

SUBJECT: Revising circumstances for law enforcement capturing images with drones

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 5 ayes — Bowers, Goodwin, Harless, Hefner, E. Morales

4 nays — White, Patterson, Schaefer, Tinderholt

WITNESSES: For — Brandon Karr, City of Pearland; David Dean, North Central Texas Emergency Communications District; (*Registered, but did not testify*: Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; James Parnell, Dallas Police Association; Dallas Reed, Texas Municipal Police Association; Bruce Wayne II)

Against — None

On — (*Registered, but did not testify*: Jason Day, Texas Department of Public Safety)

BACKGROUND: Government Code 423.003 makes it a crime for a person to use an unmanned aircraft to capture an image of an individual or privately owned property with the intent to conduct surveillance. An offense is a class C misdemeanor (maximum fine of \$500).

Sec. 423.002 lists certain circumstances under which it is lawful to capture an image using an unmanned aircraft, including if the image was captured by a law enforcement authority:

- in immediate pursuit of a person officers have reasonable suspicion or probable cause to suspect has committed an offense, not including fine-only misdemeanors;
- for the purpose of documenting a crime scene where an offense has been committed, not including fine-only misdemeanors; or
- of private property that is generally open to the public where the property owner consents to law enforcement public safety responsibilities.

It also is lawful to capture an image using an unmanned aircraft from a height no more than eight feet above the ground in a public place, if the image was captured without using electronic, mechanical, or other means to amplify the image beyond normal human perception.

Sec. 423.008 requires each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality with a population greater than 150,000 that used or operated an unmanned aircraft during the preceding 24 months to report to the governor, lieutenant governor, and the Legislature on certain items, including:

- the number of times an unmanned aircraft was used and the types of incidents and justifications for the use;
- the number of criminal investigations aided; and
- the type of information collected on an individual, residence, property, or area that was not the subject of a law enforcement operation and the frequency of the collection of this information.

Some have called for more clarity regarding what would constitute "capture" and "surveillance" for the offense under Government Code sec. 423.003. Others have called for additional guidance surrounding the circumstances under which it is lawful for a law enforcement authority to capture an image using an unmanned aircraft.

DIGEST:

HB 3251 would define "capture" and "surveillance" for the purposes of law governing the use of unmanned aircraft. "Capture" would mean the actual care, custody, control, or management of any physical or electronic representation of an image that was capable of being copied or destroyed. "Surveillance" would mean the intentional and continuous close observation of an individual or property.

The bill would expand the circumstances under which a law enforcement agency could capture an image using an unmanned aircraft in immediate pursuit of a person suspected of committing an offense or for the purpose of documenting a crime scene to include fine-only misdemeanors.

The bill would revise the circumstances under which a law enforcement authority could capture an image of private property using an unmanned aircraft to be only if the property owner consented to a search in connection with pursuing a suspect, documenting a crime scene, investigating certain scenes, searching for a missing person, or conducting a high-risk tactical operation.

The bill would remove provisions making it lawful to capture an image using an unmanned aircraft from a height no more than eight feet above the ground in a public place.

The report submitted by a law enforcement agency on its use of unmanned aircraft in the preceding 24 months would no longer have to be submitted to the Legislature but instead would have to be submitted to the House speaker and the Legislative Reference Library.

The bill would take effect September 1, 2021, and would apply only to an offense committed on or after that date.