

SUBJECT: Creating a criminal offense for operating certain aircraft

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Herrero, Kacal, Allen, V. Jones, R. Lopez, Sherman, Swanson, Toth

0 nays

1 absent — Murr

WITNESSES: For — (*Registered, but did not testify*: David Batton, Harris County Deputies Organization FOP 39; Brian Hawthorne, Sheriffs Association of Texas)

Against — (*Registered, but did not testify*: Maggie Luna, Statewide Leadership Council; Justin Martinez, Texas Center for Justice and Equity; Zig Luis)

On — Cris Love, Texas Board of Criminal Justice - Office of the Inspector General

BACKGROUND: Government Code sec. 423.0045 defines the offense of operation of unmanned aircraft over correctional facility, detention facility, or critical infrastructure facility.

A person commits the offense if they:

- operate an unmanned aircraft over a correctional facility, detention facility, or critical infrastructure facility and the unmanned aircraft is not higher than 400 feet above ground level;
- allow an unmanned aircraft to make contact with a correctional facility, detention facility, or critical infrastructure facility, including any person or object on the premises of or within the facility; or
- allow an unmanned aircraft to come within a distance of a

correctional facility, detention facility, or critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

The offense is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), except that the offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the actor has previously been convicted under this section.

Concerns have been raised about a lack of restrictions on unmanned aircraft flights above correctional facilities, since much of current law has been ruled unconstitutional.

DIGEST: CSHB 3075 would create a criminal offense for operating an unmanned aircraft over a correctional or detention facility under certain circumstances.

The bill would define a "correctional facility" as:

- a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice;
- a municipal or county jail;
- a confinement facility operated by or under contract with the Federal Bureau of Prisons; or
- a secure correctional facility or secure detention facility.

"Detention facility" would mean a facility operated by or under contract with United States Immigration and Customs Enforcement for the purpose of detaining aliens and placing them in removal proceedings.

The bill would establish that a person would commit the offense if the person intentionally or knowingly:

- operated an unmanned aircraft over a correctional facility or detention facility and the unmanned aircraft was not higher than 400 feet above ground level;

- allowed an unmanned aircraft to make contact with a correctional facility or detention facility, including any person or object on the premises of or within the facility; or
- allowed an unmanned aircraft to come within a distance of a correctional facility or detention facility that was close enough to interfere with the operations of or cause a disturbance to the facility.

These provisions would not apply to such conduct committed by:

- the federal government, this state, or a governmental entity;
- a person under contract with or otherwise acting under the direction or on behalf of the federal government, this state, or a governmental entity;
- a person who had the prior written consent of the owner or operator of the correctional facility or detention facility;
- a law enforcement agency; or
- a person under contract with or otherwise acting under the direction or on behalf of a law enforcement agency.

An offense under this section would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). The offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the actor had previously been convicted of this offense.

The offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if during the commission of the offense, the actor used the unmanned aircraft to:

- provide contraband to a person in the custody of the correctional facility or detention facility; or
- otherwise introduce contraband into the correctional facility or detention facility.

The bill would repeal all references to correctional facilities and detention facilities in Government Code sec. 423.0045 and make conforming

changes.

The bill would take effect September 1, 2023. The bill only would apply to offenses committed on or after the effective date.