
MEMORANDUM OF SUPPORT FOR THE PROTECT OUR PRIVACY ACT

A.5251 Assemblymember Kim/S.4162 Senator Ramos
May 2023

The Surveillance Technology Oversight Project supports the Protect Our Privacy Act (A.5251 Kim/S.4162 Ramos) and urges the legislature to pass, and the Governor to sign, this bill.

The Surveillance Technology Oversight Project (S.T.O.P.) litigates and advocates for New Yorkers' privacy, working to abolish local governments' systems of mass surveillance. Our work highlights the discriminatory impact of surveillance on Muslim Americans, immigrants, the LGBTQ+ community, indigenous peoples, and communities of color, particularly the unique trauma of anti-Black policing. S.T.O.P. fights to ensure that technological advancements don't come at the expense of age-old rights. We hope to transform New York City and State into models for the rest of the United States of how to harness novel technologies without adversely impacting marginalized communities.

New York is increasingly turning to drones for police use. New York governments maintain at least 530 active drone registrations across 85 government entities.¹ Police departments rarely disclose how they use drones, how often they are used, or what information they collect.² But drones can be incredibly dangerous to civil rights and liberties, as they enable the government to spy on large gatherings, like protests,³ from a long distance and with the aid of biased biometric identification technologies like facial recognition.⁴

A.5251 and S.4162 would prevent law enforcement agencies from using drones outside of narrow circumstances like search and rescue missions and natural disasters. They would also prohibit circumvention of these restrictions by police use of third-party drone data.

- **Police use drones to watch protests.**⁵ In 2020, “[t]he Department of Homeland Security deployed helicopters, airplanes and drones over 15 cities where demonstrators gathered to protest the death of George Floyd, logging at least 270 hours of surveillance.” This took place around the country: “Aircraft filmed demonstrations in Dayton, Ohio; New York City; Buffalo and Philadelphia, among other cities, sending video footage in real time to control centers.”

¹ <https://www.nyclu.org/en/campaigns/prying-eyes-government-drone-data-across-new-york-state>.

² <https://www.nyclu.org/en/campaigns/prying-eyes-government-drone-data-across-new-york-state>.

³ <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

⁴ <https://www.face-six.com/drone/>.

⁵ <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

- **Drones enable police to constantly monitor the general populace.**⁶ Baltimore police operated an aerial surveillance program that “put the daytime movements of virtually all Baltimore residents under surveillance for 12 hours a day over six months.” The program flew planes equipped with long range cameras across the city during all daylight hours. If surveillance drones can fly, no one can feel secure in the privacy of their movements to the local mosque, abortion clinic, or walk to school.
- **Drone surveillance is in direct conflict with the values expressed in the federal and New York constitutions.** The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches. It likewise prohibits searches absent a warrant in most circumstances. These same concepts were incorporated into Section Twelve of the New York State Constitution. But drones, by design and application, surveil large groups of people without any reasonable basis for suspecting that each individual in that group is responsible for carrying out illegal or dangerous activities. This would seem in opposition to the federal and state constitutions, but due to a series of misguided judicial decisions, a warrant is not generally required before conducting drone surveillance. New York has a chance to reenact constitutional privacy values by passing A.5251 and S.4162.
- **Mass surveillance perpetuates existing inequalities in the legal system.** In 2020, the NYPD flew drones passed a Black Lives Matter organizer’s home while he was falsely accused of assaulting an officer.⁷ It has been widely alleged this tactic was used to intimidate his movement for racial justice and police reform. Moreover, surveillance technology like drones is more likely to be deployed in under resourced and overpoliced areas, thus entrenching ongoing and historical biases.⁸
- **New York cannot fulfill its promise of becoming a sanctuary state if it continues engaging in mass surveillance.** New York has committed to being a sanctuary for immigrants, yet it has not yet prohibited information sharing between New York police agencies and federal immigration authorities or out-of-state police departments. With the looming prospect of mass drone surveillance, immigrants must worry that police departments are surveilling them and their communities with ultra-sensitive cameras from the sky and sending that information to those who are hostile to their presence in the country.

If implemented, the Protect Our Privacy Act would do the following:

- Prohibit police from utilizing drones to conduct any mass or targeted surveillance under any circumstances.

⁶ <https://www.aclu.org/press-releases/federal-appeals-court-rules-baltimore-aerial-surveillance-program-unconstitutional>.

⁷ <https://www.vice.com/en/article/jgxxm4/black-lives-matter-activist-nypd-drones-instagram-live>.
<https://nymag.com/intelligencer/2021/05/derrick-ingram-nypd-standoff.html>.

⁸ <https://www.sciencedirect.com/science/article/abs/pii/S0160791X18301878>.

- Prohibit police from using drones to monitor protests, concerts, religious gatherings, and other gatherings protected by the First Amendment.
- Embrace public safety by allowing police to utilize drones for search and rescue operations and to survey natural disasters.
- Suppress evidence obtained in violation of the act.
- Create a private right of action for New Yorkers whose rights under the Protect Our Privacy Act have been violated.

By passing this bill, New York will help create a system for the responsible use of government drones. For these reasons, we urge the legislature to pass and the Governor to sign the Protect Our Privacy Act (A.5251 Kim/S.4162 Ramos).