

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 570
Judiciary

(Delegate Quinter, *et al.*)

Crimes - Visual and Camera Surveillance - Penalties

This bill increases penalty provisions applicable to current law prohibitions against nonconsensual visual surveillance with prurient interest and deliberate surreptitious observation with a camera at a private residence. Each offense changes from a misdemeanor to a felony and the maximum penalties for each offense increase from imprisonment for six months and/or a fine of \$1,000 to imprisonment for five years and/or a fine of \$10,000.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's increased penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's increased penalty provisions.

Small Business Effect: None.

Analysis

Current Law: A person with prurient intent is prohibited from conducting (or procuring another person to conduct) visual surveillance of an individual in a private place without consent. Private place means certain dressing rooms, bedrooms, or rest rooms, including any such room in a place of public use or accommodation. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$1,000. An individual under such a visual surveillance has a civil cause of action

against the violator for actual damages and reasonable attorney's fees. These provisions do not affect any other legal or equitable right or remedy. These provisions do not affect the application of the State's general prohibition against nonconsensual visual surveillance of an individual in a private place.

A person may not place (or procure another person to place) a camera on real property where a private residence is located to conduct deliberate surreptitious observation of an individual inside the private residence. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$1,000. It is generally not a defense to a prosecution that the defendant owns the residence. An individual under such a visual surveillance has a civil cause of action against the violator for actual damages and reasonable attorney's fees. These provisions do not affect any other legal or equitable right or remedy. A good faith reliance on a court order is a complete defense to any civil or criminal action.

State Expenditures: Changing crimes from misdemeanors to felonies means: (1) that such cases will likely be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. It is not known whether, under this bill's provisions, the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for this offense.

In any event, general fund expenditures could increase minimally as a result of the bill's increased incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people currently incarcerated for these offenses is unknown, but assumed to be small. The number of people who would be convicted of the crimes in the future is expected to continue to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem

reimbursements for fiscal 2004 are estimated to range from \$14 to \$59 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's increased monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's increased incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$28 to \$84 per inmate in fiscal 2004.

Additional Information

Prior Introductions: None.

Cross File: SB 596 (Senator Schrader, *et al.*) – Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510