

# **Feinstein Letter of Support HB126 Crossover.pdf**

Uploaded by: Debbie Feinstein

Position: FAV



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DEPUTY STATE'S ATTORNEYS  
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April 3, 2023

The Honorable Will Smith  
Chairperson, Judicial Proceedings Committee  
11 Bladen Street  
Annapolis, MD 21401

Dear Chairperson Smith and JPR Committee Members:

I write in support of HB126—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.

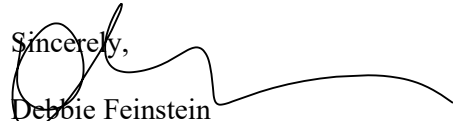
HB126 enhances the penalty for this crime when the perpetrator surveys a minor and the perpetrator is four or more years older than the minor victim. The crime remains a misdemeanor, but the penalty becomes up to five years in jail. The current crime is a misdemeanor with a maximum penalty of one year.

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.

HB126 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 HB126.

Sincerely,

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

# **visual surveillance w pru intent - house in senate**

Uploaded by: Lisae C Jordan

Position: FAV



**Working to end sexual violence in Maryland**

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**Testimony Supporting House Bill 126**  
**Lisae C. Jordan, Executive Director & Counsel**  
April 4, 2023

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 House Bill 126.

**House Bill 126 – 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 exactly the same as passed the Senate Judicial Proceedings Committee and 2d reader on the Senate floor last session, but failed to have a final vote on *sine die*.

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 helped increase 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.

Importantly, the Newell case also highlighted a potential loophole: homes are not considered private places under this statute. MCASA appreciates and supports HB126 language clarifying that this definition includes private residences.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on House Bill 126**

# **HB 126 - Visual Surveillance with Prurient Intent-**

Uploaded by: Scott Shellenberger

Position: FAV

**Bill Number: HB 126**  
**Scott D. Shellenberger, State's Attorney for Baltimore County**  
**Support**

**WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,**  
**STATE'S ATTORNEY FOR BALTIMORE COUNTY,**  
**IN SUPPORT OF HOUSE BILL 126**  
**VISUAL SURVEILLANCE WITH PRURIENT INTENT- PRIVATE PLACE AND MINOR**  
**VICTIM**

I write in support of House Bill 126 which clarifies Criminal Law Article 3-902 Visual Surveillance with Prurient Intent – Private Place and Minor Victim. Why is it necessary to add to this statute the term “a residence; or another place of private or public use or accommodation”?

Because in 2018 in Bickford v State the Court of Special Appeals held that a father secretly recording his daughter in the family bathroom did not constitute a crime under this statute. Thankfully the father was convicted of other charges but what if video recording of a minor in a private home's bathroom was the only crime. We must fix this statute and the fix is easy.

Adding the additions as outlined in House Bill 126 merely clarifies the intent of Legislature when it passed this statute. The Legislature did not want anyone to be video recorded in a state of undress, unless consented to, Period! Anywhere. A person's home bathroom should not be excluded based upon the Court's interpretation of this statute. This is a simple fix in keeping with the intent of the statute.

The changes in the sentencing scheme mirrors what the Legislature has done in a number of sex offense statutes. If you violate this statute, it is typically a 1 year misdemeanor. If you violated this statute and the victim is a minor it is a 5 year misdemeanor if the Defendant is 4 or more years older. This requirement of 4 or more years older is done in many sex offenses to account for young people who may not be completely aware of the nature of their violations. To help make this clear some examples:

- Victim is 26 years old and the defendant is 27 years old = 1 year misdemeanor
- Victim is 13 years old and the defendant is 20 years old = 5 year misdemeanor
- Victim is 15 years old and the defendant is 18 years old = 1 year misdemeanor

The first part of the bill fixes a decision of the courts that was not in keeping with the statute's intent. The second part creates a statutory scheme that at sentencing balance the equities.

I urge a favorable report.