

**Department of Legislative Services**  
Maryland General Assembly  
2023 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 228  
Judiciary

(Delegate Grammer)

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**Public Safety - Persistent Aerial Surveillance**

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This bill, with specified exceptions, prohibits a unit or agency of the State or a political subdivision of the State from conducting “persistent aerial surveillance” to gather evidence or other information in a criminal investigation.

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**Fiscal Summary**

**State Effect:** Potential significant operational impact for some State law enforcement agencies, as discussed below. State finances are not anticipated to be materially affected.

**Local Effect:** Potential operational impact for some local law enforcement agencies. Local finances are not anticipated to be affected.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A unit or agency of the State or political subdivision of the State *may* conduct persistent aerial surveillance:

- in accordance with a valid search warrant issued by a judge;
- on a location for the purpose of executing an arrest warrant;
- in fresh pursuit of a suspect, as specified;
- to assist in an active search and rescue operation;
- to locate an escaped prisoner;

- if a law enforcement officer reasonably believes that the use of aircraft is necessary to prevent imminent serious bodily harm to an individual or destruction of evidence; or
- if the U.S. Secretary of Homeland Security determines that credible intelligence indicates that there is a high risk of terrorist attack by a specific individual or organization, to counter such a risk.

“Persistent aerial surveillance” means 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.

**Current Law:** Maryland currently has no laws limiting the use of aerial surveillance. The Fourth Amendment to the U.S. Constitution protects individuals from unreasonable searches and seizures by the government and has been interpreted to create a right of privacy. The reasonableness of a governmental search often depends on the reasonableness of the expectation of privacy on the part of the person subject to the search, the location of the search, and the breadth of information gathered.

Generally, U.S. Supreme Court decisions have held a warrantless search of an individual’s home to be unreasonable, with certain clearly delineated exceptions. However, courts have also held that the Fourth Amendment does not protect individuals from searches that take place in “open fields” because it is unreasonable for a person to have an expectation of privacy over activities that take place in such areas. Technological advances have made traditional legal standards that were often location based difficult to apply, and courts and lawmakers have increasingly had to grapple with the threshold question of whether information gathered through emerging technology constitutes a search at all.

**State Fiscal Effect:** While not expected to result in a material fiscal impact, the bill results in potentially significant operational impacts for several State agencies with law enforcement units. For example, the Natural Resources Police (NRP) within the Department of Natural Resources advises that the bill prohibits aerial video documentation of violations such as oyster sanctuary or gear prohibitions, nighttime deer hunting, and unsafe boat operations. While NRP would still be able to use human observers in NRP aircraft to provide eyewitness testimony, NRP advises that video is often the best evidence that can be provided, especially to judges, juries, and prosecutors who are unfamiliar with natural resources law or regulations and the methods used by persons to commit such violations. The Alcohol and Tobacco Commission similarly advises that the bill has an operational impact on its ability to arrange for the use of drones to aid in investigations related to the transportation and sale of alcohol and tobacco.

In addition, the Department of Public Safety and Correctional Services advises that it regularly uses aerial surveillance to monitor activities of inmates and visitors in

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correctional facilities, which may not fall within any of the exceptions provided under the bill but could result in criminal charges.

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### **Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See HB 545 of 2022; HB 159 of 2021; and HB 1395 of 2021.

**Designated Cross File:** None.

**Information Source(s):** Baltimore, Frederick, and Somerset counties; City of Havre de Grace; Alcohol and Tobacco Commission; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2023  
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