

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1065
Judiciary

(Delegate Sydnor)

Judicial Proceedings

Task Force to Study Law Enforcement Surveillance Technologies

This bill establishes the Task Force to Study Law Enforcement Surveillance Technologies to study and make recommendations relating to the use of surveillance technology by law enforcement agencies in the State. The State agencies represented on the task force must provide staff for the task force. By December 5, 2017, the task force must report its findings and recommendations to the Governor and the General Assembly.

The bill takes effect June 1, 2017, and terminates June 30, 2018.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for the Office of the Attorney General, the Office of the Public Defender, the Department of State Police, and the Governor's Office of Crime Control and Prevention are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The task force must (1) study current and planned uses of surveillance technology by law enforcement agencies in the State, as specified; (2) evaluate the need for transparent civilian oversight of the uses of surveillance technologies by law enforcement agencies in the State; and (3) make recommendations to the General Assembly, based on the task force's findings.

A member of the task force may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law/Background: The Fourth Amendment to the U.S. Constitution protects individuals from unreasonable searches and seizures by the government and has been interpreted to create a right of privacy. The reasonableness of a governmental search often depends on the reasonableness of the expectation of privacy on the part of the person subject to the search, the location of the search, and the breadth of information gathered.

Generally, U.S. Supreme Court decisions have held a warrantless search of an individual's home to be unreasonable, with certain clearly delineated exceptions. However, courts have also held that the Fourth Amendment does not protect individuals from searches that take place in "open fields" because it is unreasonable for a person to have an expectation of privacy over activities that take place in such areas. Technological advances have made traditional legal standards that were often location based difficult to apply, and courts and lawmakers have increasingly had to grapple with the threshold question of whether information gathered through emerging technology constitutes a search at all.

Recently, discussion has focused on (1) law enforcement's use of cell site simulators that effectively turn cell phones into real-time tracking devices and (2) video monitoring of large geographic areas by air over long periods of time. Much of the controversy regarding such technologies has centered on (1) the scope of information gathered and the legal requirements for use of the technologies as they relate to an individual's Fourth Amendment right to privacy and (2) the lack of transparency in acquiring and deploying the technologies.

On August 26, 2016, *Bloomberg Businessweek* revealed that the Baltimore City Police Department, with funding from a private donor, had authorized the firm Persistent Surveillance to conduct aerial surveillance of a large portion of Baltimore City. Public concern over the program and the lack of notice provided to the public have been compounded by revelations that the Baltimore City Council, Mayor Stephanie Rawlings-Blake, and many other city and State leaders were not made aware of the department's activity until many months after the program began. A main concern regarding the technology is the breadth of what is captured. Rather than just focusing on suspects, the outdoor activity of every citizen in a 30-mile radius is recorded and stored.

Persistent Surveillance and other proponents of the technology claim that, as currently designed, very little detail is captured by the cameras. Individuals appear as little more than a pixel and cannot be personally identified because of the low quality of the images. Opponents and privacy experts indicate that, in a competitive market, it may only be a matter of time until highly detailed, high-resolution, real-time aerial surveillance becomes a reality. What information may be stored and for how long also remains an open question.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of General Services; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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