
SUBSTITUTE SENATE BILL 6172

State of Washington

63rd Legislature

2014 Regular Session

By Senate Law & Justice (originally sponsored by Senators Hargrove, Chase, Rivers, Rolfes, Benton, Hasegawa, Baumgartner, Kohl-Welles, Litzow, Darneille, Keiser, Pedersen, and Kline)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to protecting Washington citizens from warrantless
2 surveillance, reducing liability, and establishing clear standards
3 under which agencies may utilize unmanned aerial vehicles; adding a new
4 chapter to Title 10 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that technological
7 advances have provided new, unique equipment that may be utilized for
8 surveillance purposes. These technological advances often outpace
9 statutory protections and can lead to inconsistent or contradictory
10 interpretations between jurisdictions. The legislature finds that
11 regardless of application or size, the use of unmanned aerial vehicles,
12 without public debate or clear legal authority, creates uncertainty for
13 citizens and agencies throughout Washington state. As stated in the
14 congressional research service report entitled 'Integration of Drones
15 into Domestic Airspace,' "the extent of their potential domestic
16 application is bound only by human ingenuity. . .the full-scale
17 introduction of drones into U.S. skies will inevitably generate a host
18 of legal issues. . .With the ability to house high-powered cameras,
19 infrared sensors, facial recognition technology, and license plate

1 readers, some argue that drones present a substantial privacy risk."
2 The legislature finds that drones do present a substantial privacy risk
3 potentially contrary to the strong privacy protections enshrined in
4 Article I, section 7 of the Washington state Constitution that reads
5 "No person shall be disturbed in his private affairs, or his home
6 invaded, without authority of law."

7 The legislature further finds that the lack of clear statutory
8 authority for the use of unmanned aerial vehicles may increase
9 liability to state and local jurisdictions. It is the intent of the
10 legislature to provide clear standards for the lawful use of unmanned
11 aerial vehicles by state and local jurisdictions.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Agency" means any agency, authority, board, department,
15 division, commission, institution, bureau, or like governmental entity
16 of the state, except the Washington national guard in Title 32 U.S.C.
17 status, or of any unit of local government including counties, cities,
18 towns, regional governments, and the departments thereof, and includes
19 constitutional officers, except as otherwise expressly provided by law.
20 "Agency" also means each component part of the legislative, executive,
21 or judicial branches of state and local government, including each
22 office, department, authority, post, commission, committee, and each
23 institution or board created by law to exercise some regulatory or
24 sovereign power or duty as distinguished from purely advisory powers or
25 duties. "Agency" also includes any entity, whether public or private,
26 with which any of the foregoing has entered into a contractual
27 relationship for the operation of an unmanned aircraft system to
28 accomplish an agency function.

29 (2) "Biometric identification system" is a system that collects
30 unique physical and behavioral characteristics including, but not
31 limited to, biographical data, facial photographs, fingerprints, and
32 iris scans to identify individuals.

33 (3) "Court of competent jurisdiction" includes any district court
34 of the United States or any United States court of appeals that has
35 jurisdiction over the offense being investigated; is in a district in
36 which the public unmanned aircraft will conduct a search or a court of

1 general jurisdiction authorized by the state of Washington to issue
2 search warrants.

3 (4) "Judicial officer" means a judge, magistrate, or other person
4 authorized to issue a search warrant.

5 (5) "Law enforcement officer" means any general authority, limited
6 authority, or specially commissioned Washington peace officer or
7 federal peace officer as those terms are defined in RCW 10.93.020.

8 (6) "Person" includes any individual, corporation, partnership,
9 association, cooperative, limited liability company, trust, joint
10 venture, government, political subdivision, or any other legal or
11 commercial entity and any successor, representative, agent, agency, or
12 instrumentality thereof.

13 (7) "Personal information" means all information that (a)
14 describes, locates, or indexes anything about a person including, but
15 not limited to, his or her social security number, driver's license
16 number, agency-issued identification number, student identification
17 number, real or personal property holdings derived from tax returns,
18 and his or her education, financial transactions, medical history,
19 ancestry, religion, political ideology, or criminal or employment
20 record; (b) affords a basis for inferring personal characteristics,
21 such as finger and voice prints, photographs, or things done by or to
22 such person; and the record of his or her presence, registration, or
23 membership in an organization or activity, or admission to an
24 institution; or (c) describes, locates, or indexes anything about a
25 person including, but not limited to, intellectual property, trade
26 secrets, proprietary information, or operational information.

27 (8) "Public unmanned aircraft system" means an unmanned aircraft
28 and associated elements, including communications links, sensing
29 devices, and the components that control the unmanned aircraft,
30 operated by an agency or at the direction of or under the control of an
31 agency.

32 (9) "Sensing device" means a device capable of acquiring data or
33 information from its surroundings including, but not limited to,
34 cameras using visible, ultraviolet, or infrared frequencies,
35 microphones, thermal detectors, chemical detectors, radiation gauges,
36 and wireless receivers in any frequency.

37 (10) "Trade secrets" means all forms and types of financial,
38 business, scientific, technical, economic, or engineering information,

1 including patterns, plans, compilations, program devices, formulas,
2 designs, prototypes, methods, techniques, processes, procedures,
3 programs, or codes whether tangible or intangible, and whether or how
4 stored, compiled, or memorialized physically, electronically,
5 graphically, photographically, or in writing, which the owner has taken
6 reasonable measures to protect and has an independent economic value.

7 (11) "Unmanned aircraft" means an aircraft that is operated without
8 the possibility of human intervention from within or on the aircraft.

9 (12) "Unmanned aircraft system" means an unmanned aircraft and
10 associated elements, including communication links and components that
11 control the unmanned aircraft that are required for the pilot in
12 command to operate safely and efficiently in the national airspace
13 system.

14 NEW SECTION. **Sec. 3.** Except as otherwise specifically authorized
15 in this chapter, it shall be unlawful to operate a public unmanned
16 aircraft system or disclose personal information about any person
17 acquired through the operation of a public unmanned aircraft system.

18 NEW SECTION. **Sec. 4.** (1) No state agency or organization having
19 jurisdiction over criminal law enforcement or regulatory violations
20 including, but not limited to, the Washington state patrol, shall
21 procure a public unmanned aircraft system without the explicit approval
22 of the legislature, given for that specific public unmanned aircraft
23 system to be used for a specific purpose.

24 (2) No local agency having jurisdiction over criminal law
25 enforcement or regulatory violations shall procure a public unmanned
26 aircraft system without the explicit approval of the governing body of
27 such locality, given for that specific public unmanned aircraft system
28 to be used for a specific purpose.

29 NEW SECTION. **Sec. 5.** All operations of a public unmanned aircraft
30 system or disclosure of personal information about any person acquired
31 through the operation of a public unmanned aircraft system shall be
32 conducted in such a way as to minimize the collection and disclosure of
33 personal information not authorized under this chapter.

1 NEW SECTION. **Sec. 6.** A public unmanned aircraft system may be
2 operated and personal information from such operation disclosed in
3 order to collect personal information pursuant to a search warrant
4 issued by a court of competent jurisdiction as provided in this
5 section.

6 (1) Each petition for a search warrant from a judicial officer to
7 permit the use of a public unmanned aircraft system and personal
8 information collected from such operation shall be made in writing,
9 upon oath or affirmation, to a judicial officer in a court of competent
10 jurisdiction for the geographic area in which a public unmanned
11 aircraft system is to be operated or where there is probable cause to
12 believe the offense for which the public unmanned aircraft system is
13 sought has been committed, is being committed, or will be committed.

14 (2) The law enforcement officer shall submit an affidavit that
15 shall include:

16 (a) The identity of the applicant and the identity of the agency
17 conducting the investigation;

18 (b) The identity of the individual and area for which use of the
19 public unmanned aircraft is being sought;

20 (c) Specific and articulable facts demonstrating probable cause to
21 believe that there has been, is, or will be criminal activity and that
22 the operation of the public unmanned aircraft system will uncover
23 evidence of such activity or facts to support the finding that there is
24 probable cause for issuance of a search warrant pursuant to applicable
25 requirements; and

26 (d) A statement that other methods of data collection have been
27 investigated and found to be either cost prohibitive or pose an
28 unacceptable safety risk to a law enforcement officer or to the public.

29 (3) If the judicial officer finds, based on the affidavit
30 submitted, there is probable cause to believe a crime has been
31 committed, is being committed, or will be committed and there is
32 probable cause to believe the personal information likely to be
33 obtained from the use of the public unmanned aircraft system will be
34 evidence of the commission of such offense, the judicial officer may
35 issue a search warrant authorizing the use of the public unmanned
36 aircraft system. The search warrant shall authorize the collection of
37 personal information contained in or obtained from the public unmanned

1 aircraft system but shall not authorize the use of a biometric
2 identification system.

3 (4) Warrants shall not be issued for a period greater than ten
4 days. Extensions may be granted but shall be no longer than the
5 authorizing judicial officer deems necessary to achieve the purposes
6 for which it was granted and in no event for longer than thirty days.

7 (5) Within ten days of the execution of a search warrant, the
8 officer executing the warrant must serve a copy of the warrant upon the
9 target of the warrant, except if notice is delayed pursuant to section
10 7 of this act.

11 NEW SECTION. **Sec. 7.** A governmental entity acting under this
12 section may, when a warrant is sought, include in the petition a
13 request, which the court shall grant, for an order delaying the
14 notification required under section 6(5) of this act for a period not
15 to exceed ninety days if the court determines that there is a reason to
16 believe that notification of the existence of the warrant may have an
17 adverse result.

18 (1) An adverse result for the purposes of this section is:

- 19 (a) Placing the life or physical safety of an individual in danger;
20 (b) Causing a person to flee from prosecution;
21 (c) Causing the destruction of or tampering with evidence;
22 (d) Causing the intimidation of potential witnesses; or
23 (e) Jeopardizing an investigation or unduly delaying a trial.

24 (2) The governmental entity shall maintain a copy of certification.

25 (3) Extension of the delay of notification of up to ninety days
26 each may be granted by the court upon application or by certification
27 by a governmental entity.

28 (4) Upon expiration of the period of delay of notification under
29 subsection (1) or (3) of this section, the governmental entity shall
30 serve a copy of the warrant upon, or deliver it by registered or first-
31 class mail to, the target of the warrant, together with notice that:

32 (a) States with reasonable specificity the nature of the law
33 enforcement inquiry; and

34 (b) Informs the target of the warrant (i) that notification was
35 delayed; (ii) what governmental entity or court made the certification
36 or determination pursuant to which that delay was made; and (iii) which
37 provision of this section allowed such delay.

1 NEW SECTION. **Sec. 8.** (1) It shall be lawful under this section
2 for any law enforcement officer or other public official to operate a
3 public unmanned aircraft system and disclose personal information from
4 such operation if such officer reasonably determines that an emergency
5 situation exists that involves criminal activity and presents immediate
6 danger of death or serious physical injury to any person and:

7 (a) Requires operation of a public unmanned aircraft system before
8 a warrant authorizing such interception can, with due diligence, be
9 obtained;

10 (b) There are grounds upon which such a warrant could be entered to
11 authorize such operation; and

12 (c) An application for a warrant providing such operation is made
13 within forty-eight hours after the operation has occurred or begins to
14 occur.

15 (2) In the absence of a warrant, an operation of a public unmanned
16 aircraft system carried out under this section shall immediately
17 terminate when the personal information sought is obtained or when the
18 application for the warrant is denied, whichever is earlier.

19 (3) In the event such application for approval is denied, the
20 personal information obtained from the operation of a device shall be
21 treated as having been obtained in violation of this chapter, except
22 for purposes of section 12 of this act, and an inventory shall be
23 served on the person named in the application.

24 NEW SECTION. **Sec. 9.** (1) It shall be lawful under this section
25 for any law enforcement officer or other public official to operate a
26 public unmanned aircraft system and disclose personal information from
27 such operation if:

28 (a) Such officer reasonably determines that an emergency situation
29 exists that:

30 (i) Does not involve criminal activity;

31 (ii) Presents immediate danger of death or serious physical injury
32 to any person; and

33 (iii) Requires operation of a public unmanned aircraft system to
34 reduce the danger of death or serious physical injury;

35 (b) The official reasonably determines that the operation does not
36 intend to collect personal information and is unlikely to accidentally

1 collect personal information, and such operation is not for purposes of
2 regulatory enforcement;

3 (c) The operation is part of a training exercise conducted on a
4 military base and the public unmanned aircraft system does not collect
5 personal information on persons located outside the military base;

6 (d) The operation is for training and testing purposes by an agency
7 and does not collect personal information; or

8 (e) The operation is part of the response to an emergency or
9 disaster for which the governor has proclaimed a state of emergency
10 under RCW 43.06.010(12).

11 (2) Upon completion of the operation of a public unmanned aircraft
12 system pursuant to this section, any personal information obtained
13 shall be treated as information collected on an individual other than
14 a target for purposes of section 11 of this act.

15 NEW SECTION. **Sec. 10.** Whenever any personal information from a
16 public unmanned aircraft system has been acquired, no part of such
17 personal information and no evidence derived therefrom may be received
18 in evidence in any trial, hearing, or other proceeding in or before any
19 court, grand jury, department, officer, agency, regulatory body,
20 legislative committee, or other authority of the state or a political
21 subdivision thereof if the collection or disclosure of that personal
22 information would be in violation of this chapter.

23 NEW SECTION. **Sec. 11.** Personal information collected during the
24 operation of a public unmanned aircraft system authorized by and
25 consistent with this chapter may not be used, copied, or disclosed for
26 any purpose after conclusion of the operation, unless there is probable
27 cause that the personal information is evidence of criminal activity.
28 Personal information shall be deleted as soon as possible after there
29 is no longer probable cause that the personal information is evidence
30 of criminal activity; this must be within thirty days if the personal
31 information was collected on the target of a warrant authorizing the
32 operation of the public unmanned aircraft system, and within ten days
33 for other personal information collected incidentally to the operation
34 of a public unmanned aircraft system otherwise authorized by and
35 consistent with this chapter. There shall be a presumption that

1 personal information is not evidence of criminal activity if that
2 personal information is not used in a criminal prosecution within one
3 year of collection.

4 NEW SECTION. **Sec. 12.** Any person who knowingly violates the
5 provisions of this chapter shall be subject to legal action for
6 damages, to be brought by any other person claiming that a violation of
7 this chapter has injured his or her business, his or her person, or his
8 or her reputation. A person so injured shall be entitled to actual
9 damages and reasonable attorneys' fees and other costs of litigation.

10 NEW SECTION. **Sec. 13.** Any use of unmanned aircraft systems shall
11 fully comply with all federal aviation administration requirements and
12 guidelines. Nothing in this chapter shall be construed to limit the
13 state's ability to establish and operate a test range for the
14 integration of unmanned aviation vehicles into the national airspace.

15 NEW SECTION. **Sec. 14.** By July 1st of each year, any judicial
16 officer who has authorized the issuance of a search warrant or
17 extension thereof for the use of a public unmanned aircraft system that
18 expired during the preceding year or who has denied approval during
19 that year shall report to the chief justice of the Washington supreme
20 court or his or her designee the following information:

- 21 (1) The fact that a warrant or extension was applied for;
- 22 (2) The kind of warrant or extension applied for;
- 23 (3) The fact that the warrant or extension was granted as applied
24 for, was modified, or was denied;
- 25 (4) The period of interceptions authorized by the order, and the
26 number and duration of any extensions of the order;
- 27 (5) The offense or purpose specified in the petition and the
28 probable cause giving rise to such warrant or extension of such
29 warrant; and
- 30 (6) The identity of the applying state agency applicant or law
31 enforcement officer, the agency making the application, and the
32 judicial officer authorizing the petition.

33 NEW SECTION. **Sec. 15.** By July 1st of each year, any agency that

1 operated a public unmanned aircraft system pursuant to section 9 of
2 this act shall report to the chief of the Washington state patrol or
3 his or her designee the following information:

4 (1) The type of situation authorizing operation of the public
5 unmanned aircraft system;

6 (2) The number and nature of injuries or deaths avoided by the
7 operation; and

8 (3) The approximate nature, amount, and cost of the manpower and
9 other resources used in the operation.

10 NEW SECTION. **Sec. 16.** By December 1st of each year, the chief
11 justice of the Washington supreme court or his or her designee, and the
12 chief of the Washington state patrol or his or her designee shall
13 transmit to the legislature a full and complete report concerning the
14 number of applications for search warrants authorizing or approving
15 operation of a public unmanned aircraft system or disclosure of
16 information or data from the operation of a public unmanned aircraft
17 system pursuant to this chapter, the number of search warrants and
18 extensions granted or denied pursuant to this chapter during the
19 preceding calendar year, and the number of operations of a public
20 unmanned aircraft system pursuant to section 9 of this act. Such
21 report shall include a summary and analysis of all the data required to
22 be filed with the Washington supreme court and the Washington state
23 patrol.

24 NEW SECTION. **Sec. 17.** The governing body of any locality
25 permitting the use of public unmanned aircraft systems shall publish
26 publicly available written policies and procedures for the use of
27 public unmanned aircraft systems by the law enforcement agencies of
28 such locality.

29 NEW SECTION. **Sec. 18.** The governing body of any locality
30 permitting the use of public unmanned aircraft systems shall require
31 the law enforcement agency of such locality operating a public unmanned
32 aircraft system to maintain records of each use of a public unmanned
33 aircraft system, including the date, time, location of use, target of
34 data collection, type of data collected, the justification for the use,

1 the operator of the public unmanned aircraft system, and the person who
2 authorized the use.

3 NEW SECTION. **Sec. 19.** The governing body of any locality
4 permitting the use of a public unmanned aircraft system shall conduct
5 an annual comprehensive audit on the operation of all public unmanned
6 aircraft systems, including the law enforcement log book, corresponding
7 emergency telephone calls, warrants, and other documentation of the
8 justification for use and data collected. The audit shall be publicly
9 available. The audit shall include:

10 (1) The number of uses of a public unmanned aircraft system
11 organized by types of incidents and types of justification for use;

12 (2) The number of crime investigations aided by the use and how the
13 use was helpful to the investigation;

14 (3) The number of uses of a public unmanned aircraft system for
15 reasons other than criminal investigations and how the use was helpful;

16 (4) The frequency and type of data collected for individuals or
17 areas other than targets;

18 (5) The total cost of the public unmanned aircraft system; and

19 (6) Additional information and analysis the governing body deems
20 useful.

21 NEW SECTION. **Sec. 20.** The department of natural resources may
22 operate a public unmanned aircraft system without a warrant and collect
23 and disclose information for the express purpose of firefighting and
24 fire prevention. Public unmanned aircraft system operations under this
25 section may not be permitted for law enforcement or regulatory
26 enforcement purposes. All personal information collected must be
27 destroyed within thirty days after an operation is concluded.

28 NEW SECTION. **Sec. 21.** Nothing in this chapter is to be construed
29 either to contract nor to expand the scope of the plain view doctrine.

30 NEW SECTION. **Sec. 22.** Sections 1 through 21 of this act
31 constitute a new chapter in Title 10 RCW.

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