

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 311

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Lee” and substitute “Lee, Hixson, Rosenberg, Hucker, Mizeur, Ali, Anderson, Barkley, Barve, Benson, Bobo, Braveboy, Bronrott, Cane, Dumais, Gaines, Gilchrist, Gutierrez, Healey, Hecht, Hubbard, Ivey, Kaiser, Lafferty, Manno, McIntosh, Montgomery, Murphy, Nathan-Pulliam, Pena-Melnyk, Ramirez, Reznik, Rice, Smigiel, Stukes, Taylor, Valderrama, Waldstreich, and Weldon”; strike lines 2 and 3 in their entirety and substitute “Freedom of Association and Assembly Protection Act of 2009”; strike beginning with “requiring” in line 4 down through “circumstances” in line 7 and substitute “prohibiting a law enforcement agency from conducting a covert investigation of a certain person, group, or organization unless a certain chief or designee makes a written finding at a certain time that the covert investigation is justified for certain reasons; establishing that membership or participation in a certain group or organization does not alone establish reasonable, articulable suspicion of criminal activity”; strike beginning with “the” in line 7 down through “Police” in line 8 and substitute “a law enforcement agency”; in lines 9, 10, 11, 14, 15, and 16, in each instance, strike “the Department” and substitute “a law enforcement agency”; strike beginning with “the” in line 12 down through “Department” in line 13 and substitute “a law enforcement agency”; in line 13, after “collecting” insert “or maintaining”; in the same line, after “circumstances;” insert “requiring that information maintained in a criminal intelligence file be evaluated for the reliability of the source of the information and the validity and accuracy of the information;”; in line 15, after “manner;” insert “establishing that a certain provision may not be interpreted to diminish the rights of a person requesting certain information;”; in line 17, strike “providing for the construction of this Act;” and substitute “requiring the Department of State Police to adopt certain regulations on or before a certain date; requiring certain law enforcement agencies to adopt certain policies on or before a certain date; requiring the Department to report to certain committees of the General Assembly on certain matters on or before a certain date;”;

(Over)

in line 19, strike “the Department of State Police” and substitute “law enforcement agencies”; and in line 22, strike “2-314” and substitute “3-701”.

AMENDMENT NO. 2

On page 2, in line 1, strike “**2-314**” and substitute “**3-701**”; after line 3, insert:

**“(2) “CHIEF” MEANS THE HEAD OF A LAW ENFORCEMENT AGENCY.”;**

in line 4, strike “(2)” and substitute “(3) (I)”; in line 5, after “ORGANIZATION” insert “IN A MANNER THAT CONCEALS THE IDENTITY OF THE LAW ENFORCEMENT AGENCY OR THE IDENTITY OF AN OFFICER OR AGENT OF THE LAW ENFORCEMENT AGENCY”; after line 5, insert:

**“(II) “COVERT INVESTIGATION” DOES NOT INCLUDE THE USE OF PLAINCLOTHES OFFICERS OR EMPLOYEES FOR CROWD CONTROL AND PUBLIC SAFETY PURPOSES AT PUBLIC EVENTS.**

**(4) “DEPARTMENT” MEANS THE DEPARTMENT OF STATE POLICE.”;**

in line 6, strike “(3)” and substitute “(5)”; after line 11, insert:

**“(6) “LAW ENFORCEMENT AGENCY” MEANS A POLICE DEPARTMENT OF THE STATE, A COUNTY, A MUNICIPAL CORPORATION, OR A PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION.**

**(7) “LEGITIMATE LAW ENFORCEMENT OBJECTIVE” MEANS THE DETECTION, INVESTIGATION, DETERRENCE, OR PREVENTION OF CRIME, OR THE APPREHENSION AND PROSECUTION OF A SUSPECTED CRIMINAL.”.**

AMENDMENT NO. 3

On page 2, strike beginning with the second “**THE**” in line 12 down through “**DEPARTMENT**” in line 13 and substitute “**A LAW ENFORCEMENT AGENCY**”; in line 14, after “**ACTIVITIES**” insert “**AND THE RIGHTS OF INDIVIDUALS, GROUPS, AND ORGANIZATIONS ENGAGED IN FIRST AMENDMENT ACTIVITIES**”; in line 17, strike “**A**” and substitute “**(1) A LAW ENFORCEMENT AGENCY MAY NOT CONDUCT A**”; in line 18, strike “**SHALL BE**” and substitute “**UNLESS THE CHIEF OR THE CHIEF’S DESIGNEE MAKES A WRITTEN FINDING IN ADVANCE OR AS SOON AS IS PRACTICABLE AFTERWARDS THAT THE COVERT INVESTIGATION IS JUSTIFIED BECAUSE**”; in line 19, strike “**(1)**” and substitute “**(I) IT IS**”; in the same line, after “**REASONABLE**” insert “**, ARTICULABLE**”; in line 22, strike “**(2) SHALL BE CONDUCTED ONLY IF**” and substitute “**(II)**”; in line 23, strike “**EQUIVALENT**” and substitute “**SATISFACTORY**”; after line 23, insert:

**“(2) MEMBERSHIP OR PARTICIPATION IN A GROUP OR ORGANIZATION ENGAGED IN FIRST AMENDMENT ACTIVITIES DOES NOT ALONE ESTABLISH REASONABLE, ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY.”;**

in line 24, strike “**THE DEPARTMENT**” and substitute “**A LAW ENFORCEMENT AGENCY**”.

On page 3, in lines 1, 10, 14, and 27, in each instance, strike “**THE DEPARTMENT**” and substitute “**A LAW ENFORCEMENT AGENCY**”; in line 7, strike “**LOGISTICAL**” and substitute “**LOGICAL**”; in the same line, strike “**AND**” and substitute “**OR**”; in line 8, strike “**PURPOSE**” and substitute “**OBJECTIVE**”; in line 10, after “**COLLECT**” insert “**OR MAINTAIN**”; strike beginning with “**BASED**” in line 10 down through “**INTELLIGENCE**” in line 13 and substitute “**SOLELY ABOUT THE POLITICAL BELIEFS, IDEOLOGIES, AND ASSOCIATIONS OF AN INDIVIDUAL, GROUP, OR ORGANIZATION THAT:**

(I) IS NOT RELEVANT TO A CRIMINAL INVESTIGATION; OR

(II) IS WITHOUT REASONABLE ARTICULABLE SUSPICION THAT THE INDIVIDUAL, GROUP, OR ORGANIZATION ADVOCATES, SUPPORTS, OR ENCOURAGES THE VIOLATION OF ANY FEDERAL, STATE, OR LOCAL CRIMINAL LAW THAT PROHIBITS ACTS OF TERRORISM, RACKETEERING, VIOLENCE, EXTORTION, DESTRUCTION OF PROPERTY, INTIMIDATION, HARASSMENT, OBSTRUCTION OF JUSTICE, OR FRAUD”;

after line 13, insert:

“(H) INFORMATION MAINTAINED IN A CRIMINAL INTELLIGENCE FILE SHALL BE EVALUATED FOR THE RELIABILITY OF THE SOURCE OF THE INFORMATION AND THE VALIDITY AND ACCURACY OF THE INFORMATION.”;

in line 14, strike “(H)” and substitute “(I)”; in lines 17 and 22, in each instance, strike “THE DEPARTMENT” and substitute “A LAW ENFORCEMENT AGENCY”; in line 22, strike “(I)” and substitute “(J) (1)”; in line 24, strike “PURPOSES” and substitute “OBJECTIVES”; in lines 19, 20, and 26, in each instance, strike “DEPARTMENT” and substitute “LAW ENFORCEMENT AGENCY”; after line 26, insert:

“(2) THIS SUBSECTION MAY NOT BE INTERPRETED TO DIMINISH THE RIGHTS OF A PERSON REQUESTING INFORMATION UNDER THE MARYLAND PUBLIC INFORMATION ACT.”;

and in line 27, strike “(J)” and substitute “(K)”.

AMENDMENT NO. 4

On page 3, strike in their entirety lines 30 through 36, inclusive, and substitute:

“(L) ON OR BEFORE JANUARY 1, 2010, THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING:

(1) THE CONDUCT BY THE DEPARTMENT OF COVERT INVESTIGATIONS OF PERSONS, GROUPS, OR ORGANIZATIONS ENGAGED IN FIRST AMENDMENT ACTIVITIES; AND

(2) EACH DEPARTMENTAL COLLECTION, DISSEMINATION, RETENTION, DATABASE INCLUSION, PURGING, AND AUDITING OF INTELLIGENCE INFORMATION RELATING TO PERSONS, GROUPS, OR ORGANIZATIONS ENGAGED IN FIRST AMENDMENT ACTIVITIES.

(M) ON OR BEFORE JANUARY 1, 2010, EACH LAW ENFORCEMENT AGENCY OTHER THAN THE DEPARTMENT SHALL ADOPT A WRITTEN, PUBLICLY AVAILABLE POLICY GOVERNING:

(1) THE CONDUCT BY THE AGENCY OF COVERT INVESTIGATIONS OF PERSONS, GROUPS, OR ORGANIZATIONS ENGAGED IN FIRST AMENDMENT ACTIVITIES; AND

(2) EACH AGENCY COLLECTION, DISSEMINATION, RETENTION, DATABASE INCLUSION, PURGING, AND AUDITING OF INTELLIGENCE INFORMATION RELATING TO PERSONS, GROUPS, OR ORGANIZATIONS ENGAGED IN FIRST AMENDMENT ACTIVITIES.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1, 2010, the Department of State Police shall report to the Senate Judicial Proceedings Committee and the House Judiciary Committee, in accordance with § 2-1246 of the State Government Article, on the status of the Department’s efforts to:

(Over)

(1) revise or discontinue use of the Case Explorer database in connection with the Department's intelligence-gathering activities; and

(2) contact all individuals who have been described in the Case Explorer database as being suspected of involvement in terrorism, or who have been labeled in the Case Explorer database as a terrorist, but as to whom the Department has no reasonable, articulable suspicion of involvement in terrorism; afford those individuals an opportunity to review and obtain copies of the relevant database entries; and subsequently purge those entries."

On page 4, in line 1, strike "2" and substitute "3".