

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1395  
Judiciary

(Delegate Grammer)

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Public Safety – Persistent Aerial Surveillance

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This bill, with specified exceptions, prohibits a unit or agency of the State or political subdivision of the State from conducting “persistent aerial surveillance” to gather evidence or other information in a criminal investigation.

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Fiscal Summary

**State Effect:** Potential operational impact for some State law enforcement agencies. State finances are not anticipated to be affected.

**Local Effect:** Potential operational impact for some local law enforcement agencies. Local finances are not anticipated to be affected.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** A unit or agency of the State or political subdivision of the State *may* conduct persistent aerial surveillance:

- in accordance with a valid search warrant issued by a judge;
- on a location for the purpose of executing an arrest warrant;
- in fresh pursuit of a suspect, as specified;
- to assist in an active search and rescue operation;
- to locate an escaped prisoner;

- if a law enforcement officer reasonably believes that the use of aircraft is necessary to prevent imminent serious bodily harm to an individual or destruction of evidence; or
- if the U.S. Secretary of Homeland Security determines that credible intelligence indicates that there is a high risk of terrorist attack by a specific individual or organization, to counter such a risk.

“Persistent aerial surveillance” means the use of aircraft to record video or a concurrent series of images or pictures that when viewed in aggregate depict a person’s actions over time.

**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.

In 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.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** cities of Baltimore and Bowie; Montgomery and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of General Services; Department of Natural Resources; Department of State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2020  
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