

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1402
Judiciary

(Delegates Quinter and Lee)

Visual Surveillance with Prurient Intent - Application to Private Residence -
Penalty

This bill adds a private residence to the list of private places in which a person with prurient intent is prohibited from conducting (or procuring another person to conduct) visual surveillance of an individual without consent. The bill also increases, from one to three years, the maximum imprisonment penalty for this offense.

Fiscal Summary

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

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's expanded scope and increased incarceration penalty provision.

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 one year and/or a fine of \$2,500. 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 one year and/or a fine of \$2,500. 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.

Background: Chapter 361 of 2004 increased penalty provisions applicable to prohibitions against nonconsensual visual surveillance with prurient interest and deliberate surreptitious observation with a camera at a private place. The maximum penalties for each offense were increased from imprisonment for six months and/or a fine of \$1,000 to imprisonment for one year and/or a fine of \$2,500. Chapter 361 also specified that the prohibition against deliberate surreptitious observation with a camera at a private place does not apply to lawful camera surveillance by a licensed private detective or security guard acting within the scope of the person's occupation.

State Revenues: General fund revenues could increase minimally as a result of the bill's expanded scope from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's expanded scope and increased incarceration penalty due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected 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 \$310 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 2006 are estimated to range from \$17 to \$65 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 expanded scope from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's expanded scope and increased incarceration penalty. 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 \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/jr

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