

REGULATION OF UNMANNED AERIAL VEHICLES (UAVs OR DRONES)

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House Bills 4455 and 4456

Sponsor: Rep. Tom McMillin

Committee: Criminal Justice

Complete to 4-16-13

A SUMMARY OF HOUSE BILLS 4455 AND 4456 AS INTRODUCED 3-14-13

Briefly, House Bill 4455 would do the following:

- Create a new act to authorize and regulate the use of unmanned aerial vehicles (drones).
- Ban the use of weapons on drones.
- Require search warrants or court orders for drone operations targeting private property or for criminal investigations.
- Regulate the disclosure of information gathered from the use of drones.
- Require public entities using drones to report on drone operations to the Legislature, courts, attorney general, and/or state court administrator and make the information available on the entity's website.
- Provide misdemeanor and felony penalties for violations.
- Define terms.

House Bill 4456 would add the felony penalties to the sentencing guidelines.

Following is a more detailed description of the bills.

House Bill 4455

The bill would prohibit the use of an unmanned aerial vehicle except as provided in the new act. The term "unmanned aerial vehicle" or "UAV" would be defined to mean an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft (hereinafter referred to as a "drone").

Who May Use Drones

The bill appears to be authorizing and regulating the use of drones by public entities, and to restrict operation of drones to those entities, though this is not specifically stated. For example, the bill requires a "person" who uses a drone to comply with all Federal Aviation Administration (FAA) requirements and guidelines. A "person" is also prohibited from operating a drone that contains, mounts, or carries a lethal or nonlethal weapon or weapon system of any type, but "person" is not defined.

The bulk of the provisions of the bill are directed at various public entities. The state must obtain legislative approval before acquiring a drone and a local unit of government must obtain approval from its legislative body. The name of the political entity owning a drone must be on the body in clearly printed and visible lettering.

"Political entity" is not defined, but "agent of this state or a political subdivision of this state" would mean the state or local unit of government, including, but not limited to, a law enforcement agency or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of the state or local unit of government.

"Local unit of government" would mean a city, county, township, or village and/or a public school or a school district as defined in the Revised School Code. "Law enforcement agency" would include the Departments of State Police or Natural Resources; a county sheriff department; or the police department of a local unit of government or of a community college, college, or university.

Lawful Use of Drones

Regarding public property: An agent of the state or a political subdivision (hereinafter "public entity") could use a drone to target *public* property if both of the following apply:

- The agent reasonably suspects an emergency situation to exist involving the immediate danger of death or serious physical injury to any person, threats to national security, or activities characteristic of organized crime that requires operation of a drone before a warrant or order authorizing such interception can, with due diligence, be obtained.
- Grounds exist upon which a warrant or order could be entered to authorize the operation, and an application for a warrant or order is made within 48 hours after the operation occurred or began to occur.

In the absence of a warrant or order, the drone operation must immediately terminate if the information sought is obtained or if the warrant or order is denied, whichever happens first. Moreover, if the application for the warrant or order is denied, the information obtained from the operation of the drone must be treated as having been obtained in violation of the bill and an inventory would be required to be served on the person named in the application. ("Inventory" is not defined in the bill, but generally references the list of objects removed during a search under a warrant and is presented at the end of the search.)

Regarding private property: A drone could only be operated to target *private* property if a search warrant is first obtained to permit that operation.

Extension of Warrant for Use of Drone

Currently, a search warrant affidavit contained in any court file or court record retention system becomes public information on the 56th day following the issuance of the search warrant unless a peace officer or prosecuting attorney obtains a suppression order, upon a

showing that suppression is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness, that extends the nonpublic period.

The bill would allow a public entity to include in the application for a search warrant or order to use a drone a request (which the court would be required to grant) for an order delaying the notification described above for a period not to exceed 90 days. The court would have to determine there was reason to believe that notification of the court order may have an adverse result (defined to mean endangering the life or physical safety of an individual, flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, and/or otherwise seriously jeopardizing an investigation or unduly delaying a trial).

Extensions of up to 90 days each may be granted by a court upon application, or by certification of the public entity. When the delay of notification expires, the public entity would have to serve, or deliver by registered or first-class mail, a copy of the warrant or order upon the person or persons upon whom information was collected together with notice that states with reasonable specificity the nature of the law enforcement inquiry and informs the person or persons that notification was delayed, what governmental entity or court made the certification or determination, and which provision of this section of the bill allowed the delay.

Reporting Requirements

Public entities: The following information would have to be reported to the Legislature beginning January 1 of each year and then quarterly (April 1, July 1, and October 1) by each public entity using a drone and would also have to be posted on the public entity's website:

- Number of times a drone was used, organized by type of operation and justification for deployment.
- Number of crime investigations aided by use of a drone and description of how it helped.
- Number of times a drone was used for other than a criminal investigation and how it helped in each instance.
- Frequency and type of data collected on individuals or areas other than targets.
- Total cost of its unmanned aerial vehicle program.
- Flight pattern of each flight except for those flights made as part of a criminal investigation that has not yet been completed.
- A log containing all of the following for each drone flight:
 - Time and geographical location of each takeoff and landing.
 - Total distance travelled and time spent in flight per flight.
 - Geographical flight pattern.
 - A unique identifier denoting the individual warrant or order, if any, corresponding to the flight.

Judges: Each January, any judge that issued an order or an extension of an order that expired, or denied a request for a warrant or order, in the preceding year would have to report the following to the state court administrator:

- The fact an order or extension was applied for.
- The kind of order or extension applied for.
- Whether the order or extension was granted as applied for, modified, or denied.
- Period of drone use authorized by the order, and number and duration of any extensions of the order.
- The offense specified in the order or application or extension of the order.
- Identity of the applying public entity making the application and the person authorizing the application.

Department of Attorney General: Each March, the Department of Attorney General or the principal prosecuting attorney for a political subdivision would have to report all of the following to the state court administrator:

- The same information required of judges with respect to each application for an order or extension made during the preceding calendar year.
- A general description of the information gathered under each order or extension, including all of the following:
 - Approximate nature and frequency of incriminating conduct gathered.
 - Approximate number of persons upon whom information was gathered.
 - Approximate nature, amount, and cost of the manpower and other resources used in the collection.
- A list of each arrest resulting from information gathered and the offenses for which arrests were made.
- The number of trials resulting from information gathered.
- The number of motions to suppress made with respect to information gathered, and the number granted or denied.
- A list of convictions resulting from information gathered and the offenses for which the convictions were obtained and a general assessment of the importance of the information.

State Court Administrator: Each June, the state court administrator would have to transmit to the Legislature and post on its website a full and complete report concerning the number of applications for orders authorizing or approving drone operations or disclosure of information from a drone operation, and also the number of orders and extensions granted or denied during the preceding calendar year. The report would have to include a summary and analysis of the data required to be filed with the administrator by the judges and attorney general or local prosecutors.

Chief Operating Officer of a State Department or Local Unit of Government: A COO of a state department or local unit of government that deployed a drone during the preceding three months would have to sign an affidavit stating that there is no existing data in that unit of government's data or in that unit's possession that violates the provision requiring

data collected on a nontarget to be destroyed immediately (see Disclosure of Information Obtained by a Drone below). The affidavit would have to be sent to the chair of the Senate and House of Representatives standing committees on the judiciary by January 1, April 1, July 1, and October 1 of each year.

Disclosure of Information Obtained by a Drone

Except as provide in the bill, a law enforcement agency or political subdivision of the state could not disclose or receive information acquired through the operation of a drone.

Information about a person could be disclosed or received under the following circumstances:

- The person gave written consent to the disclosure.
- The drone was used in circumstances in which it is reasonable to believe there is an imminent threat to a person's life or safety and the use is for the purpose of assisting the person *if* the following conditions were met:
 - The request to use the drone for emergency purposes contained documentation establishing the factual basis for the emergency.
 - A supervisory official of a political subdivision files a sworn statement setting forth the grounds for the emergency access not later than 48 hours after the entity began operating a drone.
- Under a search warrant.
- Under a court order upon specific and articulable facts demonstrating a reasonable suspicion of criminal activity, that the operation of a drone would uncover the criminal activity, and that alternatives methods of data collection are either cost-prohibitive or present a significant risk to any person's bodily safety. An order issued under this provision would be limited to no more than 48 hours. A judge could extend the time period as considered necessary but not to exceed 30 days.
- If no part of the information and no evidence derived from the operation were admitted into evidence in a trial or other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or other state or local authority, or for any intelligence purpose. A drone operated under this provision must be done in a manner so as to collect data only on the target and not on individuals, homes, or areas other than the target. Facial recognition or other biometric matching technology could not be used on nontarget data collected by a drone.

Data collected on an individual, home, or area other than the target could not be used, copied, or disclosed for any purpose and would have to be deleted as soon as possible but not later than 24 hours of collection.

Information acquired and evidence derived from an operation conducted by an agent of the state or a political subdivision could not be admitted into evidence in a trial, hearing, or other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or other state or local authority *if* the disclosure would be in violation of the bill.

Violations by Public Entities

If a court or department or local unit of government determines that a public entity or individual acting on behalf of the entity has violated the bill, and that the circumstances surrounding the violation raise serious questions about whether the agent acted willfully or intentionally, the department or local unit shall initiate a proceeding to determine whether disciplinary action is warranted. If it is determined that disciplinary action is not warranted, the department director or chief operating officer of the local unit would have to notify the attorney general and provide him or her with the reasons for the determination.

A willful disclosure or use by a public entity of information beyond the extent permitted by the bill would be a violation for purposes of this provision.

If it were determined that an agent or a department of the state by intent or negligence violated the bill, the governor may require that the agent or department obtain approval from the attorney general before deploying a drone for a specified period of time. "Negligence" would mean (for the purposes of this provision) conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm.

Penalties

The bill would create the following penalties:

- Operating a weaponized drone: felony punishable by imprisonment up to 10 years and/or a fine with a minimum of \$1,000 and a maximum of \$10,000.
- Operating a drone in violation of the bill, noncompliance with FAA requirements, public entity obtaining a drone without proper approval, or public entity not putting name on body of drone: misdemeanor punishable by imprisonment for not more than 1 year and/or a fine with a minimum of \$500 and a maximum of \$5,000.
- Intentionally disclosing or using information or data obtained from use of drone:
 - 1st offense – misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500.
 - 2nd or subsequent offense – felony punishable by a minimum term of imprisonment of 4 years and/or a maximum fine of \$2,000.
- Making a significant reporting error – misdemeanor punishable by imprisonment for not more than 1 year and/or a fine with a minimum of \$500 and a maximum of \$5,000. "Significant reporting error" would mean inaccurately reporting data or failing to report data required to be reported under the bill resulting in significant risk that the public will be misled or confused by the inaccurate report or the lack of a report.

House Bill 4456

The bill would amend the Code of Criminal Procedure (MCL 777.12c) to specify that operating an armed unmanned aerial vehicle (drone) would be a Class D felony against

the public safety with a maximum term of imprisonment of 10 years. Improperly disclosing information or data obtained by a drone - second or subsequent offense - would be a Class F felony against the public trust with a maximum term of imprisonment of four years. The bill is tie-barred to House Bill 4455, meaning that it could not take effect unless House Bill 4455 is also enacted.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the state and local units of government, by setting limits on the acquisition and use of unmanned aerial vehicles (UAVs). It's not immediately known how many law enforcement agencies in the state actually operate UAVs. Publicly-released records of the Federal Aviation Administration (FAA) list no Michigan law enforcement agencies operating UAVs under a Certification of Authorization (COA) issued by the FAA¹, although news accounts potentially suggest otherwise.²

Going forward, the bill would limit the state or any local unit from acquiring an unmanned aerial vehicle until the Legislature or the legislative body of the local unit approves of the acquisition. As technology improves and costs come down, the Michigan State Police (MSP) and other state and local agencies could move to acquire unmanned aerial vehicles. For example, for MSP the use of an UAV could prove to be more cost effective than using manned aircraft for operations such as traffic safety, search and rescue, and HEMP flights. The Department of Natural Resources could use unmanned vehicles to detect and suppress forest fires or identify illegal poaching activities, while the Department of Transportation could use UAVs for traffic control or bridge inspections.

The enactment of the bill could potentially restrict or slow the acquisition of UAVs (depending on how legislative approval would need to occur) and their use (depending on

¹ See the FAA's website on unmanned aircraft systems (UAS) which released the names of entities operating UAVs under a certificate of authorization, <http://www.faa.gov/about/initiatives/uas>. See, also, the website of the Electronic Frontier Foundation, <https://www.eff.org/deeplinks/2013/02/faa-releases-new-list-drone-authorizations-your-local-law-enforcement-agency-map>. The FAA list includes some operations by the University of Michigan for research purposes. The FAA Modernization and Reform Act (P.L. 112-95) directs the FAA to "allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less" under certain conditions, including that the UAV must be flown within the sight of the operator, less than 400 feet above ground, during daylight conditions, inside Class G (uncontrolled) airspace, and more than five miles from any airport or other location with aviation activities.

² A recent article in The Oakland Press noted that the Oakland County Sheriff's department SWAT team used a small UAV in response to a September 2012 incident involving a barricaded gunman. See, Carol Hopkins, "Oakland County Sheriff Michael Bouchard concerned with Rep. Tom McMillin's drone-restricting bill", *The Oakland Press*, March 18, 2013,

http://www.theoaklandpress.com/articles/2013/03/18/news/local_news/doc5146a3b295a25722740380.txt. The Oakland County sheriff's department is not listed in documents released (thus far) by the FAA as having a COA to operate a UAV, although it is in the process of receiving a COA. A *USA Today* article notes that the UAV used by the sheriff's department in the September 2012 incident was an off-the-shelf \$300 Parrot A.R. Drone 2.0 App-Controlled Quadricopter purchased at a local Brookstone store. See, Ann Zaniwski "As drone use grows, so do privacy, safety concerns", *USA Today*, March 7, 2013,

<http://www.usatoday.com/story/news/nation/2013/03/07/drone-use-raises-privacy-safety-concerns/1969653/>.

how often a warrant would be required for operations that would generally not require a warrant using more conventional methods such as traffic cameras or manned aircraft). The cost of a UAV ranges from a few hundred dollars to several thousand dollars depending on the level of sophistication.

The bill imposes restrictions on the use of evidence and information gathered from UAV flights, potentially affecting court operations, including law enforcement agencies and prosecutors in the course of investigating and prosecuting crimes.

The bill imposes several reporting requirements on law enforcement agencies, prosecutors, and the courts. Given that the extent of the activities to be reported is not known, the cost implications these reporting requirements on the affected entities cannot be determined.

The fiscal impact on state and local correctional systems would depend on the numbers of misdemeanor and felony sentences. Information is not available on the number of persons that might be convicted under these provisions. New felony convictions would result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.