

HOUSE BILL 1111

E4, E1

2lr2281

By: **Delegate Glass**

Introduced and read first time: February 10, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Restrictions on Searches for Security Purposes – Penalties**

3 FOR the purpose of prohibiting a certain public servant, while acting under color of
4 the public servant's office or employment, from intentionally subjecting another
5 person to mistreatment or to arrest, detention, search, seizure, dispossession,
6 assessment, or lien that the public servant knows is unlawful, intentionally
7 denying or impeding another person in the exercise or enjoyment of a right,
8 privilege, power, or immunity, knowing that the conduct of the public servant is
9 unlawful, or intentionally subjecting another person to certain sexual
10 harassment; prohibiting a certain public servant, while acting under color of the
11 person's office or employment and without probable cause to believe the other
12 person committed an offense, from performing a search without effective
13 consent for the purpose of granting access to a publicly accessible building or
14 form of transportation and intentionally, knowingly, or recklessly touching the
15 other person in a certain manner, including touching through clothing or
16 causing physical contact with the other person when the public servant knows
17 or should reasonably believe that the other person will regard the contact as
18 offensive or provocative; establishing the circumstances under which a certain
19 person is considered to act under color of office or employment; providing certain
20 requirements for consent under this Act; establishing penalties for a violation of
21 this Act; providing a defense to a prosecution under this Act; requiring the
22 Attorney General to take certain actions if this Act is challenged on certain
23 grounds; authorizing the Attorney General to make certain legal arguments;
24 providing for the construction of this Act; defining certain terms; and generally
25 relating to the conduct of certain public servants.

26 BY adding to
27 Article – Criminal Law
28 Section 3–216
29 Annotated Code of Maryland
30 (2002 Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Law**

4 **3–216.**

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
6 MEANINGS INDICATED.

7 (2) “PUBLIC SERVANT” MEANS:

8 (I) AN OFFICER, EMPLOYEE, OR AGENT OF:

9 1. THE UNITED STATES;

10 2. THE STATE;

11 3. A BRANCH, A DEPARTMENT, OR AN AGENCY OF
12 THE UNITED STATES OR THE STATE; OR

13 4. ANOTHER PERSON ACTING UNDER CONTRACT
14 WITH A BRANCH, A DEPARTMENT, OR AN AGENCY OF THE UNITED STATES OR
15 THE STATE FOR THE PURPOSE OF PROVIDING A SECURITY OR LAW
16 ENFORCEMENT SERVICE; OR

17 (II) ANOTHER PERSON ACTING UNDER COLOR OF FEDERAL
18 OR STATE LAW.

19 (3) “SEXUAL HARASSMENT” MEANS UNWELCOME SEXUAL
20 ADVANCES, REQUESTS FOR SEXUAL FAVORS, OR OTHER VERBAL OR PHYSICAL
21 CONTACT OF A SEXUAL NATURE, SUBMISSION TO WHICH IS MADE A TERM OR
22 CONDITION OF A PERSON’S EXERCISE OR ENJOYMENT OF A RIGHT, PRIVILEGE,
23 POWER, OR IMMUNITY, EITHER EXPLICITLY OR IMPLICITLY.

24 (B) A PUBLIC SERVANT MAY NOT:

25 (1) WHILE ACTING UNDER COLOR OF THE PERSON’S OFFICE OR
26 EMPLOYMENT:

27 (I) INTENTIONALLY SUBJECT ANOTHER PERSON TO
28 MISTREATMENT OR TO ARREST, DETENTION, SEARCH, SEIZURE,

1 DISPOSSESSION, ASSESSMENT, OR LIEN THAT THE PUBLIC SERVANT KNOWS IS
2 UNLAWFUL;

3 (II) INTENTIONALLY DENY OR IMPEDE ANOTHER PERSON IN
4 THE EXERCISE OR ENJOYMENT OF A RIGHT, PRIVILEGE, POWER, OR IMMUNITY,
5 KNOWING THAT THE CONDUCT OF THE PUBLIC SERVANT IS UNLAWFUL; OR

6 (III) INTENTIONALLY SUBJECT ANOTHER PERSON TO
7 SEXUAL HARASSMENT; OR

8 (2) WHILE ACTING UNDER COLOR OF THE PUBLIC SERVANT'S
9 OFFICE OR EMPLOYMENT AND WITHOUT PROBABLE CAUSE TO BELIEVE THE
10 OTHER PERSON COMMITTED AN OFFENSE:

11 (I) PERFORM A SEARCH WITHOUT EFFECTIVE CONSENT
12 FOR THE PURPOSE OF GRANTING ACCESS TO A PUBLICLY ACCESSIBLE
13 BUILDING OR FORM OF TRANSPORTATION; AND

14 (II) INTENTIONALLY, KNOWINGLY, OR RECKLESSLY:

15 1. TOUCH THE ANUS, SEXUAL ORGAN, BUTTOCKS, OR
16 BREAST OF THE OTHER PERSON, INCLUDING TOUCHING THROUGH CLOTHING;
17 OR

18 2. CAUSE PHYSICAL CONTACT WITH THE OTHER
19 PERSON WHEN THE PUBLIC SERVANT KNOWS OR SHOULD REASONABLY BELIEVE
20 THAT THE OTHER PERSON WILL REGARD THE CONTACT AS OFFENSIVE OR
21 PROVOCATIVE.

22 (C) FOR PURPOSES OF THIS SECTION, A PUBLIC SERVANT ACTS UNDER
23 COLOR OF THE PERSON'S OFFICE OR EMPLOYMENT IF THE PERSON ACTS OR
24 PURPORTS TO ACT IN AN OFFICIAL CAPACITY OR TAKES ADVANTAGE OF ACTUAL
25 OR PURPORTED OFFICIAL CAPACITY.

26 (D) FOR PURPOSES OF SUBSECTION (B) OF THIS SECTION, CONSENT IS
27 EFFECTIVE ONLY IF, IMMEDIATELY BEFORE ANY SEARCH, THE PUBLIC
28 SERVANT:

29 (1) VERBALLY DESCRIBES TO THE OTHER PERSON:

30 (I) THE AREA OF THE OTHER PERSON TO BE SEARCHED;
31 AND

1 **(II) THE METHOD TO BE USED IN THE SEARCH; AND**

2 **(2) RECEIVES EXPRESS CONSENT FOR THE SEARCH FROM:**

3 **(I) THE OTHER PERSON; OR**

4 **(II) THE PARENT OR GUARDIAN OF THE OTHER PERSON.**

5 **(E) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS**
6 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO**
7 **IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$4,000 OR**
8 **BOTH.**

9 **(F) IT IS A DEFENSE TO A PROSECUTION FOR A VIOLATION OF**
10 **SUBSECTION (B) OF THIS SECTION THAT THE DEFENDANT PERFORMED THE**
11 **SEARCH IN ACCORDANCE AND CONSISTENT WITH AN EXPLICIT AND APPLICABLE**
12 **GRANT OF FEDERAL OR STATE STATUTORY AUTHORITY THAT IS CONSISTENT**
13 **WITH BOTH THE MARYLAND CONSTITUTION AND THE UNITED STATES**
14 **CONSTITUTION.**

15 **(G) (1) IN A PROSECUTION UNDER THIS SECTION, IF THE**
16 **GOVERNMENT OF THE UNITED STATES, THE DEFENDANT, OR THE DEFENDANT'S**
17 **EMPLOYER CHALLENGES THE VALIDITY OF THIS SECTION ON GROUNDS OF**
18 **UNCONSTITUTIONALITY, PREEMPTION, OR SOVEREIGN IMMUNITY, THE**
19 **ATTORNEY GENERAL, WITH THE CONSENT OF THE APPROPRIATE STATE'S**
20 **ATTORNEY, SHALL TAKE ANY ACTIONS NECESSARY ON BEHALF OF THE STATE**
21 **TO DEFEND THE VALIDITY OF THIS SECTION.**

22 **(2) THE ATTORNEY GENERAL MAY MAKE ANY LEGAL ARGUMENTS**
23 **THE ATTORNEY GENERAL CONSIDERS APPROPRIATE, INCLUDING THE**
24 **ARGUMENT THAT THIS SECTION CONSTITUTES A VALID EXERCISE OF:**

25 **(I) THE STATE'S POLICE POWERS;**

26 **(II) THE LIBERTY INTERESTS OF THE PEOPLE THAT ARE**
27 **SECURED BY THE UNITED STATES CONSTITUTION;**

28 **(III) THE POWERS RESERVED TO THE STATES BY THE TENTH**
29 **AMENDMENT TO THE UNITED STATES CONSTITUTION; OR**

30 **(IV) THE RIGHTS AND PROTECTIONS SECURED BY THE**
31 **MARYLAND CONSTITUTION.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed, as a matter of State law, to be enforceable up to but no further than the
3 maximum possible extent consistent with federal constitutional requirements, even if
4 that construction is not readily apparent, as the constructions are authorized only to
5 the extent necessary to save this Act from judicial invalidation.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2012.