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By: **Montgomery County Delegation**

Introduced and read first time: February 6, 2004

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2004

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CHAPTER\_\_\_\_\_

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 operating in Montgomery County has the same authority  
9 as the State Fire Marshal and a full-time investigative and inspection assistant  
10 in the office of the State Fire Marshal to make an arrest without a warrant and  
11 exercise certain powers of arrest; authorizing a Montgomery County fire and  
12 explosive investigator to exercise certain authority while operating outside  
13 Montgomery County under certain circumstances; authorizing the Montgomery  
14 County Fire Administrator to limit certain authority of a fire and explosive  
15 investigator to make an arrest without a warrant or exercise certain powers of  
16 arrest; requiring the Fire Administrator to express the limitation in writing;  
17 ~~providing that the action of the Fire Administrator in limiting certain authority~~  
18 ~~is not subject to judicial review, does not create a right for anyone except the~~  
19 ~~Fire Administrator or the county to challenge the authority of a fire and~~  
20 ~~explosive investigator, and does not create a cause of action for damages against~~  
21 ~~the county, the Fire Administrator, or a fire and explosive investigator;~~ removing  
22 a Montgomery County fire and explosive investigator from a law granting  
23 certain fire investigators authority to make an arrest without a warrant under  
24 certain circumstances for the commission of certain felonies and certain other  
25 crimes; excluding a Montgomery County fire and explosive investigator from the  
26 definition of "law enforcement officer" under the law relating to the Law  
27 Enforcement Officers' Bill of Rights; including a Montgomery County fire and

1 explosive investigator in the definition of "police officer" under the law relating  
2 to the Maryland Police Training Commission; defining a certain term; requiring  
3 the Maryland Police Training Commission to certify certain fire and explosive  
4 investigators as police officers under certain circumstances; and generally  
5 relating to the authority of Montgomery County fire and explosive investigators.

6 BY repealing and reenacting, without amendments,  
7 Article - Criminal Law  
8 Section 4-201(a)  
9 Annotated Code of Maryland  
10 (2002 Volume and 2003 Supplement)

11 BY repealing and reenacting, with amendments,  
12 Article - Criminal Law  
13 Section 4-201(d)  
14 Annotated Code of Maryland  
15 (2002 Volume and 2003 Supplement)

16 BY repealing and reenacting, without amendments,  
17 Article - Criminal Procedure  
18 Section 2-208  
19 Annotated Code of Maryland  
20 (2001 Volume and 2003 Supplement)

21 BY adding to  
22 Article - Criminal Procedure  
23 Section 2-208.1  
24 Annotated Code of Maryland  
25 (2001 Volume and 2003 Supplement)

26 BY repealing and reenacting, with amendments,  
27 Article - Criminal Procedure  
28 Section 2-209  
29 Annotated Code of Maryland  
30 (2001 Volume and 2003 Supplement)  
31 (As enacted by Chapter 17 of the Acts of the General Assembly of 2003)

32 BY repealing and reenacting, without amendments,  
33 Article - Public Safety  
34 Section 3-101(a) and 3-201(a)  
35 Annotated Code of Maryland  
36 (2003 Volume)

37 BY repealing and reenacting, with amendments,

1 Article - Public Safety  
2 Section 3-101(e)(2) and 3-201(e)(2)  
3 Annotated Code of Maryland  
4 (2003 Volume)

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

7 **Article - Criminal Law**

8 4-201.

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

10 (d) "Law enforcement official" means:

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

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

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

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

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

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

27 **Article - Criminal Procedure**

28 2-208.

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

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

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

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

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

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

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

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

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

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

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

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

22 1. may not be apprehended;

23 2. may cause physical injury or property damage to another;  
24 or

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

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

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

29 (ii) malicious burning in the first or second degree under § 6-104 or  
30 § 6-105 of the Criminal Law Article;

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

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

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

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

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

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

14 (2) When acting under the authority granted by § 2-102 of this title, the  
15 State Fire Marshal or a full-time investigative and inspection assistant in the Office  
16 of the State Fire Marshal has the powers of arrest set forth in §§ 2-202, 2-203, and  
17 2-204 of this subtitle.

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

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

24 2. the Police Commissioner or Police Commissioner's  
25 designee, when in Baltimore City;

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

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

30 5. the Secretary of Natural Resources or Secretary's  
31 designee, when on property owned, leased, operated by, or under the control of the  
32 Department of Natural Resources; or

33 6. the respective chief of police or chief's designee, when on  
34 property owned, leased, operated by, or under the control of the Maryland  
35 Transportation Authority, Maryland Aviation Administration, or Maryland Port  
36 Administration; and

1 (ii) the Department of State Police barrack commander or  
2 commander's designee, unless there is an agreement otherwise with the Department  
3 of State Police.

4 (2) When the State Fire Marshal or a full-time investigative and  
5 inspection assistant in the Office of the State Fire Marshal participates in a joint  
6 investigation with officials from another State, federal, or local law enforcement unit,  
7 the State Fire Marshal or a full-time investigative and inspection assistant in the  
8 Office of the State Fire Marshal shall give the notice required under paragraph (1) of  
9 this subsection reasonably in advance.

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

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

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

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

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

24 2-208.1.

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

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

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

31 (II) ~~HAS SUCCESSFULLY COMPLETED AN APPROVED A TRAINING~~  
32 ~~PROGRAM FROM A POLICE TRAINING SCHOOL AS DEFINED IN § 3-201(A) APPROVED~~  
33 ~~BY THE POLICE TRAINING COMMISSION ESTABLISHED UNDER TITLE 3, SUBTITLE 2~~  
34 ~~OF THE PUBLIC SAFETY ARTICLE.~~

35 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A  
36 MONTGOMERY COUNTY FIRE AND EXPLOSIVE INVESTIGATOR HAS THE SAME  
37 AUTHORITY GRANTED TO THE STATE FIRE MARSHAL OR A FULL-TIME

1 INVESTIGATIVE AND INSPECTION ASSISTANT OF THE OFFICE OF THE STATE FIRE  
2 MARSHAL UNDER § 2-208 OF THIS SUBTITLE;

3           (1)     WHILE OPERATING IN MONTGOMERY COUNTY; AND

4           (2)     WHILE OPERATING OUTSIDE MONTGOMERY COUNTY WHEN:

5                   (I)     THE MONTGOMERY COUNTY FIRE AND EXPLOSIVE  
6 INVESTIGATOR IS PARTICIPATING IN A JOINT INVESTIGATION WITH OFFICIALS  
7 FROM ANOTHER STATE, FEDERAL, OR LOCAL LAW ENFORCEMENT UNIT, AT LEAST  
8 ONE OF WHICH HAS LOCAL JURISDICTION;

9                   (II)    THE MONTGOMERY COUNTY FIRE AND EXPLOSIVE  
10 INVESTIGATOR IS RENDERING ASSISTANCE TO ANOTHER LAW ENFORCEMENT  
11 OFFICER;

12                  (III)   THE MONTGOMERY COUNTY FIRE AND EXPLOSIVE  
13 INVESTIGATOR IS ACTING AT THE REQUEST OF A LAW ENFORCEMENT OFFICER OR  
14 STATE LAW ENFORCEMENT OFFICER; OR

15                  (IV)    AN EMERGENCY EXISTS.

16       (C)     (+)     THE MONTGOMERY COUNTY FIRE ADMINISTRATOR:

17                   (+)     (1)     MAY LIMIT THE AUTHORITY OF A MONTGOMERY COUNTY  
18 FIRE AND EXPLOSIVE INVESTIGATOR UNDER THIS SECTION; AND

19                   (++)    (2)     SHALL EXPRESS THE LIMITATION IN A WRITTEN POLICY.

20                  (2)     ~~THE ACTION OF THE MONTGOMERY COUNTY FIRE ADMINISTRATOR~~  
21 ~~UNDER PARAGRAPH (1) OF THIS SUBSECTION;~~

22                  (+)     ~~IS NOT SUBJECT TO JUDICIAL REVIEW;~~

23                  (++)    ~~EXCEPT FOR THE MONTGOMERY COUNTY FIRE~~  
24 ~~ADMINISTRATOR OR FOR MONTGOMERY COUNTY, DOES NOT CREATE A RIGHT TO~~  
25 ~~CHALLENGE THE AUTHORITY OF A MONTGOMERY COUNTY FIRE AND EXPLOSIVE~~  
26 ~~INVESTIGATOR; AND~~

27                  (III)    ~~DOES NOT CREATE A CAUSE OF ACTION FOR DAMAGES~~  
28 ~~AGAINST MONTGOMERY COUNTY, THE MONTGOMERY COUNTY FIRE~~  
29 ~~ADMINISTRATOR, OR A MONTGOMERY COUNTY FIRE AND EXPLOSIVE INVESTIGATOR.~~  
30 2-209.

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

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







**Article - Public Safety**

1 3-101.

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

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

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

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

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

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

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

14 3-201.

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

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

17 (i) a member of the Field Enforcement Division of the  
18 Comptroller's Office;

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

20 (iii) an investigator of the Internal Investigative Unit of the  
21 Department; AND

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

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

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

