

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 326  
(Senator Lee)  
Judicial Proceedings

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**Criminal Law - Visual Surveillance With Prurient Intent - Minor Victim**

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This bill establishes that a violation of § 3-902 of the Criminal Law Article (visual surveillance with prurient intent), where the victim was a minor at the time of the offense and the person who conducted the visual surveillance was at least four years older than the victim, is a felony punishable by imprisonment for up to 10 years and/or a \$5,000 maximum fine.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund expenditures due to the bill's penalty provision. Revenues are not materially affected, as discussed below.

**Local Effect:** Minimal increase in revenues due to the bill's penalty provision. Expenditures are not materially affected.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person with prurient intent is prohibited from conducting (or procuring another person to conduct) visual surveillance of (1) an individual in a "private place" without that individual's consent or (2) the "private area of an individual" by use of a camera without the individual's consent under circumstances in which a reasonable person would believe that the private area would not be visible to the public, regardless of whether the individual is in a public or private place.

“Private place” means a room contained in locations specified in statute in which a person can reasonably be expected to disrobe (fully or partially) and has a reasonable expectation of privacy. Certain dressing rooms, bedrooms, or rest rooms, including any such room in a place of public use or accommodation, are considered private places. The “private area of an individual” means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of an individual.

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 who was under such 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.

**State Revenues:** Though the bill shifts cases from the District Court to the circuit courts, any corresponding decrease in general fund revenues from monetary penalties imposed in those cases does not materially affect State finances.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill’s incarceration penalty due to more people being committed to State correctional 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.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that it received information on four individuals sentenced to 10 total counts under § 3-902 in the circuit courts during fiscal 2021. Information is not available on the ages of the victims and the defendants. Information is also not readily available on convictions for this offense in the District Court.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$4,700 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 a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

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

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## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** HB 185 (Delegate Pippy) - Judiciary.

**Information Source(s):** Kent, Montgomery, Washington, and Worcester counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - January 24, 2022  
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