

SENATE BILL 256

E4

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CF HB 182

By: **Senators Raskin, Astle, Conway, Forehand, Frosh, Garagiola, Harrington, Kelley, King, Lenett, Madaleno, McFadden, Muse, Pinsky, Pugh, and Rosapepe**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Freedom of Association and Assembly Protection Act of 2009**

3 FOR the purpose of establishing that it is the public policy of the State zealously to
4 respect and defend certain constitutional rights of certain persons; prohibiting a
5 law enforcement agency from using certain covert techniques to investigate or
6 infiltrate a certain entity unless a certain finding is made; requiring the
7 Department of State Police to adopt certain regulations on or before a certain
8 date; requiring certain law enforcement agencies to adopt certain policies on or
9 before a certain date; requiring certain regulations and policies to include
10 certain requirements; prohibiting a law enforcement agency from collecting,
11 disseminating, or maintaining certain information in a criminal intelligence
12 database unless the information is directly related to certain criminal activity;
13 prohibiting a law enforcement agency from knowingly receiving, disseminating,
14 or maintaining any information that has been obtained in violation of a law;
15 authorizing a law enforcement agency to disseminate certain information to
16 another law enforcement agency only if the information meets certain
17 requirements; specifying that all requests for dissemination of certain
18 information shall be evaluated and approved by the chief of the law enforcement
19 agency receiving the request; requiring the dissemination of certain protected
20 information to be through written transmittal or recorded in a certain manner;
21 requiring a record of each dissemination to be maintained for a certain period of
22 time; prohibiting certain information from being disseminated to certain
23 nonlaw enforcement persons, except as authorized by law; requiring the
24 Department of State Police to report to certain committees of the General
25 Assembly on certain matters on or before a certain date; defining certain terms;
26 and generally relating to investigations of certain entities.

27 BY adding to

28 Article – Public Safety

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 3-701 through 3-704 to be under the new subtitle "Subtitle 7.
2 Investigations of Protest or Advocacy Entities"
3 Annotated Code of Maryland
4 (2003 Volume and 2008 Supplement)

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

7 **Article - Public Safety**

8 **SUBTITLE 7. INVESTIGATIONS OF PROTEST OR ADVOCACY ENTITIES.**

9 **3-701.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) "CHIEF" MEANS THE HEAD OF A LAW ENFORCEMENT AGENCY.

13 (C) (1) "COVERT TECHNIQUE" MEANS THE CLANDESTINE
14 COLLECTION OF INFORMATION BY A LAW ENFORCEMENT AGENCY IN A MANNER
15 THAT CONCEALS:

16 (I) THE IDENTITY OF THE LAW ENFORCEMENT AGENCY;

17 (II) THE IDENTITY OF AN OFFICER OF THE LAW
18 ENFORCEMENT AGENCY; OR

19 (III) THE FACT THAT THE INFORMATION IS BEING
20 COLLECTED.

21 (2) "COVERT TECHNIQUE" INCLUDES:

22 (I) MAIL COVERS;

23 (II) THE OPENING OF MAIL;

24 (III) PHYSICAL, PHOTOGRAPHIC, AND ELECTRONIC
25 SURVEILLANCE;

26 (IV) OBTAINING ACCESS TO STORED WIRE OR ELECTRONIC
27 COMMUNICATIONS;

28 (V) THE USE OF COVERT ELECTRONIC MAIL ADDRESSES;
29 AND

1 (VI) THE USE OF UNDERCOVER LAW ENFORCEMENT
2 OFFICERS OR AGENTS.

3 (D) “CRIMINAL INTELLIGENCE INFORMATION” MEANS INFORMATION
4 OBTAINED BY A LAW ENFORCEMENT AGENCY IN CONNECTION WITH A CRIMINAL
5 INVESTIGATION.

6 (E) “DEPARTMENT” MEANS THE DEPARTMENT OF STATE POLICE.

7 (F) “LAW ENFORCEMENT AGENCY” MEANS A POLICE DEPARTMENT OF
8 THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION.

9 (G) “PROTECTED INFORMATION” MEANS INFORMATION ABOUT THE
10 POLITICAL, RELIGIOUS, OR SOCIAL VIEWS, ASSOCIATIONS, OR FIRST
11 AMENDMENT-PROTECTED ACTIVITIES OF ANY INDIVIDUAL, GROUP,
12 CORPORATION, BUSINESS, PARTNERSHIP, OR ORGANIZATION.

13 (H) (1) “PROTEST OR ADVOCACY ENTITY” MEANS A GROUP OF
14 INDIVIDUALS OR AN ORGANIZATION THAT CONSIDERS, DEBATES, AND
15 ADVOCATES POINTS OF VIEW ON ISSUES OF PUBLIC POLICY.

16 (2) “PROTEST OR ADVOCACY ENTITY” INCLUDES AN INDIVIDUAL
17 WHO BELONGS TO A GROUP OR ORGANIZATION DESCRIBED IN PARAGRAPH (1)
18 OF THIS SUBSECTION.

19 **3-702.**

20 (A) IT IS THE PUBLIC POLICY OF THE STATE ZEALOUSLY TO RESPECT
21 AND DEFEND THE FEDERAL AND STATE CONSTITUTIONAL RIGHTS OF THE
22 CITIZENRY AND THE PROTEST AND ADVOCACY ENTITIES IN THE STATE.

23 (B) A LAW ENFORCEMENT AGENCY MAY NOT USE AN OTHERWISE
24 LAWFUL COVERT TECHNIQUE TO INVESTIGATE OR INFILTRATE A PROTEST OR
25 ADVOCACY ENTITY UNLESS, BEFORE THE COVERT TECHNIQUE IS USED, THE
26 CHIEF MAKES A WRITTEN FINDING, INCLUDING SPECIFIC FACTUAL
27 DETERMINATIONS UPON WHICH THE FINDING IS BASED, THAT THE USE OF THE
28 COVERT TECHNIQUE IS JUSTIFIED BECAUSE:

29 (1) IT IS BASED ON A REASONABLE, ARTICULABLE SUSPICION OF
30 A PRESENT OR PLANNED VIOLATION OF THE LAW; AND

31 (2) A LESS INTRUSIVE METHOD OF INVESTIGATION IS NOT LIKELY
32 TO YIELD SATISFACTORY RESULTS.

1 (C) ON OR BEFORE JANUARY 1, 2010, THE DEPARTMENT SHALL ADOPT
2 REGULATIONS GOVERNING THE USE BY THE DEPARTMENT OF COVERT
3 TECHNIQUES INVOLVING THE SURVEILLANCE OF PROTEST OR ADVOCACY
4 ENTITIES.

5 (D) ON OR BEFORE JULY 1, 2010, EACH LAW ENFORCEMENT AGENCY
6 OTHER THAN THE DEPARTMENT SHALL ADOPT A WRITTEN, PUBLICLY
7 AVAILABLE POLICY GOVERNING THE USE BY THE AGENCY OF COVERT
8 TECHNIQUES INVOLVING THE SURVEILLANCE OF PROTEST OR ADVOCACY
9 ENTITIES.

10 **3-703.**

11 (A) A LAW ENFORCEMENT AGENCY MAY NOT:

12 (1) COLLECT, DISSEMINATE, OR MAINTAIN PROTECTED
13 INFORMATION IN A CRIMINAL INTELLIGENCE DATABASE UNLESS THE
14 INFORMATION IS DIRECTLY RELATED TO CRIMINAL ACTIVITY THAT IS THE
15 SUBJECT OF AN INVESTIGATION OR PRELIMINARY INQUIRY AUTHORIZED AND
16 CONDUCTED IN ACCORDANCE WITH THIS SUBTITLE; OR

17 (2) KNOWINGLY RECEIVE, DISSEMINATE, OR MAINTAIN ANY
18 INFORMATION THAT HAS BEEN OBTAINED IN VIOLATION OF AN APPLICABLE
19 FEDERAL, STATE, OR LOCAL LAW, ORDINANCE, OR REGULATION.

20 (B) A LAW ENFORCEMENT AGENCY MAY DISSEMINATE PROTECTED
21 INFORMATION LAWFULLY OBTAINED DURING AN INVESTIGATION CONDUCTED
22 IN ACCORDANCE WITH THIS SUBTITLE TO FEDERAL, STATE, OR LOCAL LAW
23 ENFORCEMENT AGENCIES ONLY IF THE INFORMATION:

24 (1) FALLS WITHIN THE INVESTIGATIVE OR PROTECTIVE
25 JURISDICTION OR LITIGATION-RELATED RESPONSIBILITY OF THE AGENCY;

26 (2) MAY ASSIST IN PREVENTING AN UNLAWFUL ACT, THE USE OF
27 VIOLENCE, OR ANY OTHER CONDUCT DANGEROUS TO HUMAN LIFE; OR

28 (3) IS REQUIRED TO BE DISSEMINATED BY AN INTERAGENCY
29 AGREEMENT, STATUTE, OR OTHER LAW.

30 (C) (1) EACH REQUEST FOR DISSEMINATION OF PROTECTED
31 INFORMATION COLLECTED AND MAINTAINED UNDER THIS SUBTITLE SHALL BE
32 EVALUATED AND APPROVED BY THE CHIEF OF THE LAW ENFORCEMENT AGENCY
33 RECEIVING THE REQUEST.

1 **(2) THE DISSEMINATION OF PROTECTED INFORMATION SHALL BE**
2 **THROUGH WRITTEN TRANSMITTAL OR RECORDED ON A FORM THAT DESCRIBES**
3 **THE DOCUMENTS OR PROTECTED INFORMATION TRANSMITTED.**

4 **(3) A RECORD OF EACH DISSEMINATION SHALL BE MAINTAINED**
5 **FOR A MINIMUM OF 1 YEAR.**

6 **(D) INFORMATION COLLECTED AND MAINTAINED UNDER THIS**
7 **SUBTITLE MAY NOT BE DISSEMINATED TO A NONLAW ENFORCEMENT AGENCY,**
8 **DEPARTMENT, GROUP, ORGANIZATION, OR INDIVIDUAL, EXCEPT AS**
9 **AUTHORIZED BY LAW.**

10 **3-704.**

11 **(A) ON OR BEFORE JANUARY 1, 2010, THE DEPARTMENT SHALL ADOPT**
12 **REGULATIONS GOVERNING ALL DEPARTMENTAL COLLECTION, DISSEMINATION,**
13 **RETENTION, DATABASE INCLUSION, PURGING, AND AUDITING OF CRIMINAL**
14 **INTELLIGENCE INFORMATION RELATING TO PROTEST OR ADVOCACY ENTITIES.**

15 **(B) ON OR BEFORE JULY 1, 2010, EACH LAW ENFORCEMENT AGENCY**
16 **OTHER THAN THE DEPARTMENT SHALL ADOPT A WRITTEN, PUBLICLY**
17 **AVAILABLE POLICY GOVERNING ALL AGENCY COLLECTION, DISSEMINATION,**
18 **RETENTION, DATABASE INCLUSION, PURGING, AND AUDITING OF CRIMINAL**
19 **INTELLIGENCE INFORMATION RELATING TO PROTEST OR ADVOCACY ENTITIES.**

20 **(C) THE REGULATIONS AND POLICIES ADOPTED UNDER SUBSECTIONS**
21 **(A) AND (B) OF THIS SECTION SHALL INCLUDE A REQUIREMENT THAT:**

22 **(1) A DATABASE CONTAINING CRIMINAL INTELLIGENCE**
23 **INFORMATION RELATING TO PROTEST OR ADVOCACY ENTITIES BE:**

24 **(I) AUDITED PERIODICALLY FOR RELEVANCE TO CRIMINAL**
25 **ACTIVITY, TIMELINESS, ACCURACY, AND RELIABILITY; AND**

26 **(II) PURGED ON AN APPROPRIATE CYCLE;**

27 **(2) INFORMATION UNLAWFULLY OR INAPPROPRIATELY ENTERED**
28 **INTO A DATABASE AS CRIMINAL INTELLIGENCE INFORMATION RELATING TO A**
29 **PROTEST OR ADVOCACY ENTITY BE PURGED PROMPTLY AND THE FACT OF THE**
30 **EXISTENCE OF THE INFORMATION AND THE DATE OF PURGING BE RECORDED**
31 **AND MAINTAINED IN LAW ENFORCEMENT RECORDS; AND**

1 **(3) INFORMATION TO BE RETAINED IN A LAW ENFORCEMENT FILE**
2 **BE EVALUATED FOR THE RELIABILITY OF THE SOURCE OF THE INFORMATION**
3 **AND THE VALIDITY AND ACCURACY OF THE CONTENT OF THE INFORMATION**
4 **PRIOR TO FILING AND INCLUDE A STATEMENT AS TO WHETHER THE**
5 **RELIABILITY OF THE SOURCE AND THE VALIDITY AND ACCURACY OF THE**
6 **INFORMATION HAVE BEEN CORROBORATED.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1,
8 2010, the Department of State Police shall report to the Senate Judicial Proceedings
9 Committee and the House Judiciary Committee, in accordance with § 2-1246 of the
10 State Government Article, on the status of the Department's efforts to:

11 (1) revise or discontinue use of the Case Explorer database in connection
12 with the Department's intelligence-gathering activities; and

13 (2) contact all individuals who have been described in the Case Explorer
14 database as being suspected of involvement in criminal activity, but as to whom the
15 Department has no articulable reasonable suspicion of involvement in criminal
16 activity; expeditiously afford those individuals an opportunity to review and obtain
17 copies of the unredacted relevant database entries; and subsequently purge those
18 entries.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2009.