
By: **Delegates Doory, Amedori, Barkley, Bartlett, Conroy, DeBoy, Goodwin,
Howard, Hubbard, Kaiser, Madaleno, Mandel, Montgomery,
Nathan-Pulliam, O'Donnell, Pendergrass, and Zirkin**

Introduced and read first time: February 5, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Surveillance - Cellular or Wireless Telephones Equipped with**
3 **Cameras**

4 FOR the purpose of clarifying that certain misdemeanors that prohibit conducting or
5 procuring another to conduct visual surveillance of an individual under certain
6 circumstances extend to cellular or wireless telephones equipped with cameras
7 that are used to conduct visual surveillance; clarifying that the misdemeanor of
8 placing or procuring another to place a camera on certain real property to
9 conduct deliberate surreptitious observation of a certain individual under
10 certain circumstances extends to the placement of a cellular or wireless
11 telephone equipped with a camera to conduct deliberate surreptitious
12 observation; applying certain penalties to certain prohibited acts; defining
13 certain terms; making a stylistic change; and generally relating to the use of
14 cellular or wireless telephones equipped with cameras in surveillance crimes.

15 BY repealing and reenacting, with amendments,
16 Article - Criminal Law
17 Section 3-901 through 3-903
18 Annotated Code of Maryland
19 (2002 Volume and 2003 Supplement)

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

22 **Article - Criminal Law**

23 3-901.

- 24 (a) (1) In this section the following words have the meanings indicated.
- 25 (2) "Private place" means a dressing room or rest room in a retail store.
- 26 (3) "Visual surveillance" means surveillance by:

- 1 (i) direct sight;
- 2 (ii) the use of mirrors;
- 3 (iii) the use of cameras; [or]
- 4 (IV) THE USE OF CELLULAR OR WIRELESS TELEPHONES EQUIPPED
5 WITH CAMERAS; OR
- 6 [(iv)] (V) the use of an electronic device that can be used
7 surreptitiously to observe an individual.

8 (b) This section does not apply to any otherwise lawful surveillance conducted
9 by a law enforcement officer while performing official duties.

10 (c) A person may not conduct or procure another to conduct visual surveillance
11 of an individual in a private place without the consent of that individual.

12 (d) A person who violates this section is guilty of a misdemeanor and on
13 conviction is subject to imprisonment not exceeding 30 days or a fine not exceeding
14 \$1,000 or both.

15 (e) It is not a defense to a prosecution under this section that the defendant
16 owns the premises where the private place is located.

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

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

22 3-902.

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

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

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

- 29 1. an office, business, or store;
- 30 2. a recreational facility;
- 31 3. a restaurant or tavern;
- 32 4. a hotel, motel, or other lodging facility;

- 1 5. a theater or sports arena;
- 2 6. a school or other educational institution;
- 3 7. a bank or other financial institution;
- 4 8. any part of a day care home used for the care and custody
5 of a child; or
- 6 9. another place of public use or accommodation.
- 7 (ii) "Private place" includes a tanning room, dressing room,
8 bedroom, or restroom.
- 9 (4) (i) "Visual surveillance" means the deliberate[,] surreptitious
10 observation of an individual by any means.
- 11 (ii) "Visual surveillance" includes surveillance by:
- 12 1. direct sight;
- 13 2. the use of mirrors; [or]
- 14 3. the use of cameras; OR
- 15 4. THE USE OF CELLULAR OR WIRELESS TELEPHONES
16 EQUIPPED WITH CAMERAS.
- 17 (iii) "Visual surveillance" does not include a casual, momentary, or
18 unintentional observation of an individual.
- 19 (b) This section does not apply to a person who without prurient intent:
- 20 (1) conducts filming by or for the print or broadcast media;
- 21 (2) conducts or procures another to conduct visual surveillance of an
22 individual to protect property or public safety or prevent crime; or
- 23 (3) conducts visual surveillance and:
- 24 (i) holds a license issued under Title 13 or Title 19 of the Business
25 Occupations and Professions Article; and
- 26 (ii) is acting within the scope of the person's occupation.
- 27 (c) A person may not with prurient intent conduct or procure another to
28 conduct visual surveillance of an individual in a private place without the consent of
29 that individual.

1 (d) A person who violates this section is guilty of a misdemeanor and on
2 conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding
3 \$1,000 or both.

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

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

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

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

12 3-903.

13 (a) In this section, "camera" includes:

14 (1) A CELLULAR OR WIRELESS TELEPHONE EQUIPPED WITH A CAMERA;
15 AND

16 (2) any OTHER electronic device that can be used surreptitiously to
17 observe an individual.

18 (b) This section does not apply to:

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

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

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

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

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

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

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

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

4 (d) A person who violates this section is guilty of a misdemeanor and on
5 conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding
6 \$1,000 or both.

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

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

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

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

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

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