

SENATE BILL 596

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2003 Regular Session
3r2322
CF 3r1430

By: **Senators Schrader, Brinkley, Hafer, Jacobs, Kittleman, and Stoltzfus**
Introduced and read first time: February 5, 2003
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Visual and Camera Surveillance - Penalties**

3 FOR the purpose of making the crime of visually observing, with prurient interest, an
4 individual without the consent of that individual a felony and increasing the
5 penalties; making the crime of placing or procuring another to place a camera on
6 real property where a private residence is located to conduct certain
7 observations of an individual inside the private residence a felony and
8 increasing the penalties; and generally relating to visual and camera
9 surveillance of an individual without the consent of that individual.

10 BY repealing and reenacting, with amendments,
11 Article - Criminal Law
12 Section 3-902 and 3-903
13 Annotated Code of Maryland
14 (2002 Volume)

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

17 **Article - Criminal Law**

18 3-902.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) "Camera" includes any electronic device that can be used
21 surreptitiously to observe an individual.

22 (3) "Private place" means a dressing room, bedroom, or rest room in:

23 (i) an office, business, or store;

24 (ii) a recreational facility;

25 (iii) a restaurant or tavern;

- 1 (iv) a hotel, motel, or other lodging facility;
2 (v) a theater or sports arena;
3 (vi) a school or other educational institution;
4 (vii) a bank or other financial institution;
5 (viii) any part of a day care home used for the care and custody of a
6 child; or
7 (ix) another place of public use or accommodation.

8 (4) (i) "Visual surveillance" means the deliberate, surreptitious
9 observation of an individual by any means.

10 (ii) "Visual surveillance" includes surveillance by:

- 11 1. direct sight;
12 2. the use of mirrors; or
13 3. the use of cameras.

14 (iii) "Visual surveillance" does not include a casual, momentary, or
15 unintentional observation of an individual.

16 (b) This section does not apply to a person who without prurient intent:

- 17 (1) conducts filming by or for the print or broadcast media;
18 (2) conducts or procures another to conduct visual surveillance of an
19 individual to protect property or public safety or prevent crime; or
20 (3) conducts visual surveillance and:

21 (i) holds a license issued under Title 13 or Title 19 of the Business
22 Occupations and Professions Article; and

23 (ii) is acting within the scope of the person's occupation.

24 (c) A person may not with prurient intent conduct or procure another to
25 conduct visual surveillance of an individual in a private place without the consent of
26 that individual.

27 (d) A person who violates this section is guilty of a [misdemeanor] FELONY
28 and on conviction is subject to imprisonment not exceeding [6 months] 5 YEARS or a
29 fine not exceeding [\$1,000] \$10,000 or both.

1 (e) (1) An individual who was under visual surveillance in violation of this
2 section has a civil cause of action against any person who conducted or procured
3 another to conduct the visual surveillance.

4 (2) In an action under this subsection, the court may award actual
5 damages and reasonable attorney's fees.

6 (f) This section does not affect any legal or equitable right or remedy
7 otherwise provided by law.

8 (g) This section does not affect the application of § 3-901 of this subtitle.
9 3-903.

10 (a) In this section, "camera" includes any electronic device that can be used
11 surreptitiously to observe an individual.

12 (b) This section does not apply to:

13 (1) an adult resident of the private residence where a camera is placed;

14 (2) a person who places or procures another to place a camera on real
15 property without the intent to conduct deliberate surreptitious observation of an
16 individual inside the private residence;

17 (3) a person who has obtained the consent of an adult resident, or the
18 adult resident's legal guardian, to place a camera on real property to conduct
19 deliberate surreptitious observation of an individual inside the private residence;

20 (4) any otherwise lawful observation with a camera conducted by a law
21 enforcement officer while performing official duties;

22 (5) filming conducted by a person by or for the print or broadcast media
23 through use of a camera that is not secreted from view;

24 (6) any part of a private residence used for business purposes, including
25 any part of a private residence used as a day care home for the care and custody of a
26 child; or

27 (7) filming of a private residence by a person through use of a camera
28 that is not located on the real property where the private residence is located.

29 (c) A person may not place or procure another to place a camera on real
30 property where a private residence is located to conduct deliberate surreptitious
31 observation of an individual inside the private residence.

32 (d) A person who violates this section is guilty of a [misdemeanor] FELONY
33 and on conviction is subject to imprisonment not exceeding [6 months] 5 YEARS or a
34 fine not exceeding [\$1,000] \$10,000 or both.

1 (e) Subject to subsection (b)(1) of this section, it is not a defense to a
2 prosecution under this section that the defendant owns the private residence.

3 (f) A good faith reliance on a court order is a complete defense to a civil or
4 criminal action brought under this section.

5 (g) (1) An individual who was observed through the use of a camera in
6 violation of this section has a civil cause of action against any person who placed or
7 procured another to place the camera on the real property.

8 (2) In an action under this subsection, the court may award damages and
9 reasonable attorney's fees.

10 (h) This section does not affect any legal or equitable right or remedy
11 otherwise provided by law.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2003.