

SENATE BILL 1053

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By: **Senators Brochin, Della, Frosh, Klausmeier, and Stone**

Introduced and read first time: March 9, 2009

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Strip Search or Body Cavity Search of an Arrestee –**
3 **Restrictions**

4 FOR the purpose of prohibiting a police officer from conducting or supervising a strip
5 search or body cavity search of an individual arrested for certain misdemeanors
6 or traffic offenses under certain circumstances, or of a minor detained for a
7 certain act that would be a misdemeanor if committed by an adult, or for certain
8 traffic offenses under certain circumstances; providing for certain exceptions;
9 authorizing a police officer to conduct or supervise a strip search or body cavity
10 search only if the officer has a reasonable suspicion that certain items may be
11 concealed by the individual or minor and the officer is granted authorization by
12 a certain supervising officer on duty; establishing certain requirements for the
13 conducting of a strip search or a body cavity search; requiring a medical
14 professional to conduct a body cavity search; providing that a complaint against
15 a police officer alleging a violation of this Act shall be investigated in accordance
16 with a certain law; providing that nothing in this Act limits or repeals any
17 common law or statutory rights of an individual regarding an action for
18 damages or injunctive relief; defining certain terms; and generally relating to
19 restrictions on the conducting of a strip search or body cavity search of persons
20 arrested under certain circumstances.

21 BY repealing and reenacting, without amendments,
22 Article – Criminal Procedure
23 Section 2–101(a) and (c)
24 Annotated Code of Maryland
25 (2008 Replacement Volume)

26 BY adding to
27 Article – Criminal Procedure
28 Section 2–108
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Replacement Volume)

2 BY repealing and reenacting, without amendments,

3 Article – Public Safety

4 Section 3–101(a) and 3–104(a)

5 Annotated Code of Maryland

6 (2003 Volume and 2008 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article – Public Safety

9 Section 3–101(e) and 3–104(c)

10 Annotated Code of Maryland

11 (2003 Volume and 2008 Supplement)

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

14 **Article – Criminal Procedure**

15 2–101.

16 (a) In this title the following words have the meanings indicated.

17 (c) “Police officer” means a person who in an official capacity is authorized by
18 law to make arrests and is:

19 (1) a member of the Department of State Police;

20 (2) a member of the Police Department of Baltimore City;

21 (3) a member of the Baltimore City School Police Force;

22 (4) a member of the police department, bureau, or force of a county;

23 (5) a member of the police department, bureau, or force of a municipal
24 corporation;

25 (6) a member of the Maryland Transit Administration Police Force or
26 Maryland Transportation Authority Police Force;

27 (7) a member of the University of Maryland Police Force or Morgan
28 State University Police Force;

29 (8) a special police officer who is appointed to enforce the law and
30 maintain order on or protect property of the State or any of its units;

31 (9) a member of the Department of General Services security force;

1 (10) the sheriff of a county whose usual duties include the making of
2 arrests;

3 (11) a regularly employed deputy sheriff of a county who is
4 compensated by the county and whose usual duties include the making of arrests;

5 (12) a member of the Natural Resources Police Force of the Department
6 of Natural Resources;

7 (13) an authorized employee of the Field Enforcement Bureau of the
8 Comptroller's Office;

9 (14) a member of the Maryland–National Capital Park and Planning
10 Commission Park Police;

11 (15) a member of the Housing Authority of Baltimore City Police Force;

12 (16) a member of the Crofton Police Department;

13 (17) a member of the WMATA Metro Transit Police, subject to the
14 jurisdictional limitations under Article XVI, § 76 of the Washington Metropolitan Area
15 Transit Authority Compact, which is codified at § 10–204 of the Transportation
16 Article;

17 (18) a member of the Internal Investigative Unit of the Department;

18 (19) a member of the State Forest and Park Service Police Force of the
19 Department of Natural Resources;

20 (20) a member of the Department of Labor, Licensing, and Regulation
21 Police Force;

22 (21) a member of the Washington Suburban Sanitary Commission
23 Police Force;

24 (22) a member of the Ocean Pines Police Department; or

25 (23) a member of the police force of the Baltimore City Community
26 College.

27 **2–108.**

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

30 (2) “BODY CAVITY” MEANS THE STOMACH OR RECTAL CAVITY OF
31 A MALE OR FEMALE INDIVIDUAL AND THE VAGINA OF A FEMALE INDIVIDUAL.

1 **(3) “BODY CAVITY SEARCH” MEANS A PHYSICAL INTRUSION INTO**
2 **A BODY CAVITY TO DETERMINE THE PRESENCE OF A WEAPON OR OF A**
3 **CONTROLLED DANGEROUS SUBSTANCE CONCEALED IN THE BODY CAVITY.**

4 **(4) “CONTROLLED DANGEROUS SUBSTANCE” HAS THE MEANING**
5 **STATED IN § 5-101 OF THE CRIMINAL LAW ARTICLE.**

6 **(5) “POLICE OFFICER” INCLUDES A LAW ENFORCEMENT OFFICER**
7 **AS DEFINED IN § 3-101 OF THE PUBLIC SAFETY ARTICLE.**

8 **(6) “STRIP SEARCH” MEANS AN OBSERVATION OF THE**
9 **UNCLOTHED BODY OF AN INDIVIDUAL TO DETERMINE THE PRESENCE OF A**
10 **WEAPON OR OF A CONTROLLED DANGEROUS SUBSTANCE.**

11 **(B) THIS SECTION DOES NOT APPLY TO A STRIP SEARCH OR A BODY**
12 **CAVITY SEARCH OF:**

13 **(1) AN INDIVIDUAL IN THE CUSTODY OF THE DIVISION OF**
14 **CORRECTIONS IN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL**
15 **SERVICES;**

16 **(2) AN INDIVIDUAL IN THE CUSTODY OF A LOCAL CORRECTIONAL**
17 **FACILITY; OR**

18 **(3) A MINOR IN THE CUSTODY OF THE DEPARTMENT OF**
19 **JUVENILE SERVICES.**

20 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
21 **SUBSECTION, AND SUBJECT TO THE PROVISIONS OF SUBSECTION (D) OF THIS**
22 **SECTION, A POLICE OFFICER MAY NOT CONDUCT OR SUPERVISE A STRIP**
23 **SEARCH OR BODY CAVITY SEARCH OF:**

24 **(I) AN INDIVIDUAL ARRESTED AND HELD IN CUSTODY FOR**
25 **A MISDEMEANOR OR TRAFFIC OFFENSE THAT DOES NOT INVOLVE WEAPONS,**
26 **CONTROLLED DANGEROUS SUBSTANCES, OR VIOLENCE; OR**

27 **(II) A MINOR DETAINED FOR AN ACT THAT WOULD BE A**
28 **MISDEMEANOR IF COMMITTED BY AN ADULT, OR A TRAFFIC OFFENSE THAT**
29 **DOES NOT INVOLVE WEAPONS, CONTROLLED DANGEROUS SUBSTANCES, OR**
30 **VIOLENCE.**

1 **(2) SUBJECT TO SUBSECTION (D) OF THIS SECTION, A POLICE**
2 **OFFICER MAY CONDUCT OR SUPERVISE A STRIP SEARCH OR BODY CAVITY**
3 **SEARCH OF AN INDIVIDUAL OR MINOR ONLY IF THE POLICE OFFICER:**

4 **(I) HAS A REASONABLE SUSPICION BASED ON**
5 **ARTICULABLE, SPECIFIC FACTS TO BELIEVE THAT THE INDIVIDUAL OR MINOR IS**
6 **CONCEALING A WEAPON OR A CONTROLLED DANGEROUS SUBSTANCE AND THAT**
7 **A STRIP SEARCH OR BODY CAVITY SEARCH WOULD RESULT IN THE DISCOVERY**
8 **OF A WEAPON OR OF A CONTROLLED DANGEROUS SUBSTANCE; AND**

9 **(II) IS GRANTED AUTHORIZATION FROM THE**
10 **HIGHEST-RANKING, SUPERVISING OFFICER ON DUTY.**

11 **(D) (1) (I) THIS PARAGRAPH APPLIES TO THE CONDUCTING OF A**
12 **STRIP SEARCH.**

13 **(II) 1. ANY POLICE OFFICER OR AUTHORIZED**
14 **INDIVIDUAL PARTICIPATING IN THE CONDUCTING OF A STRIP SEARCH MUST BE**
15 **OF THE SAME SEX AS THE INDIVIDUAL OR MINOR BEING SEARCHED.**

16 **2. THE STRIP SEARCH MUST BE CONDUCTED IN A**
17 **LOCATION WHERE THE SEARCH MAY NOT BE OBSERVED BY INDIVIDUALS NOT**
18 **PARTICIPATING IN THE SEARCH.**

19 **3. THE NUMBER OF INDIVIDUALS PARTICIPATING**
20 **MUST BE LIMITED ONLY TO THE INDIVIDUALS NECESSARY TO CONDUCT THE**
21 **STRIP SEARCH.**

22 **(2) (I) THIS PARAGRAPH APPLIES TO THE CONDUCTING OF A**
23 **BODY CAVITY SEARCH.**

24 **(II) 1. A BODY CAVITY SEARCH SHALL BE PERFORMED**
25 **BY A MEDICAL PROFESSIONAL AND CONDUCTED UNDER SANITARY CONDITIONS.**

26 **2. EXCEPT FOR THE MEDICAL PROFESSIONAL, ANY**
27 **POLICE OFFICER OR AUTHORIZED INDIVIDUALS PARTICIPATING IN THE**
28 **CONDUCTING OF A BODY CAVITY SEARCH MUST BE OF THE SAME SEX AS THE**
29 **INDIVIDUAL OR MINOR BEING SEARCHED.**

30 **3. THE BODY CAVITY SEARCH MUST BE CONDUCTED**
31 **IN A LOCATION WHERE THE SEARCH MAY NOT BE OBSERVED BY INDIVIDUALS**
32 **NOT PARTICIPATING IN THE BODY CAVITY SEARCH.**

1 (v) a Montgomery County fire and explosive investigator as
2 defined in § 2–208.1 of the Criminal Procedure Article;

3 (vi) an Anne Arundel County or City of Annapolis fire and
4 explosive investigator as defined in § 2–208.2 of the Criminal Procedure Article;

5 (vii) a Prince George’s County fire and explosive investigator as
6 defined in § 2–208.3 of the Criminal Procedure Article;

7 (viii) a Worcester County fire and explosive investigator as
8 defined in § 2–208.4 of the Criminal Procedure Article; or

9 (ix) a City of Hagerstown fire and explosive investigator as
10 defined in § 2–208.5 of the Criminal Procedure Article.

11 3–104.

12 (a) The investigation or interrogation by a law enforcement agency of a law
13 enforcement officer for a reason that may lead to disciplinary action, demotion, or
14 dismissal shall be conducted in accordance with this section.

15 (c) (1) A complaint against a law enforcement officer that alleges
16 brutality in the execution of the law enforcement officer’s duties **OR ALLEGES A**
17 **VIOLATION OF § 2–108 OF THE CRIMINAL PROCEDURE ARTICLE** may not be
18 investigated unless the complaint is sworn to, before an official authorized to
19 administer oaths, by:

20 (i) the aggrieved individual;

21 (ii) a member of the aggrieved individual’s immediate family;

22 (iii) an individual with firsthand knowledge obtained because
23 the individual was present at and observed the alleged incident; or

24 (iv) the parent or guardian of the minor child, if the alleged
25 incident involves a minor child.

26 (2) Unless a complaint is filed within 90 days after the alleged
27 brutality **OR AN ALLEGED VIOLATION OF § 2–108 OF THE CRIMINAL PROCEDURE**
28 **ARTICLE**, an investigation that may lead to disciplinary action under this subtitle for
29 brutality **OR AN ALLEGED VIOLATION OF § 2–108 OF THE CRIMINAL PROCEDURE**
30 **ARTICLE** may not be initiated and an action may not be taken.

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