

# HOUSE BILL 311

E4

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CF SB 266

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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**

Introduced and read first time: January 29, 2009

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 23, 2009

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## 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,  
10 group, or organization unless a certain chief or designee makes a written  
11 finding at a certain time that the covert investigation is justified for certain  
12 reasons; establishing that membership or participation in a certain group or  
13 organization does not alone establish reasonable, articulable suspicion of  
14 criminal activity; requiring the Department of State Police a law enforcement  
15 agency to conduct all investigations involving certain activities for a legitimate  
16 law enforcement objective; requiring the Department a law enforcement agency  
17 to safeguard certain rights of all persons; prohibiting the Department a law  
18 enforcement agency from conducting certain activities for certain purposes;  
19 requiring the Department a law enforcement agency to terminate a certain  
20 investigation under certain circumstances; prohibiting the Department a law

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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.



1 enforcement agency from collecting or maintaining certain information under  
 2 certain circumstances; requiring that information maintained in a criminal  
 3 intelligence file be evaluated for the reliability of the source of the information  
 4 and the validity and accuracy of the information; requiring ~~the Department a~~  
 5 law enforcement agency to classify accurately certain information; authorizing  
 6 ~~the Department a~~ law enforcement agency to disseminate certain information in  
 7 a certain manner; establishing that a certain provision may not be interpreted  
 8 to diminish the rights of a person requesting certain information; prohibiting  
 9 ~~the Department a~~ law enforcement agency from knowingly including certain  
 10 information in certain files; ~~providing for the construction of this Act;~~ requiring  
 11 the Department of State Police to adopt certain regulations on or before a  
 12 certain date; requiring certain law enforcement agencies to adopt certain  
 13 policies on or before a certain date; requiring the Department to report to  
 14 certain committees of the General Assembly on certain matters on or before a  
 15 certain date; defining certain terms; and generally relating to investigations  
 16 affecting First Amendment rights conducted by ~~the Department of State Police~~  
 17 law enforcement agencies.

18 BY adding to

19 Article – Public Safety

20 Section ~~2-314~~ 3-701

21 Annotated Code of Maryland

22 (2003 Volume and 2008 Supplement)

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

25 **Article – Public Safety**

26 **~~2-314~~ 3-701.**

27 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
 28 MEANINGS INDICATED.

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

30 ~~(2)~~ (3) (I) **“COVERT INVESTIGATION” MEANS AN**  
 31 **INFILTRATION OF OR ATTEMPT TO INFILTRATE A GROUP OR ORGANIZATION IN A**  
 32 **MANNER THAT CONCEALS THE IDENTITY OF THE LAW ENFORCEMENT AGENCY**  
 33 **OR THE IDENTITY OF AN OFFICER OR AGENT OF THE LAW ENFORCEMENT**  
 34 **AGENCY.**

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

1           (4) “DEPARTMENT” MEANS THE DEPARTMENT OF STATE  
2 POLICE.

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

4                   (I) ACTIVITIES INVOLVING CONSTITUTIONALLY  
5 PROTECTED SPEECH OR ASSOCIATION; OR

6                   (II) CONDUCT RELATED TO FREEDOM OF SPEECH, FREE  
7 EXERCISE OF RELIGION, FREEDOM OF THE PRESS, THE RIGHT TO ASSEMBLE, OR  
8 THE RIGHT TO PETITION THE GOVERNMENT.

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

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

15           (B) (1) THIS SECTION ESTABLISHES THE RESPONSIBILITIES OF THE  
16 DEPARTMENT A LAW ENFORCEMENT AGENCY RELATING TO INVESTIGATIONS  
17 AFFECTING FIRST AMENDMENT ACTIVITIES AND THE RIGHTS OF INDIVIDUALS,  
18 GROUPS, AND ORGANIZATIONS ENGAGED IN FIRST AMENDMENT ACTIVITIES.

19           (2) THIS SECTION DOES NOT APPLY TO INVESTIGATIONS THAT DO  
20 NOT INVOLVE FIRST AMENDMENT ACTIVITIES.

21           (C) (1) A A LAW ENFORCEMENT AGENCY MAY NOT CONDUCT A  
22 COVERT INVESTIGATION OF A PERSON, A GROUP, OR AN ORGANIZATION  
23 ENGAGED IN FIRST AMENDMENT ACTIVITIES ~~SHALL BE~~ UNLESS THE CHIEF OR  
24 THE CHIEF’S DESIGNEE MAKES A WRITTEN FINDING IN ADVANCE OR AS SOON AS  
25 IS PRACTICABLE AFTERWARDS THAT THE COVERT INVESTIGATION IS JUSTIFIED  
26 BECAUSE:

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

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

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

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

5                   **(1) CONDUCT ALL INVESTIGATIONS INVOLVING FIRST**  
6 **AMENDMENT ACTIVITIES FOR A LEGITIMATE LAW ENFORCEMENT OBJECTIVE;**  
7 **AND**

8                   **(2) IN THE PROCESS OF CONDUCTING AN INVESTIGATION,**  
9 **SAFEGUARD THE CONSTITUTIONAL RIGHTS AND LIBERTIES OF ALL PERSONS.**

10           **(E) ~~THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY MAY NOT**  
11 **INVESTIGATE, PROSECUTE, DISRUPT, INTERFERE WITH, HARASS, OR**  
12 **DISCRIMINATE AGAINST A PERSON ENGAGED IN A FIRST AMENDMENT ACTIVITY**  
13 **FOR THE PURPOSE OF PUNISHING, RETALIATING, PREVENTING, OR HINDERING**  
14 **THE PERSON FROM EXERCISING CONSTITUTIONAL RIGHTS.**

15           **(F) AN INVESTIGATION INVOLVING FIRST AMENDMENT ACTIVITIES**  
16 **SHALL BE TERMINATED WHEN ~~LOGISTICAL~~ LOGICAL LEADS HAVE BEEN**  
17 **EXHAUSTED ~~AND~~ OR NO LEGITIMATE LAW ENFORCEMENT ~~PURPOSE~~ OBJECTIVE**  
18 **JUSTIFIES THE CONTINUANCE OF THE INVESTIGATION.**

19           **(G) ~~THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY MAY NOT**  
20 **COLLECT OR MAINTAIN INFORMATION ~~BASED SOLELY ON THE BELIEFS,~~**  
21 **~~ACTIVITIES, AND ASSOCIATIONS OF INDIVIDUALS THAT IS NOT RELEVANT TO A~~**  
22 **~~CRIMINAL INVESTIGATION OR THE GATHERING OF CRIMINAL INTELLIGENCE~~**  
23 **SOLELY ABOUT THE POLITICAL BELIEFS, IDEOLOGIES, AND ASSOCIATIONS OF**  
24 **AN INDIVIDUAL, GROUP, OR ORGANIZATION THAT:**

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

26                   **(II) IS WITHOUT REASONABLE ARTICULABLE SUSPICION**  
27 **THAT THE INDIVIDUAL, GROUP, OR ORGANIZATION ADVOCATES, SUPPORTS, OR**  
28 **ENCOURAGES THE VIOLATION OF ANY FEDERAL, STATE, OR LOCAL CRIMINAL**  
29 **LAW THAT PROHIBITS ACTS OF TERRORISM, RACKETEERING ACTIVITY, AS**  
30 **DEFINED IN 18 U.S.C. § 1961, VIOLENCE, EXTORTION, DESTRUCTION OF**  
31 **PROPERTY, INTIMIDATION, HARASSMENT, OBSTRUCTION OF JUSTICE, OR**  
32 **FRAUD.**

33           **(H) INFORMATION MAINTAINED IN A CRIMINAL INTELLIGENCE FILE**  
34 **SHALL BE EVALUATED FOR THE RELIABILITY OF THE SOURCE OF THE**  
35 **INFORMATION AND THE VALIDITY AND ACCURACY OF THE INFORMATION.**

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

5               (2) ~~WHEN THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY  
6 LISTS IN A DATABASE A SPECIFIC CRIME FOR WHICH AN INDIVIDUAL, A GROUP,  
7 OR AN ORGANIZATION IS UNDER SUSPICION, THE ~~DEPARTMENT~~ LAW  
8 ENFORCEMENT AGENCY SHALL ENSURE THAT THE CLASSIFICATION IS  
9 ACCURATE BASED ON THE INFORMATION AVAILABLE TO THE ~~DEPARTMENT~~ LAW  
10 ENFORCEMENT AGENCY AT THE TIME.

11       ~~(J)~~ (J) (1) INFORMATION GATHERED AND MAINTAINED BY ~~THE~~  
12 ~~DEPARTMENT~~ A LAW ENFORCEMENT AGENCY FOR INTELLIGENCE PURPOSES  
13 MAY BE DISSEMINATED ONLY TO APPROPRIATE PERSONS FOR LEGITIMATE LAW  
14 ENFORCEMENT ~~PURPOSES~~ OBJECTIVES IN ACCORDANCE WITH THE LAW  
15 GOVERNING THE RELEASE OF POLICE RECORDS AND WITH PROCEDURES  
16 ESTABLISHED BY THE ~~DEPARTMENT~~ LAW ENFORCEMENT AGENCY.

17               (2) THIS SUBSECTION MAY NOT BE INTERPRETED TO DIMINISH  
18 THE RIGHTS OF A PERSON REQUESTING INFORMATION UNDER THE MARYLAND  
19 PUBLIC INFORMATION ACT.

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

23       ~~(K)~~ ~~NOTHING IN THIS SECTION MAY BE CONSTRUED TO PROHIBIT A~~  
24 ~~DEPARTMENT EMPLOYEE, IN THE COURSE OF THE EMPLOYEE'S DUTIES, FROM~~  
25 ~~VISITING ANY PLACE, OR ATTENDING ANY EVENT, THAT IS OPEN TO THE~~  
26 ~~GENERAL PUBLIC, OR REVIEWING INFORMATION THAT IS IN THE PUBLIC~~  
27 ~~DOMAIN, ON THE SAME TERMS AND CONDITIONS AS MEMBERS OF THE PUBLIC,~~  
28 ~~IF THE DEPARTMENT EMPLOYEE HAS A LEGITIMATE LAW ENFORCEMENT~~  
29 ~~OBJECTIVE.~~

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

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

35               (2) EACH DEPARTMENTAL COLLECTION, DISSEMINATION,  
36 RETENTION, DATABASE INCLUSION, PURGING, AND AUDITING OF INTELLIGENCE

1 INFORMATION RELATING TO PERSONS, GROUPS, OR ORGANIZATIONS ENGAGED  
2 IN FIRST AMENDMENT ACTIVITIES.

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

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

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1,  
14 2010, the Department of State Police shall report to the Senate Judicial Proceedings  
15 Committee and the House Judiciary Committee, in accordance with § 2-1246 of the  
16 State Government Article, on the status of the Department’s efforts to:

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

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.