

**CAROLYN A. QUATTROCKI**  
*Chief Deputy Attorney General*

**LEONARD J. HOWIE III**  
*Deputy Attorney General*

**CARRIE J. WILLIAMS**  
*Deputy Attorney General*

**SHARON S. MERRIWEATHER**  
*Deputy Attorney General*

**ZENITA WICKHAM HURLEY**  
*Deputy Attorney General*



**PETER V. BERNS**  
*General Counsel*

**CHRISTIAN E. BARRERA**  
*Chief of Staff*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

**ANTHONY G. BROWN**  
*Attorney General*

February 24, 2026

**TO:** The Honorable J. Sandy Bartlett  
Chair, Judiciary Committee

**FROM:** Rhea Harris  
Deputy Director, Legislative Affairs, Office of the Attorney General

**RE:** House Bill 398 – Public Safety- Persistent Aerial Surveillance (Oppose)

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The Office of the Attorney General (OAG) opposes House Bill 398- Public Safety – Persistent Aerial Surveillance. House Bill prohibits persistent aerial surveillance by a unit, an agency, or a political subdivision of the State to gather evidence or other information in a criminal investigation, subject to limited exceptions. HB398 defines “persistent aerial surveillance” as 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.

House Bill 398 would significantly impact the work of the Criminal Division of the OAG, in that it would make any evidence obtained by persistent surveillance by a drone inadmissible without a valid judicial search warrant in any criminal, civil, or administrative proceeding. Exceptions exist for hot pursuit, active search and rescue, and locating an escaped prisoner. The Environmental and Natural Resources Crimes Unit (ENRCU) coordinates the investigation and prosecution of criminal environmental violations and other associated criminal charges throughout the State, including cases involving alleged illegal dumping/burial of solid waste, illicit discharge of pollutants, and a range of environmental and natural resource crimes. Because ENRCU frequently uses drone surveillance as an essential and valuable investigatory tool in its cases, House Bill 398 would significantly impair our ability to investigate and prove our cases. ENRCU relies on existing 4th Amendment law (see *Florida v. Riley*, 488 U.S. 445 (1989)(helicopter in legal airspace hovering 400' over a greenhouse in a residential backyard to observe/photograph contents was not a ‘search’ and did not violate 4th Amendment), *Dow Chemical Company v. United States*, 476 U.S. 227 (1986)(aerial photography by EPA and open fields doctrine), and *U.S. v. Dunn*, 480 U.S. 294 (1987)(open fields doctrine, generally).

In addition to ENRCU, by prohibiting drone surveillance, House Bill 398 would impact a variety of government public safety activities, including: finding lost children or vulnerable adults, firefighting and prevention, public health issues, and mapping/surveying. Additionally, House Bill 398 only prohibits the introduction of such evidence by units of the State. Nothing in the bill would prohibit a citizen or a non-profit entity from using a drone without a search warrant to obtain evidence they wish to admit in a civil action (contested divorce, auto tort, etc.).

OAG suggests that this bill be referred to a summer study to bring stakeholders together to survey the other enacted state laws and monitor for opinions from the Supreme Court of the United States and the Supreme Court of Maryland.

For the reasons stated above, the Office of the Attorney General opposes House Bill 398 and urges the bill be referred to a summer study.

Cc: Members of the Committee