH OR RELIGIOUS ORGANIZATION, IN ACCORDANCE WITH TENETS~~
20 ~~AND PRACTICES THAT INCLUDE RELIANCE ON TREATMENT BY SPIRITUAL MEANS~~
21 ~~ALONE FOR HEALING.~~

22 (B) (1) ~~A RELATED INSTITUTION SHALL PERMIT A RESIDENT OR LEGAL~~
23 ~~REPRESENTATIVE OF THE RESIDENT TO MONITOR THE RESIDENT THROUGH THE~~
24 ~~USE OF ELECTRONIC MONITORING DEVICES.~~

25 (2) (4) ~~A RELATED INSTITUTION SHALL REQUIRE A RESIDENT WHO~~
26 ~~ENGAGES IN ELECTRONIC MONITORING TO POST A NOTICE ON THE DOOR OF THE~~
27 ~~RESIDENT'S ROOM.~~

28 (H) ~~THE NOTICE MUST STATE THAT THE ROOM IS BEING~~
29 ~~MONITORED BY AN ELECTRONIC MONITORING DEVICE.~~

30 (3) ~~BEFORE BEGINNING ELECTRONIC MONITORING, A RELATED~~
31 ~~INSTITUTION SHALL REQUIRE A RESIDENT WHO WISHES TO ENGAGE IN ELECTRONIC~~
32 ~~MONITORING AND SHARES A ROOM WITH ANOTHER RESIDENT TO OBTAIN THE~~
33 ~~WRITTEN CONSENT FROM THE OTHER RESIDENT OR THE LEGAL REPRESENTATIVE~~
34 ~~OF THE OTHER RESIDENT.~~

35 (4) ~~MONITORING CONDUCTED UNDER THIS SECTION SHALL:~~

36 (4) ~~BE NONCOMPULSORY AND AT THE ELECTION OF THE~~
37 ~~RESIDENT OR LEGAL REPRESENTATIVE OF THE RESIDENT;~~

1 (HI) ~~BE FUNDED BY THE RESIDENT OR LEGAL REPRESENTATIVE OF~~
2 ~~THE RESIDENT; AND~~

3 (III) ~~PROTECT THE PRIVACY RIGHTS OF OTHER RESIDENTS AND~~
4 ~~VISITORS TO THE RELATED INSTITUTION TO THE EXTENT REASONABLY POSSIBLE.~~

5 (5) ~~A RELATED INSTITUTION MAY NOT REFUSE TO ADMIT AN~~
6 ~~INDIVIDUAL TO RESIDENCY IN THE RELATED INSTITUTION OR REMOVE A RESIDENT~~
7 ~~FROM THE RELATED INSTITUTION BECAUSE OF A REQUEST FOR ELECTRONIC~~
8 ~~MONITORING.~~

9 (6) ~~A RELATED INSTITUTION SHALL MAKE REASONABLE PHYSICAL~~
10 ~~ACCOMMODATION FOR ELECTRONIC MONITORING, BY PROVIDING:~~

11 (I) ~~A REASONABLY SECURE PLACE TO MOUNT THE ELECTRONIC~~
12 ~~MONITORING DEVICE; AND~~

13 (II) ~~ACCESS TO POWER SOURCES.~~

14 (7) ~~A RELATED INSTITUTION SHALL INFORM A RESIDENT OR THE LEGAL~~
15 ~~REPRESENTATIVE OF THE RESIDENT OF THE RESIDENT'S RIGHT TO ELECTRONIC~~
16 ~~MONITORING.~~

17 (8) ~~A RELATED INSTITUTION MAY REQUEST A RESIDENT OR A~~
18 ~~RESIDENT'S LEGAL REPRESENTATIVE TO CONDUCT ELECTRONIC MONITORING~~
19 ~~WITHIN PLAIN VIEW.~~

20 (C) ~~A RESIDENT WHO WISHES TO INSTALL AN ELECTRONIC MONITORING~~
21 ~~DEVICE MAY BE REQUIRED BY THE ADMINISTRATOR OF THE RELATED INSTITUTION~~
22 ~~TO MAKE THE REQUEST IN WRITING.~~

23 (D) ~~SUBJECT TO THE MARYLAND RULES OF EVIDENCE, A TAPE CREATED~~
24 ~~THROUGH THE USE OF ELECTRONIC MONITORING SHALL BE ADMISSIBLE IN EITHER~~
25 ~~A CIVIL OR CRIMINAL ACTION BROUGHT IN A MARYLAND COURT.~~

26 (E) (1) ~~A PERSON WHO OPERATES A RELATED INSTITUTION IN VIOLATION~~
27 ~~OF THE PROVISIONS IN THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON~~
28 ~~CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$2,000 OR IMPRISONMENT NOT~~
29 ~~EXCEEDING 5 YEARS OR BOTH.~~

30 (2) ~~A PERSON WHO WILLFULLY AND WITHOUT THE CONSENT OF A~~
31 ~~RESIDENT HAMPERS, OBSTRUCTS, TAMPERS WITH, OR DESTROYS AN ELECTRONIC~~
32 ~~MONITORING DEVICE OR TAPE SHALL BE GUILTY OF A MISDEMEANOR AND ON~~
33 ~~CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$2,000 OR IMPRISONMENT NOT~~
34 ~~EXCEEDING 90 DAYS OR BOTH.~~

35 ~~SECTION 1. AND BE IT FURTHER ENACTED, BE IT ENACTED BY THE~~
36 ~~GENERAL ASSEMBLY OF MARYLAND, That:~~

1 (a) The Department of Health and Mental Hygiene shall develop guidelines
2 for a nursing home that elects to use electronic monitoring with the consent of a
3 resident or the legal representative of the resident.

4 (b) On or before December 1, 2003, the Department of Health and Mental
5 Hygiene shall report on the guidelines developed under subsection (a) of this section
6 to the Senate Finance Committee and the House Health and Government Operations
7 Committee of the General Assembly, in accordance with § 2-1246 of the State
8 Government Article.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 ~~October~~ July 1, 2003.