

March 5, 2020

Hon. Chairman Luke Clippinger
6 Bladen Street, House Room 101
Annapolis, MD 21401

Re: HB 1395 – Public Safety – Persistent Aerial Surveillance

Mr. Chair,

HB 1395 adopts a framework for the legal use of persistent aerial surveillance, including the constitutional check of the warrant requirement.

In times of violence and uncertainty, does the rule of law matter? Of course it does. Despite this, there are interests in the state of Maryland operating unconstitutional persistent aerial surveillance.

When Persistent Surveillance Systems started surveilling the city of Baltimore, it did so in a discreet agreement without any public awareness. The wide-area, live-feed surveillance system was developed for wartime use. After being shut down in Los Angeles and Dayton over privacy concerns, the program was brought to Baltimore, funded by philanthropists and authorized by Baltimore City police.

The Supreme Court has long held that aerial surveillance does not constitute a search in considering the Fourth Amendment. However, the persistency of this new technology makes aerial surveillance more equivalent to GPS monitoring, which the Supreme Court has already considered a search. I will not belabor a legal analysis here. However, I would refer you to John Pavletic's note which I cite below and I have uploaded as testimony.

History has shown us that surveillance authorities are frequently abused, they act in secret and in regard to these technologies, it is nearly impossible to hold a government to account. Persistent Surveillance Systems is not the only operator in the persistent surveillance space. As this sector grows, it is expected that companies will become more intrusive to compete.

Again, when this technology was launched, it was done so in secret. The picture you see in front of you is Baltimore City...except for the top portion of the image. That is district six – my district – in Baltimore County. In fact, I can almost see my house. What happens when some unknown law enforcement agency secretly decides to surveil Dundalk, Perry Hall, Timonium or Catonsville? Or maybe Howard County? Or Prince Georges County? Will the decision be arbitrary? Will there be any oversight at all?

Persistent aerial surveillance presents tantalizing opportunities for law enforcement and crime reduction. These benefits will never be enough to avoid the command of the Constitution. Case law places this technology in a precarious position. Rather than letting this issue be settled by litigation, we should adopt a legal and constitutional framework for the use of persistent aerial surveillance.

Thank you for the hearing for House Bill 1395. I am happy to discuss any questions and I ask for a favorable report.

Delegate Robin Grammer