

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1211
Judiciary

(Delegate Rose, *et al.*)

Criminal Law - Visual Surveillance in a Private Place or of a Private Area

This bill removes the “prurient intent” requirement from a prohibition against visual surveillance without consent of an individual in a private place or of the private area of an individual under specified circumstances. The bill also removes the “without prurient intent” standard from the authorization of filming and visual surveillance in specified circumstances. The bill retains the existing classification of and penalties for the offense, which is a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$2,500.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s expanded application of an existing penalty provision.

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

Small Business Effect: None.

Analysis

Current Law: 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.

While “prurient” is not defined in statute, it is often described as being sexual or lascivious in nature.

“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 specified locations, such as a school, hotel, or store.

This prohibition does not apply to a person who *without prurient intent*:

- conducts filming by or for the print or broadcast media;
- conducts or procures another to conduct visual surveillance of an individual to protect property or public safety or prevent crimes; or
- conducts visual surveillance and holds a license issued under Title 13 (private detectives) or Title 19 (security guards) of the Business Occupations and Professions Article and is acting within the scope of the person’s occupation.

A victim has a civil cause of action against any person who conducted or procured another to conduct the visual surveillance. The court may award actual damages and reasonable attorney’s fees. The remedies for this prohibition do not affect any legal or equitable right or remedy otherwise provided by law. Likewise, this prohibition does not affect the application of the general visual surveillance law (§ 3-901 of the Criminal Law Article).

Under § 3-901 of the Criminal Law Article, a person may not conduct or procure another to conduct visual surveillance of an individual in a private place without the consent of that individual. “Private place” means a dressing room or rest room in a retail store. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 30 days and/or a \$1,000 maximum fine.

Background: **Exhibit 1** contains fiscal 2019 data on the number of District Court violations and convictions for offenses related to the bill. Data is not available on the number of violations that did not result in a conviction because of the prurient intent requirement.

According to the Maryland Sentencing Guidelines Database, nine individuals were sentenced to 34 total counts of visual surveillance in a private place under § 3-902 of the Criminal Law Article in the State’s circuit courts during fiscal 2019. The Division of Correction advises that it received two intakes with offenses under § 3-902 of the Criminal Law Article during fiscal 2019.

Exhibit 1
District Court Violations and Convictions
Fiscal 2019

	<u>District Court Violations</u>	<u>District Court Convictions</u>
Criminal Law Article, § 3-902(c)(1) Visual Surveillance – Prurient Intent – Private Place	44	2
Criminal Law Article, § 3-902(c)(2) Visual Surveillance – Prurient Intent – Private Area	1	0
Criminal Law Article, § 3-901 General Visual Surveillance	30	1

Source: Maryland Judiciary

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Carroll, Cecil, Harford, Montgomery, Queen Anne’s, and St. Mary’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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mr/aad

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