

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2337

By: Wesselhoft

AS INTRODUCED

An Act relating to aircraft; creating the Oklahoma Unmanned Aerial Surveillance Act; defining terms; requiring use of unmanned aerial vehicles to comply with Federal Aviation Administration rules; prohibiting agent of state from using unmanned aerial vehicle; proscribing information disclosure; providing exceptions; limiting use in exceptions provided; barring facial recognition and other matching technology on nontargets; excluding equipping unmanned aerial vehicle with weapons; providing exception; blocking use of information gathered in violation of the act as evidence; granting exception for exculpatory evidence; permitting operation and disclosure of information in emergency situations; listing scenarios for emergency situation; terminating operation once information is gathered or warrant is acquired; deeming certain information to be obtained in violation of the act; requiring inventory; providing for delay in notification if adverse result might occur; specifying what constitutes an adverse result; allowing extensions of delayed notification; directing delivery of notice to subject of collected information; detailing contents of notice; mandating proceeding to determine disciplinary action for violation of act; prescribing punishment and fine for violations of act; permitting civil action for violations of act; awarding attorney fees and costs to prevailing party; directing recordkeeping for each use of an unmanned aerial vehicle; listing contents of record; requiring record to be retained for specified time; providing for release of record through the Oklahoma Open Records Act; mandating records be given to the Administrator of the Courts annually; prescribing record to be retained for

1 minimum length of time; directing release of record
2 through an Open Records Act request; providing for
3 codification; and providing an effective date.
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5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 400 of Title 3, unless there is
8 created a duplication in numbering, reads as follows:

9 A. This act shall be known and may be cited as the "Oklahoma
10 Unmanned Aerial Surveillance Act".

11 B. As used in the Oklahoma Unmanned Aerial Surveillance Act:

12 1. "Agent of the state or any political subdivision of the
13 state" means any state or local agency, including but not limited to
14 a law enforcement entity or any other investigative entity, agency,
15 department, division, bureau, board or commission or any individual
16 acting or purporting to act for or on behalf of a state or local
17 agency; and

18 2. "Unmanned aerial vehicle" means an aircraft that is operated
19 without the possibility of direct human intervention from within or
20 on the aircraft.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 401 of Title 3, unless there is
23 created a duplication in numbering, reads as follows:
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1 A. Any use of unmanned aerial vehicles shall fully comply with
2 all Federal Aviation Administration requirements and guidelines.

3 B. Except as provided in the Oklahoma Unmanned Aerial
4 Surveillance Act, it is unlawful for an agent of the state or any
5 political subdivision of the state to operate an unmanned aerial
6 vehicle or to disclose or receive information acquired through the
7 operation of an unmanned aerial vehicle.

8 C. Exceptions:

9 1. Consent. It shall be lawful under the Oklahoma Unmanned
10 Aerial Surveillance Act to disclose or receive information about any
11 person acquired through the operation of an unmanned aerial vehicle
12 if the person has given written consent to the disclosure;

13 2. Emergency Situations. It shall be lawful under the Oklahoma
14 Unmanned Aerial Surveillance Act for an agent of the state or any
15 political subdivision of the state to operate an unmanned aerial
16 vehicle and for information from the operation to be disclosed or
17 received if the unmanned aerial vehicle is used in circumstances in
18 which it is reasonable to believe that there is an imminent threat
19 to the life or safety of a person, and to assist the person subject
20 to the following limitations:

21 a. not later than forty-eight (48) hours after the agent
22 of the state or any political subdivision of the state
23 begins operation of an unmanned aerial vehicle, a
24 supervisory official shall file a sworn statement with

1 the appropriate court setting forth the grounds for
2 the emergency use, and

3 b. the statement shall document the factual basis for the
4 emergency;

5 3. Warrant or Order.

6 a. An unmanned aerial vehicle may be operated and
7 information from the operation disclosed in order to
8 collect information from a nonpublic area only
9 pursuant to a warrant issued by a court of competent
10 jurisdiction and in full compliance with Sections 1221
11 through 1241 of Title 22 of the Oklahoma Statutes.

12 b. An unmanned aerial vehicle may be operated and
13 information from the operation disclosed in order to
14 collect information from a public area pursuant to a
15 warrant authorized under subparagraph a of this
16 paragraph or pursuant to an order issued by any court
17 of competent jurisdiction if the agent of the state or
18 any political subdivision of the state offers specific
19 and articulable facts demonstrating reasonable
20 suspicion of criminal activity, that the operation of
21 the public unmanned aircraft system will uncover the
22 activity, and that alternative methods of data
23 collection are either cost-prohibitive or present a
24 significant risk to any person's bodily safety. The

1 order shall not be issued for a period longer than
2 forty-eight (48) hours. Extensions of an order may be
3 granted but shall be no longer than the authorizing
4 judge deems necessary to achieve the purposes for
5 which it was granted and in no event for longer than
6 thirty (30) days;

7 4. Non-law-enforcement Operations. It shall be lawful under
8 the Oklahoma Unmanned Aerial Surveillance Act for an agent of the
9 state or any political subdivision of the state to operate an
10 unmanned aerial vehicle and for information derived from the
11 operation to be disclosed if no part of any information and no
12 evidence derived from the operation may be received as evidence in
13 any trial, hearing or other proceeding in or before any court, grand
14 jury, department, officer, agency, regulatory body, legislative
15 committee or other authority of the state or a political subdivision
16 of the state or for any intelligence purpose;

17 5. Public Land. An unmanned aerial vehicle may be operated by
18 any authorized agent of the state or any political subdivision of
19 the state or federal agency, when conducting surveillance
20 exclusively of public land or property; provided, that the
21 surveillance shall not be targeted at gathering or producing
22 information concerning any private individuals or organizations that
23 are using or are present on the land or property. The entity
24 conducting surveillance shall notify the agency that has oversight

1 of the target public land or property prior to conducting the
2 surveillance; and

3 6. Scientific Research and Cartography. An unmanned aerial
4 vehicle may be operated by any authorized agent of the state or any
5 political subdivision of the state or federal agency when conducting
6 scientific research, including but not limited to climatological,
7 agricultural, hydrological or meteorological research, or for data
8 or image collection for cartography or digital mapping for
9 geographic information systems (GIS). Operation under this
10 paragraph shall not be targeted at gathering or producing
11 information concerning any private individuals or organizations and
12 shall not include any biometric or facial recognition operation.

13 D. When unmanned aerial vehicles are used pursuant to
14 subsection C of this section, they shall be operated in a manner to
15 collect data only on the target and to avoid data collection on
16 individuals, homes or areas other than the target. Neither facial
17 recognition nor other biometric matching technology may be used on
18 nontarget data collected by an unmanned aerial vehicle.

19 E. Unmanned aerial vehicles shall not be equipped with weapons
20 except when used by duly authorized members, agents or contractors
21 of the Department of Defense or the United States military.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 402 of Title 3, unless there is
24 created a duplication in numbering, reads as follows:

1 Whenever an agent of the state or any political subdivision of
2 the state uses an unmanned aerial vehicle, no part of information
3 acquired and no evidence derived from the operation may be received
4 as evidence in any trial, hearing or other proceeding in or before
5 any court, grand jury, department, officer, agency, regulatory body,
6 legislative committee or other authority of the state or any
7 political subdivision of the state if that information or data was
8 collected in violation of the Oklahoma Unmanned Aerial Surveillance
9 Act. This exclusion shall not apply to exculpatory evidence offered
10 by a private individual or organization, nor to evidence offered or
11 received to show or prove a violation of this act.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 403 of Title 3, unless there is
14 created a duplication in numbering, reads as follows:

15 A. Emergency Situation Exception. Notwithstanding any other
16 provision of the Oklahoma Unmanned Aerial Surveillance Act, an agent
17 of the state or any political subdivision of the state may operate
18 an unmanned aerial vehicle and disclose information from the
19 operation if:

20 1. The agent of the state or any political subdivision of the
21 state reasonably determines that an emergency situation exists that:

22 a. involves:

23 (1) immediate danger of death or serious physical
24 injury to any person, including but not limited

1 to missing children, wildfires, severe weather or
2 other natural disasters, or

3 (2) conspiratorial activities threatening the
4 national security interest, and

5 b. requires operation of an unmanned aerial vehicle
6 before a warrant or order authorizing an operation
7 can, with due diligence, be obtained; or

8 2. There are grounds upon which a warrant or order could be
9 entered to authorize the operation, provided that an application for
10 a warrant or order approving the operation is made within forty-
11 eight (48) hours after the operation begins to occur.

12 B. Failure to Obtain a Warrant or Order.

13 1. Termination of Operation. In the absence of a warrant or
14 order, an operation of an unmanned aerial vehicle carried out under
15 subsection A of this section shall immediately terminate when the
16 information sought is obtained or when the application for the
17 warrant or order is denied, whichever is earlier.

18 2. Prohibition on Use as Evidence. In the event an application
19 for the warrant or order is denied, the information obtained from
20 the operation of an unmanned aerial vehicle shall be treated as
21 having been obtained in violation of the Oklahoma Unmanned Aerial
22 Surveillance Act and an inventory of the information obtained from
23 the operation shall be disclosed by the person named in the
24 application.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 404 of Title 3, unless there is
3 created a duplication in numbering, reads as follows:

4 A. An agent of the state or any political subdivision of the
5 state under paragraph 3 of subsection C of Section 2 of this act or
6 Section 3 of this act may, where a court order or warrant is sought,
7 include in the application a request, which the court shall grant,
8 for an order delaying the notification for a period not to exceed
9 ninety (90) days, if the court determines that there is reason to
10 believe that notification of the existence of the court order may
11 have an adverse result described in subsection B of this section.

12 B. An adverse result for the purposes of subsection A of this
13 section is:

14 1. Endangering the life or physical safety of an individual;
15 2. Flight from prosecution;
16 3. Destruction of or tampering with evidence;
17 4. Intimidation of potential witnesses; or
18 5. Otherwise seriously jeopardizing an investigation or unduly
19 delaying a trial.

20 C. Extensions of the delay of notification of up to ninety (90)
21 days each may be granted by the court upon application or by
22 certification by the agent of the state or any political subdivision
23 of the state.
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1 D. Upon expiration of the period of delay of notification the
2 agent of the state or any political subdivision of the state shall
3 serve upon or deliver by registered or first-class mail to the
4 person or persons upon whom information was collected a copy of the
5 warrant or order together with notice that:

6 1. States with reasonable specificity the nature of the law
7 enforcement inquiry; and

8 2. Informs the person or persons upon whom information was
9 collected:

10 a. that notification was delayed,

11 b. what governmental entity or court made the
12 certification or determination pursuant to which that
13 delay was made, and

14 c. which provision of the Oklahoma Unmanned Aerial
15 Surveillance Act allowed the delay.

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 405 of Title 3, unless there is
18 created a duplication in numbering, reads as follows:

19 A. If a court or appropriate department or agency determines
20 that an agent of the state or any political subdivision of the state
21 has violated any provision of the Oklahoma Unmanned Aerial
22 Surveillance Act, and the court or appropriate department or agency
23 finds that the circumstances surrounding the violation raise serious
24 questions about whether or not the agent of the state or any

1 political subdivision of the state acted willfully or intentionally
2 with respect to the violation, the department or agency shall, upon
3 receipt of a true and correct copy of the decision and findings of
4 the court or appropriate department or agency, promptly initiate a
5 proceeding to determine whether disciplinary action against the
6 agent of the state or any political subdivision of the state is
7 warranted. The director of such department or agency shall notify
8 the Attorney General of all such proceedings and provide the
9 Attorney General with the reasons for each determination made.

10 B. Any violation of the Oklahoma Unmanned Aerial Surveillance
11 Act shall be punishable as a misdemeanor with a sentence not to
12 exceed six (6) months in the county jail and a fine of not less than
13 Two Hundred Fifty Dollars (\$250.00) and not more than Two Thousand
14 Five Hundred Dollars (\$2,500.00) per violation.

15 C. Regardless of whether any action is taken pursuant to
16 subsection A or B of this section, any private individual or
17 organization alleging a violation of the Oklahoma Unmanned Aerial
18 Surveillance Act may bring a civil action in district court for
19 declaratory and injunctive relief and shall be entitled to
20 reasonable attorney fees and costs upon prevailing.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 406 of Title 3, unless there is
23 created a duplication in numbering, reads as follows:
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1 A. Recordkeeping. An agent of the state or any political
2 subdivision of the state using unmanned aerial vehicles pursuant to
3 the Oklahoma Unmanned Aerial Surveillance Act shall maintain a log
4 recording each use of an unmanned aerial vehicle. The log shall
5 include, at a minimum:

- 6 1. The date, time and location of use;
- 7 2. The target of data collection;
- 8 3. The type of data collected;
- 9 4. The justification for the deployment;
- 10 5. The operator of the unmanned aerial vehicle;
- 11 6. The person applying for a warrant authorizing the use;
- 12 7. Whether an exception to the warrant requirements specified
13 in the Oklahoma Unmanned Aerial Surveillance Act was used to justify
14 the deployment of an unmanned aerial vehicle;
- 15 8. Whether a warrant request was granted or denied;
- 16 9. Which court and judge authorized or denied a warrant
17 application; and
- 18 10. Whether any agent of the state or political subdivision of
19 the state was subject to any discipline or criminal proceedings for
20 violating any provision of this act.

21 B. The log shall be retained by the state for a minimum of
22 three (3) years.

23 C. The log shall be made available subject to a request made
24 through the Oklahoma Open Records Act.

1 D. In December of each year the state or any political
2 subdivision of the state maintaining a log pursuant to subsection A
3 of this section shall report their log to the Administrator of the
4 Courts. The Administrator of the Courts shall retain these records
5 for a minimum of ten (10) years, and the records shall be made
6 available subject to a request made through the Oklahoma Open
7 Records Act.

8 SECTION 8. This act shall become effective November 1, 2016.

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