

**Written Testimony SB326 2.4.22 (1).pdf**

Uploaded by: Caroline Ackerman

Position: FAV



**BILL NO:** Senate Bill 326

**TITLE:** Criminal Law – Visual Surveillance With Prurient Intent – Minor Victim

**COMMITTEE:** Judicial Proceedings

**HEARING DATE:** February 8, 2022

**SUBMITTED BY:** Caroline Ackerman, Managing Attorney of Maryland Legal Services & Special Projects, Amara Legal Center

**POSITION:** SUPPORT

The Amara Legal Center writes to support Senate Bill 326 (SB326). We are grateful that Senator Lee introduced this important legislation to address visual surveillance and sexual exploitation of minors. Thank you for giving us the opportunity to share our thoughts.

The Amara Legal Center (“Amara”) provides free legal services in Washington, D.C., Maryland, and Northern Virginia to survivors of sex trafficking and to anyone whose rights are violated while involved in commercial sex. Since 2013, Amara has served over 500 clients. Although many believe that sex trafficking only occurs overseas or among foreign nationals, the vast majority of Amara’s clients are U.S. citizens, both juveniles and adults born and raised in the D.C. metro area. Amara provides brief legal advice, partial and full representation for civil legal issues such as civil protection orders, divorce, child custody and support, and name changes. In addition to civil legal services, Amara provides victim-witness advocacy for clients working with law enforcement, criminal/juvenile defense, and representation in criminal record sealing and expungement cases.

Traffickers use both physical and non-physical means to exert power and control over victims. One method is the nonconsensual recording and/or disclosure of intimate, private photos and videos. Examples include covert placement of recording devices that capture commercial sex acts without the parties’ knowledge, nude or semi-nude photos posted as advertisements online without the individual’s consent, or threats to share intimate photos or videos with friends or family if the victim does not comply with certain demands. This nonconsensual surveillance and disclosure results in severe trauma to victims whose privacy is violated.

SB326 addresses the abuse perpetrated by traffickers and individuals who record or otherwise conduct visual surveillance of minors in places where there is a reasonable expectation of privacy. SB326 recognizes that minors are especially vulnerable to nonconsensual surveillance as adults control their surrounding environments in schools, recreational settings, and private homes. Recognizing the harm caused by such surveillance, SB326 creates an enhancement so that individuals who are at least four years older than the minor victim may be charged with a felony-level instead of a misdemeanor-level offense. This enhancement would enable perpetrators to receive longer sentences, up to ten years, which will keep survivors safe as they work on healing and moving forward. We also would like to note the possibilities of the criminalization of sex trafficking survivors who may be forced or coerced by their traffickers to engage in criminal activity. All too often, we see victims who are charged with crimes as a result of their trafficking, and we would be remiss to not acknowledge this in this testimony.

With that said, the Amara Legal Center supports SB326, and we urge the committee to protect youth from sexual exploitation in the form of visual surveillance by passing this felony enhancement. We respectfully urge a favorable report.

# **Feinstein Letter of Support SB326.pdf**

Uploaded by: Debbie Feinstein

Position: FAV



STATE'S ATTORNEY  
JOHN J. MCCARTHY

## State's Attorney for Montgomery County

50 Maryland Avenue  
Rockville, Maryland 20850

240-777-7300  
FAX 240-777-7413  
WWW.MONTGOMERYCOUNTYMD.GOV/SAO

DEPUTY STATE'S ATTORNEYS  
PETER A. FEENEY  
RYAN S. WECHSLER

February 4, 2022

The Honorable William Smith & Members of the Senate Judicial Proceedings Committee  
Chairperson, Senate Judicial Proceedings Committee  
11 Bladen Street  
Annapolis, MD 21401

Dear Chairperson Smith and JPR Committee Members:

I write in support of SB326—Criminal Law—Visual Surveillance With Prurient Interest—Minor Victim. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office. My division is responsible for prosecuting cases involving sexual abuse and exploitation of minors. I am a member of the Montgomery County Child Advocacy Center's Multidisciplinary Team and the Governor's Family Violence Council, as well as other teams that work to prevent sexual violence.

Section 3-902 of the Maryland Criminal Law Article prohibits individuals, without consent, from visually surveying another person in a private place, and it prohibits individuals, without consent, from visually surveying another person with a camera under circumstances where a reasonable person would believe the area would not be visible to the public.

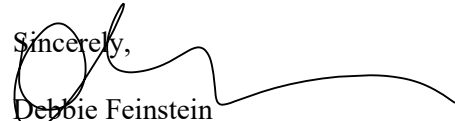
SB326 enhances the penalty for this crime when the perpetrator surveys a minor and the perpetrator is four or more years older than the minor victim. The crime becomes a felony under these circumstances with a penalty of up to ten years in jail. The current crime is a misdemeanor with a maximum penalty of one year.

My division has prosecuted many cases where the perpetrator set-up a hidden camera to view the activities of a minor victim. We have seen cases where the camera is in a bathroom, changing room, or private bedroom. When the perpetrator is a parent, family member, household member, or person with supervision over the minor, the State can charge the perpetrator with Sexual Abuse of Minor, Section 3-602 of the Criminal Law Article, under a sexual exploitation theory. Sexual Abuse of a Minor, a felony, has a maximum penalty of twenty-five years. If the perpetrator is not a parent, family member, household member, or person with supervision over the minor, the penalty goes from twenty-five years to one year.

SB326 is a fair bill that provides equity to minors who are visually surveyed and sexually exploited irrespective of the relationship between the minor and the perpetrator. The conduct is the same. The law on visual surveillance should differentiate between the exploitation of minors and adults, just as Maryland law does in so many other circumstances.

I strongly urge this Committee to issue a favorable report on SB326.

Sincerely,

  
Debbie Feinstein  
Chief, Special Victims Division  
Senior Assistant State's Attorney

# **Visual Surveillance.pdf**

Uploaded by: joseph riley

Position: FAV



**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.

TABLE OF CONTENTS

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.

# 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)** 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.

# **visual surveillance w pru intent - senate - 2022 -**

Uploaded by: Lisae C Jordan

Position: FAV



**Working to end sexual violence in Maryland**

P.O. Box 8782  
Silver Spring, MD 20907  
Phone: 301-565-2277  
Fax: 301-565-3619

For more information contact:  
Lisae C. Jordan, Esquire  
443-995-5544  
www.mcasa.org

**Testimony Supporting Senate Bill 326**  
**Lisae C. Jordan, Executive Director & Counsel**  
February 8, 2022

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 326.

**Senate Bill 326 – Visual Surveillance with Prurient Intent – Minor Victim**

This bill increases the penalty for visual surveillance with prurient intent when the victim is a minor, raising the potential penalty from up to one year, a \$1,000 fine, or both to up to ten years, a \$5,000 fine, or both.

This bill is prompted by the very disturbing case involving Jonathan Newell, a judge on the Circuit Court for Caroline County. A 15 year old boy discovered a camera pointed towards the shower and reported this to his parents. Law enforcement were notified and Newell ate evidence in the course of the investigation; Newell died from a self inflicted gunshot before he could be brought to justice. [https://www.washingtonpost.com/local/public-safety/maryland-judge-kills-self-after-eating-evidence/2021/09/10/8834b9ba-125b-11ec-9cb6-bf9351a25799\\_story.html](https://www.washingtonpost.com/local/public-safety/maryland-judge-kills-self-after-eating-evidence/2021/09/10/8834b9ba-125b-11ec-9cb6-bf9351a25799_story.html)

The current penalty for this crime is far too low. The harm from visual surveillance with prurient intent can be quite serious. The pandemic is increasing sexual exploitation using the internet and the footage from visual surveillance provides the content for perpetrators to use in public exploitation as well as for their own use. Moreover, just the capturing of these images inflicts harm and invades privacy, with survivors reporting emotional distress, fear of public places and activities such as using public restrooms. MCASA fully supports increasing the penalty for cases involving children and respectfully suggests that Committee may want to consider increasing the penalty for all cases. Additionally, the Newell case highlights a potential loophole: homes are not considered private places under this statute. Again, the Committee may wish to consider clarifying this definition to apply to private residences.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on Senate Bill 326**

**SB326\_jpr\_fav\_Lee.pdf**

Uploaded by: Susan Lee

Position: FAV

SUSAN C. LEE  
Legislative District 16  
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on  
Cybersecurity, Information Technology,  
and Biotechnology

*Chair*

Maryland Legislative Asian American  
and Pacific Islander Caucus

*President Emeritus*

Women Legislators of the  
Maryland General Assembly, Inc.



James Senate Office Building  
11 Bladen Street, Room 223  
Annapolis, Maryland 21401  
410-841-3124 · 301-858-3124  
800-492-7122 Ext. 3124  
Susan.Lee@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

*February 8, 2022*

Sponsor Testimony- FAVORABLE- SB326- Criminal Law – Visual Surveillance with Prurient Intent – Minor Victim

Senate Bill 326 is an addition of ten short lines of text that will fix a huge loophole in current law. This legislation elevates the current misdemeanor charge to felony in cases of surveillance of prurient or sexual intent when the victim is a minor and at least four years younger than the defendant.

Currently, Maryland Criminal Law § 3-902 provides that anyone found to have surveyed a victim for sexual purposes while the victim had reasonable expectation of privacy- for example, in their bedroom, bathroom, or a dressing room- faces a misdemeanor sentence of no more than one year in prison or a \$2,500 fine. Current law stipulates that the surveillance must be of bodily areas deemed “private parts of the body,” to include: the majority of the female breast (not cleavage viewable while in low-cut tops or swimwear), naked or undergarment-clad genitals, the pubic area, or the buttocks of an individual. These maximums include cases involving child victims.

This bill deems such a crime serious enough to be a felony any occasion in which the victim of prurient surveillance is a minor and the defendant was at least four years older than the victim. The maximum sentence is increased from one-year to ten years and the potential fine doubled to \$5,000. An amendment clarifies that the locations of such surveillance be in a residential setting or place of private use or accommodation and without the consent of the minor. The house has also proposed this same amendment in the cross-filed bill. This is a multi-jurisdictional and bipartisan effort to align our laws better to the harm the criminal behavior creates.

This simple addition to § 3-902 assists in combatting the scourge of child pornography and ensures that at every step of production, stern penalties await those who would engage in such an enterprise. To invade a personal moment during which child was either using facilities or otherwise comfortable enough to undress is one of gross perversion and modern technology

continues to allow would-be surveyors cheaper and stealthier means to view and preserve such intrusions.

We must ensure that we convey a clear message: this behavior is not tolerated in our state. Children and teens deserve protection and privacy and the knowledge that our criminal law will punish those who dare invade.

For these reasons, I request a favorable vote on Senate Bill 326.