
By: **Allegany County Delegation**

Introduced and read first time: February 1, 1999

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Warrantless Arrest - Assault**

3 FOR the purpose of authorizing a police officer to arrest without a warrant a person
4 who has committed an assault in the second degree under certain
5 circumstances; making conforming changes to provisions of law regarding the
6 arrest powers of the State Fire Marshal and a full-time investigative and
7 inspection assistant of the Office of the State Fire Marshal; making a technical
8 correction; and generally relating to warrantless arrests by police officers.

9 BY repealing and reenacting, without amendments,
10 Article 27 - Crimes and Punishments
11 Section 12(a) and (b) and 12A
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1998 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article 27 - Crimes and Punishments
16 Section 594B
17 Annotated Code of Maryland
18 (1996 Replacement Volume and 1998 Supplement)

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

21 **Article 27 - Crimes and Punishments**

22 12.

23 (a) In this subheading the following words have the meanings indicated.

24 (b) Except as otherwise provided in this subheading, "assault" means the
25 offenses of assault, battery, and assault and battery, which terms retain their
26 judicially determined meanings.

1 12A.

2 (a) A person may not commit an assault.

3 (b) A person who violates this section is guilty of the misdemeanor of assault
4 in the second degree and on conviction is subject to a fine of not more than \$2,500 or
5 imprisonment for not more than 10 years or both.

6 594B.

7 (a) A police officer may arrest without a warrant any person who commits, or
8 attempts to commit, any felony or misdemeanor in the presence of, or within the view
9 of, such officer.

10 (b) A police officer who has probable cause to believe that a felony or
11 misdemeanor is being committed in the officer's presence or within the officer's view,
12 may arrest without a warrant any person whom the officer may reasonably believe to
13 have committed such offense.

14 (c) A police officer may arrest a person without a warrant if the officer has
15 probable cause to believe that a felony has been committed or attempted and that
16 such person has committed or attempted to commit a felony whether or not in the
17 officer's presence or view.

18 (d) (1) A police officer may arrest a person without a warrant if:

19 (i) The officer has probable cause to believe that:

20 1. The person battered the person's spouse or other
21 individual with whom the person resides;

22 2. There is evidence of physical injury; and

23 3. Unless the person is immediately arrested:

24 A. The person may not be apprehended;

25 B. The person may cause injury to the person or damage to
26 the property of one or more other persons; or

27 C. The person may tamper with, dispose of, or destroy
28 evidence; and

29 (ii) A report to the police was made within 48 hours of the alleged
30 incident.

31 (2) If the police officer has probable cause to believe that mutual battery
32 occurred and arrest is necessary under this subsection, the officer shall consider
33 whether one of the parties acted in self-defense when making the determination
34 whether to arrest the person whom the officer believes to be the primary aggressor.

1 (E) A POLICE OFFICER MAY ARREST A PERSON WITHOUT A WARRANT IF THE
2 OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT:

3 (1) THE PERSON COMMITTED AN ASSAULT UNDER § 12A OF THIS
4 ARTICLE; AND

5 (2) THE ASSAULT OCCURRED ON SCHOOL PREMISES.

6 [(e)] (F) A police officer may arrest a person without a warrant if the officer
7 has probable cause to believe:

8 (1) That an offense listed in subsection [(f)] (G) of this section has been
9 committed;

10 (2) That the person has committed the offense; and

11 (3) That unless the person is immediately arrested:

12 (i) The person may not be apprehended;

13 (ii) The person may cause injury to the person or damage to the
14 property of one or more other persons; or

15 (iii) The person may tamper with, dispose of, or destroy evidence.

16 [(f)] (G) The offenses referred to in subsection [(e)] (F) of this section are:

17 (1) Those offenses specified in the following sections of Article 27, as they
18 may be amended from time to time:

19 (i) Section 8(a) (relating to malicious burning);

20 (ii) Section 36 (relating to carrying or wearing weapon);

21 (iii) Section 111 (relating to destroying, injuring, etc., property of
22 another);

23 (iv) Section 156 (relating to giving a false alarm of a fire);

24 (v) Section 287 (relating to possession of hypodermic syringes, etc.,
25 restricted);

26 (vi) Sections 342 through 344 (theft) where the value of the property
27 stolen was less than \$300;

28 (vii) Sections 276 through 302 (relating to drugs and other
29 dangerous substances) as they shall be amended from time to time;

30 (viii) Section 36B (relating to handguns);

31 (ix) Section 388 (relating to manslaughter by automobile, etc.); and

- 1 (x) Section 335A (relating to indecent exposure).
- 2 (2) Attempts to commit the offenses specified in the following sections of
3 Article 27 as they may be amended from time to time:
- 4 (i) Section 8(a) (relating to malicious burning);
- 5 (ii) Section 111 (relating to destroying, injuring, etc., property of
6 another);
- 7 (iii) Sections 342 through 344 (theft) where the value of the property
8 stolen was less than \$300;
- 9 (iv) Section 33A (relating to breaking into a building or boat with
10 intent to steal); or
- 11 (v) Sections 276 through 302 (relating to drugs and other
12 dangerous substances), as they shall be amended from time to time.
- 13 [(g)] (H) For purposes of this section, the term "police officer" means any
14 person who, in an official capacity, is authorized by law to make arrests and who is:
- 15 (1) A member of the Department of State Police;
- 16 (2) A member of the Baltimore City Police Department;
- 17 (3) A member of the Baltimore City School Police Force;
- 18 (4) A member of the police department, bureau, or force of any county;
- 19 (5) A member of the police department, bureau, or force of any
20 incorporated city or town, except Baltimore City, which is a "qualifying municipality",
21 as defined in § 66(a)(7) and § 69 of Article 88B of this Code;
- 22 (6) A member of the Mass Transit Administration Police Force, or the
23 Maryland Port Administration Police Force of the Department of Transportation or
24 the Maryland Transportation Authority Police Force;
- 25 (7) A member of the University of Maryland or Morgan State University
26 Police Force;
- 27 (8) Appointed, or given the powers of, a special policeman employed and
28 compensated by the State for the enforcement of law and the maintenance of order on
29 property of the State or of any of its agencies, or for the protection of such property,
30 and includes a member of the Department of General Services security force;
- 31 (9) The sheriff of any county and whose usual duties include the making
32 of arrests;
- 33 (10) A regularly employed deputy sheriff of any county and who is
34 compensated by the county and whose usual duties include the making of arrests;

1 (11) A member of the Natural Resources Police of the Department of
2 Natural Resources;

3 (12) A member of the Investigative Services Unit of the Comptroller's
4 Office;

5 (13) A member of the Maryland-National Capital Park and Planning
6 Commission Park Police;

7 (14) Housing Authority of Baltimore City Police Force;

8 (15) A member of the Crofton Police Department;

9 (16) A member of the WMATA Metro Transit Police, subject to the
10 jurisdictional limitations under Article XVI, § 76 of the Washington Metropolitan
11 Area Transit Authority Compact, § 10-204 of the Transportation Article; or

12 (17) Subject to subsections [(i)] (J) and [(l)(7)] (N)(7) of this section, the
13 State Fire Marshal or a full-time investigative and inspection assistant of the Office
14 of the State Fire Marshal.

15 [(h)] (I) (1) (i) In this subsection the following words have the meanings
16 indicated.

17 (ii) "Emergency" means a sudden or unexpected happening or an
18 unforeseen combination of circumstances that calls for immediate action to protect
19 the health, safety, welfare, or property of an individual from actual or threatened
20 harm or from an unlawful act.

21 (iii) "Federal law enforcement officer" means an officer who is
22 empowered to effect an arrest with or without a warrant for violations of the United
23 States Code and who is authorized to carry firearms in the performance of the
24 officer's duties.

25 (2) Subject to the limitations provided in paragraph (3) of this
26 subsection, a federal law enforcement officer is granted:

27 (i) The powers of arrest as set forth in this section; and

28 (ii) The power to execute arrest and search and seizure warrants
29 issued under the laws of this State.

30 (3) A federal law enforcement officer may exercise the powers granted in
31 this subsection if:

32 (i) The officer is participating in a joint investigation with officials
33 from any State or local law enforcement agency;

34 (ii) The officer is rendering assistance to a police officer;

1 (iii) The officer is acting at the request of a local police officer or a
2 State Police officer; or

3 (iv) An emergency exists.

4 (4) When acting under the authority granted in this subsection, the
5 following notifications of an investigation or enforcement action shall be made:

6 (i) 1. When in an incorporated municipality, to the chief of
7 police, if any, or the chief's designee;

8 2. When in a county which has a county police department,
9 to the chief of police or the chief's designee;

10 3. When in a county without a police department, to the
11 sheriff or the sheriff's designee;

12 4. When in Baltimore City, to the Police Commissioner or the
13 Police Commissioner's designee;

14 5. When on any property owned, leased, operated by, or
15 under the control of the Department of Natural Resources, to the Secretary of Natural
16 Resources or the Secretary's designee; or

17 6. When on any property owned, leased, or operated by or
18 under the control of the Maryland Transportation Authority or the Maryland Port
19 Administration, to the respective chief of police or the chief's designee; and

20 (ii) Unless there is an agreement otherwise with the Department of
21 State Police, to the Department of State Police barrack commander or designee.

22 (5) When a federal law enforcement officer is acting under the authority
23 granted in paragraph (3)(i) of this subsection, the notification required under
24 paragraph (4) of this subsection shall be made at a reasonable time in advance.

25 (6) A federal law enforcement officer who exercises the powers set forth
26 in this subsection has the same legal status as a police officer of this State.

27 (7) Nothing in this subsection shall be construed to impose liability upon
28 or to require indemnification by the State of Maryland or any local subdivision for any
29 act performed by a federal law enforcement officer pursuant to this subsection.

30 (8) (i) Any federal law enforcement officer acting pursuant to this
31 subsection shall enjoy the same protections provided to police officers of this State as
32 set forth in § 2-608 of the Courts Article with regard to charging documents against
33 police officers.

34 (ii) A federal law enforcement officer acting under this subsection
35 shall have the immunity from liability described under § 5-611 of the Courts Article.

1 (i) (J) (1) Except as provided in subsection [(1)(7)] (N)(7) of this section,
2 the State Fire Marshal or a full-time investigative and inspection assistant of the
3 Office of the State Fire Marshal has the powers of arrest set forth in subsection (c) of
4 this section only as to offenses listed under §§ 6, 7, 139C, and 410, of this article, and
5 attempts, conspiracies, and solicitations to commit these offenses.

6 (2) Except as provided in subsection [(1)(7)] (N)(7) of this section, the
7 State Fire Marshal or a full-time investigative and inspection assistant of the Office
8 of the State Fire Marshal has the powers of arrest set forth in subsection [(e)] (F) of
9 this section only as to offenses listed under §§ 8(a), 9, 9A, 11D, 111B, 151A, 151C, 156,
10 and 470A(b)(4) of this article, and attempting, causing, aiding, counseling, or
11 procuring arson in the first or second degree or malicious burning in the first or
12 second degree.

13 (3) Except as provided in subsection [(1)(7)] (N)(7) of this section, the
14 State Fire Marshal or a full-time investigative and inspection assistant of the Office
15 of the State Fire Marshal does not have the powers of arrest set forth in subsections
16 (a), (b), [and] (d), AND (E) of this section.

17 (j) (K) (1) The fire investigators of the Prince George's County Fire
18 Department have the same powers of arrest set forth in subsection (c) of this section
19 as to offenses listed under:

20 (i) §§ 6, 7, 139C, 151A, and 151C of this article, and attempts,
21 conspiracies, and solicitations to commit these offenses; and

22 (ii) Article 38A, §§ 27A and 31 of the Code.

23 (2) The fire investigators of the Prince George's County Fire Department
24 have the same powers of arrest set forth in subsection [(e)] (F) of this section as to the
25 offenses:

26 (i) Listed under §§ 8(a), 9, 9A, 11D, 12A-2, 151, 156, 156B, and
27 470A(b)(4) of this article;

28 (ii) Listed under § 5-704 of the Natural Resources Article;

29 (iii) Listed under Article 38A, §§ 16, 17, 27, and 31A of the Code; and

30 (iv) Of attempting, causing, aiding, counseling, or procuring a
31 violation of §§ 6, 7, or 8A of this article.

32 (k) (L) Nothing in this section shall impair any right of arrest otherwise
33 existing under this Code.

34 (l) (M) Nothing in this section deprives a person of the right to receive a
35 citation for a traffic violation as provided in the Maryland Vehicle Law or for a
36 criminal violation, as provided by law or rule of court.

1 [(m)] (N) (1) (i) In this subsection the following words have the meanings
2 indicated.

3 (ii) "Emergency" means a sudden or unexpected happening or an
4 unforeseen combination of circumstances that calls for immediate action to protect
5 the health, safety, welfare, or property of an individual from actual or threatened
6 harm or from an unlawful act.

7 (iii) "Police officer" does not include a State Police officer.

8 (iv) "State Police officer" means a police employee as defined in
9 Article 88B, § 2 of the Code.

10 (2) (i) Except as provided in subparagraph (ii) of this paragraph and
11 subject to the limitations provided in paragraph (3) of this subsection, and in addition
12 to the powers granted in § 298 of this article, a police officer of this State may make
13 arrests, conduct investigations and otherwise enforce the laws of this State
14 throughout the State without limitations as to jurisdiction.

15 (ii) Under this subsection a police officer may not enforce the
16 provisions of the Maryland Vehicle Law beyond the officer's sworn jurisdiction.

17 (3) A police officer may exercise the powers granted in this subsection if:

18 (i) 1. The police officer is participating in a joint investigation
19 with officials from any other State, federal, or local law enforcement agency at least
20 one of which shall have local jurisdiction;

21 2. The police officer is rendering assistance to a police officer;

22 3. The police officer is acting at the request of a local police
23 officer or a State Police officer; or

24 4. An emergency exists; and

25 (ii) The police officer is acting in accordance with regulations
26 adopted by the police officer's employing agency to implement this subsection.

27 (4) When acting under the authority granted in this subsection, the
28 following notifications of an investigation or enforcement action shall be made:

29 (i) 1. When in an incorporated municipality, to the chief of
30 police, if any, or the chief's designee;

31 2. When in a county that has a county police department, to
32 the chief of police or the chief's designee;

33 3. When in a county without a police department, to the
34 sheriff or the sheriff's designee;

1 (1) The police officer has probable cause to believe a stalking under § 124
2 of this article has been committed;

3 (2) The police officer has reason to believe that the alleged stalking
4 victim or a third person is in danger of imminent bodily harm or death; and

5 (3) The probable cause under paragraph (1) of this subsection is
6 supported by credible evidence other than statements of the alleged stalking victim.

7 [(q)] (R) Correctional officers designated by the Commissioner of Correction
8 under § 684A of this article have the same powers of arrest for individuals on the
9 property of a facility under the jurisdiction of the Division of Correction as are set
10 forth in this section for police officers.

11 [(r)] (S) Correctional officers designated by the head administrative officer of
12 a county or municipal correctional facility under § 684B of this article have the same
13 powers of arrest for individuals on the property of the facility as are set forth in this
14 section for police officers.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 1999.