Montgomery County Council

Committee: GO
Committee Review: At a future date
Staff: Christine Wellons, Chief Legislative Attorney
Purpose: To receive testimony – no vote expected

AGENDA ITEM #12
March 18, 2025
Public Hearing

SUBJECT

Bill 4-25, Surveillance Technology - Acquisition and Use by the County

Lead Sponsors: Councilmember Mink and Council President Stewart

Co-Sponsor: Councilmembers Balcombe and Luedtke

EXPECTED ATTENDEES

Public speakers

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Receive testimony.

DESCRIPTION/ISSUE

Bill 4-25 would:

(1) require the submission of impact reports, and the adoption of regulations, prior to the acquisition, funding, or use by the County of certain surveillance technology;
(2) limit the acquisition and use of facial recognition technology by the County consistent with state law;
(3) require annual reports and public hearings regarding surveillance technology; and
(4) generally amend the law regarding the acquisition, funding, and use of surveillance technology by the County.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

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Agenda Item #12
March 18, 2025
Public Hearing

M E M O R A N D U M

March 13, 2025

TO: County Council

FROM: Christine M.H. Wellons, Chief Legislative Attorney

SUBJECT: Bill 4-25, Administration – Surveillance Technology - Acquisition and Use by the County

PURPOSE: Public hearing – receive testimony

Bill 4-25, Surveillance Technology - Acquisition and Use by the County, sponsored by Lead Sponsors Councilmember Mink and Council President Stewart and Co-Sponsors Councilmembers Balcombe and Luedtke, was introduced on February 11, 2025. A public hearing is tentatively scheduled for March 18, 2025, at 1:30 p.m. A worksession of the Government Operations and Fiscal Committee will be scheduled for a later date.

Bill 4-25 would:

(1) require the submission of impact reports, and the adoption of regulations, prior to the acquisition, funding, or use by the County of certain surveillance technology;
(2) limit the acquisition and use of facial recognition technology by the County consistent with state law;
(3) require annual reports and public hearings regarding surveillance technology; and
(4) generally amend the law regarding the acquisition, funding, and use of surveillance technology by the County.

BACKGROUND

The purpose of the bill would be to establish a transparent process through which safeguards are put in place regarding the County's acquisition and use of any new surveillance technology.

BILL SPECIFICS

The bill would add a new article to Chapter 2 {Administration} of the County Code. The new article would be entitled the "Surveillance Technology Transparency and Civil Liberties Act".

Under the bill, before the County acquires or uses a new (post-2020) surveillance technology, it would be required to undergo an impact study process, and to adopt Method (1) regulations regarding the use of the technology. The general definition of "surveillance technology" would include "any electronic device, hardware, or software that is intended to

collect, capture, record, retain, process, intercept, analyze, monitor, or share audio, visual, digital, location, thermal, biometric, behavioral, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group."

First, the County agency seeking to use a new technology would be required to publish a "surveillance technology impact report." The impact report would include:

- a description of the new surveillance technology and how it works;
- the proposed purposes of the surveillance technology;
- if the surveillance technology will not be uniformly deployed throughout the County, the factors that will be used to determine where the technology is deployed;
- the fiscal impact of the surveillance technology;
- research on the efficacy of the surveillance technology, including peer-reviewed academic literature if available; and
- an assessment identifying:
    - potential adverse impacts the surveillance technology, if deployed, might have on civil liberties and civil rights; and
    - measures that will be implemented to safeguard the public from the potential adverse impacts.

Second, prior to acquiring or using the new surveillance technology, the agency would be required to promulgate Method (1) regulations. As a part of that process, the agency would be required to submit to the Council a report on the anticipated impacts of the proposed regulations on racial equity and social justice.

The regulations would be required to address:

- the purposes the surveillance technology is intended to advance;
- the authorized uses of the surveillance technology;
- the prohibited uses of the surveillance technology;
- procedural requirements to govern the authorized uses of the technology;
- the maintenance and dissemination of surveillance data associated with the technology, including the sharing of collected surveillance data;
- measures to minimize the unauthorized collection of surveillance data;

- measures to minimize the unauthorized access of surveillance data, including encryption and access control mechanisms;

- measures to delete unauthorized surveillance data;

- data retention requirements related to the surveillance data; and

- auditing and oversight requirements.

The bill would "grandfather" technologies already in use by the County prior to 2020. In addition, it would include a transition process for surveillance technologies acquired after 2020 but before the effective date of the bill. For those technologies, the using agency would be required to submit Method (1) regulations to the Council within nine months after the effective date of the bill. If the regulations are not submitted to the Council or the Council disapproves of the regulations, then the agency would have to desist acquiring or using the technology.

This packet contains:	Circle #
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Bill No. 4-25
Concerning: Administration – Surveillance Technology - Acquisition and Use by the County
Revised: 2/3/2025 Draft No. 9
Introduced: February 11, 2025
Expires: December 7, 2026
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Mink and Council President Stewart
Co-Sponsor: Councilmembers Balcombe and Luedtke

AN ACT to:

(1) require the submission of impact reports, and the adoption of regulations, prior to the acquisition, funding, or use by the County of certain surveillance technology;
(2) limit the acquisition and use of facial recognition technology by the County consistent with state law;
(3) require annual reports and public hearings regarding surveillance technology; and
(4) generally amend the law regarding the acquisition, funding, and use of surveillance technology by the County.

By adding
Montgomery County Code
Chapter 2, Administration
Article XV. Surveillance Technology.
Sections 2-160, 2-161, 2-162, 2-163, 2-164, and 2-165

Boldface	*Heading or a defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland, approves the following Act:

Sec 1. Sections 2-160, 2-161, 2-162, 2-163, 2-164, and 2-165, of Article XV, are added, as follows:

ARTICLE. XV. SURVEILLANCE TECHNOLOGY.

2-160. Title.

This Article is known as the "Surveillance Technology Transparency and Civil Liberties Act".

2-161. Definitions.

In this Article, the following terms have the meanings indicated.

Agency means a unit or instrumentality of the County government and includes any County department or office.

Facial recognition technology means a computer program, a service, or any other technology that analyzes facial features and is used by or at the direction of an agency for the for the identification, verification, or persistent tracking of individuals in still or video images.

Facial recognition technology does not include technology:

(1) used only for the analysis of facial features to grant or deny access to an electronic device; or

(2) that uses an automated or semiautomated process only for the purpose of redacting a recording or an image for release or disclosure outside an agency to protect the privacy of a subject depicted in the recording or image if the process does not generate or result in the retention of any biometric data or surveillance information.

Lead agency means an agency, identified by the Chief Administrative Officer, as having primary responsibility for the acquisition, funding, or use of a new

surveillance technology.

New surveillance technology means any type of surveillance technology, the acquisition, funding, or use of which is not yet authorized by a Method (1) regulation adopted under Section 2-162.

New surveillance technology includes a material alteration or enhancement in the functionalities or capabilities of a technology previously authorized under Section 2-162.

New surveillance technology does not include:

(1) a technology that does not differ in its functionalities and capabilities from a technology previously authorized under Section 2-162; or

(2) a surveillance technology used, funded, or acquired by the County prior to January 1, 2020.

Surveillance data means any electronic data collected, captured, recorded, retained, processed, intercepted, analyzed, or shared by surveillance technology.

Surveillance technology means:

(1) any electronic device, hardware, or software that is intended to collect, capture, record, retain, process, intercept, analyze, monitor, or share audio, visual, digital, location, thermal, biometric, behavioral, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group; or

(2) any system, device, or vehicle that is equipped with an electronic device, hardware, or software under paragraph (1) of this

definition.

Surveillance technology includes:

(1) international mobile subscriber identity (IMSI) catchers and other cell site simulators;

(2) automatic license plate readers;

(3) electronic toll readers;

(4) closed-circuit television cameras;

(5) biometric surveillance technology, including voice, iris, and gait-recognition software and databases;

(6) mobile DNA capture technology;

(7) gunshot detection and location hardware and services;

(8) x-ray vans;

(9) video and audio monitoring or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras;

(10) surveillance enabled or capable lightbulbs or light fixtures;

(11) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network;

(12) social media monitoring software;

(13) through-the-wall radar or similar imaging technology;

(14) passive scanners of radio networks;

(15) long-range Bluetooth and other wireless-scanning devices;

(16) radio-frequency I.D. (RFID) scanners;

(17) software designed to integrate or analyze data from surveillance

technology, including surveillance target tracking and predictive policing software; and

(18) facial recognition technology.

Surveillance technology does not include:

(1) routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or surveillance-related functions;

(2) Parking Ticket Devices (PTDs);

(3) manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video or audio recordings;

(4) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;

(5) databases that do not and will not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology;

(6) manually-operated technological devices that are used primarily for internal communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems; and

(7) medical devices or medical treatments used or prescribed by licensed healthcare professionals.

2-162. New surveillance technology – requirements.

(a) An agency must not acquire, fund, or use a new surveillance technology, unless the requirements of this Section are met.

(b) *Impact report - required*.

(1) Before an agency acquires, funds, or uses a new surveillance technology, the lead agency must publish and submit to the County Executive and the County Council a surveillance technology impact report.

(2) A surveillance technology impact report must contain:

(A) a description of the new surveillance technology and how it works;

(B) the proposed purposes of the surveillance technology;

(C) if the surveillance technology will not be uniformly deployed throughout the County, the factors that will be used to determine where the technology is deployed;

(D) the fiscal impact of the surveillance technology;

(E) research on the efficacy of the surveillance technology, including peer-reviewed academic literature if available; and

(F) an assessment identifying:

(i) potential adverse impacts the surveillance technology, if deployed, might have on civil liberties and civil rights; and

(ii) measures that will be implemented to safeguard the public from the potential adverse impacts.

(3) A surveillance technology impact report must be submitted to the County Executive and the County Council, and must be published, at least 30 days before the agency submits proposed regulations to the County Register under subsection (c).

(c) *Regulations - required.*

(1) Before an agency acquires, funds, or uses a new surveillance technology, the Council must approve Method (1) regulations, promulgated by the lead agency after a public hearing conducted by the Executive.

(2) The public hearing under paragraph (1) must be held at least 60 days after publication of the proposed regulations in the County Register.

(3) When the lead agency submits proposed regulations to the Council under this subsection, it must at the same time submit a written report of the Office of Racial Equity and Social Justice identifying the anticipated impacts of the proposed regulations on racial equity and social justice.

(4) The regulations promulgated under this subsection must address:

(A) the purposes the surveillance technology is intended to advance;

(B) the authorized uses of the surveillance technology;

(C) the prohibited uses of the surveillance technology;

(D) procedural requirements to govern the authorized uses of the technology;

(E) the maintenance and dissemination of surveillance data

associated with the technology, including the sharing of collected surveillance data;

(F) measures to minimize the unauthorized collection of surveillance data;

(G) measures to minimize the unauthorized access of surveillance data, including encryption and access control mechanisms;

(H) measures to delete unauthorized surveillance data;

(I) data retention requirements related to the surveillance data; and

(J) auditing and oversight requirements.

(d) *Contracting requirements*. Prior to executing a contract to acquire or use new surveillance technology, a contracting agency:

(1) must publish:

(A) the identity of the contractor; and

(B) the written privacy policies of the contractor that apply to the County; and

(2) must include within the contract a prohibition against the material alteration of the privacy policies, as applied to the County, without the County's prior written consent.

(e) *Contractors' privacy policies*. If a contractor materially alters its privacy policy under subsection (d), as applied to the County, the contracting agency must publish:

(1) the updated policy; and

(2) the County's written consent to the updated policy.

(f) *Discriminatory uses or disclosures – prohibited.*

(1) An agency must not acquire or use any surveillance technology with the purpose or effect of discriminating against individuals or communities based on immigration status, reproductive healthcare, gender-affirming care, race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, genetic status, presence of children, family responsibilities, source of income, sexual orientation, or gender identity.

(2) An agency must not acquire or use surveillance technology for the purpose of investigating or enforcing:

(A) federal immigration laws; or

(B) laws of the federal government or of other states regarding the provision of, or access to, reproductive healthcare or gender-affirming healthcare.

(3) Unless compelled by court order, an agency must not disclose surveillance data in furtherance of the investigation or enforcement of:

(A) federal immigration laws; or

(B) laws of the federal government or of other states regarding the provision of, or access to, reproductive healthcare or gender-affirming healthcare.

2-163. Facial recognition technology – criminal investigation requirements.

(a) An agency must not acquire or use facial recognition except as permitted under Chapter 808 of the 2024 Laws of Maryland.

(b) An agency must not use facial recognition technology to investigate a

crime other than the commission of or the attempt to commit:

(1) a crime of violence as defined in Section 14-101 of the Criminal Law Article of the Maryland Code;

(2) a human trafficking offense under Title 3, Subtitle 11 of the Criminal Law Article of the Maryland Code;

(3) first- or second-degree child abuse under Section 3-601 of the Criminal Law Article of the Maryland Code;

(4) a child pornography offense under Section 11-207 of the Criminal Law Article of the Maryland Code;

(5) a hate crime under Section 10-304 of the Criminal Law Article of the Maryland Code;

(6) a weapon crime under Sections 4-102, 4-103, 4-203(a)(1)(iii) or (iv), 4-204, or 4-303(a)(2) of the Criminal Law Article of the Maryland Code;

(7) a weapon crime under Sections 5–138, 5–140, 5–141, 5–207(c)(16), § 5–406(a)(3), OR § 5–703(a) of the Public Safety Article of the Maryland Code;

(8) aggravated cruelty to animals under Sections 10-606 or 10-607 of the Criminal Law Article of the Maryland Code;

(9) importation of fentanyl or a fentanyl analogue under Section 5-614(a)(1)(xii) of the Criminal Law Article of the Maryland Code;

(10) stalking under Section 3-802 of the Criminal Law Article of the Maryland Code;

(11) a criminal act involving circumstances presenting a substantial and ongoing treat to public safety or national security; or

(12) a crime under the laws of another state substantially equivalent to a crime listed in paragraphs (1) through (10) of this subsection involving a fugitive from justice charged with a crime in that state and sought under Title 9 of the Criminal Procedure Article of the Maryland Code.

2-164. Annual reporting.

(a) Each agency that acquires, funds, or uses surveillance technology must publish and submit to the County Executive and the County Council an annual report.

(b) The annual report must contain, regarding the prior year:

(1) a description of each type of surveillance technology acquired, funded, or used by the agency;

(2) a summary of how each technology was used;

(3) a general description of the geographic areas of the County where the surveillance technology was deployed;

(4) a summary of complaints or concerns that were received about each surveillance technology;

(5) the results of any internal audits regarding surveillance data;

(6) any information about regulatory violations in connection with surveillance technologies, and the response of the agency to the violations;

(7) an analysis of any discriminatory, disparate, and other adverse impacts of the use of the technology upon civil rights and civil liberties; and

(8) total annual costs for the surveillance technology.

(c) The Council must hold a public hearing on each annual report.

Sec. 2. Inventory of surveillance technologies. Within 6 months after the effective date of this Act, the Executive must submit to the Council and publish a written inventory of surveillance technology used or acquired by the County prior to the effective date of this Act.

Sec. 3. Transition. For a new surveillance technology acquired or used by an agency after January 1, 2020 and before the effective date of this Act, the agency may continue to acquire and use the technology after the effective date of this Act unless: (i) within 9 months after the effective date of the Act, the lead agency has not submitted Method (1) regulations regarding the technology to the Council under Section 2-162 (added under Section 1 of this Act); (ii) the Council disapproves of the Method (1) regulations regarding the technology; or (iii) the Council takes no action on the Method (1) regulations within one year after submission of the regulations to the Council by the lead agency. The Council may, by resolution, extend the one-year deadline under subsection (iii) by intervals of 3 months.

(12)

Climate Assessment

Office of Legislative Oversight

Bill 4-25: Administration - Surveillance Technology – Acquisition and Use by the County

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 4-25 will have no impact on the County's contribution to addressing climate change as the Bill proposes actions to establish a transparent process for the County's acquisition and use of any new surveillance technology.

BACKGROUND AND PURPOSE OF BILL 4-25

Surveillance technologies are becoming increasingly common in local government, especially within police departments. For instance, one recent survey found that almost two-thirds of large police agencies across the U.S. use automatic license plate readers – [1] "high-speed, computer-controlled camera systems…that automatically capture all license plate numbers that come into view."[2] Examples of other surveillance technologies include video surveillance, face recognition, and social media monitoring.[3] Advocates and scholars note that unchecked use of surveillance technologies by local governments can pose a considerable threat to civil rights and civil liberties.[4,5]

The purpose of Bill 4-25 is to establish a transparent process for the County to acquire and use surveillance technologies. If enacted, Bill 4-25 would require County agencies that want to acquire and use a new surveillance technology to:[6,7]

- **Publish a surveillance technology impact report.** For the desired surveillance technology, the report would describe how it works, its proposed uses, and where it would be deployed, among other things. The report would also assess the potential adverse impacts of technology on civil rights and civil liberties and safeguards that would be implemented to protect against those impacts. The agency would have to publish and submit the report to the County Executive and County Council at least 30 days before proposing regulations for the technology.
- **Propose Method (1) regulations for the use of surveillance technology.** For the desired surveillance technology, the proposed regulations would have to address its purpose, authorized and prohibited uses, and measures to minimize unauthorized collection and access to surveillance data, among other things. The agency would also have to submit a report from the Office of Racial Equity and Social Justice that describes the anticipated impact of the proposed regulations on RESJ. The County Executive would be required to hold a public hearing on the proposed regulations at least 60 days after they are published. Method (1) regulations must be approved by the Council before they are adopted.[8]

- **Submit an annual report for approved surveillance technologies.** The annual report would describe each type of surveillance technology, how they were used, and complaints and concerns on their use, among other things. The Council would be required to hold a public hearing on each annual report.

Bill 4-25 also includes guidelines on contracting requirements, contractor privacy policies, and prohibited discriminatory uses of surveillance technologies. It also includes guidelines on the use of facial recognition technology for criminal investigations.[9]

If Bill 4-25 is enacted, the County Executive would be required to publish an inventory of surveillance technologies that were acquired and used before the Bill's effective date. Agencies must submit Method (1) regulations for any technologies acquired between January 1, 2020, and before the Bill's effective date. Agencies would have to stop using surveillance technologies if their regulations are not submitted or if the Council disapproves their regulations.[10]

The Council introduced Bill 4-25, Administration – Surveillance Technology – Acquisition and Use by the County, on February 11, 2025.

ANTICIPATED IMPACTS

As the Bill proposes actions to establish a transparent process for the County's acquisition and use of any new surveillance technology, OLO anticipates Bill 4-25 will have no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.[11] OLO does not offer recommendations or amendments as Bill 4-25 is likely to have little to no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

[1] Christopher Slobogin and Sarah Brayne, "Surveillance Technologies and Constitutional Law," Annual Review of Criminology, September 2022 citing Mariana Oliver and Matthew B. Kugler, "Surveying Surveillance: A National Study of Police Department Surveillance Technologies," Arizona State Law Journal, 2022.
[2] Automated License Plater Readers, Street Level Surveillance, Electronic Frontier Foundation.
[3] Street Level Surveillance, Electronic Frontier Foundation.
[4] Community Oversight of Surveillance - D.C., American Civil Liberties Union of DC.
[5] Christopher Slobogin, *Privacy at Risk: The New Government Surveillance and the Fourth Amendment* (University of Chicago Press, 2008).
[6] Introduction Staff Report for Bill 4-25, Montgomery County Council, Introduced February 11, 2025.
[7] Bill 4-25, Introduction Staff Report for Bill 4-25.
[8] Montgomery County Code § 2A-15
[9] Ibid.
[10] Introduction Staff Report for Bill 4-25.
[11] Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

OFFICE OF MANAGEMENT AND BUDGET

Marc Elrich
County Executive

Jennifer R. Bryant
Director

MEMORANDUM

March 4, 2025

TO: Kate Stewart, President
Montgomery County Council

FROM: Jennifer R. Bryant, Director
Office of Management and Budget

SUBJECT: Extension Request: Fiscal Impact Statement for Expedited Bill 4-25, Administration – Surveillance Technology - Acquisition and Use by the County

As required by Section 2-81A of the Montgomery County Code, we are informing you that transmittal of the Fiscal Impact Statement for the above referenced legislation will be delayed because more time is needed to collect information and conduct a meaningful analysis on the Bill. We are requesting an extension and will transmit the Fiscal Impact Statement no later than April 25, 2025.

JRB:ac

cc: Cecily Thorne, Chief of Staff to the Council President, Montgomery County Council
Craig Howard, Executive Director, Montgomery County Council
Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive
Tricia Swanson, Director of Strategic Partnerships, Office of the County Executive
Joshua Watters, Deputy Director, Office of Management and Budget
Rachel Silberman, Manager, Office of Management and Budget
Veronica Jaua, Senior Fiscal and Policy Analyst, Office of Management and Budget