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## A BILL FOR AN ACT

RELATING TO VIOLATION OF PRIVACY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the Hawaii penal  
2 code does not adequately address situations in which  
3 technological advances have provided unique equipment that may  
4 be used for unauthorized surveillance purposes. These  
5 technological advances such as unmanned aircraft systems, also  
6 known as drones, often outpace statutory protections and present  
7 a substantial privacy risk. The legislature also finds that the  
8 proliferation and accessibility of these devices have created  
9 concerns about a person's right to privacy in their own homes  
10 throughout the State.

11           The purpose of this Act is to amend the offenses of  
12 violation of privacy in the first and second degree to address  
13 privacy concerns because of the use of unmanned aircraft  
14 systems.

15           SECTION 2. Section 711-1110.9, Hawaii Revised Statutes, is  
16 amended by amending subsection (1) to read as follows:



1           "(1) A person commits the offense of violation of privacy  
2 in the first degree if, except in the execution of a public duty  
3 or as authorized by law:

4           (a) The person intentionally or knowingly installs or  
5 uses [~~or both,~~] in any private place, [~~without~~  
6 ~~consent of the person or persons entitled to privacy~~  
7 ~~therein,~~] any device for observing, recording,  
8 amplifying, or broadcasting another person in a stage  
9 of undress or sexual activity in that place [~~or,~~]  
10 without the consent of the person or person entitled  
11 to privacy therein;

12           **(b) The person knowingly installs or uses outside a**  
13 **private place any device or unmanned aircraft system**  
14 **for observing, recording, amplifying, or broadcasting**  
15 **another person in a stage of undress or sexual**  
16 **activity in that place that would not ordinarily be**  
17 **visible, audible, or comprehensible outside, without**  
18 **the consent of the person or persons entitled to**  
19 **privacy therein; or**

20           [~~(b)~~] **(c) The person knowingly discloses an image or video**  
21 **of another identifiable person either in the nude, as**



1 defined in section 712-1210, or engaging in sexual  
2 conduct, as defined in section 712-1210, without the  
3 consent of the depicted person, with intent to harm  
4 substantially the depicted person with respect to that  
5 person's health, safety, business, calling, career,  
6 financial condition, reputation, or personal  
7 relationships; provided that:

8 (i) This paragraph shall not apply to images or  
9 videos of the depicted person made:

10 (A) When the person was voluntarily nude in  
11 public or voluntarily engaging in sexual  
12 conduct in public; or

13 (B) Pursuant to a voluntary commercial  
14 transaction; and

15 (ii) Nothing in this paragraph shall be construed to  
16 impose liability on a provider of "electronic  
17 communication service" or "remote computing  
18 service" as those terms are defined in section  
19 803-41, for an image or video disclosed through  
20 the electronic communication service or remote  
21 computing service by another person."



1 SECTION 3. Section 711-1111, Hawaii Revised Statutes, is  
2 amended by amending subsections (1) and (2) to read as follows:

3 "(1) A person commits the offense of violation of privacy  
4 in the second degree if, except in the execution of a public  
5 duty or as authorized by law, the person intentionally:

6 (a) Trespasses on property for the purpose of subjecting  
7 anyone to eavesdropping or other surveillance in a  
8 private place;

9 (b) Peers or peeps into a window or other opening of a  
10 dwelling or other structure adapted for sojourn or  
11 overnight accommodations for the purpose of spying on  
12 the occupant thereof or invading the privacy of  
13 another person with a lewd or unlawful purpose, under  
14 circumstances in which a reasonable person in the  
15 dwelling or other structure would not expect to be  
16 observed;

17 (c) Trespasses on property for the sexual gratification of  
18 the actor;

19 (d) Installs or uses, [~~or both,~~] in any private place,  
20 [~~without consent of the person or persons entitled to~~  
21 ~~privacy therein,~~] any [~~means or~~] device for observing,



1 recording, amplifying, or broadcasting sounds or  
2 events in that place other than another person in a  
3 stage of undress or sexual activity~~(7)~~, without the  
4 consent of the person or persons entitled to privacy  
5 therein;

6 (e) Installs or uses outside a private place any device or  
7 unmanned aircraft system for observing, hearing,  
8 recording, amplifying, or broadcasting sounds or  
9 events occurring [~~originating~~] in that place which  
10 would not ordinarily be visible, audible or  
11 comprehensible outside, without the consent of the  
12 person or persons entitled to privacy therein;

13 (f) Covertly records or broadcasts an image of another  
14 person's intimate area underneath clothing, by use of  
15 any device, and that image is taken while that person  
16 is in a public place and without that person's  
17 consent;

18 (g) Intercepts, without the consent of the sender or  
19 receiver, a message or photographic image by  
20 telephone, telegraph, letter, electronic transmission,



1 or other means of communicating privately; but this  
2 paragraph does not apply to:

3 (i) Overhearing of messages through a regularly  
4 installed instrument on a telephone party line or  
5 an extension; or

6 (ii) Interception by the telephone company, electronic  
7 mail account provider, or telephone or electronic  
8 mail subscriber incident to enforcement of  
9 regulations limiting use of the facilities or  
10 incident to other operation and use;

11 (h) Divulges, without the consent of the sender or the  
12 receiver, the existence or contents of any message or  
13 photographic image by telephone, telegraph, letter,  
14 electronic transmission, or other means of  
15 communicating privately, if the accused knows that the  
16 message or photographic image was unlawfully  
17 intercepted or if the accused learned of the message  
18 or photographic image in the course of employment with  
19 an agency engaged in transmitting it; or

20 (i) Knowingly possesses materials created under  
21 circumstances prohibited in section 711-1110.9.



1           (2) This section shall not apply to any dissemination,  
2 distribution, or transfer of images subject to this section by  
3 an electronic communication service provider or remote storage  
4 service in the ordinary course of its business. For the purpose  
5 of this subsection:

6           "Electronic communication" means any transfer of signs,  
7 signals, writing, images, sounds, data, or intelligence of any  
8 nature transmitted in whole or part by a wire, radio,  
9 electromagnetic, photoelectronic, or photo-optical system.

10           "Electronic communication service" means any service that  
11 provides to users thereof the ability to send or receive wire or  
12 electronic communications.

13           "Electronic communication service provider" means any  
14 person engaged in the offering or sale of electronic  
15 communication services to the public.

16           "Electronic communication system" means any wire, radio,  
17 electromagnetic, photo-optical, or photoelectronic facilities  
18 for the transmission of wire or electronic communications, and  
19 any computer facilities or related electronic equipment for the  
20 electronic storage of such communications, including e-mail, web  
21 hosting, multimedia messaging services, and remote storage



1 services offered by an electronic communication service  
2 provider.

3 "Remote storage service" means the provision to the public  
4 of computer storage or processing services by means of an  
5 electronic communication system.

6 "Unmanned aircraft system" means a drone or any object that  
7 is a system consisting of an unmanned aircraft that is remotely  
8 controlled, usually from the ground, but may also be remotely  
9 controlled from a manned aircraft, by use of data links and  
10 onboard sensors."

11 SECTION 4. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval.

17

INTRODUCED BY:



JAN 20 2016





# H.B. NO. 1632

**Report Title:**

Violation of Privacy; Unmanned Aircraft Systems

**Description:**

Amends the offenses of violation of privacy in the first and second degree to address privacy concerns because of the use of unmanned aircraft systems.

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