

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 754

(Senator Folden)

Judicial Proceedings

Maryland Wiretap and Electronic Surveillance Reform Workgroup

This bill establishes the Maryland Wiretap and Electronic Surveillance Reform Workgroup. The workgroup must study specified issues regarding Maryland's wiretapping and electronic surveillance laws. The Office of the Attorney General (OAG) must provide staff for the workgroup. The Governor must designate the chair of the workgroup. Members of the workgroup may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations. The workgroup must report its preliminary and final findings and recommendations to the Governor and the General Assembly by December 1, 2023, and December 1, 2024, respectively. **The bill takes effect June 1, 2023, and terminates June 30, 2025.**

Fiscal Summary

State Effect: OAG can staff the workgroup with existing budgeted resources. Any expense reimbursements for workgroup members are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: The bill is not expected to materially affect local finances and operations.

Small Business Effect: None.

Analysis

Bill Summary: The workgroup must (1) study the effectiveness of Maryland's wiretapping and electronic surveillance laws; (2) examine current technologies, privacy concerns, and best practices in the field of wiretapping and electronic surveillance; (3) examine ways to make the use of audio and visual recordings from wiretapping and

electronic surveillance more available to assist with the prevention of, and admissible for use in proceedings relating to, domestic violence, child abuse, and the abuse of the elderly and other vulnerable adults; and (4) make recommendations regarding revisions to Maryland's wiretapping and electronic surveillance laws.

Current Law:

Visual Surveillance

Under § 3-902 of the Criminal Law Article, a person may not with prurient intent conduct or procure another to conduct visual surveillance of (1) an individual in a private place without the consent of that individual or (2) the private area of an individual by use of a camera without the consent of the individual under circumstances in which a reasonable person would believe that the private area of the individual would not be visible to the public, regardless of whether the individual is in a public or private place. Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$2,500 maximum fine.

While "prurient" is not defined in statute, it is often described as being sexual or lascivious in nature. "Private place" means a room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy in specified locations, such as a school, hotel, or store.

This prohibition does not apply to a person who without prurient intent:

- conducts filming by or for the print or broadcast media;
- conducts or procures another to conduct visual surveillance of an individual to protect property or public safety or prevent crimes; or
- conducts visual surveillance and holds a license issued under Title 13 (private detectives) or Title 19 (security guards) of the Business Occupations and Professions Article and is acting within the scope of the person's occupation.

This prohibition does not affect the application of the general visual surveillance law (§ 3-901 of the Criminal Law Article).

Under § 3-901 of the Criminal Law Article, a person may not conduct or procure another to conduct visual surveillance of an individual in a private place without the consent of that individual. "Private place" means a dressing room or rest room in a retail store. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 30 days and/or a \$1,000 maximum fine.

A victim of illegal visual surveillance has a civil cause of action against any person who conducted or procured another to conduct the visual surveillance. The court may award actual damages and reasonable attorney's fees. Remedies under § 3-902 do not affect any legal or equitable right or remedy otherwise provided by law.

Interception of Wire, Oral, or Electronic Communications

Except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; or
- willfully use, or endeavor to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

One exception to this prohibition is the interception of a communication where the interceptor is a party to the communication and 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 State or federal law. Exceptions also exist for law enforcement activities that meet specified criteria.

Violators are guilty of a felony, punishable by imprisonment for up to five years and/or a \$10,000 maximum fine.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Department of Legislative Services

Fiscal Note History: First Reader - March 13, 2023
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