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H.B. 149
135th General Assembly

Bill Analysis

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Version: As Reported by House Aviation and Aerospace

Primary Sponsor: Rep. Willis

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SUMMARY

- Generally requires a peace officer to obtain a court-issued search warrant to collect surveillance data using an unmanned aerial vehicle (UAV) if the peace officer otherwise would need a warrant to physically enter the house or place in person to conduct the search.
- Prohibits surveillance data and any information obtained from that data from being admitted as evidence in a criminal proceeding if it was gathered under circumstances that required a warrant and the warrant was not obtained.
- Establishes circumstances in which a warrant is not required for the use of a UAV, including patrolling within 50 miles of an international border, when exigent circumstances exist, to examine the scene of a vehicle accident, and for patrols before, during, and after environmental or weather disasters.
- Establishes procedures that law enforcement must follow in order to utilize a UAV, including a requirement to document and verify all flight data.
- Prohibits law enforcement from using a UAV armed with a lethal weapon.
- Specifies that UAV flight data is a public record, unless it qualifies for a public records exemption under the Public Records Law.
- Allows a person accused of a crime that includes evidence gathered by a UAV to obtain, via the discovery process, information relating to that person acquired by the UAV.

DETAILED ANALYSIS

Criminal evidence derived from drones

Background

The Fourth Amendment to the United States Constitution generally prohibits unreasonable searches and seizures. It also generally requires searches to be based on probable cause and made pursuant to a court-issued search warrant. However, the U.S. Supreme Court has recognized several exceptions to the warrant requirement. For example, the Fourth Amendment does not protect a person's property that is open to the plain view of law enforcement. Under this exception, the Court has found that law enforcement traveling in a crewed aircraft in the public airways does not need "to obtain a warrant in order to observe what is visible to the naked eye."¹ The Court has not yet addressed a similar case involving unmanned aerial vehicles (UAVs), otherwise known as drones. Currently, judgments from the lower courts are split, based on the circumstances of each case, regarding whether a warrantless search with a drone violated the Fourth Amendment.²

Warrant requirement

The bill generally requires a peace officer to obtain a search warrant to use a UAV to gather surveillance data (the data gathered by a UAV during its flight, including images, videos, or other recordings) if the officer would be required to obtain a search warrant to physically enter the house or place in-person to conduct the search. The requirement applies to both entering the interior of a house or place with the UAV and to observing the interior of the house or place with the UAV (given the technical precision of a UAV's cameras). Unless otherwise exempt, surveillance data and the information obtained through it is not admissible in criminal proceedings if it was obtained without a warrant when a warrant was otherwise required.³ The search warrants for law enforcement use of a UAV are the same as those used under current law for a peace officer physically entering a house or place.

Circumstances that do not require a warrant

The bill allows a law enforcement agency to use a UAV for surveillance without a search warrant as follows:

1. To patrol within 50 miles of a national border for purposes of policing that border to prevent or deter the illegal entry of any individual, illegal substance, or contraband;
2. When exigent circumstances exist;

¹ *California v. Ciraolo*, 476 U.S. 207, 218 (1986).

² See for example *State v. Stevens*, 5th Dist. Coshocton No. 2022CA0017, 2023-Ohio-889 (finding no Fourth Amendment violation) and *Long Lake Twp. v. Maxon*, App. No. 349230, 2022 Mich. App. LEXIS 5544 (September 15, 2022) (finding a Fourth Amendment violation).

³ R.C. 4561.60(A) and (B)(1); R.C. 4561.61(A).

3. Before, during, or immediately after an environmental or weather-related catastrophe to allow the agency to better preserve public safety, to protect property, to survey environmental damage in order to determine if a state of emergency should be declared, or to conduct surveillance for the assessment and evaluation of damage, erosion, flood, or contamination;
4. To examine the scene of a vehicle accident, monitor traffic congestion, or conduct other forms of traffic law enforcement that typically does not require a peace officer to obtain a search warrant in advance of conducting that enforcement;
5. To photograph and record evidence at a crime scene; and
6. For research, education, training, testing, or development efforts related to UAVs or UAV systems, their technologies, and their potential applications, undertaken by or in conjunction with a school, an institution of higher education, or a public or private collaborator.⁴

Requirements and prohibitions for law enforcement

Requirements for use of a UAV

Under the bill, a law enforcement agency must do both of the following relative to its use of a UAV:

1. Ensure that the agency and any peace officer employed by the agency documents all flight data for each surveillance flight of UAV taken by or on behalf of the agency (flight data is the data pertaining to a UAV's flight, including the flight's duration, path, and mission objective); and
2. Verify that the flight data for each surveillance flight is accurate and complete.

A law enforcement agency must retain all surveillance data or flight data that is relevant to an ongoing investigation, trial, or litigation until it is determined that it is no longer necessary for that purpose. The flight data is a public record, unless it qualifies for a public records exemption under the Public Records Law.⁵

UAV prohibitions

Under the bill, a law enforcement agency may not use, authorize the use of, or issue a permit for the use of a UAV armed with any lethal weapon. An agency also may not authorize the use of or issue a permit for the use of a UAV for the surveillance of one private individual by another private individual unless the agency obtains express, informed consent from one of the following:

1. The individual being surveilled; or

⁴ R.C. 4561.62.

⁵ R.C. 4561.60(B) and 4561.64(A), (B), and (D).

2. The owner of the real property on which the person being surveilled is present.⁶

Obtaining the data through discovery

Under the bill, a person accused of a crime that includes evidence gathered by a UAV may obtain, via the subpoena and discovery process, information relating to that person acquired in the course of surveillance of that person by the UAV. However, the person may not obtain information related to the operational capabilities and technical conduct of the UAV.⁷

HISTORY

| Action | Date |
|-----------------------------------|----------|
| Introduced | 04-04-23 |
| Reported, H. Aviation & Aerospace | 06-12-24 |

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⁶ R.C. 4561.63.

⁷ R.C. 4561.64(C).