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Annotated Code of Maryland
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*** CURRENT THROUGH THE 2005 REGULAR SESSION AND CHAPTERS 1 THROUGH 17
OF THE 2006 REGULAR SESSION ***

*** ANNOTATIONS ARE CURRENT THROUGH JUNE 2, 2006 ***

CRIMINAL PROCEDURE
TITLE 2. LAW ENFORCEMENT PROCEDURES; ARREST PROCESS
SUBTITLE 2. WARRANTLESS ARRESTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. CRIMINAL PROCEDURE Code Ann. § 2-208 (2006)

§ 2-208. Authority of State Fire Marshal and assistants

(a) Warrantless arrest powers for commission of specified felonies. —

(1) The State Fire Marshal or a full-time investigative and inspection assistant of the Office of the State Fire Marshal may arrest a person without a warrant if the State Fire Marshal or assistant has probable cause to believe:

- (i) a felony that is a crime listed in paragraph (2) of this subsection has been committed or attempted; and
- (ii) the person to be arrested has committed or attempted to commit the felony whether or not in the presence or within the view of the State Fire Marshal or assistant.

(2) The powers of arrest set forth in paragraph (1) of this subsection apply only to the crimes listed in this paragraph and to attempts, conspiracies, and solicitations to commit these crimes:

- (i) murder under § 2-201(4) of the *Criminal Law Article*;
- (ii) setting fire to a dwelling or occupied structure under § 6-102 of the *Criminal Law Article*;
- (iii) setting fire to a structure under § 6-103 of the *Criminal Law Article*;
- (iv) a crime that relates to destructive devices under § 4-503 of the *Criminal Law Article*; and
- (v) making a false statement or rumor as to a destructive device under § 9-504 of the *Criminal Law Article*.

(b) Warrantless arrest powers for commission of specified crimes. —

(1) The State Fire Marshal or a full-time investigative and inspection assistant of the Office of the State Fire Marshal may arrest a person without a warrant if the State Fire Marshal or assistant has probable cause to believe:

- (i) the person has committed a crime listed in paragraph (2) of this subsection; and
- (ii) unless the person is arrested immediately, the person:

- 1. may not be apprehended;
- 2. may cause physical injury or property damage to another; or
- 3. may tamper with, dispose of, or destroy evidence.

(2) The crimes referred to in paragraph (1) of this subsection are:

- (i) a crime that relates to a device that is constructed to represent a destructive device under § 9-505 of the *Criminal Law Article*;

(ii) malicious burning in the first or second degree under § 6-104 or § 6-105 of the *Criminal Law Article*;

(iii) burning the contents of a trash container under § 6-108 of the *Criminal Law Article*;

(iv) making a false alarm of fire under § 9-604 of the *Criminal Law Article*;

(v) a crime that relates to burning or attempting to burn property as part of a religious or ethnic crime under § 10-304 or § 10-305 of the *Criminal Law Article*;

(vi) a crime that relates to interference, obstruction, or false representation of fire and safety personnel under § 6-602 or § 7-402 of the *Public Safety Article*; and

(vii) threatening arson or attempting, causing, aiding, counseling, or procuring arson in the first or second degree or malicious burning in the first or second degree under Title 6, Subtitle 1 of the *Criminal Law Article*.

(c) Other warrantless arrest powers. —

(1) The State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal may act under the authority granted by § 2-102 of this title to police officers as provided under paragraph (2) of this subsection.

(2) When acting under the authority granted by § 2-102 of this title, the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal has the powers of arrest set forth in §§ 2-202, 2-203, and 2-204 of this subtitle.

(d) Required notifications. —

(1) The State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal who acts under the authority granted by this section shall notify the following persons of an investigation or enforcement action:

(i) 1. the chief of police, if any, or chief's designee, when in a municipal corporation;

2. the Police Commissioner or Police Commissioner's designee, when in Baltimore City;

3. the chief of police or chief's designee, when in a county with a county police department, except Baltimore City;

4. the sheriff or sheriff's designee, when in a county without a county police department;

5. the Secretary of Natural Resources or Secretary's designee, when on property owned, leased, operated by, or under the control of the Department of Natural Resources; or

6. the respective chief of police or chief's designee, when on property owned, leased, operated by, or under the control of the Maryland Transportation Authority, Maryland Aviation Administration, or Maryland Port Administration; and

(ii) the Department of State Police barrack commander or commander's designee, unless there is an agreement otherwise with the Department of State Police.

(2) When the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal participates in a joint investigation with officials from another State, federal, or local law enforcement unit, the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal shall give the notice required under paragraph (1) of this subsection reasonably in advance.

(e) Immunities and exemptions; employee status. — A State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal who acts under the authority granted by this section:

(1) has the same immunities from liability and exemptions as a State Police officer in addition to any other immunities and exemptions to which the State Fire Marshal or full-time investigative and inspection assistant is otherwise entitled; and

(2) remains at all times and for all purposes an employee of the employing unit.

(f) Effect of section. —

(1) This section does not impair a right of arrest otherwise existing under the Code.

(2) This section does not deprive a person of the right to receive a citation for a traffic violation as provided in the Maryland Vehicle Law or a criminal violation as provided by law or the Maryland Rules.

HISTORY: An. Code 1957, art. 27, § 594B(c), (e), (i)(1), (2), (k), (l), (m)(4), (5), (6), (7)(i); 2001, ch. 10, § 2; 2002, ch. 213, § 6; 2003, ch. 17; 2004, ch. 377; 2005, ch. 25, § 12; ch. 463.

NOTES:

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, § 594B(e), (k), (l), (i)(1) and (2), and (m)(7)(i) and (4), (5), and (6), as they related to the State Fire Marshal and full-time investigative and inspection assistants in the Office of the State Fire Marshal.

Subsection (a)(1) of this section is revised to repeat the provisions of § 2-202(c) of this subtitle for clarity and to eliminate the former cross-reference to "subsection (c) of [Art. 27, § 594B]". Similarly, subsection (b)(1) of this section is revised to repeat the provisions of § 2-203 of this subtitle for clarity and to eliminate the former cross-reference to "subsection (e) of [Art. 27, § 594B]".

In subsection (b) of this section, the former reference to "Art. 27, § 9", which contains the prohibition against making a threat of arson, is deleted as included in item (b)(2)(vii) of this section.

Also in subsection (b) of this section, the former reference to "Art. 27, § 111B" is deleted as erroneous because § 111B concerns throwing missiles into an occupied vehicle and no longer concerns crimes related to fire.

In subsection (c) of this section, the former reference to the grant of the power of arrest set forth in former subsections (a) through (e) of this section "for any criminal violation of the Code" is deleted as misleading in light of the fact that former subsections (d) and (e) did not apply to any criminal violation of the Code, but instead only to domestic abuse crime and certain other specified crimes.

Subsections (d) and (e) of this section are revised in this section as well as in § 2-102 of this subtitle, which concerns police officers, to clarify that these provisions also apply to the State Fire Marshal and certain assistants. Under the former law, the State Fire Marshal and a full-time investigative and inspection assistant were covered by these provisions because those persons were defined as "police officers".

Subsection (d) of this section is revised to clarify that the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal who acts under the authority of this section must notify the listed entities.

In subsection (d)(1)(i)1 of this section, the reference to a "municipal corporation" is substituted for the former reference to an "incorporated municipality" to conform to Md. Constitution, Art. XI-E.

In subsection (d)(1)(i)3 of this section, the exception for "Baltimore City" is added for clarity because Baltimore City is included in the standard definition of "county". However, Baltimore City is covered in subsection (c)(1)(i)2 of this section.

In subsection (d)(2) of this section, the reference to the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal who "participates in a joint investigation with officials from another State, federal, or local law enforcement unit" is substituted for the former reference to a police officer who is "acting under the authority granted in paragraph (3)(i)1 of this subsection" for specificity and to eliminate an unnecessary cross-reference.

In the introductory language of subsection (d) of this section, the reference to the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal who "acts" under the authority granted by this section is substituted for the former reference to a police officer who "uses" that authority for consistency with language used throughout this section.

As for authority granted to the State Police, *see* Art. 88B, § 4.

As for the substitution of the term "unit" for the former reference to an "agency", *see* General Revisor's Note to article.

Former Art. 27, § 594B(i)(3), which stated that the State Fire Marshal or a certain assistant does not have certain arrest powers, except as provided in subsection (l)(7) [the correct cross-reference is to (m)(7)(i)], is deleted as unnecessary. Subsection (c) of this section revises former subsection (m)(7)(i). The fact that the State Fire Marshal or a certain assistant does not have certain arrest powers absent the conditions stated in subsection (c) of this section is implicit in this revision.

Former Art. 27, § 594B(m)(7)(ii), which stated that the powers of arrest established in former subsection (m)(7)(i) are in addition to the powers of arrest established under former § 594B(i), is deleted as implicit in this revised section, which contains the provisions of both former subsection (m)(7)(i) and subsection (i).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the General Assembly may wish to extend the authority of the State Fire Marshal and investigative and inspection assistants under

this section to include the making of warrantless arrests if there is probable cause to believe that there has been murder committed in perpetration of arson under Art. 27, § 408 [Repealed] or murder committed in perpetration of any murder under Art. 27, § 409 [Repealed] (murder in a burning barn, tobacco house, etc.).

DEFINED TERMS:

"County"	§ 1-101
"Person"	§ 1-101
"Police officer"	§ 2-101

EFFECT OF AMENDMENTS.—Chapter 213, Acts 2002, effective Oct. 1, 2002, substituted "§ 2-201(4) of the Criminal Law Article" for "Article 27, § 410 of the Code" in (a)(2)(i); substituted "§ 6-102 of the Criminal Law Article" for "Article 27, § 6 of the Code" in (a)(2)(ii); substituted "§ 6-103 of the Criminal Law Article" for "Article 27, § 7 of the Code" in (a)(2)(iii); substituted "§ 4-503 of the Criminal Law Article" for "Article 27, § 139C of the Code" in (a)(2)(iv); substituted "§ 9-504 of the Criminal Law Article" for "Article 27, § 151A of the Code" in (a)(2)(v); substituted "§ 9-505 of the Criminal Law Article" for "Article 27, § 151C of the Code" in (b)(2)(i); substituted "§ 6-104 or § 6-105 of the Criminal Law Article" for "Article 27, § 8(a) of the Code" in (b)(2)(ii); substituted "§ 6-108 of the Criminal Law Article" for "Article 27, § 9A of the Code" in (b)(2)(iii); substituted "§ 9-604 of the Criminal Law Article" for "Article 27, § 156 of the Code" in (b)(2)(iv); substituted "§ 10-303 or § 10-304 of the Criminal Law Article" for "Article 27, § 470A(b)(4) of the Code" in (b)(2)(v); and substituted "Title 6, Subtitle 1 of the Criminal Law Article" for "the subheading 'arson and burning' in Article 27 of the Code" in (b)(2)(vii).

Chapter 17, Acts 2003, effective Oct. 1, 2003, substituted "§ 6-602 or § 7-402 of the Public Safety Article" for "Article 27, § 11D of the Code" in (b)(2)(vi).

Chapter 377, Acts 2004, effective Oct. 1, 2004, reenacted the section without change.

Chapter 463, Acts 2005, effective October 1, 2005, reenacted the section without change.

EDITOR'S NOTE.—Section 2, ch. 463, Acts 2005, provides that "the Maryland Police Training Commission shall certify as a police officer each Anne Arundel County or City of Annapolis fire and explosive investigator who meets the requirements of § 2-208.2 of the Criminal Procedure Article on October 1, 2005."

Section 12, ch. 25, Acts 2005, provides that "any reference in the Annotated Code of Maryland rendered obsolete by an Act of the 2004 Special Session of the General Assembly or by an Act of the General Assembly of 2005 shall be corrected by the publisher of the Annotated Code, in consultation with and subject to the approval of the Department of Legislative Services, with no further action required by the General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 12 of ch. 25, "§ 10-304 or 10-305 of the Criminal Law Article" was substituted for "§ 10-303 or 10-304 of the Criminal Law Article" in (b)(2)(v), following the amendment by Chapter 571, Acts 2005.

DECLARATION OF COMMON LAW RULES.—Former Art. 27, § 594B(c) [now §§ 2-202(c) and 2-208(a)(1) of this article] was declarative of common law rules long in effect in *Maryland. Richardson v. Snow*, 340 F. Supp. 1261 (D. Md. 1972).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.