

HOUSE BILL 613

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2004 Regular Session
(4lr0610)

ENROLLED BILL
-- Judiciary/Judicial Proceedings --

Introduced by **Delegates Quinter, Amedori, Bates, Bobo, DeBoy, Feldman, Madaleno, Malone, McComas, McDonough, McMillan, Miller, Montgomery, Pendergrass, Sossi, Trueschler, and F. Turner F. Turner, Doory, Barkley, Bartlett, Conroy, Goodwin, Howard, Hubbard, Kaiser, Mandel, Nathan-Pulliam, O'Donnell, and Zirkin**

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 _____

1 AN ACT concerning

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

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

13 BY repealing and reenacting, with amendments,

1 Article - Criminal Law
2 Section 3-902 and 3-903
3 Annotated Code of Maryland
4 (2002 Volume and 2003 Supplement)

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

7 **Article - Criminal Law**

8 3-902.

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

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

12 (3) (i) "Private place" means a room in which a person can reasonably
13 be expected to fully or partially disrobe and has a reasonable expectation of privacy,
14 in:

- 15 1. an office, business, or store;
- 16 2. a recreational facility;
- 17 3. a restaurant or tavern;
- 18 4. a hotel, motel, or other lodging facility;
- 19 5. a theater or sports arena;
- 20 6. a school or other educational institution;
- 21 7. a bank or other financial institution;
- 22 8. any part of a day care home used for the care and custody
23 of a child; or
- 24 9. another place of public use or accommodation.

25 (ii) "Private place" includes a tanning room, dressing room,
26 bedroom, or restroom.

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

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

- 30 1. direct sight;

1 2. the use of mirrors; or

2 3. the use of cameras.

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

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

6 (1) conducts filming by or for the print or broadcast media;

7 (2) conducts or procures another to conduct visual surveillance of an
8 individual to protect property or public safety or prevent crime; or

9 (3) conducts visual surveillance and:

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

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

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

16 (d) A person who violates this section is guilty of a {misdemeanor} ~~FELONY~~
17 and on conviction is subject to imprisonment not exceeding [6 months] ~~5 3-YEARS /~~
18 YEAR or a fine not exceeding [\$1,000] ~~\$10,000~~ \$2,500 or both.

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

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

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

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

27 3-903.

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

30 (b) This section does not apply to:

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

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

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

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

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

11 (6) any part of a private residence used for business purposes, including
 12 any part of a private residence used as a day care home for the care and custody of a
 13 child; ~~or~~

14 (7) filming of a private residence by a person through use of a camera
 15 that is not located on the real property where the private residence is located; OR

16 (8) ANY OTHERWISE LAWFUL OBSERVATION WITH A CAMERA OF THE
 17 COMMON AREA OF MULTIUNIT FAMILY DWELLINGS BY A PERSON THAT HOLDS A
 18 LICENSE UNDER TITLE 13 OR TITLE 19 OF THE BUSINESS OCCUPATIONS AND
 19 PROFESSIONS ARTICLE, ACTING WITHIN THE SCOPE OF THE PERSON'S OCCUPATION.

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

23 (d) A person who violates this section is guilty of a ~~misdemeanor~~ **FELONY**
 24 and on conviction is subject to imprisonment not exceeding [6 months] ~~5 3-YEARS 1~~
 25 YEAR or a fine not exceeding [\$1,000] ~~\$10,000~~ \$2,500 or both.

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

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

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2004.