

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 126
Judiciary

(Delegate Pippy)

Judicial Proceedings

Criminal Law - Visual Surveillance With Prurient Intent - Private Place and
Minor Victim

This bill establishes that a violation of § 3-902 of the Criminal Law Article (visual surveillance with prurient intent) through the use of a camera, 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 misdemeanor punishable by imprisonment for up to five years and/or a \$2,500 maximum fine. The bill also expands the prohibition on conducting visual surveillance with prurient intent of an individual in a private place by adding a residence and another place of private use or accommodation to the list of locations in the definition of a “private place” under § 3-902.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s penalty provision and the expanded application of an existing penalty provision. Revenues are not materially affected.

Local Effect: Minimal increase in expenditures due to the bill’s penalty provision and the expanded application of an existing penalty provision. Revenues are not materially affected.

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 (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 restrooms, 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 Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty and the expanded application of an existing incarceration penalty due to (1) more people being committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs and (2) more people being committed to State correctional facilities for convictions in Baltimore City. The number of people convicted under the bill is expected to be minimal.

The Maryland State Commission on Criminal Sentencing Policy advises that it received information on five individuals sentenced to nine total counts under § 3-902 or § 3-903 (camera surveillance) in the circuit courts during fiscal 2022. The Department of Public Safety and Correctional Services reports that while there were no sentenced inmates, three probation cases were opened for individuals sentenced under § 3-902 during fiscal 2022. Information is not available on the ages of the victims and the defendants. Information is also not readily available on convictions under § 3-902 in the District Court.

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 \$4,970 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 Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty and the expanded application of an existing incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per inmate in recent years.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 326 and HB 185 of 2022.

Designated Cross File: None.

Information Source(s): Baltimore City; Anne Arundel, Caroline, Charles, Howard, and Prince George's 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

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