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

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

NEW SECTION. Sec. 1. The legislature finds that technological advances have provided new, unique equipment that may be utilized for surveillance purposes. These technological advances often outpace statutory protections and can lead to inconsistent or contradictory interpretations between jurisdictions. The legislature finds that regardless of application or size, the use of unmanned aerial vehicles, without public debate or clear legal authority, creates uncertainty for citizens and agencies throughout Washington state. As stated in the congressional research service report entitled 'Integration of Drones into Domestic Airspace,' "the extent of their potential domestic application is bound only by human ingenuity. . .the full-scale introduction of drones into U.S. skies will inevitably generate a host of legal issues. . .With the ability to house high-powered cameras,
infrared sensors, facial recognition technology, and license plate
readers, some argue that drones present a substantial privacy risk."
The legislature finds that drones do present a substantial privacy risk
potentially contrary to the strong privacy protections enshrined in
Article I, section 7 of the Washington state Constitution that reads
"No person shall be disturbed in his private affairs, or his home
invaded, without authority of law."
The legislature further finds that the lack of clear statutory
authority for the use of unmanned aerial vehicles may increase
liability to state and local jurisdictions. It is the intent of the
legislature to provide clear standards for the lawful use of unmanned
aerial vehicles by state and local jurisdictions.

NEW SECTION. Sec. 2. The definitions in this section apply
throughout this chapter unless the context clearly requires otherwise.
(1) "Agency" means any agency, authority, board, department,
division, commission, institution, bureau, or like governmental entity
of the state, except the Washington national guard in Title 32 U.S.C.
status, or of any unit of local government including counties, cities,
towns, regional governments, and the departments thereof, and includes
constitutional officers, except as otherwise expressly provided by law.
"Agency" also means each component part of the legislative, executive,
or judicial branches of state and local government, including each
office, department, authority, post, commission, committee, and each
institution or board created by law to exercise some regulatory or
sovereign power or duty as distinguished from purely advisory powers or
duties. "Agency" also includes any entity, whether public or private,
with which any of the foregoing has entered into a contractual
relationship for the operation of a system of personal information to
accomplish an agency function.
(2) "Biometric identification system" is a system that collects
unique physical and behavioral characteristics including, but not
limited to, biographical data, facial photographs, fingerprints, and
iris scans to identify individuals.
(3) "Court of competent jurisdiction" includes any district court
of the United States or any United States court of appeals that has
jurisdiction over the offense being investigated; is in a district in
which the public unmanned aircraft will conduct a search or a court of
general jurisdiction authorized by the state of Washington to issue
search warrants.

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

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

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

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

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

(9) "Sensing device" means a device capable of acquiring data or
information from its surroundings including, but not limited to,
cameras using visible, ultraviolet, or infrared frequencies,
microphones, thermal detectors, chemical detectors, radiation gauges,
and wireless receivers in any frequency.
(10) "Trade secrets" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, which the owner has taken reasonable measures to protect and has an independent economic value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If the judicial officer finds, based on the affidavit submitted, that there is probable cause to believe that a crime has been committed, is being committed, or will be committed and that there is probable cause to believe the personal information likely to be
obtained from the use of the public unmanned aircraft system will be
evidence of the commission of such offense, the judicial officer may
issue a search warrant authorizing the use of the public unmanned
aircraft system. The search warrant shall authorize the collection of
personal information contained in or obtained from the public unmanned
aircraft system but shall not authorize the use of a biometric
identification system.

(4) Warrants shall not be issued for a period greater than forty-eight
hours. Extensions may be granted but shall be no longer than the
authorizing judicial officer deems necessary to achieve the purposes
for which it was granted and in no event for longer than thirty days.
(5) Within ten days of the execution of a search warrant, the
officer executing the warrant must serve a copy of the warrant upon the
person or persons upon whom personal information was collected except
notice may be delayed under section 7 of this act.

NEW SECTION. Sec. 7. A governmental entity acting under this
section may, when a warrant is sought, include in the petition a
request, which the court shall grant, for an order delaying the
notification required under section 6(5) of this act for a period not
to exceed ninety days if the court determines that there is a reason to
believe that notification of the existence of the warrant may have an
adverse result.
(1) An adverse result for the purposes of this section is:
(a) Placing the life or physical safety of an individual in danger;
(b) Causing a person to flee from prosecution;
(c) Causing the destruction of or tampering with evidence;
(d) Causing the intimidation of potential witnesses; or
(e) Jeopardizing an investigation or unduly delaying a trial.
(2) The governmental entity shall maintain a copy of certification.
(3) Extension of the delay of notification of up to ninety days
each may be granted by the court upon application or by certification
by a governmental entity.
(4) Upon expiration of the period of delay of notification under
subsection (1) or (3) of this section, the governmental entity shall
serve a copy of the warrant upon, or deliver it by registered or first-
class mail to, the person or persons upon whom personal information was
collected together with notice that:
(a) States with reasonable specificity the nature of the law enforcement inquiry; and
(b) Informs the person or persons upon whom personal information was collected (i) that notification was delayed; (ii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and (iii) which provision of this section allowed such delay.

NEW SECTION. Sec. 8. (1) It shall be lawful under this section for any law enforcement officer or other public official to operate a public unmanned aircraft system and disclose personal information from such operation if such officer reasonably determines that an emergency situation exists that involves criminal activity and presents immediate danger of death or serious physical injury to any person and:
(a) Requires operation of a public unmanned aircraft system before a warrant authorizing such interception can, with due diligence, be obtained;
(b) There are grounds upon which such a warrant could be entered to authorize such operation; and
(c) An application for a warrant providing such operation is made within forty-eight hours after the operation has occurred or begins to occur.
(2) In the absence of a warrant, an operation of a public unmanned aircraft system carried out under this section shall immediately terminate when the personal information sought is obtained or when the application for the warrant is denied, whichever is earlier.
(3) In the event such application for approval is denied, the personal information obtained from the operation of a device shall be treated as having been obtained in violation of this chapter, except for purposes of section 13 of this act, and an inventory shall be served on the person named in the application.

NEW SECTION. Sec. 9. (1) It shall be lawful under this section for any law enforcement officer or other public official to operate a public unmanned aircraft system and disclose personal information from such operation if:
(a) Such officer reasonably determines that an emergency situation exists that:
(i) Does not involve criminal activity;

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

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

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

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

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

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

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

NEW SECTION.  Sec. 12. Personal information collected on any individual or area specified in the warrant shall be deleted within thirty days unless there is a reasonable belief that the personal information is evidence of criminal activity related to the reason that allowed the use of the unmanned public aircraft system.
NEW SECTION. **Sec. 13.** Any person who violates the provisions of this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this chapter has injured his or her business, his or her person, or his or her reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by him or her on account of violation of the provisions of this chapter, or liquidated damages computed at the rate of one thousand dollars a day for each day of violation, not to exceed ten thousand dollars, and reasonable attorneys' fees and other costs of litigation.

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

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

1. The fact that a warrant or extension was applied for;
2. The kind of warrant or extension applied for;
3. The fact that the warrant or extension was granted as applied for, was modified, or was denied;
4. The period of interceptions authorized by the order, and the number and duration of any extensions of the order;
5. The offense or purpose specified in the petition and the probable cause giving rise to such warrant or extension of such warrant; and
6. The identity of the applying state agency applicant or law enforcement officer, the agency making the application, and the judicial officer authorizing the petition.

NEW SECTION. **Sec. 16.** By July 1st of each year, any law enforcement agency who applied for a criminal search warrant or extension thereof for the use of a public unmanned aircraft system
shall report to the chief of the Washington state patrol or his or her
designee the following information:

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

(2) The general description of the information gathered under such
search warrant or extension including:
(a) The approximate nature and frequency of incriminating conduct
gathered;
(b) The approximate number of persons upon whom information was
gathered; and
(c) The approximate nature, amount, and cost of the manpower and
other resources used in the collection;
(3) The number of arrests resulting from information gathered under
such search warrant or extension and the offenses for which arrests
were made;
(4) The number of trials resulting from such information;
(5) The number of motions to suppress made with respect to such
information and the number granted or denied;
(6) The number of convictions resulting from such information and
the offenses for which the convictions were obtained and a general
assessment of the importance of the information; and
(7) The information required by section 15 of this act with respect
to search warrants or extensions obtained in the preceding calendar
year.

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

(1) The type of situation authorizing operation of the public
unmanned aircraft system;
(2) The number and nature of injuries or deaths avoided by the
operation; and
(3) The approximate nature, amount, and cost of the manpower and
other resources used in the operation.
NEW SECTION. Sec. 18. By December 1st of each year, the chief justice of the Washington supreme court or his or her designee, and the chief of the Washington state patrol or his or her designee shall transmit to the legislature a full and complete report concerning the number of applications for search warrants authorizing or approving operation of a public unmanned aircraft system or disclosure of information or data from the operation of a public unmanned aircraft system pursuant to this chapter, the number of search warrants and extensions granted or denied pursuant to this chapter during the preceding calendar year, and the number of operations of a public unmanned aircraft system pursuant to section 9 of this act. Such report shall include a summary and analysis of all the data required to be filed with the Washington supreme court and the Washington state patrol.

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

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

NEW SECTION. Sec. 21. The governing body of any locality permitting the use of a public unmanned aircraft system shall conduct an annual comprehensive audit on the operation of all public unmanned aircraft systems, including the law enforcement log book, corresponding emergency telephone calls, warrants, and other documentation of the justification for use and data collected. The audit shall be publicly available. The audit shall include:
(1) The number of uses of a public unmanned aircraft system organized by types of incidents and types of justification for use;
(2) The number of crime investigations aided by the use and how the use was helpful to the investigation;
(3) The number of uses of a public unmanned aircraft system for reasons other than criminal investigations and how the use was helpful;
(4) The frequency and type of data collected for individuals or areas other than targets;
(5) The total cost of the public unmanned aircraft system; and
(6) Additional information and analysis the governing body deems useful.

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

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

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

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