

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 823

S.P. 268

In Senate, March 2, 2017

An Act To Promote Transparency with Respect to Surveillance Technology

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator BELLOWS of Kennebec.
Cosponsored by Representative MOONEN of Portland and
Senators: BRAKEY of Androscoggin, KATZ of Kennebec, LANGLEY of Hancock,
Representatives: BABBIDGE of Kennebunk, CEBRA of Naples, GUERIN of Glenburn,
HARVELL of Farmington, JOHANSEN of Monticello.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §59** is enacted to read:

3 **§59. State acquisition and use of surveillance technology**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings:

6 A. "State entity" means any office, department, agency, authority, institution or other
7 instrumentality of the State;

8 B. "Surveillance data" means any electronic data collected, captured, recorded,
9 retained, processed, intercepted, analyzed or shared by surveillance technology; and

10 C. "Surveillance technology" means any electronic surveillance device, hardware or
11 software that is capable of collecting, capturing, recording, retaining, processing,
12 intercepting, analyzing, monitoring or sharing audio, visual, digital, location, thermal,
13 biometric or similar information or communications specifically associated with, or
14 capable of being associated with, any specific person or group or any system, device
15 or vehicle that is equipped with an electronic surveillance device, hardware or
16 software.

17 **2. Surveillance technology; requirements for acquisition and use.** A state entity
18 may not seek funding or in-kind support to acquire surveillance technology; acquire,
19 share or borrow surveillance technology; use surveillance technology for a purpose or in
20 a manner not previously approved by the Legislature under this subsection; or request
21 proposals for or enter into an agreement with another entity to acquire, share, borrow or
22 otherwise use surveillance technology or surveillance data, unless the state entity:

23 A. Holds a public hearing regarding the functionality of the proposed surveillance
24 technology to be acquired or used; the proposed activity or activities relating to
25 surveillance technology; adverse effects, if any, the use of the proposed technology
26 could have on civil rights and civil liberties; measures that could be implemented to
27 avoid any adverse effects; and with which other entities, if any, the state entity may
28 voluntarily share surveillance data. The state entity shall publish notice of the public
29 hearing in a newspaper with general circulation throughout the State at least 14 days
30 in advance of the public hearing. The state entity shall provide the opportunity for
31 members of the public to provide written and oral testimony at the public hearing and
32 to file written testimony within 10 days of the close of the public hearing; and

33 B. Obtains legislative approval of the proposed activity or activities relating to
34 surveillance technology. For the purposes of this paragraph, "legislative approval"
35 means enactment of legislation that:

36 (1) Expressly approves the use of the surveillance technology for a specified
37 activity or activities;

38 (2) Limits the use of the surveillance technology to the expressly approved
39 activity or activities under subparagraph (1);

1 (3) Enumerates with which other entities, if any, the state entity may voluntarily
2 share the surveillance data; and

3 (4) Provides that legislative approval for the use of the surveillance technology is
4 contingent upon the implementation of any measures the Legislature considers
5 necessary to avoid adverse effects of that use on civil rights and civil liberties.

6 **Sec. 2. 25 MRSA §4501, sub-§§3 and 4**, as enacted by PL 2015, c. 307, §1, are
7 amended to read:

8 **3. Acquisition of unmanned aerial vehicles.** ~~The~~ Subject to the additional
9 requirements imposed by Title 5, section 59, the acquisition of an unmanned aerial
10 vehicle by a law enforcement agency must be approved by the governing body of the
11 governmental unit overseeing the law enforcement agency seeking to make such an
12 acquisition or, in the case of a state agency, by the commissioner of that agency.

13 **4. Law enforcement agency operation of unmanned aerial vehicles.** A law
14 enforcement agency's operation of an unmanned aerial vehicle must fully comply with all
15 Federal Aviation Administration requirements and guidelines, including the acquisition of
16 a certificate of authorization or waiver from the Federal Aviation Administration and with
17 the requirements imposed in Title 5, section 59. Additionally, a law enforcement
18 agency's use of an unmanned aerial vehicle is governed by the following provisions.

19 A. A law enforcement agency may not use an unmanned aerial vehicle before
20 adopting standards that meet, at a minimum, the standards set forth in subsection 5.

21 B. Except as permitted by a recognized exception to the requirement for a warrant
22 under the Constitution of Maine or the United States Constitution, a law enforcement
23 agency may not use an unmanned aerial vehicle for criminal investigations without a
24 warrant.

25 C. Notwithstanding paragraph A, a law enforcement agency may use an unmanned
26 aerial vehicle for the purpose of a search and rescue operation when the law
27 enforcement agency determines that use of an unmanned aerial vehicle is necessary
28 to alleviate an immediate danger to any person or for training exercises related to
29 such uses.

30 D. Notwithstanding paragraph A, a law enforcement agency may use an unmanned
31 aerial vehicle for purposes other than the investigation of crime, including, but not
32 limited to, aerial photography for the assessment of accidents, forest fires and other
33 fire scenes, flood stages and storm damage.

34 E. In no case may a weaponized unmanned aerial vehicle be used or its use
35 facilitated by a state or local law enforcement agency in this State.

36 F. A law enforcement agency may not use an unmanned aerial vehicle to conduct
37 surveillance of private citizens peacefully exercising their constitutional rights of free
38 speech and assembly.

39 G. Notwithstanding paragraph A, a law enforcement agency may use an unmanned
40 aerial vehicle for an emergency use approved by the chief administrative officer of
41 the agency or the Governor.

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SUMMARY

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This bill requires a state entity to hold a public hearing and obtain legislative approval prior to engaging in certain activities relating to the acquisition and use of surveillance technology.

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