

Bill Number: HB 228
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION TO HOUSE BILL 228
AERIAL SURVEILLANCE

I write in opposition of House Bill 228 that severely limits aerial surveillance. Such surveillance can be an effective crime-fighting tool for law enforcement.

The Fourth Amendment guarantees the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. The Supreme Court and countless State Courts have held for decades that a person has no right to privacy in what you display in a public place. Ever since Katz v. United States (1967), the Supreme Court has ruled that the Fourth Amendment protects a person in places where there is a reasonable expectation of privacy.

Thus, the Supreme Court has held that observing and photographing people's homes and surrounding areas from an airplane, flying at 1,000 feet, doesn't violate the Fourth Amendment (see California v. Ciraolo (1986)). It also held the same as to a helicopter overflight at 400 feet (Florida v. Riley (1989), though one of the justices whose vote was necessary for upholding the government action (Justice O'Connor) noted that "public use of altitudes lower than that – particularly public observations from helicopters circling over the curtilage of a home – may be sufficiently rare that police surveillance from such altitudes would violate reasonable expectations of privacy."

Why would we pass a law which goes further than the Fourth Amendment and Supreme Court case law require. What about the next time we hold a marathon, will law enforcement not be able to protect the runners and the public with persistent aerial surveillance?

What is next, the cameras on our streets that capture crime and helps convict offenders every day? What is next, the cameras in stores, the cameras on our door bells? Certainly those videos are much more intrusive then aerial surveillance at thousands of feet up and we all embrace those.

All of us in society in this day and age know and accept that everything we do in public is being seen and recorded.

A police officer has a right to follow you on a public street. They have the right to stand on top of a building and watch you outside using binoculars. It is not a violation of the Fourth Amendment to video a person on a public street while they are walking or driving.

Persistent aerial surveillance with video is not a violation of the Fourth Amendment. Why would the State of Maryland want to severely hamper a technique that may assist in combating crime by going beyond what the Constitution protects?

Persistent aerial surveillance may not be currently in use in the State, but should not be outlawed in case a jurisdiction in the future may want to use it to fight crime.

The Fourth Amendment and the Supreme Court cases that interpret it are more than sufficient to protect the citizens of the State of Maryland.

I urge an unfavorable report.