
By: **Montgomery County Delegation**

Introduced and read first time: February 6, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County - Fire and Explosive Investigators - Authority**
3 **MC 409-04**

4 FOR the purpose of including a Montgomery County fire and explosive investigator in
5 the definition of "law enforcement official" under the law relating to the
6 authorized carrying of a handgun by a person engaged in law enforcement;
7 providing that, under certain circumstances, a Montgomery County fire and
8 explosive investigator has the same authority as the State Fire Marshal and a
9 full-time investigative and inspection assistant in the office of the State Fire
10 Marshal to make an arrest without a warrant and exercise certain powers of
11 arrest; authorizing the Montgomery County Fire Administrator to limit certain
12 authority of a fire and explosive investigator to make an arrest without a
13 warrant or exercise certain powers of arrest; requiring the Fire Administrator to
14 express the limitation in writing; providing that the action of the Fire
15 Administrator in limiting certain authority is not subject to judicial review, does
16 not create a right for anyone except the Fire Administrator or the county to
17 challenge the authority of a fire and explosive investigator, and does not create
18 a cause of action for damages against the county, the Fire Administrator, or a
19 fire and explosive investigator; removing a Montgomery County fire and
20 explosive investigator from a law granting certain fire investigators authority to
21 make an arrest without a warrant under certain circumstances for the
22 commission of certain felonies and certain other crimes; excluding a
23 Montgomery County fire and explosive investigator from the definition of "law
24 enforcement officer" under the law relating to the Law Enforcement Officers'
25 Bill of Rights; including a Montgomery County fire and explosive investigator in
26 the definition of "police officer" under the law relating to the Maryland Police
27 Training Commission; defining a certain term; requiring the Maryland Police
28 Training Commission to certify certain fire and explosive investigators as police
29 officers under certain circumstances; and generally relating to the authority of
30 Montgomery County fire and explosive investigators.

31 BY repealing and reenacting, without amendments,
32 Article - Criminal Law
33 Section 4-201(a)

1 Annotated Code of Maryland
2 (2002 Volume and 2003 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Criminal Law
5 Section 4-201(d)
6 Annotated Code of Maryland
7 (2002 Volume and 2003 Supplement)

8 BY repealing and reenacting, without amendments,
9 Article - Criminal Procedure
10 Section 2-208
11 Annotated Code of Maryland
12 (2001 Volume and 2003 Supplement)

13 BY adding to
14 Article - Criminal Procedure
15 Section 2-208.1
16 Annotated Code of Maryland
17 (2001 Volume and 2003 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Criminal Procedure
20 Section 2-209
21 Annotated Code of Maryland
22 (2001 Volume and 2003 Supplement)
23 (As enacted by Chapter 17 of the Acts of the General Assembly of 2003)

24 BY repealing and reenacting, without amendments,
25 Article - Public Safety
26 Section 3-101(a) and 3-201(a)
27 Annotated Code of Maryland
28 (2003 Volume)

29 BY repealing and reenacting, with amendments,
30 Article - Public Safety
31 Section 3-101(e)(2) and 3-201(e)(2)
32 Annotated Code of Maryland
33 (2003 Volume)

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

Article - Criminal Law

4-201.

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

(d) "Law enforcement official" means:

(1) a full-time member of a police force or other unit of the United States, a state, a county, a municipal corporation, or other political subdivision of a state who is responsible for the prevention and detection of crime and the enforcement of the laws of the United States, a state, a county, a municipal corporation, or other political subdivision of a state;

(2) a part-time member of a police force of a county or municipal corporation who is certified by the county or municipal corporation as being trained and qualified in the use of handguns; [or]

(3) a fire investigator of the Prince George's County Fire Department who:

(i) is certified by Prince George's County as being trained and qualified in the use of handguns; and

(ii) has met the minimum qualifications and has satisfactorily completed the training required by the Maryland Police Training Commission; OR

(4) A MONTGOMERY COUNTY FIRE AND EXPLOSIVE INVESTIGATOR AS DEFINED IN § 2-208.1 OF THE CRIMINAL PROCEDURE ARTICLE.

Article - Criminal Procedure

2-208.

(a) (1) The State Fire Marshal or a full-time investigative and inspection assistant of the Office of the State Fire Marshal may arrest a person without a warrant if the State Fire Marshal or assistant has probable cause to believe:

(i) a felony that is a crime listed in paragraph (2) of this subsection has been committed or attempted; and

(ii) the person to be arrested has committed or attempted to commit the felony whether or not in the presence or within the view of the State Fire Marshal or assistant.

(2) The powers of arrest set forth in paragraph (1) of this subsection apply only to the crimes listed in this paragraph and to attempts, conspiracies, and solicitations to commit these crimes:

(i) murder under § 2-201(4) of the Criminal Law Article;

1 (ii) setting fire to a dwelling or occupied structure under § 6-102 of
2 the Criminal Law Article;

3 (iii) setting fire to a structure under § 6-103 of the Criminal Law
4 Article;

5 (iv) a crime that relates to destructive devices under § 4-503 of the
6 Criminal Law Article; and

7 (v) making a false statement or rumor as to a destructive device
8 under § 9-504 of the Criminal Law Article.

9 (b) (1) The State Fire Marshal or a full-time investigative and inspection
10 assistant of the Office of the State Fire Marshal may arrest a person without a
11 warrant if the State Fire Marshal or assistant has probable cause to believe:

12 (i) the person has committed a crime listed in paragraph (2) of this
13 subsection; and

14 (ii) unless the person is arrested immediately, the person:

15 1. may not be apprehended;

16 2. may cause physical injury or property damage to another;
17 or

18 3. may tamper with, dispose of, or destroy evidence.

19 (2) The crimes referred to in paragraph (1) of this subsection are:

20 (i) a crime that relates to a device that is constructed to represent
21 a destructive device under § 9-505 of the Criminal Law Article;

22 (ii) malicious burning in the first or second degree under § 6-104 or
23 § 6-105 of the Criminal Law Article;

24 (iii) burning the contents of a trash container under § 6-108 of the
25 Criminal Law Article;

26 (iv) making a false alarm of fire under § 9-604 of the Criminal Law
27 Article;

28 (v) a crime that relates to burning or attempting to burn property
29 as part of a religious or ethnic crime under § 10-303 or § 10-304 of the Criminal Law
30 Article;

31 (vi) a crime that relates to interference, obstruction, or false
32 representation of fire and safety personnel under § 6-602 or § 7-402 of the Public
33 Safety Article; and

1 (vii) threatening arson or attempting, causing, aiding, counseling, or
2 procuring arson in the first or second degree or malicious burning in the first or
3 second degree under Title 6, Subtitle 1 of the Criminal Law Article.

4 (c) (1) The State Fire Marshal or a full-time investigative and inspection
5 assistant in the Office of the State Fire Marshal may act under the authority granted
6 by § 2-102 of this title to police officers as provided under paragraph (2) of this
7 subsection.

8 (2) When acting under the authority granted by § 2-102 of this title, the
9 State Fire Marshal or a full-time investigative and inspection assistant in the Office
10 of the State Fire Marshal has the powers of arrest set forth in §§ 2-202, 2-203, and
11 2-204 of this subtitle.

12 (d) (1) The State Fire Marshal or a full-time investigative and inspection
13 assistant in the Office of the State Fire Marshal who acts under the authority granted
14 by this section shall notify the following persons of an investigation or enforcement
15 action:

16 (i) 1. the chief of police, if any, or chief's designee, when in a
17 municipal corporation;

18 2. the Police Commissioner or Police Commissioner's
19 designee, when in Baltimore City;

20 3. the chief of police or chief's designee, when in a county
21 with a county police department, except Baltimore City;

22 4. the sheriff or sheriff's designee, when in a county without
23 a county police department;

24 5. the Secretary of Natural Resources or Secretary's
25 designee, when on property owned, leased, operated by, or under the control of the
26 Department of Natural Resources; or

27 6. the respective chief of police or chief's designee, when on
28 property owned, leased, operated by, or under the control of the Maryland
29 Transportation Authority, Maryland Aviation Administration, or Maryland Port
30 Administration; and

31 (ii) the Department of State Police barrack commander or
32 commander's designee, unless there is an agreement otherwise with the Department
33 of State Police.

34 (2) When the State Fire Marshal or a full-time investigative and
35 inspection assistant in the Office of the State Fire Marshal participates in a joint
36 investigation with officials from another State, federal, or local law enforcement unit,
37 the State Fire Marshal or a full-time investigative and inspection assistant in the
38 Office of the State Fire Marshal shall give the notice required under paragraph (1) of
39 this subsection reasonably in advance.

1 (e) A State Fire Marshal or a full-time investigative and inspection assistant
2 in the Office of the State Fire Marshal who acts under the authority granted by this
3 section:

4 (1) has the same immunities from liability and exemptions as a State
5 Police officer in addition to any other immunities and exemptions to which the State
6 Fire Marshal or full-time investigative and inspection assistant is otherwise entitled;
7 and

8 (2) remains at all times and for all purposes an employee of the
9 employing unit.

10 (f) (1) This section does not impair a right of arrest otherwise existing
11 under the Code.

12 (2) This section does not deprive a person of the right to receive a citation
13 for a traffic violation as provided in the Maryland Vehicle Law or a criminal violation
14 as provided by law or the Maryland Rules.

15 2-208.1.

16 (A) IN THIS SECTION, "MONTGOMERY COUNTY FIRE AND EXPLOSIVE
17 INVESTIGATOR" MEANS AN INDIVIDUAL WHO:

18 (1) IS ASSIGNED TO THE FIRE AND EXPLOSIVE INVESTIGATIONS
19 SECTION OF THE MONTGOMERY COUNTY FIRE MARSHAL'S OFFICE; AND

20 (2) (I) HAS THE RANK OF A FIRE RESCUE LIEUTENANT OR HIGHER;
21 AND

22 (II) HAS SUCCESSFULLY COMPLETED AN APPROVED POLICE
23 TRAINING SCHOOL AS DEFINED IN § 3-201(A) OF THE PUBLIC SAFETY ARTICLE.

24 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
25 MONTGOMERY COUNTY FIRE AND EXPLOSIVE INVESTIGATOR HAS THE SAME
26 AUTHORITY GRANTED TO THE STATE FIRE MARSHAL OR A FULL-TIME
27 INVESTIGATIVE AND INSPECTION ASSISTANT OF THE OFFICE OF THE STATE FIRE
28 MARSHAL UNDER § 2-208 OF THIS SUBTITLE.

29 (C) (1) THE MONTGOMERY COUNTY FIRE ADMINISTRATOR:

30 (I) MAY LIMIT THE AUTHORITY OF A MONTGOMERY COUNTY FIRE
31 AND EXPLOSIVE INVESTIGATOR UNDER THIS SECTION; AND

32 (II) SHALL EXPRESS THE LIMITATION IN A WRITTEN POLICY.

33 (2) THE ACTION OF THE MONTGOMERY COUNTY FIRE ADMINISTRATOR
34 UNDER PARAGRAPH (1) OF THIS SUBSECTION:

35 (I) IS NOT SUBJECT TO JUDICIAL REVIEW;

1 (II) EXCEPT FOR THE MONTGOMERY COUNTY FIRE
2 ADMINISTRATOR OR FOR MONTGOMERY COUNTY, DOES NOT CREATE A RIGHT TO
3 CHALLENGE THE AUTHORITY OF A MONTGOMERY COUNTY FIRE AND EXPLOSIVE
4 INVESTIGATOR; AND

5 (III) DOES NOT CREATE A CAUSE OF ACTION FOR DAMAGES
6 AGAINST MONTGOMERY COUNTY, THE MONTGOMERY COUNTY FIRE
7 ADMINISTRATOR, OR A MONTGOMERY COUNTY FIRE AND EXPLOSIVE INVESTIGATOR.
8 2-209.

9 (a) [In this section, "Montgomery County fire and explosive investigator"
10 means an individual who:

11 (1) is assigned to the fire and explosive investigations section of the
12 Montgomery County Fire Marshal's Office; and

13 (2) (i) has the rank of a fire rescue lieutenant or higher; and

14 (ii) has successfully completed an approved police training school
15 as defined in § 3-201(a) of the Public Safety Article.

16 (b)] (1) A fire investigator of the Prince George's County Fire Department [or
17 a Montgomery County fire and explosive investigator] may arrest a person without a
18 warrant if the fire investigator [or Montgomery County fire and explosive
19 investigator] has probable cause to believe:

20 (i) a felony that is a crime listed in paragraph (2) of this subsection
21 has been committed or attempted; and

22 (ii) the person to be arrested has committed or attempted to commit
23 the felony whether or not in the presence or within the view of the fire investigator.

24 (2) The powers of arrest set forth in paragraph (1) of this subsection
25 apply only to:

26 (i) the crimes listed in this paragraph and to attempts,
27 conspiracies, and solicitations to commit these crimes:

28 1. a crime that relates to a device that is constructed to
29 represent a destructive device under § 9-505 of the Criminal Law Article;

30 2. setting fire to a dwelling or occupied structure under §
31 6-102 of the Criminal Law Article;

32 3. setting fire to a structure under § 6-103 of the Criminal
33 Law Article;

34 4. making a false statement or rumor as to a destructive
35 device under § 9-504 of the Criminal Law Article; and

1 (ix) a crime that relates to interference, obstruction, or false
2 representation of fire and safety personnel under §§ 6-602 and 7-402 of the Public
3 Safety Article;

4 (x) attempting, causing, aiding, or abetting:

5 1. setting fire to a dwelling or occupied structure in violation
6 of § 6-102 of the Criminal Law Article; or

7 2. setting fire to a structure in violation of § 6-103 of the
8 Criminal Law Article;

9 (xi) maliciously or negligently setting fires under § 5-704 of the
10 Natural Resources Article;

11 (xii) unlawful discharge or possession of fireworks under §§
12 10-104, 10-110, and 10-111 of the Public Safety Article; and

13 (xiii) unlawful manufacture of or dealing in explosives under §§
14 11-105(a), 11-114(a), and 11-115(b) of the Public Safety Article.

15 **Article - Public Safety**

16 3-101.

17 (a) In this subtitle the following words have the meanings indicated.

18 (e) (2) "Law enforcement officer" does not include:

19 (i) an individual who serves at the pleasure of the Police
20 Commissioner of Baltimore City;

21 (ii) an individual who serves at the pleasure of the appointing
22 authority of a charter county;

23 (iii) the police chief of a municipal corporation; [or]

24 (iv) an officer who is in probationary status on initial entry into the
25 law enforcement agency except if an allegation of brutality in the execution of the
26 officer's duties is made; OR

27 (V) A MONTGOMERY COUNTY FIRE AND EXPLOSIVE INVESTIGATOR
28 AS DEFINED IN § 2-208.1 OF THE CRIMINAL PROCEDURE ARTICLE.

29 3-201.

30 (a) In this subtitle the following words have the meanings indicated.

31 (e) (2) "Police officer" includes:

1 (i) a member of the Field Enforcement Division of the
2 Comptroller's Office;

3 (ii) the State Fire Marshal or a deputy State fire marshal; [and]

4 (iii) an investigator of the Internal Investigative Unit of the
5 Department; AND

6 (IV) A MONTGOMERY COUNTY FIRE AND EXPLOSIVE INVESTIGATOR
7 AS DEFINED IN § 2-208.1 OF THE CRIMINAL PROCEDURE ARTICLE.

8 SECTION 2. AND BE IT FURTHER ENACTED, That the Maryland Police
9 Training Commission shall certify as a police officer each Montgomery County fire
10 and explosive investigator who meets the requirements of § 2-208.1 of the Criminal
11 Procedure Article on October 1, 2004.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect October 1, 2004.