HB 545

Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 545 (Delegates Grammer and Cox)
Judiciary

Public Safety - Persistent Aerial Surveillance

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

Fiscal Summary

State Effect: Potential significant operational impact for some State law enforcement agencies, as discussed below. State finances are not anticipated to be materially affected.

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

Small Business Effect: None.

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: 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.

State Fiscal Effect: While not expected to result in a material fiscal impact, the bill results in potentially significant operational impacts for several State agencies with law enforcement units. For example, the Natural Resources Police (NRP) within the Department of Natural Resources advises that the bill prohibits aerial video documentation of violations such as oyster sanctuary or gear prohibitions, nighttime deer hunting, and unsafe boat operations. While NRP would still be able to use human observers in NRP aircraft to provide eyewitness testimony, NRP advises that video is often the best evidence that can be provided, especially to judges, juries, and prosecutors who are unfamiliar with natural resources law or regulations and the methods used by persons to commit such violations. The Maryland Department of Transportation similarly advises that the bill has an operational effect on the Maryland Transit Administration (MTA) Police, which currently deploys drones during investigations of criminal activity on property owned, operated, or leased by MTA.

In addition, with respect to similar legislation considered in prior legislative sessions, the Department of Public Safety and Correctional Services has advised that it regularly uses aerial surveillance to monitor activities of inmates and visitors in correctional facilities, which may not fall within any of the exceptions provided under the bill but could result in criminal charges.

Additional Information

Prior Introductions: HB 159 of 2021 received a hearing in the House Judiciary Committee, but no further action was taken. HB 1395 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Caroline 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 Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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