

CHAPTER 493

(House Bill 311)

AN ACT concerning

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

FOR the purpose of ~~requiring that a covert investigation of a certain person, group, or organization be based on a reasonable suspicion that the person, group, or organization is planning, or engaged in, criminal activity; authorizing that the investigation be conducted only under certain circumstances~~ 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; requiring the Department of State Police a law enforcement agency to conduct all investigations involving certain activities for a legitimate law enforcement objective; requiring the Department a law enforcement agency to safeguard certain rights of all persons; prohibiting the Department a law enforcement agency from conducting certain activities for certain purposes; requiring the Department a law enforcement agency to terminate a certain investigation under certain circumstances; prohibiting the Department a law enforcement agency from collecting or maintaining certain information under certain circumstances; 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; requiring the Department a law enforcement agency to classify accurately certain information; authorizing the Department a law enforcement agency to disseminate certain information in a certain manner; establishing that a certain provision may not be interpreted to diminish the rights of a person requesting certain information; prohibiting the Department a law enforcement agency from knowingly including certain information in certain files; providing for the construction of this Act; 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; defining certain terms; and generally relating to investigations affecting First Amendment rights conducted by the Department of State Police law enforcement agencies.

BY adding to

Article – Public Safety
Section ~~2-314~~ 3-701
Annotated Code of Maryland
(2003 Volume and 2008 Supplement)

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

Article – Public Safety

~~2-314~~ 3-701.

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

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

~~(2)~~ (3) (I) “COVERT INVESTIGATION” MEANS AN INFILTRATION OF OR ATTEMPT TO INFILTRATE A GROUP OR ORGANIZATION 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.

(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.

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

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

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

(6) “LAW ENFORCEMENT AGENCY” MEANS A POLICE OR SHERIFF’S 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.

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

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

(C) (1) ~~A~~ A LAW ENFORCEMENT AGENCY MAY NOT CONDUCT A COVERT INVESTIGATION OF A PERSON, A GROUP, OR AN ORGANIZATION ENGAGED IN FIRST AMENDMENT ACTIVITIES ~~SHALL BE~~ 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:

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

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

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

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

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

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

(E) ~~THE DEPARTMENT~~ A LAW ENFORCEMENT AGENCY MAY NOT INVESTIGATE, PROSECUTE, DISRUPT, INTERFERE WITH, HARASS, OR DISCRIMINATE AGAINST A PERSON ENGAGED IN A FIRST AMENDMENT ACTIVITY

FOR THE PURPOSE OF PUNISHING, RETALIATING, PREVENTING, OR HINDERING THE PERSON FROM EXERCISING CONSTITUTIONAL RIGHTS.

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

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

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

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

(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.

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

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

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

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

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

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

(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:

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

(2) contact all ~~individuals~~ persons 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~~ persons an opportunity to review and obtain copies of the relevant database entries; and subsequently purge those entries.

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

Approved by the Governor, May 19, 2009.