

HOUSE BILL 1019

J1, J3
HB 557/09 – HGO

0lr1526

By: **Delegates Hecht and Benson**

Introduced and read first time: February 15, 2010

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Nursing Homes – Electronic Monitoring (Vera’s Law)**

3 FOR the purpose of creating an exception to the prohibition against willfully
4 intercepting a wire or an electronic communication for a person who intercepts
5 wire, oral, or electronic communications in a nursing home or assisted living
6 program under certain circumstances; requiring a related institution to allow a
7 resident or a resident’s legal representative to monitor the resident through the
8 use of video cameras or other electronic monitoring devices; requiring a resident
9 who shares a room with another resident to obtain written consent before
10 beginning electronic monitoring; requiring the nursing home or assisted living
11 program to provide power sources and space to set up electronic monitoring
12 devices; prohibiting a nursing home or assisted living program from refusing to
13 admit an individual to or removing a resident from the nursing home or assisted
14 living program because of a request to install an electronic monitoring device;
15 authorizing a nursing home or assisted living program administrator to require
16 that a request to install or place electronic monitoring be in writing;
17 establishing certain penalties for violators; requiring that tapes or recordings
18 created from electronic monitoring be admissible in criminal and civil actions
19 brought in Maryland courts, subject to the Maryland Rules of Evidence;
20 requiring that certain tapes and recordings created from electronic monitoring
21 be made available to the Department of Health and Mental Hygiene for a
22 certain purpose; defining a certain term; and generally relating to electronic
23 monitoring in nursing homes and assisted living programs.

24 BY adding to

25 Article – Courts and Judicial Proceedings

26 Section 10–402(c)(11)

27 Annotated Code of Maryland

28 (2006 Replacement Volume and 2009 Supplement)

29 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Health – General
2 Section 19–343.1
3 Annotated Code of Maryland
4 (2009 Replacement Volume)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Courts and Judicial Proceedings**

8 10–402.

9 (c) (11) (I) IN THIS PARAGRAPH, “RELATED INSTITUTION” HAS THE
10 MEANING STATED IN § 19–343.1 OF THE HEALTH – GENERAL ARTICLE.

11 (II) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PERSON TO
12 INTERCEPT A WIRE, AN ORAL, OR AN ELECTRONIC COMMUNICATION IN A
13 RELATED INSTITUTION IF THE PERSON:

14 1. IS A RESIDENT OF THE RELATED INSTITUTION OR
15 THE LEGAL REPRESENTATIVE OF A RESIDENT;

16 2. CONDUCTS THE ELECTRONIC MONITORING IN
17 THE RESIDENT’S ROOM IN THE RELATED INSTITUTION; AND

18 3. POSTS A NOTICE ON THE DOOR OF THE
19 RESIDENT’S ROOM STATING THAT THE ROOM IS BEING MONITORED BY AN
20 ELECTRONIC MONITORING DEVICE.

21 **Article – Health – General**

22 **19–343.1.**

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
24 MEANINGS INDICATED.

25 (2) “ELECTRONIC MONITORING DEVICE” INCLUDES A VIDEO
26 SURVEILLANCE CAMERA, AN AUDIO DEVICE, A VIDEO TELEPHONE, AND AN
27 INTERNET VIDEO SURVEILLANCE DEVICE.

28 (3) “RELATED INSTITUTION” MEANS:

29 (I) A NURSING HOME AS DEFINED IN § 19–1401(E) OF THIS
30 ARTICLE; OR

1 **(II) AN ASSISTED LIVING PROGRAM THAT IS LICENSED TO**
2 **SERVE 17 OR MORE RESIDENTS.**

3 **(B) (1) A RELATED INSTITUTION SHALL ALLOW A RESIDENT OR, IF**
4 **THE RESIDENT IS INCAPACITATED, THE LEGAL REPRESENTATIVE OF THE**
5 **RESIDENT TO MONITOR THE RESIDENT THROUGH THE USE OF ELECTRONIC**
6 **MONITORING DEVICES.**

7 **(2) (I) A RELATED INSTITUTION SHALL REQUIRE A RESIDENT**
8 **WHO ENGAGES IN ELECTRONIC MONITORING TO POST A NOTICE ON THE DOOR**
9 **OF THE RESIDENT'S ROOM.**

10 **(II) THE NOTICE MUST STATE THAT THE ROOM IS BEING**
11 **MONITORED BY AN ELECTRONIC MONITORING DEVICE.**

12 **(3) BEFORE BEGINNING ELECTRONIC MONITORING, A RELATED**
13 **INSTITUTION SHALL REQUIRE A RESIDENT WHO WISHES TO ENGAGE IN**
14 **ELECTRONIC MONITORING AND SHARES A ROOM WITH ANOTHER RESIDENT TO**
15 **OBTAIN WRITTEN CONSENT FROM THE OTHER RESIDENT OR THE LEGAL**
16 **REPRESENTATIVE OF THE OTHER RESIDENT.**

17 **(4) MONITORING CONDUCTED UNDER THIS SECTION SHALL:**

18 **(I) BE NONCOMPULSORY AND AT THE ELECTION OF THE**
19 **RESIDENT OR LEGAL REPRESENTATIVE OF THE RESIDENT;**

20 **(II) BE PROVIDED BY THE RESIDENT OR LEGAL**
21 **REPRESENTATIVE OF THE RESIDENT; AND**

22 **(III) PROTECT THE PRIVACY RIGHTS OF OTHER RESIDENTS**
23 **AND VISITORS TO THE RELATED INSTITUTION TO THE EXTENT REASONABLY**
24 **POSSIBLE.**

25 **(5) A RELATED INSTITUTION MAY NOT REFUSE TO ADMIT AN**
26 **INDIVIDUAL TO RESIDENCY IN THE RELATED INSTITUTION OR REMOVE A**
27 **RESIDENT FROM THE RELATED INSTITUTION BECAUSE OF A REQUEST FOR**
28 **ELECTRONIC MONITORING.**

29 **(6) A RELATED INSTITUTION SHALL MAKE REASONABLE**
30 **PHYSICAL ACCOMMODATION FOR ELECTRONIC MONITORING, BY PROVIDING:**

31 **(I) A REASONABLY SECURE PLACE TO MOUNT OR PLACE**
32 **THE ELECTRONIC MONITORING DEVICE; AND**

1 **(II) ACCESS TO POWER SOURCES.**

2 **(7) A RELATED INSTITUTION SHALL INFORM A RESIDENT OR THE**
3 **LEGAL REPRESENTATIVE OF THE RESIDENT OF THE RESIDENT'S RIGHT TO**
4 **ELECTRONIC MONITORING:**

5 **(I) IN THE FACILITY'S ADMISSION AGREEMENT; AND**

6 **(II) BY POSTING NOTICE IN A PROMINENT LOCATION IN THE**
7 **FACILITY.**

8 **(8) A RELATED INSTITUTION MAY REQUEST A RESIDENT OR A**
9 **RESIDENT'S LEGAL REPRESENTATIVE TO CONDUCT ELECTRONIC MONITORING**
10 **WITHIN PLAIN VIEW.**

11 **(C) A RESIDENT OR LEGAL REPRESENTATIVE OF THE RESIDENT WHO**
12 **WISHES TO INSTALL OR PLACE AN ELECTRONIC MONITORING DEVICE MAY BE**
13 **REQUIRED BY THE ADMINISTRATOR OF THE RELATED INSTITUTION TO MAKE**
14 **THE REQUEST IN WRITING.**

15 **(D) SUBJECT TO THE MARYLAND RULES OF EVIDENCE, A TAPE OR**
16 **RECORDING CREATED THROUGH THE USE OF ELECTRONIC MONITORING SHALL**
17 **BE ADMISSIBLE IN EITHER A CIVIL OR CRIMINAL ACTION BROUGHT IN A**
18 **MARYLAND COURT.**

19 **(E) A TAPE OR RECORDING DERIVED FROM ELECTRONIC MONITORING**
20 **CONDUCTED UNDER THIS SECTION THAT IS IN THE POSSESSION OF A RELATED**
21 **INSTITUTION SHALL BE MADE AVAILABLE TO THE DEPARTMENT FOR THE**
22 **PURPOSE OF ASSESSING THE RELATED INSTITUTION'S COMPLIANCE WITH**
23 **APPLICABLE REGULATIONS.**

24 **(F) (1) A PERSON WHO OPERATES A RELATED INSTITUTION IN**
25 **VIOLATION OF THE PROVISIONS OF THIS SECTION IS GUILTY OF A**
26 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING**
27 **\$2,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.**

28 **(2) A PERSON WHO WILLFULLY AND WITHOUT THE CONSENT OF A**
29 **RESIDENT HAMPERS, OBSTRUCTS, TAMPERS WITH, OR DESTROYS AN**
30 **ELECTRONIC MONITORING DEVICE OR TAPE OR RECORDING SHALL BE GUILTY**
31 **OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT**
32 **EXCEEDING \$2,000 OR IMPRISONMENT NOT EXCEEDING 90 DAYS OR BOTH.**

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2010.