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POSITION ON PROPOSED LEGISLATION

BILL: HB 398 Public Safety - Persistent Aerial Surveillance

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 02/24/2026

The Maryland Office of the Public Defender (MOPD) strongly believes that persistent aerial surveillance is an overly broad invasive tool that acts as a general warrant capturing data on broad swaths of individuals. The U.S. Court of Appeals for the Fourth Circuit seems to agree. *See [Leaders of a Beautiful Struggle v. The Baltimore Police Department, 2 F.4th 330 \(4th Cir. 2022\)](#)* (on en banc review, holding that an aerial surveillance program that enables police to deduce from the whole of individuals' movements is a search such that accessing its data requires a warrant).

While House Bill 398 seeks to address the immediate concerns of persistent aerial surveillance, a broader approach is needed to ensure we are addressing the variety of existing and emerging invasive technologies used by law enforcement. In recent years, surreptitious surveillance techniques of varying levels of invasiveness and effectiveness are increasingly used throughout the State. Despite this growing field, there continues to be a lack of transparency surrounding the use of surveillance techniques by law enforcement. More disturbingly, when relied upon to arrest and prosecute individuals, there are incomplete or opaque disclosures surrounding their usage.

MOPD encourages the Judiciary Committee to go further than the provisions in H.B. 398 and contemplate a holistic approach to regulate these various technologies rather than address them individually in a piecemeal fashion. Such an approach would ensure that, when these technologies are implemented, it is done in a transparent, constitutional, and scientifically reliable manner.

Specifically as to the technology of persistent aerial surveillance, MOPD believes HB 398 would permit the use of this invasive technology in an unjustifiable number of situations and does not clearly lay out what would be required to comply with the law. Specifically, HB 398 would permit the government to utilize PAS in seven broad situations without the necessity of a warrant. It is not clear from the language of the bill what standard of proof would be required to utilize the technology in these situations or what limitations, if any, would exist upon the use of the technology in these situations. For example, the bill would permit the State to utilize PAS when "TO LOCATE AN ESCAPED PRISONER." Hypothetically, if a prisoner were to escape from custody in Cumberland, would the State be permitted to utilize PAS to look for the escape prisoner in Baltimore City? If so, for how long? All without, per the language of the bill, the necessity for a warrant or permission of a Court.

MOPD is also concerned that HB 398 lacks clarity in terms of how it is to be implemented. PAS, by its nature, is a backwards looking technology. A plane equipped with a highly sophisticated

camera records a broad swatch of area over a period of time. At a later time, the utilizer of the technology can go back into the recorded material and utilize it to follow where individuals who have been recorded have come and gone. Would HB 398 require the government to obtain a warrant (where the other exceptions don't exist) prior to the plane taking off and turning its camera on, or only require a warrant, or specified exception, to access and review the recorded footage? The bill language is unclear.

To conclude MOPD believes, persistent surveillance is an overly broad invasive tool that acts as a general warrant capturing data on broad swaths of individuals. Its use should not be permitted period. MOPD would encourage the legislature to contemplate a holistic approach to regulate various invasive technologies with the aim of protecting our privacy and liberties, rather than address them individually in a piecemeal and haphazard fashion. In terms of the piecemeal approach attempted by this bill, the permitted uses are overly broad and ill defined. For those reasons, MOPD urges an unfavorable report.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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