



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chair and
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 7, 2023

RE: **HB 228 – Public Safety - Persistent Aerial Surveillance**

POSITION: OPPOSE

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) OPPOSE HB 228. This bill, with specified exceptions, prohibit a unit or agency of the state or political subdivision from conducting persistent aerial surveillance to gather evidence or other information in a criminal investigation.

Specific concerns with HB 228 are enumerated below.

1. The definition of Persistent Aerial Surveillance- The definition states it is "video or images ... depict A PERSONS ACTIONS over time". Law enforcement will use UAS to film over a yard or specified area searching for stolen property. This is permissible under *California V. Ciraolo* (1986) "The Court stated that Fourth Amendment protection of the home had never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares. Nor did the mere fact Ciraolo had erected a 10-foot fence around his yard preclude an officer's observations from a public vantage point where he had a right to be and which rendered activities clearly visible." This definition would prohibit UAS from being used for these purposes.
2. Law enforcement officers working in narcotics can do controlled buys with UAS allowing officers to see the buy in plain view in a public area in a much safer environment. The bill would prohibit this type of surveillance.
3. The bill does not differentiate between public and private places. As noted above in *Ciraolo* and also reiterated in *Florida v. Riley* (1989), private property viewed from the air does not automatically receive Fourth Amendment protection.
4. While the bill outlines acceptable uses, it does not provide for the use of videos/photos taken at a motor vehicle collision, which may be used as evidence in a criminal trial. The use of UAS to do reconstruction photos is used throughout the state and will continue to

expand. This ability allows for faster reconstruction work, allowing roads to be re-opened quicker and limits the amount of time police officers and civilians have to be on the road, increasing their safety.

5. Although the bill specifies UAS may be used in accordance with a valid search warrant or to execute an arrest warrant, it's not clear whether the warrant would need to specify the possible use of UAS. This detail may not be known at the time the warrant is being sought.

The use of (UAS) is becoming much more prevalent in law enforcement. Limiting their use as specified in this bill is very short sighted and will significantly hinder law enforcement's ability to safely and effectively executive their job.

For these reasons, MCPA and MSA OPPOSE HB 228 and respectfully request an UNFAVORABLE report.