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**HB 0398 – Public Safety – Persistent Aerial Surveillance**

Dear Chair Bartlett and Distinguished Members of the Judiciary Committee,

The Maryland Fraternal Order of Police **OPPOSES House Bill 0398 – Public Safety - Persistent Aerial Surveillance**. This legislation would place broad limits on the ability of law enforcement to conduct surveillance necessary for the public's safety.

Police departments around the State of Maryland are currently able to use aerial surveillance, including the use of manned helicopters and fixed-wing aircraft, flying lawfully in navigable airspace, to conduct surveillance related to criminal activity. **House Bill 0398**, although presumably intended to place narrow limits on this activity, actually places broad limits on a police department's ability to conduct surveillance related to detecting and investigating criminal activity. The language in this bill regarding "a person's action over time" is too vague and will place unrealistic limitations on police departments' ability to use aircraft to interdict and investigate criminal activity. This language could easily be interpreted to mean seconds or minutes of video is sufficient to qualify for "action over time."

The requirement that the federal government is the only entity that can designate a "high risk of terrorist activity" is far too broad and will drastically limit police departments' abilities to respond to threats, mitigate threats, or determine that there is no threat. There is also no definition of what such a "high risk" is composed of in this legislation. The restrictions are also far too specific requiring a federal cabinet-level official to make a declaration that there is a threat, it is high-risk, that a specific individual or organization has been identified as involved, and that aerial surveillance is **necessary** to counter the threat (i.e. the determination is that without the aerial surveillance, there is NO other way to stop the threat). This is not something that any such Secretary of Homeland Security will be so directly and specifically involved in to allow a local agency to counter such a threat.

Additionally, there are instances where police use aerial surveillance for a variety of other tasks, such as pre-warrant security before a warrant has been signed and providing general security at large events, such as fairs or parades. Due to the restrictions in this legislation, the ability to use aerial systems for crime or crash scene analysis will set agencies back decades in technological abilities and will cause roadways and crime scenes to be closed to the public for many times the number of hours currently needed with aerial technologies. Aerial systems are used as a de-escalation tool in emergencies, such as suicidal subjects, and as a way for police to assist local businesses and residences with security assessments. These uses would be prohibited under this bill because there is no "imminent threat."

The United States Supreme Court has already ruled, in *Florida v. Riley* (488 U.S. 445 (1989)) that there is no reasonable expectation of privacy from aerial surveillance in situations where a person's

activity can be seen by a private citizen flying in airspace legally. Because there are already constitutional protections in place that limit a police officer's ability to use, without a warrant, any surveillance technique or tool that unreasonably intrudes upon society's reasonable expectation of privacy, placing additional restrictions on police departments' use of aerial surveillance needlessly restricts law enforcement's ability to investigate a wide range of illegal activity.

The observation of areas, including public areas, that are not subject to the reasonable expectation of privacy are exempt from the warrant requirements of the Fourth Amendment. (*Coolidge v. New Hampshire*, 403 U.S. 443 (1971)). Therefore, adding a requirement for officers to obtain a warrant for a search which, constitutionally, does not require a warrant, sets a new burden that is neither historically required nor is legally necessary.

For these reasons, the Maryland Fraternal Order of Police **OPPOSES** House Bill 0398.



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