
SUBSTITUTE HOUSE BILL 1771

State of Washington

63rd Legislature

2013 Regular Session

By House Public Safety (originally sponsored by Representatives Taylor, Shea, Overstreet, Condotta, Ryu, Scott, Pike, Blake, Schmick, Morris, Haler, MacEwen, Hope, Appleton, Goodman, Buys, Moscoso, Kristiansen, Upthegrove, and Carlyle)

READ FIRST TIME 02/22/13.

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; prescribing penalties; and declaring an
5 emergency.

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

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

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

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

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

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

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

34 (3) "Court of competent jurisdiction" includes any district court
35 of the United States or any United States court of appeals that has
36 jurisdiction over the offense being investigated; is in a district in

1 which the public unmanned aircraft will conduct a search or a court of
2 general jurisdiction authorized by the state of Washington to issue
3 search warrants.

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

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

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

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

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

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

1 (10) "Trade secrets" means all forms and types of financial,
2 business, scientific, technical, economic, or engineering information,
3 including patterns, plans, compilations, program devices, formulas,
4 designs, prototypes, methods, techniques, processes, procedures,
5 programs, or codes whether tangible or intangible, and whether or how
6 stored, compiled, or memorialized physically, electronically,
7 graphically, photographically, or in writing, which the owner has taken
8 reasonable measures to protect and has an independent economic value.

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

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

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

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

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

32 NEW SECTION. **Sec. 5.** All operations of a public unmanned aircraft
33 system or disclosure of personal information about any person acquired
34 through the operation of a public unmanned aircraft system shall be

1 conducted in such a way as to minimize the collection and disclosure of
2 personal information not authorized under this chapter.

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

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

16 (2) The law enforcement officer shall submit an affidavit that
17 shall include:

18 (a) The identity of the applicant and the identity of the agency
19 conducting the investigation;

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

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

27 (d) The name of the county or city where there is probable cause to
28 believe the offense for which use of the unmanned public aircraft
29 system is sought has been committed, is being committed, or will be
30 committed; and

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

34 (3) If the judicial officer finds, based on the affidavit
35 submitted, that there is probable cause to believe that a crime has
36 been committed, is being committed, or will be committed and that there
37 is probable cause to believe the personal information likely to be

1 obtained from the use of the public unmanned aircraft system will be
2 evidence of the commission of such offense, the judicial officer may
3 issue a search warrant authorizing the use of the public unmanned
4 aircraft system. The search warrant shall authorize the collection of
5 personal information contained in or obtained from the public unmanned
6 aircraft system but shall not authorize the use of a biometric
7 identification system.

8 (4) Warrants shall not be issued for a period greater than forty-
9 eight hours. Extensions may be granted but shall be no longer than the
10 authorizing judicial officer deems necessary to achieve the purposes
11 for which it was granted and in no event for longer than thirty days.

12 (5) Within ten days of the execution of a search warrant, the
13 officer executing the warrant must serve a copy of the warrant upon the
14 person or persons upon whom personal information was collected except
15 notice may be delayed under section 7 of this act.

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

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

- 24 (a) Placing the life or physical safety of an individual in danger;
- 25 (b) Causing a person to flee from prosecution;
- 26 (c) Causing the destruction of or tampering with evidence;
- 27 (d) Causing the intimidation of potential witnesses; or
- 28 (e) Jeopardizing an investigation or unduly delaying a trial.

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

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

33 (4) Upon expiration of the period of delay of notification under
34 subsection (1) or (3) of this section, the governmental entity shall
35 serve a copy of the warrant upon, or deliver it by registered or first-
36 class mail to, the person or persons upon whom personal information was
37 collected together with notice that:

1 (a) States with reasonable specificity the nature of the law
2 enforcement inquiry; and

3 (b) Informs the person or persons upon whom personal information
4 was collected (i) that notification was delayed; (ii) what governmental
5 entity or court made the certification or determination pursuant to
6 which that delay was made; and (iii) which provision of this section
7 allowed such delay.

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

14 (a) Requires operation of a public unmanned aircraft system before
15 a warrant authorizing such interception can, with due diligence, be
16 obtained;

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

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

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

26 (3) In the event such application for approval is denied, the
27 personal information obtained from the operation of a device shall be
28 treated as having been obtained in violation of this chapter, except
29 for purposes of section 13 of this act, and an inventory shall be
30 served on the person named in the application.

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

35 (a) Such officer reasonably determines that an emergency situation
36 exists that:

1 (i) Does not involve criminal activity;
2 (ii) Presents immediate danger of death or serious physical injury
3 to any person; and

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

6 (b) The official reasonably determines that the operation does not
7 intend to collect personal information and is unlikely to accidentally
8 collect personal information, and such operation is not for purposes of
9 regulatory enforcement; or

10 (c) The operation is part of a training exercise conducted on a
11 military base and the public unmanned aircraft system does not collect
12 personal information on persons located outside the military base.

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

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

25 NEW SECTION. **Sec. 11.** No personal information collected on an
26 individual or area other than the target that justified the issuance of
27 a search warrant may be used, copied, or disclosed for any purpose.
28 Such personal information shall be deleted as soon as possible, and in
29 no event later than twenty-four hours after collection.

30 NEW SECTION. **Sec. 12.** Personal information collected on any
31 individual or area specified in the warrant shall be deleted within
32 thirty days unless there is a reasonable belief that the personal
33 information is evidence of criminal activity related to the reason that
34 allowed the use of the unmanned public aircraft system.

1 NEW SECTION. **Sec. 13.** Any person who violates the provisions of
2 this chapter shall be subject to legal action for damages, to be
3 brought by any other person claiming that a violation of this chapter
4 has injured his or her business, his or her person, or his or her
5 reputation. A person so injured shall be entitled to actual damages,
6 including mental pain and suffering endured by him or her on account of
7 violation of the provisions of this chapter, or liquidated damages
8 computed at the rate of one thousand dollars a day for each day of
9 violation, not to exceed ten thousand dollars, and reasonable
10 attorneys' fees and other costs of litigation.

11 NEW SECTION. **Sec. 14.** Any use of unmanned aircraft systems shall
12 fully comply with all federal aviation administration requirements and
13 guidelines.

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

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

32 NEW SECTION. **Sec. 16.** By July 1st of each year, any law
33 enforcement agency who applied for a criminal search warrant or
34 extension thereof for the use of a public unmanned aircraft system

1 shall report to the chief of the Washington state patrol or his or her
2 designee the following information:

3 (1) The information required by section 15 of this act with respect
4 to each application for a search warrant or extension made during the
5 preceding calendar year;

6 (2) The general description of the information gathered under such
7 search warrant or extension including:

8 (a) The approximate nature and frequency of incriminating conduct
9 gathered;

10 (b) The approximate number of persons upon whom information was
11 gathered; and

12 (c) The approximate nature, amount, and cost of the manpower and
13 other resources used in the collection;

14 (3) The number of arrests resulting from information gathered under
15 such search warrant or extension and the offenses for which arrests
16 were made;

17 (4) The number of trials resulting from such information;

18 (5) The number of motions to suppress made with respect to such
19 information and the number granted or denied;

20 (6) The number of convictions resulting from such information and
21 the offenses for which the convictions were obtained and a general
22 assessment of the importance of the information; and

23 (7) The information required by section 15 of this act with respect
24 to search warrants or extensions obtained in the preceding calendar
25 year.

26 NEW SECTION. **Sec. 17.** By July 1st of each year, any agency that
27 operated a public unmanned aircraft system pursuant to section 9 of
28 this act shall report to the chief of the Washington state patrol or
29 his or her designee the following information:

30 (1) The type of situation authorizing operation of the public
31 unmanned aircraft system;

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

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

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

15 NEW SECTION. **Sec. 19.** The governing body of any locality
16 permitting the use of public unmanned aircraft systems shall publish
17 publicly available written policies and procedures for the use of
18 public unmanned aircraft systems by the law enforcement agencies of
19 such locality.

20 NEW SECTION. **Sec. 20.** The governing body of any locality
21 permitting the use of public unmanned aircraft systems shall, by
22 ordinance, require the law enforcement agency of such locality
23 operating a public unmanned aircraft system to maintain records of each
24 use of a public unmanned aircraft system, including the date, time,
25 location of use, target of data collection, type of data collected, the
26 justification for the use, the operator of the public unmanned aircraft
27 system, and the person who authorized the use.

28 NEW SECTION. **Sec. 21.** The governing body of any locality
29 permitting the use of a public unmanned aircraft system shall conduct
30 an annual comprehensive audit on the operation of all public unmanned
31 aircraft systems, including the law enforcement log book, corresponding
32 emergency telephone calls, warrants, and other documentation of the
33 justification for use and data collected. The audit shall be publicly
34 available. The audit shall include:

- 1 (1) The number of uses of a public unmanned aircraft system
2 organized by types of incidents and types of justification for use;
3 (2) The number of crime investigations aided by the use and how the
4 use was helpful to the investigation;
5 (3) The number of uses of a public unmanned aircraft system for
6 reasons other than criminal investigations and how the use was helpful;
7 (4) The frequency and type of data collected for individuals or
8 areas other than targets;
9 (5) The total cost of the public unmanned aircraft system; and
10 (6) Additional information and analysis the governing body deems
11 useful.

12 NEW SECTION. **Sec. 22.** The governing body of any locality
13 permitting the use of a public unmanned aircraft system shall, upon
14 completion of the publicly available annual audit on the use of public
15 unmanned aircraft systems, review the use of public unmanned aircraft
16 systems and consider both the benefits and risks to privacy before
17 authorizing the continued operation of a public unmanned aircraft
18 system in such locality.

19 NEW SECTION. **Sec. 23.** Sections 1 through 22 of this act
20 constitute a new chapter in Title 10 RCW.

21 NEW SECTION. **Sec. 24.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 immediately.

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