

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 847
Judiciary

(Delegate Rosenberg, *et al.*)

Criminal Procedure - Government Drone Use - Limitations

This bill regulates and restricts the use of a “drone” by an agent of the State or political subdivision of the State (“agent”). The use of a drone by an agent must fully comply with all Federal Aviation Administration (FAA) requirements and guidelines. A drone operated by an agent may not be equipped with a weapon.

The bill defines a “drone” as an unmanned aerial vehicle or aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted State resources.

Local Effect: The bill’s requirements can be handled with existing budgeted local resources.

Small Business Effect: None.

Analysis

Bill Summary:

Authorized Operation of a Drone by an Agent: An agent may not operate a drone for the purpose of receiving or disclosing information acquired through the operation of the drone, unless:

- the person about whom information was acquired through use of the drone gives written consent to the disclosure;
- the drone is operated to collect information from a nonpublic area and the information is disclosed in accordance with a search warrant or in accordance with the bill's provisions;
- the drone is operated to collect information from a public area and the information is disclosed in accordance with a search warrant or an order issued by a court of competent jurisdiction if the agent offers specific and articulable facts demonstrating a reasonable suspicion of criminal activity and a likelihood that the operation of the drone will uncover the activity; or
- no part of the information and evidence derived from the operation is received in evidence in a trial, hearing, or other proceeding before a court or grand jury.

Despite the restrictions listed above, an agent is authorized to operate a drone and disclose information from the operation if:

- the agent reasonably determines that an emergency situation exists that (1) involves immediate danger of death or serious physical injury to an individual, conspiratorial activities threatening the national security interest, or conspiratorial activities characteristic of organized crime and (2) requires operation of a drone before a warrant or an order authorizing the operation can be obtained with due diligence;
- there are grounds on which a warrant or an order likely would be granted to authorize the operation; and
- an application for a warrant or an order approving the operation is made within 48 hours after the operation begins.

The operation of a drone without a warrant or court order as described above must terminate immediately when the information sought is obtained or when the application for the warrant or order is denied, whichever is earlier. If the application for the warrant or order is denied, the information obtained from the operation must be treated as if it was obtained in violation of the bill's provisions.

Authorized Data Collection by a Drone: A drone that is operated in compliance with the bill's provisions must be operated in a manner to collect data only on the target of the operation and to avoid data collection on individuals, homes, or areas other than the target. A drone may not use facial recognition or other biometric matching technology on an individual who is not a target of the operation.

Data collected on an individual, a home, or an area other than the target of the operation may not be used, copied, or disclosed for any purpose and must be deleted as soon as possible, but no later than 24 hours after collection.

Warrants and Court Orders for Drone Operation: A court order issued for the operation of a drone in a public area may not be in effect for longer than 48 hours but may be extended by a judge for up to 30 days if the judge deems the extension necessary to achieve the purposes for which the order was granted.

In seeking a court order or warrant, an agent may include in the application a request for an order delaying the notification required for a period not to exceed 30 days. The court must grant the request for delay if the court determines that there is reason to believe that notification of the existence of the court order may (1) endanger the life or physical safety of an individual; (2) cause the target to flee from prosecution; (3) lead to the destruction of or tampering with evidence; (4) intimidate a potential witness; or (5) otherwise jeopardize an investigation or unduly delay a trial. The court is authorized to grant extensions of a delay of notification of up to 30 days each on application or recertification of an application by the agent. Once the delay of notification expires, the agent must serve or deliver by registered first-class mail a copy of the warrant or order on each person on whom information was collected with a notice containing specified information.

If a disclosure of information is in violation of the bill's provisions, no part of the information acquired and no evidence derived from that information may be received in evidence in a trial, a hearing, or any other proceeding in or before a court or grand jury.

Unauthorized Disclosure of Information by Agent and Disciplinary Actions: A willful disclosure or use by an agent of information beyond the extent permitted is a violation of the bill's provisions, and the court or an appropriate department or agency must initiate proceedings to determine whether disciplinary action against the agent is warranted upon a finding that (1) the agent violated one of the bill's provisions and (2) the circumstances surrounding the violation raise serious questions about whether the agent acted willfully or intentionally with respect to the violation.

Reporting Requirements: In June of each year, an agent that used a drone during the previous year is required to report to the General Assembly and make public on its website specified information regarding the frequency of drone use, types of data collected on individuals or areas other than targets, the total cost of the drone program, and the number of arrests resulting from information gathered through drone use and the offenses for which arrests were made.

Current Law: There are no statutory provisions specifically dedicated to drones.

With respect to warrants, a circuit court or District Court judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the jurisdiction of the judge or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing.

An application for a search warrant must be in (1) writing; (2) signed and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause.

Any search and seizure made under the authority of a search warrant must be made within 15 calendar days after the day the warrant was issued. A search warrant is void after this 15-day period.

A judge who issues a search warrant must retain a copy of the warrant, application, and supporting affidavit. A judge may order a supporting affidavit to be sealed for up to 30 days under certain circumstances. The warrant, application, affidavit, and other supporting documentation may not be filed with the clerk of the court until the search warrant is returned executed. Generally, an executed search warrant must be returned to the issuing judge or a judge in the same circuit or district as promptly as possible or within 10 days after the date the warrant was executed. The judge to whom the warrant is returned must attach specified supporting documentation and file the papers with the clerk of the county in which the property was seized. The papers filed with the clerk must be sealed and may only be opened for inspection upon order of the court. The clerk must maintain a confidential index of search warrants. A warrant that is not executed within the 15-day time period must be promptly returned to the issuing judge, who may destroy it.

Background: Unmanned aerial vehicles (UAVs), or “drones,” are aircraft controlled remotely from another location without a human pilot on board. Once exclusively thought of in the context of overseas military operations, UAVs/drones are becoming an increasingly popular tool with domestic law enforcement. Civilian uses of drones can range from backyard/playground recreational use to meteorology and professional photography from higher altitudes. In December 2013, the popular online retailer Amazon.com announced plans to implement “Amazon Prime Air,” a 30-minute delivery system using UAVs. The proliferation and rapid advancement of UAV technology has generated discussion regarding Fourth Amendment protections and privacy concerns.

The State does not currently use UAVs, but there is great potential for their use in law enforcement, including surveillance, search and rescue, accident investigations, hostage situations, and aerial mapping. In 2012, Congress the FAA Modernization and Reform Act, which directed the FAA to safely integrate UAVs into national airspace by September 2015.

To assist with integration, the FAA designated six UAV test sites in 2013. The sites are located in Alaska, Nevada, New York, North Dakota, Texas, and Virginia. The University System of Maryland (USM) was 1 of 25 applicants from 24 states to submit a proposal to become one of the FAA test sites. Though USM was not selected, USM, Virginia Polytechnic and State University, and Rutgers University did enter into a memorandum of understanding to collaborate on UAV research prior to the FAA's decision. The Patuxent Partnership, a nonprofit in Southern Maryland, received \$500,000 in fiscal 2013 to establish a test site proposal. Because of the tri-state collaboration agreement, personnel and facilities in Maryland and New Jersey will assist Virginia in its UAV research; however, the extent of this assistance is unknown at this time.

Under current law, UAVs are banned for commercial use until the FAA issues regulations in 2015. However, there are two ways to obtain FAA approval to operate a UAV: (1) obtain an experimental airworthiness certificate to conduct private-sector research and development, training, and flight demonstrations; or (2) obtain a Certificate of Waiver or Authorization (COA). A COA allows public entities to fly UAVs in civil airspace, including law enforcement, border patrol, search and rescue, and other governmental operational missions. There were 545 active COAs as of December 4, 2013.

According to the National Conference of State Legislatures, 13 states enacted 16 new laws and 11 states adopted 16 resolutions pertaining to drones in 2013.

State Expenditures: The Judiciary advises that the bill may result in additional applications for warrants and requests for court orders by law enforcement, which may result in a fiscal and operational impact that cannot be reliably quantified at this time. However, given that, based on available information, State and local law enforcement agencies are not currently using drones, this analysis assumes that the bill's requirements will be incorporated into future law enforcement and judicial procedures regarding drone usage.

Additional Information

Prior Introductions: None.

Cross File: SB 926 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Montgomery County; cities of Frederick and Havre de Grace; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Maryland Department of Agriculture; Department of Natural Resources; Governor's Office of Crime Control and Prevention; Military Department; Department of State Police; State's Attorneys' Association; University System of Maryland; Federal Aviation Administration; National Conference of State Legislatures; CNN.com; *The Baltimore Sun*; Department of Legislative Services

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