



**Testimony for the Senate Judicial Proceedings Committee
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SB 926 – Criminal Procedure – Government Drone Use – Limitations

SUPPORT

The ACLU of Maryland supports SB 926, placing reasonable restrictions on law enforcement’s use of drones. This is an important, timely effort to regulate the use of unmanned aerial vehicles (UAVs), or drones, by establishing rules and standards for their operation, protections for individual privacy, and transparent public oversight.

Drone technology brings with it many opportunities – from more affordable ways to gather information for traffic reports to more efficient ways to count deer in the forest. Unregulated, however, warrantless drone operations could interfere with residents’ reasonable expectation of privacy, chill First Amendment-protected activities, and lead to discriminatory targeting.

Drone technology is powerful, and is rapidly advancing, as well as becoming cheaper. As a result, we will soon see more and more drones in the skies. In fact, Congress has required the Federal Aviation Administration (FAA) to open domestic airspace more widely to drones by 2015. Currently in development are drones small enough to fly into houses,¹ undetected and silent.² They can hover and observe people’s activity, zooming in on any area.³ Furthermore, drones can be equipped with a host of sophisticated surveillance technologies, including identifying people carrying guns and tracking their cell phones⁴ and invasive biometric tracking tools that can recognize faces and “track people persistently across wide areas,” or identify individuals using digital stereotyping (using “everything from age to gender to ethnicity to skin color to height and weight - the system can keep track of targets at ranges that are impossible to do with facial recognition. Like 750 feet away or more.”)⁵

Drones are not like helicopters or any other police vehicle. They aren’t subject to the same limitations as helicopters, which are costly and require trained, human pilots, launch pads and flight and ground crews. Rather, drones are cheap, small and quiet and – unlike helicopters – every single town and city in the state could conceivably afford to fly multiple drones. Because of these fundamental differences, they are particularly well-suited to secret surveillance, so they need specific legal controls.

The ACLU has serious concerns about the use of unmanned aerial vehicle surveillance technology to collect information about individuals suspected of no crime. The pace at which surveillance technology has evolved in recent years has far outstripped the pace at which laws have adapted to protect individuals’ privacy. It is incumbent upon state lawmakers to protect

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¹ Bumiller and Shanker, “War Evolves with Drones, Some Tiny as Bugs” (6/19/2011), *The New York Times*, http://www.nytimes.com/2011/06/20/world/20drones.html?pagewanted=all&_r=0

² Beckhusen, “Super-Silent Owl Drone Will Spy on You Without You Ever Noticing,” (July 19, 2102) *Wired Magazine*, <http://www.wired.com/dangerroom/2012/07/owl/>

³ Gallagher, “Could the Pentagon’s 1.8 Gigapixel Drone Camera Be Used For Domestic Surveillance?” (Feb. 6, 2013), *Slate*, <http://www.wired.com/dangerroom/2012/07/owl/>

⁴ McCullagh, “DHS builds domestic surveillance tech into Predator drones,” (Mar. 2, 2013), *CNET*, http://news.cnet.com/8301-13578_3-57572207-38/dhs-built-domestic-surveillance-tech-into-predator-drones/

⁵ Shachtman, “Army Tracing Plan: Drones That Never Forget a Face” (Sept. 28, 2011), *Wired Magazine*, [http://www.wired.com/dangerroom/2011/09/drones-never-forget-a-face/\(internal quotations omitted\)](http://www.wired.com/dangerroom/2011/09/drones-never-forget-a-face/(internal%20quotations%20omitted))

Maryland residents' privacy and ensure that this emerging technology is used responsibly in Maryland – not for warrantless surveillance of our ordinary, day to day lives. It is a core value in our society that we do not watch innocent people just in case they do something wrong.

SB 926 strikes the right balance by permitting law enforcement use of drones only in emergencies or with a probable cause warrant issued by a judge. It requires data minimization by prohibiting law enforcement from identifying anyone other than the target that justified the warrant and drone deployment, and requires that data on bystanders be deleted promptly. When drones are used for purposes other than authorized criminal investigations by law enforcement, the data they collect would be prohibited from being introduced as evidence in court.

In addition, the bill would establish a robust reporting requirement to keep policymakers and the public informed about drone use in the Free State. Transparency is key in a democratic society, and technology shouldn't change that.

In 2013, a number of other states place responsible limits on the use of domestic drones. Maryland should join Florida, Idaho, Illinois, Montana, Oregon, Tennessee and Texas in passing legislation to regulate government deployment of this power technology, before our friendly skies are swarming with video cameras and other high tech surveillance tools.⁶

Before drones become ubiquitous in our airspace, we need clear rules so that we can enjoy the benefits of this technology without needlessly sacrificing our privacy and liberty. SB 926 will provide the needed checks and balances to prevent indiscriminate mass surveillance.

For the foregoing reasons, the ACLU of Maryland supports SB 926.

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⁶ In addition to the states listed above, Alaska adopted a resolution creating a drone task force to recommend policies and legislation; Virginia and North Carolina enacted a two-year moratorium on drones while they are being evaluated; Governor of Maine vetoes their legislation and the New Jersey Governor pocket vetoed their legislation. For the most up-to-date listing of drone legislation, see, <https://www.aclu.org/blog/technology-and-liberty/status-domestic-drone-legislation-states>