

SENATE BILL 266

E4

9lr0212
CF HB 311

By: **The President (By Request - Administration) and Senators Frosh ~~and Lenett, Lenett, Brochin, Forehand, Gladden, Muse, Raskin, and Simonaire~~**

Introduced and read first time: January 23, 2009
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 25, 2009

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 individual makes a written finding at a
11 certain time that the covert investigation is justified for certain reasons;
12 establishing that membership or participation in a certain group or organization
13 does not alone establish reasonable, articulable suspicion of criminal activity;
14 requiring ~~the Department of State Police~~ a law enforcement agency to conduct
15 all investigations involving certain activities for a legitimate law enforcement
16 objective; requiring ~~the Department~~ a law enforcement agency to safeguard
17 certain rights of all persons; prohibiting ~~the Department~~ a law enforcement
18 agency from conducting certain activities for certain purposes; requiring ~~the~~
19 ~~Department~~ a law enforcement agency to terminate a certain investigation
20 under certain circumstances; prohibiting ~~the Department~~ a law enforcement
21 agency from collecting or maintaining certain information under certain
22 circumstances; requiring that information maintained in a criminal intelligence
23 file be evaluated for the reliability of the source of the information and the
24 validity and accuracy of the information; requiring ~~the Department~~ a law

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

14 BY adding to
 15 Article – Public Safety
 16 Section ~~2-314~~ 3-701
 17 Annotated Code of Maryland
 18 (2003 Volume and 2008 Supplement)

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

21 **Article – Public Safety**

22 **~~2-314~~ 3-701.**

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
 24 MEANINGS INDICATED.

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

26 ~~(2)~~ (3) (1) **“COVERT INVESTIGATION” MEANS AN**
 27 **INFILTRATION OF OR ATTEMPT TO INFILTRATE A GROUP OR ORGANIZATION IN A**
 28 **MANNER THAT CONCEALS THE IDENTITY OF THE LAW ENFORCEMENT AGENCY**
 29 **OR THE IDENTITY OF AN OFFICER OR AGENT OF THE LAW ENFORCEMENT**
 30 **AGENCY.**

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

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

36 ~~(3)~~ (5) **“FIRST AMENDMENT ACTIVITIES” MEANS:**

1 (I) ACTIVITIES INVOLVING CONSTITUTIONALLY
 2 PROTECTED SPEECH OR ASSOCIATION; OR

3 (II) CONDUCT RELATED TO FREEDOM OF SPEECH, FREE
 4 EXERCISE OF RELIGION, FREEDOM OF THE PRESS, THE RIGHT TO ASSEMBLE, OR
 5 THE RIGHT TO PETITION THE GOVERNMENT.

6 (6) (I) “LAW ENFORCEMENT AGENCY” MEANS A LAW
 7 ENFORCEMENT AGENCY OF A DEPARTMENT, COUNTY, OR A MUNICIPAL
 8 CORPORATION OF THE STATE.

9 (II) “LAW ENFORCEMENT AGENCY” INCLUDES SHERIFFS.

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

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

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

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

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

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

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

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

1 (1) CONDUCT ALL INVESTIGATIONS INVOLVING FIRST
2 AMENDMENT ACTIVITIES FOR A LEGITIMATE LAW ENFORCEMENT OBJECTIVE;
3 AND

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

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

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

15 (G) ~~THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY MAY NOT
16 COLLECT OR MAINTAIN INFORMATION ~~BASED SOLELY ON THE~~ ABOUT THE
17 POLITICAL BELIEFS, ACTIVITIES IDEOLOGIES, AND ASSOCIATIONS OF
18 INDIVIDUALS, GROUPS, OR ORGANIZATIONS THAT IS NOT RELEVANT TO A
19 CRIMINAL INVESTIGATION ~~OR THE GATHERING OF CRIMINAL INTELLIGENCE.~~

20 (H) INFORMATION MAINTAINED IN A CRIMINAL INTELLIGENCE FILE
21 SHALL BE EVALUATED FOR THE RELIABILITY OF THE SOURCE OF THE
22 INFORMATION AND THE VALIDITY AND ACCURACY OF THE INFORMATION.

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

27 (2) WHEN ~~THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY
28 LISTS IN A DATABASE A SPECIFIC CRIME FOR WHICH AN INDIVIDUAL, A GROUP,
29 OR AN ORGANIZATION IS UNDER SUSPICION, THE ~~DEPARTMENT~~ LAW
30 ENFORCEMENT AGENCY SHALL ENSURE THAT THE CLASSIFICATION IS
31 ACCURATE BASED ON THE INFORMATION AVAILABLE TO THE ~~DEPARTMENT~~ LAW
32 ENFORCEMENT AGENCY AT THE TIME.

33 ~~(H)~~ (J) (1) INFORMATION GATHERED AND MAINTAINED BY ~~THE~~
34 ~~DEPARTMENT~~ A LAW ENFORCEMENT AGENCY FOR INTELLIGENCE PURPOSES
35 MAY BE DISSEMINATED ONLY TO APPROPRIATE PERSONS FOR LEGITIMATE LAW
36 ENFORCEMENT ~~PURPOSES~~ OBJECTIVES IN ACCORDANCE WITH THE LAW

1 GOVERNING THE RELEASE OF POLICE RECORDS AND WITH PROCEDURES
2 ESTABLISHED BY THE ~~DEPARTMENT~~ LAW ENFORCEMENT AGENCY.

3 (2) THIS SUBSECTION MAY NOT BE INTERPRETED TO DIMINISH
4 THE RIGHTS OF A PERSON REQUESTING INFORMATION UNDER THE MARYLAND
5 PUBLIC INFORMATION ACT.

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

9 ~~(K) NOTHING IN THIS SECTION MAY BE CONSTRUED TO PROHIBIT A~~
10 ~~DEPARTMENT EMPLOYEE, IN THE COURSE OF THE EMPLOYEE'S DUTIES, FROM~~
11 ~~VISITING ANY PLACE, OR ATTENDING ANY EVENT, THAT IS OPEN TO THE~~
12 ~~GENERAL PUBLIC, OR REVIEWING INFORMATION THAT IS IN THE PUBLIC~~
13 ~~DOMAIN, ON THE SAME TERMS AND CONDITIONS AS MEMBERS OF THE PUBLIC,~~
14 ~~IF THE DEPARTMENT EMPLOYEE HAS A LEGITIMATE LAW ENFORCEMENT~~
15 ~~OBJECTIVE.~~

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

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

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

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

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

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

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

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

7 (2) (i) contact each individual who has been described in the Case
8 Explorer database as being suspected of involvement in terrorism, or who has been
9 labeled in the Case Explorer database as a terrorist, but as to whom the Department
10 has no reasonable, articulable suspicion of involvement in terrorism;

11 (ii) afford the individuals described in item (i) of this item an
12 opportunity to review and obtain copies of the relevant database entries; and

13 (iii) subsequently purge the entries relating to the individuals
14 described in item (i) of this item.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.