

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 1233  
Judiciary

(Delegate George, *et al.*)

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Criminal Procedure - Law Enforcement Agencies - Use of Drones

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This bill prohibits a law enforcement agency from using a “drone” to gather evidence or other information without a warrant, unless the drone is being used to respond to an emergency or counter a high-risk terrorist attack. A “drone” is a powered aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, and is expendable or recoverable.

An aggrieved party may initiate a civil action against a law enforcement agency to prevent or remedy a violation. Evidence collected through the unauthorized use of a drone without a warrant is not admissible in a criminal prosecution.

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Fiscal Summary

**State Effect:** The bill is procedural and does not materially affect State finances.

**Local Effect:** The bill is procedural and does not materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** There are no provisions under current law specifically dedicated to drones.

With respect to warrants, a circuit court or District Court judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building,

apartment, premises, place, or thing within the jurisdiction of the judge or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing.

An application for a search warrant must be in (1) writing; (2) signed and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause.

Any search and seizure made under the authority of a search warrant must be made within 15 calendar days after the day the warrant was issued. A search warrant is void after this 15-day period.

A judge who issues a search warrant must retain a copy of the warrant, application, and supporting affidavit. A judge may order a supporting affidavit to be sealed for up to 30 days under certain circumstances. The warrant, application, affidavit, and other supporting documentation may not be filed with the clerk of the court until the search warrant is returned executed. Generally, an executed search warrant must be returned to the issuing judge or a judge in the same circuit or district as promptly as possible or within 10 days after the date the warrant was executed. The judge to whom the warrant is returned must attach specified supporting documentation and file the papers with the clerk of the county in which the property was seized. The papers filed with the clerk must be sealed and may only be opened for inspection upon order of the court. The clerk must maintain a confidential index of search warrants. A warrant that is not executed within the 15-day time period must be promptly returned to the issuing judge, who may destroy it.

**Background:** Once exclusively thought of in the context of overseas military operations, drones are becoming an increasingly popular tool with domestic law enforcement. The term “drone” typically refers to an unmanned machine capable of flight, and can even be applied to remote controlled helicopters sold at local shopping malls. Civilian use of drones can range from backyard/playground recreational use to meteorology and professional photography from higher altitudes.

Flying a drone for something other than recreational use requires a certificate from the Federal Aviation Administration (FAA), which has been reluctant to issue them due to safety concerns. Under the FAA Modernization and Reform Act, the FAA must establish six drone-testing ranges, expedite requests for permission to use drones, and determine a way for drones to be integrated into domestic airspace by 2015. Several organizations sent Freedom of Information Act requests to the FAA for information on entities authorized to use drones domestically. The list included universities and law enforcement agencies. Included in the list was a joint effort by the Queen Anne’s County

Sheriff's Office, the U.S. Department of Justice, the U.S. Department of Homeland Security, and the U.S. Navy to conduct drone training for use in the county for search and rescue, drug surveillance, and surveillance of a location prior to serving a warrant.

In September 2012, the U.S. Government Accountability Office issued a report on unmanned aircraft systems (UAS). The report expressed concerns over UAS safety and unreliable performance, as well as privacy concerns over data obtained by UAS.

In February 2013, Charlottesville, Virginia ordered a two-year moratorium on the use of unmanned aircraft, making it the first city in the nation to take such action. Drone-related legislation is being considered in several states.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Federal Aviation Administration, *TIME*, American Civil Liberties Union, *The Los Angeles Times*, Department of Legislative Services

**Fiscal Note History:** First Reader - March 14, 2013  
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