

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3146

By: Humphrey

AS INTRODUCED

An Act relating to criminal procedure; creating the Freedom from Unwarranted Surveillance Act; defining terms; prohibiting certain agencies and persons from using drones to gather evidence or record images; providing presumption of privacy on privately owned property; listing exceptions to certain prohibited conduct; stating remedies for violations; making certain evidence inadmissible in criminal prosecutions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2021 of Title 22, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Freedom from Unwarranted Surveillance Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2022 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Drone" means a powered, aerial vehicle that:

- a. does not carry a human operator,
- b. uses aerodynamic forces to provide vehicle lift,
- c. can fly autonomously or be piloted remotely,
- d. can be expendable or recoverable, and
- e. can carry a lethal or nonlethal payload.

2. "Image" means a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, sound waves, odors, or other physical phenomena which captures conditions existing on or about real property or an individual located on that property;

3. "Imaging device" means a mechanical, digital, or electronic viewing device, still camera, camcorder, motion picture camera, or any other instrument, equipment, or format capable of recording, storing, or transmitting an image;

4. "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled dangerous substances laws;

5. "Political subdivision" means any municipality, city, town, village, school, or county;

6. "State agency" means any agency, department, board or commission of the state or any state eleemosynary, educational, rehabilitative, correctional, or custodial facility; and

7. "Surveillance" means:

- 1 a. with respect to an owner, tenant, occupant, invitee,
2 or licensee of privately owned real property, the
3 observation of such persons with sufficient visual
4 clarity to be able to obtain information about their
5 identity, habits, conduct, movements, or whereabouts,
6 or
7 b. with respect to privately owned real property, the
8 observation of the physical improvements of such
9 property with sufficient visual clarity to be able to
10 determine unique identifying features or its occupancy
11 by one or more persons.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 2023 of Title 22, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A law enforcement agency may not use a drone to gather
16 evidence or other information, except as provided in Section 4 of
17 this act.

18 B. A person, a state agency, or a political subdivision may not
19 use a drone equipped with an imaging device to record an image of
20 privately owned real property or of the owner, tenant, occupant,
21 invitee, or licensee of such property with the intent to conduct
22 surveillance on the individual or property captured in the image in
23 violation of the reasonable expectation of privacy of such person
24 without his or her written consent. For purposes of this section, a
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1 person is presumed to have a reasonable expectation of privacy on
2 his or her privately owned real property if he or she is not
3 observable by persons located at ground level in a place where they
4 have a legal right to be, regardless of whether he or she is
5 observable from the air with the use of a drone.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2024 of Title 22, unless there
8 is created a duplication in numbering, reads as follows:

9 The provisions of this act do not prohibit the use of a drone:

10 1. To counter a high risk of a terrorist attack by a specific
11 individual or organization if the United States Secretary of
12 Homeland Security determines that credible intelligence indicates
13 that there is such a risk;

14 2. If the law enforcement agency first obtains a search warrant
15 signed by a judge authorizing the use of a drone;

16 3. If the law enforcement agency possesses reasonable suspicion
17 that, under particular circumstances, swift action is needed to
18 prevent imminent danger to life or serious damage to property, to
19 forestall the imminent escape of a suspect or the destruction of
20 evidence, or to achieve purposes including, but not limited to,
21 facilitating the search for a missing person. Provided, the head of
22 the law enforcement agency using the drone for this purpose must
23 provide written authorization for such use and must maintain a copy
24 on file at the agency;

1 4. To assist a law enforcement agency with traffic management;
2 provided, however, a law enforcement agency acting under this
3 paragraph may not issue a traffic infraction citation based on
4 images or video captured by a drone;

5 5. To facilitate the collection of evidence by a law
6 enforcement agency at a crime scene or traffic crash scene;

7 6. By a state agency or political subdivision for:

8 a. the assessment of damage due to a flood, a wildfire,
9 or any other natural disaster that is the subject of a
10 state of emergency declared by the state or by a
11 political subdivision, before the expiration of the
12 emergency declaration, or

13 b. vegetation or wildlife management on publicly owned
14 land or water.

15 7. By certified fire department personnel to perform tasks
16 within the scope and practice authorized under their certifications;

17 8. By a person or an entity engaged in a business or profession
18 licensed by the state, or by an agent, employee, or contractor
19 thereof, if the drone is used only to perform reasonable tasks
20 within the scope of practice or activities permitted under the
21 license of such person or entity. However, this exception does not
22 apply to a profession in which the authorized scope of practice of
23 the licensee includes obtaining information about the identity,
24 habits, conduct, movements, whereabouts, affiliations, associations,

1 transactions, reputation, or character of any society, person, or
2 group of persons;

3 9. By an employee or a contractor of a property appraiser who
4 uses a drone solely for the purpose of assessing property for ad
5 valorem taxation;

6 10. To capture images by or for an electric, water, or natural
7 gas utility:

- 8 a. for operations and maintenance of utility facilities,
9 including facilities used in the generation,
10 transmission, or distribution of electricity, gas, or
11 water, for the purpose of maintaining utility system
12 reliability and integrity,
 - 13 b. for inspecting utility facilities, including
14 pipelines, to determine construction, repair,
15 maintenance, or replacement needs before, during, and
16 after construction of such facilities,
 - 17 c. for assessing vegetation growth for the purpose of
18 maintaining clearances on utility rights-of-way,
 - 19 d. for utility routing, siting, and permitting for the
20 purpose of constructing utility facilities or
21 providing utility services, or
 - 22 e. for conducting environmental monitoring, as provided
23 by federal, state, or local law, rule, or permit.
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1 11. For aerial mapping, if the person or entity using a drone
2 for this purpose is operating in compliance with Federal Aviation
3 Administration regulations;

4 12. To deliver cargo, if the person or entity using a drone for
5 this purpose is operating in compliance with Federal Aviation
6 Administration regulations;

7 13. To capture images necessary for the safe operation or
8 navigation of a drone that is being used for a purpose allowed under
9 federal or Oklahoma law;

10 14. By a communications service provider or a contractor for a
11 communications service provider for routing, siting, installation,
12 maintenance, or inspection of facilities used to provide
13 communications services;

14 15. By an employee of the Oklahoma Department of Wildlife
15 Conservation for the purposes of managing and eradicating invasive
16 exotic plants or animals on public lands and suppressing and
17 mitigating wildfire threats; or

18 16. By a non-law enforcement employee of the Oklahoma
19 Department of Agriculture, Food, and Forestry for activities for the
20 purposes of managing and eradicating plant or animal diseases.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2025 of Title 22, unless there
23 is created a duplication in numbering, reads as follows:

1 A. An aggrieved party may initiate a civil action against a law
2 enforcement agency to obtain all appropriate relief in order to
3 prevent or remedy a violation of this act.

4 B. The owner, tenant, occupant, invitee, or licensee of
5 privately owned real property may initiate a civil action for
6 compensatory damages for violations of this act and may seek
7 injunctive relief to prevent future violations of this act against a
8 person, state agency, or political subdivision that violates the
9 provisions of subsection B of Section 3 of this act. In such
10 action, the prevailing party is entitled to recover reasonable
11 attorney fees from the non-prevailing party based on the actual and
12 reasonable time expended by his or her attorney billed at an
13 appropriate hourly rate and, in cases in which the payment of such a
14 fee is contingent on the outcome, without a multiplier, unless the
15 action is tried to verdict, in which case a multiplier of up to
16 twice the actual value of the time expended may be awarded in the
17 discretion of the trial court.

18 C. Punitive damages for a violation of subsection B of Section
19 3 of this act may be sought against a person subject to other
20 requirements and limitations of law.

21 D. The remedies provided for a violation of subsection B of
22 Section 3 of this act are cumulative to other existing remedies.
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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2026 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 Evidence obtained or collected in violation of the provisions of
5 this act shall not be admissible as evidence in a criminal
6 prosecution in any court of law in this state.

7 SECTION 7. This act shall become effective November 1, 2024.

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9 59-2-8558 GRS 12/31/23

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