

HOUSE BILL 311

E4

(9lr0213)

ENROLLED BILL

—Judiciary/Judicial Proceedings—

Introduced by **The Speaker (By Request - Administration) and Delegates Barnes, Feldman, Frick, ~~and Lee~~ 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, Waldstreicher, and Weldon**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 ~~Public Safety Department of State Police Investigations Affecting First~~
3 ~~Amendment Rights~~
4 Freedom of Association and Assembly Protection Act of 2009

5 FOR the purpose of ~~requiring that a covert investigation of a certain person, group, or~~
6 ~~organization be based on a reasonable suspicion that the person, group, or~~
7 ~~organization is planning, or engaged in, criminal activity; authorizing that the~~
8 ~~investigation be conducted only under certain circumstances~~ prohibiting a law
9 enforcement agency from conducting a covert investigation of a certain person,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 group, or organization unless a certain chief or designee makes a written
 2 finding at a certain time that the covert investigation is justified for certain
 3 reasons; establishing that membership or participation in a certain group or
 4 organization does not alone establish reasonable, articulable suspicion of
 5 criminal activity; requiring ~~the Department of State Police~~ a law enforcement
 6 agency to conduct all investigations involving certain activities for a legitimate
 7 law enforcement objective; requiring ~~the Department~~ a law enforcement agency
 8 to safeguard certain rights of all persons; prohibiting ~~the Department~~ a law
 9 enforcement agency from conducting certain activities for certain purposes;
 10 requiring ~~the Department~~ a law enforcement agency to terminate a certain
 11 investigation under certain circumstances; prohibiting ~~the Department~~ a law
 12 enforcement agency from collecting or maintaining certain information under
 13 certain circumstances; requiring that information maintained in a criminal
 14 intelligence file be evaluated for the reliability of the source of the information
 15 and the validity and accuracy of the information; requiring ~~the Department~~ a
 16 law enforcement agency to classify accurately certain information; authorizing
 17 ~~the Department~~ a law enforcement agency to disseminate certain information in
 18 a certain manner; establishing that a certain provision may not be interpreted
 19 to diminish the rights of a person requesting certain information; prohibiting
 20 ~~the Department~~ a law enforcement agency from knowingly including certain
 21 information in certain files; ~~providing for the construction of this Act;~~ requiring
 22 the Department of State Police to adopt certain regulations on or before a
 23 certain date; requiring certain law enforcement agencies to adopt certain
 24 policies on or before a certain date; requiring the Department to report to
 25 certain committees of the General Assembly on certain matters on or before a
 26 certain date; defining certain terms; and generally relating to investigations
 27 affecting First Amendment rights conducted by ~~the Department of State Police~~
 28 law enforcement agencies.

29 BY adding to

30 Article – Public Safety

31 Section ~~2-314~~ 3-701

32 Annotated Code of Maryland

33 (2003 Volume and 2008 Supplement)

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

36 **Article – Public Safety**

37 **~~2-314~~ 3-701.**

38 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
 39 MEANINGS INDICATED.

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

1 ~~(2)~~ **(3)** **(I)** **“COVERT INVESTIGATION” MEANS AN**
2 **INFILTRATION OF OR ATTEMPT TO INFILTRATE A GROUP OR ORGANIZATION IN A**
3 **MANNER THAT CONCEALS THE IDENTITY OF THE LAW ENFORCEMENT AGENCY**
4 **OR THE IDENTITY OF AN OFFICER OR AGENT OF THE LAW ENFORCEMENT**
5 **AGENCY.**

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

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

11 ~~(3)~~ **(5)** **“FIRST AMENDMENT ACTIVITIES” MEANS:**

12 **(I)** **ACTIVITIES INVOLVING CONSTITUTIONALLY**
13 **PROTECTED SPEECH OR ASSOCIATION; OR**

14 **(II)** **CONDUCT RELATED TO FREEDOM OF SPEECH, FREE**
15 **EXERCISE OF RELIGION, FREEDOM OF THE PRESS, THE RIGHT TO ASSEMBLE, OR**
16 **THE RIGHT TO PETITION THE GOVERNMENT.**

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

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

23 **(B)** **(1)** **THIS SECTION ESTABLISHES THE RESPONSIBILITIES OF ~~THE~~**
24 **DEPARTMENT A LAW ENFORCEMENT AGENCY RELATING TO INVESTIGATIONS**
25 **AFFECTING FIRST AMENDMENT ACTIVITIES AND THE RIGHTS OF ~~INDIVIDUALS~~**
26 **PERSONS, GROUPS, AND ORGANIZATIONS ENGAGED IN FIRST AMENDMENT**
27 **ACTIVITIES.**

28 **(2)** **THIS SECTION DOES NOT APPLY TO INVESTIGATIONS THAT DO**
29 **NOT INVOLVE FIRST AMENDMENT ACTIVITIES.**

30 **(C)** **(1)** **A A LAW ENFORCEMENT AGENCY MAY NOT CONDUCT A**
31 **COVERT INVESTIGATION OF A PERSON, A GROUP, OR AN ORGANIZATION**
32 **ENGAGED IN FIRST AMENDMENT ACTIVITIES ~~SHALL BE~~ UNLESS THE CHIEF OR**
33 **THE CHIEF’S DESIGNEE MAKES A WRITTEN FINDING IN ADVANCE OR AS SOON AS**

1 IS PRACTICABLE AFTERWARDS THAT THE COVERT INVESTIGATION IS JUSTIFIED
 2 BECAUSE:

3 ~~(1)~~ (I) IT IS BASED ON A REASONABLE, ARTICULABLE
 4 SUSPICION THAT THE PERSON, GROUP, OR ORGANIZATION IS PLANNING OR
 5 ENGAGED IN CRIMINAL ACTIVITY; AND

6 ~~(2)~~ (II) ~~SHALL BE CONDUCTED ONLY IF~~ A LESS INTRUSIVE
 7 METHOD OF INVESTIGATION IS NOT LIKELY TO YIELD ~~EQUIVALENT~~
 8 SATISFACTORY RESULTS.

9 (2) MEMBERSHIP OR PARTICIPATION IN A GROUP OR
 10 ORGANIZATION ENGAGED IN FIRST AMENDMENT ACTIVITIES DOES NOT ALONE
 11 ESTABLISH REASONABLE, ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY.

12 (D) ~~THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY SHALL:

13 (1) CONDUCT ALL INVESTIGATIONS INVOLVING FIRST
 14 AMENDMENT ACTIVITIES FOR A LEGITIMATE LAW ENFORCEMENT OBJECTIVE;
 15 AND

16 (2) IN THE PROCESS OF CONDUCTING AN INVESTIGATION,
 17 SAFEGUARD THE CONSTITUTIONAL RIGHTS AND LIBERTIES OF ALL PERSONS.

18 (E) ~~THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY MAY NOT
 19 INVESTIGATE, PROSECUTE, DISRUPT, INTERFERE WITH, HARASS, OR
 20 DISCRIMINATE AGAINST A PERSON ENGAGED IN A FIRST AMENDMENT ACTIVITY
 21 FOR THE PURPOSE OF PUNISHING, RETALIATING, PREVENTING, OR HINDERING
 22 THE PERSON FROM EXERCISING CONSTITUTIONAL RIGHTS.

23 (F) AN INVESTIGATION INVOLVING FIRST AMENDMENT ACTIVITIES
 24 SHALL BE TERMINATED WHEN ~~LOGISTICAL~~ LOGICAL LEADS HAVE BEEN
 25 EXHAUSTED ~~AND OR~~ NO LEGITIMATE LAW ENFORCEMENT PURPOSE OBJECTIVE
 26 JUSTIFIES THE CONTINUANCE OF THE INVESTIGATION.

27 (G) ~~THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY MAY NOT
 28 COLLECT OR MAINTAIN INFORMATION ~~BASED SOLELY ON THE BELIEFS,~~
 29 ~~ACTIVITIES, AND ASSOCIATIONS OF INDIVIDUALS THAT IS NOT RELEVANT TO A~~
 30 ~~CRIMINAL INVESTIGATION OR THE GATHERING OF CRIMINAL INTELLIGENCE~~
 31 SOLELY ABOUT THE POLITICAL BELIEFS, IDEOLOGIES, AND ASSOCIATIONS OF
 32 AN INDIVIDUAL A PERSON, GROUP, OR ORGANIZATION THAT IF:

33 ~~(1)~~ (1) THE INFORMATION IS NOT RELEVANT TO A
 34 CRIMINAL INVESTIGATION; OR

1 ~~(H)~~ (2) ~~IS WITHOUT THE LAW ENFORCEMENT AGENCY~~
2 ~~DOES NOT HAVE A REASONABLE ARTICULABLE SUSPICION THAT THE~~
3 ~~INDIVIDUAL PERSON, GROUP, OR ORGANIZATION ADVOCATES, SUPPORTS, OR~~
4 ~~ENCOURAGES THE VIOLATION OF ANY FEDERAL, STATE, OR LOCAL CRIMINAL~~
5 ~~LAW THAT PROHIBITS ACTS OF TERRORISM, RACKETEERING ACTIVITY, AS~~
6 ~~DEFINED IN 18 U.S.C. § 1961, VIOLENCE, EXTORTION, DESTRUCTION OF~~
7 ~~PROPERTY, INTIMIDATION, HARASSMENT, OBSTRUCTION OF JUSTICE, OR~~
8 ~~FRAUD.~~

9 (H) INFORMATION MAINTAINED IN A CRIMINAL INTELLIGENCE FILE
10 SHALL BE EVALUATED FOR THE RELIABILITY OF THE SOURCE OF THE
11 INFORMATION AND THE VALIDITY AND ACCURACY OF THE INFORMATION.

12 ~~(H)~~ (I) (1) ~~THE DEPARTMENT A LAW ENFORCEMENT AGENCY~~
13 ~~SHALL CLASSIFY ACCURATELY INTELLIGENCE INFORMATION IN ITS DATABASES~~
14 ~~TO REFLECT PROPERLY THE PURPOSE FOR WHICH THE INFORMATION IS~~
15 ~~COLLECTED.~~

16 (2) ~~WHEN THE DEPARTMENT A LAW ENFORCEMENT AGENCY~~
17 ~~LISTS IN A DATABASE A SPECIFIC CRIME FOR WHICH AN INDIVIDUAL A PERSON,~~
18 ~~A GROUP, OR AN ORGANIZATION IS UNDER SUSPICION, THE DEPARTMENT LAW~~
19 ~~ENFORCEMENT AGENCY SHALL ENSURE THAT THE CLASSIFICATION IS~~
20 ~~ACCURATE BASED ON THE INFORMATION AVAILABLE TO THE DEPARTMENT LAW~~
21 ~~ENFORCEMENT AGENCY AT THE TIME.~~

22 ~~(J)~~ (J) (1) ~~INFORMATION GATHERED AND MAINTAINED BY THE~~
23 ~~DEPARTMENT A LAW ENFORCEMENT AGENCY FOR INTELLIGENCE PURPOSES~~
24 ~~MAY BE DISSEMINATED ONLY TO APPROPRIATE PERSONS FOR LEGITIMATE LAW~~
25 ~~ENFORCEMENT PURPOSES OBJECTIVES IN ACCORDANCE WITH THE LAW~~
26 ~~GOVERNING THE RELEASE OF POLICE RECORDS AND WITH PROCEDURES~~
27 ~~ESTABLISHED BY THE DEPARTMENT LAW ENFORCEMENT AGENCY.~~

28 (2) THIS SUBSECTION MAY NOT BE INTERPRETED TO DIMINISH
29 THE RIGHTS OF A PERSON REQUESTING INFORMATION UNDER THE MARYLAND
30 PUBLIC INFORMATION ACT.

31 ~~(J)~~ (K) ~~THE DEPARTMENT A LAW ENFORCEMENT AGENCY~~
32 ~~KNOWINGLY MAY NOT INCLUDE IN ANY CRIMINAL INTELLIGENCE FILE~~
33 ~~INFORMATION THAT HAS BEEN OBTAINED IN VIOLATION OF THIS SECTION.~~

34 ~~(K) NOTHING IN THIS SECTION MAY BE CONSTRUED TO PROHIBIT A~~
35 ~~DEPARTMENT EMPLOYEE, IN THE COURSE OF THE EMPLOYEE'S DUTIES, FROM~~
36 ~~VISITING ANY PLACE, OR ATTENDING ANY EVENT, THAT IS OPEN TO THE~~

~~1 GENERAL PUBLIC, OR REVIEWING INFORMATION THAT IS IN THE PUBLIC
2 DOMAIN, ON THE SAME TERMS AND CONDITIONS AS MEMBERS OF THE PUBLIC,
3 IF THE DEPARTMENT EMPLOYEE HAS A LEGITIMATE LAW ENFORCEMENT
4 OBJECTIVE.~~

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

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

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

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

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

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1,
25 2010, the Department of State Police shall report to the Senate Judicial Proceedings
26 Committee and the House Judiciary Committee, in accordance with § 2-1246 of the
27 State Government Article, on the status of the Department's efforts to:

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

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

1 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.