



TO: MSAA Legislative Committee
FROM: Joseph Riley, State's Attorney Caroline County
Legislative Committee Chair
DATE: September 16, 2021
RE: Legislative Proposal

The purpose of this proposal is to address the disparity in the penalty for Visual Surveillance with Prurient Intent and the harm it creates, particularly if the subject of the surveillance is a minor.

In 2021, it was discovered that the former Circuit Court Judge Jonathan Newell secretly recorded minor aged males in various stages of undress and at moments when privacy would be expected (i.e. showering) at a cabin on a hunting property in Dorchester County.

A search warrant on both the hunting property and the residence of Newell was conducted. While the electronics were being analyzed there were various discussions about what charges would be appropriate with what we knew at the time. One of the concerns was that a one year maximum visual surveillance charge was not sufficient to encompass the harm and the violation on these young men. This proposal is attempt to bridge this gap.

Rather than attempt to address the complex definition of child pornography, this proposal would make the surreptitious video surveillance of a minor with prurient intent by a person more than four years old of the minor subject a felony punishable by 10 years of incarceration and a fine not exceeding five thousand dollars or both.

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CURRENT MARYLAND CRIMINAL CODE § 3-902
PROPOSED LEGISLATIVE CHANGES

Md. CRIMINAL LAW Code Ann. § 3-902

Copy Citation

Statutes current through legislation effective July 1, 2021 of the 2021 Regular Session of the General Assembly. Some statutes may be more current.

- [MD - Annotated Code of Maryland](#)
- [CRIMINAL LAW](#)
- [TITLE 3. OTHER CRIMES AGAINST THE PERSON](#)
- [SUBTITLE 9. SURVEILLANCE AND OTHER CRIMES AGAINST PRIVACY](#)

§ 3-902. Visual surveillance with prurient intent

(a) Definitions. --

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

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

(3) "Female breast" means a portion of the female breast below the top of the areola.

(4) "Private area of an individual" means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of an individual.

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

1. an office, business, or store;
2. a recreational facility;
3. a restaurant or tavern;
4. a hotel, motel, or other lodging facility;
5. a theater or sports arena;
6. a school or other educational institution;
7. a bank or other financial institution;
8. any part of a family child care home used for the care and custody of a child; or
9. another place of public use or accommodation.

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

(6)

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

(ii) "Visual surveillance" includes surveillance by:

1. direct sight;
2. the use of mirrors; or
3. the use of cameras.

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

(b) Scope of section. -- This section does not apply to a person who without prurient intent:

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

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

(3) conducts visual surveillance and:

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

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

(c) Prohibited. -- A person may not with prurient intent conduct or procure another to conduct visual surveillance of:

(1) an individual in a private place without the consent of that individual; or

(2) the private area of an individual by use of a camera without the consent of the individual under circumstances in which a reasonable person would believe that the private area of the

individual would not be visible to the public, regardless of whether the individual is in a public or private place.

(d) Penalty. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$ 2,500 or both.

(e) Civil action. --

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

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

(f) Other remedies. -- This section does not affect any legal or equitable right or remedy otherwise provided by law.

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

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individual would not be visible to the public, regardless of whether the individual is in a public or private place.

(d) Penalty. -

(a) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$ 2,500 or both.

(b) If the subject of the surveillance is a minor and the person violating this section is more than four years older than the subject then the person violating this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine of \$ 5,000 dollars or both.

(e) Civil action. --

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

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

(f) Other remedies. -- This section does not affect any legal or equitable right or remedy otherwise provided by law.

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