



## Testimony for the House Judiciary Committee

March 6, 2020

### HB 1395 Public Safety – Persistent Aerial Surveillance

#### FAVORABLE with AMENDMENTS

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The ACLU of Maryland supports HB 1395, which would prohibit government entities from conducting “persistent aerial surveillance” to gather evidence or other information in a criminal investigation, with some exceptions.

This is an important, timely effort to regulate the use of aerial surveillance, with local governments and private actors, especially in Baltimore City, shortsightedly eyeing this technology as a panacea for public safety.

This technology brings with it many opportunities—from more affordable ways to gather information for traffic reports to more efficient ways to count deer in the forest. Unregulated, however, warrantless surveillance operations could interfere with residents’ reasonable expectation of privacy, chill First Amendment-protected activities, and lead to discriminatory targeting.

#### **African Americans are at greater risk of being mistakenly identified**

Aerial surveillance systems are often coupled with facial recognition technologies to identify persons from great distances. Studies show that facial recognition algorithms in use by US law enforcement are statistically worse at identifying Black faces than white faces. As a result, because police investigate the closest match, the software puts innocent Black people at higher risk of police investigation than innocent white people.<sup>1</sup>

#### **Surveillance technology has a chilling effect when deployed during First Amendment protected activity**

The use of this technology during First Amendment protected activity, such as peaceful public demonstrations, threatens to chill the exercise of these rights. Persons will simply be less willing to publicly demonstrate if demonstrating subjects them to this intrusive level of surveillance. This is especially concerning in light of

<sup>1</sup> Clare Garvie and Jonathan Frankle, Facial-Recognition Software Might Have a Racial Bias Problem, *The Atlantic* (Apr. 7, 2016), available at <http://www.theatlantic.com/technology/archive/2016/04/the-underlying-bias-of-facial-recognition-systems/476991/>.



recent revelations regarding Geofeedia, a social media monitoring software that has been used by law enforcement agencies and was used in Maryland.<sup>2</sup> The software allows law enforcement to employ facial recognition software to identify faces in photographs of demonstrations posted on social media and cross-reference them with photos of persons with open warrants. Use of surveillance and facial recognition in this context has obvious chilling effects on the exercise of First Amendment freedoms. A recent study shows that individuals' internet use patterns change substantially when they perceive that they are being monitored.<sup>3</sup> And the choice of which demonstrations will trigger the deployment of the facial recognition technology raises concerns about the targeted use against communities of color.

### **Persistent surveillance aircrafts are not like helicopters or other police vehicles**

Persistent surveillance aircrafts aren't subject to the same limitations as helicopters, which are costly and require trained, human pilots, launch pads and flight and ground crews. Rather, surveillance aircrafts are relatively cheap, small and quiet and – unlike helicopters – every single town and city in the state could conceivably afford to fly multiple drones. Because of these fundamental differences, they are particularly well-suited to secret surveillance, so they need specific legal controls.

The ACLU has serious concerns about the use of unmanned aerial vehicle surveillance technology to collect information about individuals suspected of no crime. The pace at which surveillance technology has evolved in recent years has far outstripped the pace at which laws have adapted to protect individuals' privacy. It is incumbent upon state lawmakers to protect Maryland residents' privacy and ensure that this emerging technology is used responsibly in Maryland – not for warrantless surveillance of our ordinary, day to day lives. It is a core value in our society that we do not watch innocent people just in case they do something wrong.

We respectfully urge the committee to consider additional safeguards to the legislation:

1. Require that the footage from surveillance technologies be deleted within a reasonable time but certainly immediately after the criminal infraction has

<sup>2</sup> Kevin Rector and Alison Knezevich, Baltimore Sun, Social media companies rescind access to Geofeedia, which fed information to police during 2015 unrest (Oct. 11, 2016). Available at <http://www.baltimoresun.com/news/maryland/crime/bs-md-geofeedia-update-20161011-story.html>

<sup>3</sup> Jonathan W. Penny, Chilling Effects: Online Surveillance and Wikipedia Use, 31 Berkeley Tech. L.J. (September 2016), available at [https://papers.ssrn.com/sol3/papers2.cfm?abstract\\_id=2769645](https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2769645).



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been resolved;

2. Transparency and accountability measures are needed to allow communities who are subject to this surveillance to know about it and be able to advocate for or against them. Transparency is key in a democratic society, and technology shouldn't change that; and
3. When surveillance technologies are used in violation of the statute or for purposes other than authorized criminal investigations by law enforcement, the data they collect should be inadmissible as evidence in court proceedings.

Before persistent surveillance technologies become ubiquitous in our airspace, we need clear rules so that we can enjoy the benefits of this technology without needlessly sacrificing our privacy and liberty.

For the foregoing reasons, the ACLU of Maryland supports HB 1395.