
By: **Delegates Nathan-Pulliam, Gutierrez, Ramirez, Anderson, Benson,
Bobo, Bronrott, Franchot, Gaines, Hixson, Hurson, Jones, Lee,
Madaleno, Marriott, Menes, Murray, and Petzold**

Introduced and read first time: February 4, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Undocumented Immigrants - Preventing Unlawful**
3 **Detention by Police**

4 FOR the purpose of prohibiting a police officer from detaining undocumented
5 immigrants without meeting the criteria of a warrantless arrest; prohibiting a
6 police officer from searching for undocumented immigrants for a certain
7 purpose; and generally relating to the unlawful detention of undocumented
8 immigrants.

9 BY repealing and reenacting, without amendments,
10 Article - Criminal Procedure
11 Section 2-101(c) and 2-202
12 Annotated Code of Maryland
13 (2001 Volume and 2003 Supplement)

14 BY adding to
15 Article - Criminal Procedure
16 Section 2-108
17 Annotated Code of Maryland
18 (2001 Volume and 2003 Supplement)

19 Preamble

20 WHEREAS, The diversity of our population is vital to our community's
21 character, and we have a long tradition of protecting and expanding human rights
22 and civil liberties protections for all of our residents, including noncitizens and
23 immigrants; and

24 WHEREAS, Requiring State and local law enforcement officers to enforce
25 federal immigration laws would undermine their best crime prevention efforts and
26 would discourage immigrants from coming forward with information on crimes; and

1 WHEREAS, Requiring State and local law enforcement officers to enforce
2 federal immigration laws without receiving adequate training or compensation for the
3 added responsibility would deter resources from other crime prevention initiatives;
4 and

5 WHEREAS, The Declaration of Independence of the United States holds as
6 self-evident that all people are created equal and are endowed with the unalienable
7 rights of life, liberty, and the pursuit of happiness; and

8 WHEREAS, The Fourth Amendment of the U.S. Constitution declares that "the
9 right of the people to be secure in their persons, houses, papers, and effects, against
10 unreasonable searches and seizures, shall not be violated, and no Warrants shall
11 issue, but upon probable cause, supported by Oath or affirmation, and particularly
12 describing the place to be searched, and the persons or things to be seized"; and

13 WHEREAS, The Fourteenth Amendment of the U.S. Constitution prohibits the
14 government from denying "to any person within its jurisdiction the equal protection of
15 the laws"; and

16 WHEREAS, Article 44 of the Maryland Declaration of Rights explicitly states
17 "That the provisions of the Constitution of the United States, and of this State, apply,
18 as well in time of war, as in time of peace; and any departure therefrom, or violation
19 thereof, under the plea of necessity, or any other plea, is subversive of good
20 Government and tends to anarchy and despotism"; and

21 WHEREAS, Many other communities throughout the country have enacted
22 resolutions reaffirming support for civil rights and civil liberties in the face of
23 government policies that threaten these values, and demanding accountability from
24 federal agencies regarding the use of these new powers; and

25 WHEREAS, Efforts to end terrorism and ensure security can and should be
26 undertaken while preserving the civil rights and liberties of the residents of
27 Maryland; now, therefore,

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

30 **Article - Criminal Procedure**

31 2-101.

32 (c) "Police officer" means a person who in an official capacity is authorized by
33 law to make arrests and is:

- 34 (1) a member of the Department of State Police;
- 35 (2) a member of the Police Department of Baltimore City;
- 36 (3) a member of the Baltimore City School Police Force;

- 1 (4) a member of the police department, bureau, or force of a county;
- 2 (5) a member of the police department, bureau, or force of a municipal
3 corporation;
- 4 (6) a member of the Maryland Transit Administration Police Force,
5 Maryland Port Administration Police Force, or Maryland Transportation Authority
6 Police Force;
- 7 (7) a member of the University of Maryland Police Force or Morgan State
8 University Police Force;
- 9 (8) a special police officer who is appointed to enforce the law and
10 maintain order on or protect property of the State or any of its units;
- 11 (9) a member of the Department of General Services security force;
- 12 (10) the sheriff of a county whose usual duties include the making of
13 arrests;
- 14 (11) a regularly employed deputy sheriff of a county who is compensated
15 by the county and whose usual duties include the making of arrests;
- 16 (12) a member of the Natural Resources Police Force of the Department of
17 Natural Resources;
- 18 (13) an authorized employee of the Field Enforcement Division of the
19 Comptroller's Office;
- 20 (14) a member of the Maryland-National Capital Park and Planning
21 Commission Park Police;
- 22 (15) a member of the Housing Authority of Baltimore City Police Force;
- 23 (16) a member of the Crofton Police Department;
- 24 (17) a member of the WMATA Metro Transit Police, subject to the
25 jurisdictional limitations under Article XVI, § 76 of the Washington Metropolitan
26 Area Transit Authority Compact, which is codified at § 10-204 of the Transportation
27 Article;
- 28 (18) a member of the Internal Investigative Unit of the Department;
- 29 (19) a member of the State Forest and Park Service Police Force of the
30 Department of Natural Resources;
- 31 (20) a member of the Department of Labor, Licensing, and Regulation
32 Police Force; or
- 33 (21) a member of the Washington Suburban Sanitary Commission Police
34 Force.

1 2-108.

2 A POLICE OFFICER:

3 (1) MAY NOT DETAIN AN UNDOCUMENTED IMMIGRANT WITHOUT
4 MEETING THE CRITERIA AS SET FORTH IN § 2-202 OF THIS TITLE;

5 (2) MAY NOT SEARCH FOR UNDOCUMENTED IMMIGRANTS FOR THE
6 SOLE PURPOSE OF DETAINING THEM; AND

7 (3) MAY NOT BE REQUIRED TO ENFORCE FEDERAL IMMIGRATION LAWS.
8 2-202.

9 (a) A police officer may arrest without a warrant a person who commits or
10 attempts to commit a felony or misdemeanor in the presence or within the view of the
11 police officer.

12 (b) A police officer who has probable cause to believe that a felony or
13 misdemeanor is being committed in the presence or within the view of the police
14 officer may arrest without a warrant any person whom the police officer reasonably
15 believes to have committed the crime.

16 (c) A police officer without a warrant may arrest a person if the police officer
17 has probable cause to believe that a felony has been committed or attempted and the
18 person has committed or attempted to commit the felony whether or not in the
19 presence or within the view of the police officer.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2004.