



Bernard C. "Jack" Young
Mayor

BALTIMORE POLICE DEPARTMENT



Michael S. Harrison
Police Commissioner

HB1395

March 6, 2020

To: The Honorable Chair and Members of the House Judiciary Committee

From: Michelle Wirzberger, Esq., Dir. of Government Affairs, Baltimore Police Department

Re: Public Safety – Persistent Aerial Surveillance

Position: **OPPOSE**

Chair Clippinger, Vice-Chair Atterbeary, and members of the committee, please be advised the Baltimore Police Department (BPD) **opposes** HB1395.

HB1395 would prohibit the use of persistent aerial surveillance by a unit, agency or political subdivision to gather certain evidence or information in criminal investigation, except under the following circumstances:

1. In accordance with a valid search warrant issued by a judge.
2. On a location for the purpose of executing an arrest warrant.
3. In fresh pursuit of a suspect as defined in §2-304 of the Criminal Procedure Article.
4. To assist in an active search and rescue operation.
5. To locate an escaped prisoner.
6. If a law enforcement officer reasonably believes that the use of the aircraft is necessary to prevent imminent bodily harm to an individual or destruction of evidence. OR
7. If the United States Secretary of Homeland Security indicates that there is a high risk of terrorist attack by a specific individual or organization to counter such a risk.

An earlier iteration of an aerial surveillance program was launched in 2016 without any public notice or awareness. That pilot program ended after only a couple of weeks once disclosure of its operation was made public. Subsequently, Commissioner Harrison was hired in Baltimore in February 2019 and the programs' vendor and its advocates supported a relaunch of the program. After much discussion and consideration, the BPD has initiated a new iteration, the Aerial Investigation Research (AIR) pilot program that is slated to be launched sometime next month. It was important to the Commissioner that this pilot program be handled differently, with proper

notice, added safeguards, and extensive review. Accordingly, we have developed the following framework:

- ***Limited Scope and Duration:*** This pilot program will be active for up to 180 days in order to collect enough data so that we can make a determination of the efficacy of the technology. The program will be focused on the following crimes: murder, non-fatal shootings, armed robberies and car-jackings. Other serious incidents will only be considered on a case by case basis.
- ***Civilian Review and Audits:*** Independent research partners will evaluate the effectiveness of the program: Potential partners include: Morgan State University, New York University, University of Baltimore, and the Rand Corporation. Effectiveness will be measured by:
 - *Impact on the Solve Rate:* Identifying who allegedly committed the crime.
 - *Impact on the Clearance Rate:* Apprehending those who allegedly committed the crime and closing the case.
 - *Public Support of the Program:* Survey conducted before and after the program begins to ensure sustained community support.
 - *Potential Deterrence Effect on Crime:* This will be the most difficult to empirically determine.

Moreover, independent civilian auditors will be engaged to review system use logs to ensure the program is only being used for its intended public safety purpose.

- ***Data Protection:*** That data that is obtained can only be used for the purposes related to the criminal investigation and will not be allowed for any other purpose. The data will be stored for only 45 days during the pilot period (note that BPD will consider longer or shorter durations after evaluation of the program). However, with respect to specific incidents of crimes the evidence collected from this program will be compiled into packets and be a permanent part of the case file. As with all other evidence that information will be provided to the prosecution and be made available to defense counsel through the discovery process.
- ***Public Education of the Pilot Program:*** Over the next couple of weeks BPD will be holding several public meetings to discuss our proposed path forward to inform residents of our approach. After consideration of all public feedback, BPD will negotiate (consistent with City procurement regulations) a Memorandum of Understanding (MOU) with the operator of the aerial surveillance program.

It is also important to know how the technology works. The plane will be flown to collect imagery data covering over 90% of Baltimore City, fly a minimum of forty hours per week and use its system to capture up to 32 square miles of the City per image every second. The resolution of the camera technology is limited to 1 pixel per person, which means that individuals and vehicles are shown as a single dot that cannot be personally identified, but rather can be tracked from a crime scene. This program will NOT be a real-time active surveillance

system and only used for investigative “look-back” after an incident has already occurred and has received a case number or a CAD (computer-aided dispatch) incident number.

The usage of this technology is constitutionally permitted in areas open to the public view based on Supreme Court rulings. We will use this technology similar to other proven investigative systems or techniques, such as Citiwatch cameras and License Plate Readers. Those tools are not prohibited in the manners proposed in this particular bill. If they were, it would lessen their investigative value so much that it may even negate the entire need for their use, as it would for this program.

BPD does not view this program as a panacea or as a single solution strategy. Rather we see it as a potential tool in the tool box. How effective of a tool will be determined by this pilot program. However, we need an appropriate sample set of data to make that determination (using the framework and safeguards as discussed above). This bill will only inhibit our ability to make that determination.

Therefore, we respectfully request an **unfavorable** report on House Bill 1395.