

JAN 22 2016

A BILL FOR AN ACT

RELATING TO PUBLIC ORDER.

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

1 SECTION 1. The legislature finds that Hawaii's existing
2 penal code does not adequately address situations in which
3 technological advances have provided unique equipment that may
4 be utilized for unauthorized surveillance purposes.
5 Technological advances such as the development of unmanned
6 aircraft systems, or drones, often outpace statutory protections
7 and present substantial privacy risks. The legislature further
8 finds that the proliferation and accessibility of unmanned
9 aircraft systems throughout the State have created concerns
10 about a person's right to privacy in the home.

11 The legislature also finds that the term "device" may cover
12 all technological improvements resulting in new devices, and
13 that using the term "devices" will prevent the need to change
14 the violation of privacy statutes each time a new device is
15 created.



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1 The purpose of this Act is to amend the offenses of
2 violation of privacy in the first and second degree to protect a
3 person's right to privacy in the home from devices.

4 SECTION 2. Section 711-1110.9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§711-1110.9 Violation of privacy in the first degree.

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

10 (a) The person intentionally or knowingly installs or
11 uses, [~~or both,~~] in any private place, [~~without~~
12 ~~consent of the person or persons entitled to privacy~~
13 ~~therein,~~] any device for observing, recording,
14 amplifying, or broadcasting another person in a stage
15 of undress or sexual activity in that place [~~,-or-~~],
16 without the consent of the person or persons entitled
17 to privacy therein;

18 (b) The person knowingly installs or uses outside a
19 private place any device for observing, recording,
20 amplifying, or broadcasting another person in a stage
21 of undress or sexual activity in that private place



1 which would not ordinarily be visible, audible, or
2 comprehensible outside, without the consent of the
3 person or persons entitled to privacy therein; or

4 ~~[(b)]~~ (c) The person knowingly discloses an image or video
5 of another identifiable person either in the nude, as
6 defined in section 712-1210, or engaging in sexual
7 conduct, as defined in section 712-1210, without the
8 consent of the depicted person, with intent to harm
9 substantially the depicted person with respect to that
10 person's health, safety, business, calling, career,
11 financial condition, reputation, or personal
12 relationships; provided that:

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

15 (A) When the person was voluntarily nude in
16 public or voluntarily engaging in sexual
17 conduct in public; or

18 (B) Pursuant to a voluntary commercial
19 transaction; and

20 (ii) Nothing in this paragraph shall be construed to
21 impose liability on a provider of "electronic



1 communication service" or "remote computing
2 service" as those terms are defined in section
3 803-41, for an image or video disclosed through
4 the electronic communication service or remote
5 computing service by another person.

6 (2) Violation of privacy in the first degree is a class C
7 felony. In addition to any penalties the court may impose, the
8 court may order the destruction of any recording made in
9 violation of this section.

10 (3) For the purposes of this section, "device" means any
11 system consisting of an unmanned aircraft that is remotely
12 controlled by the use of data links and on board sensors."

13 SECTION 3. Section 711-1111, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsection (1) to read:

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

19 (a) Trespasses on property for the purpose of subjecting
20 anyone to eavesdropping or other surveillance in a
21 private place;



- 1 (b) Peers or peeps into a window or other opening of a
2 dwelling or other structure adapted for sojourn or
3 overnight accommodations for the purpose of spying on
4 the occupant thereof or invading the privacy of
5 another person with a lewd or unlawful purpose, under
6 circumstances in which a reasonable person in the
7 dwelling or other structure would not expect to be
8 observed;
- 9 (c) Trespasses on property for the sexual gratification of
10 the actor;
- 11 (d) Installs or uses, [~~or both,~~] in any private place,
12 [~~without consent of the person or persons entitled to~~
13 ~~privacy therein,~~] any [~~means or~~] device for observing,
14 recording, amplifying, or broadcasting sounds or
15 events in that place other than another person in a
16 stage of undress or sexual activity[+], without the
17 consent of the person or persons entitled to privacy
18 therein;
- 19 (e) Installs or uses outside a private place any device
20 for observing, hearing, recording, amplifying, or
21 broadcasting sounds [~~originating~~] or events occurring



1 in that place which would not ordinarily be visible,
2 audible, or comprehensible outside, without the
3 consent of the person or persons entitled to privacy
4 therein;

5 (f) Covertly records or broadcasts an image of another
6 person's intimate area underneath clothing, by use of
7 any device, and that image is taken while that person
8 is in a public place and without that person's
9 consent;

10 (g) Intercepts, without the consent of the sender or
11 receiver, a message or photographic image by
12 telephone, telegraph, letter, electronic transmission,
13 or other means of communicating privately; but this
14 paragraph does not apply to:

15 (i) Overhearing of messages through a regularly
16 installed instrument on a telephone party line or
17 an extension; or

18 (ii) Interception by the telephone company, electronic
19 mail account provider, or telephone or electronic
20 mail subscriber incident to enforcement of



1 regulations limiting use of the facilities or
2 incident to other operation and use;

3 (h) Divulges, without the consent of the sender or the
4 receiver, the existence or contents of any message or
5 photographic image by telephone, telegraph, letter,
6 electronic transmission, or other means of
7 communicating privately, if the accused knows that the
8 message or photographic image was unlawfully
9 intercepted or if the accused learned of the message
10 or photographic image in the course of employment with
11 an agency engaged in transmitting it; or

12 (i) Knowingly possesses materials created under
13 circumstances prohibited in section 711-1110.9."

14 2. By amending subsection (3) to read:

15 "(3) For the purposes of this section:

16 "Device" means any system consisting of an unmanned
17 aircraft that is remotely controlled by the use of data links
18 and on board sensors.

19 "Intimate areas" means any portion of a person's underwear,
20 pubic area, anus, buttocks, vulva, genitals, or female breast.



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1 "Intimate areas underneath clothing" does not include
 2 intimate areas visible through a person's clothing or intimate
 3 areas exposed in public.

4 "Public place" means an area generally open to the public,
 5 regardless of whether it is privately owned, and includes but is
 6 not limited to streets, sidewalks, bridges, alleys, plazas,
 7 parks, driveways, parking lots, buses, tunnels, buildings,
 8 stores, and restaurants."

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

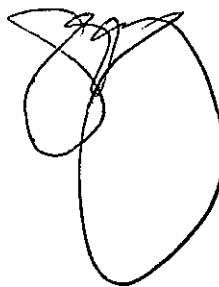
12 SECTION 5. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect upon its approval.
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Report Title:

Unmanned Aircraft Systems; Devices; Violation of Privacy; First Degree; Second Degree; Penal Code

Description:

Makes it a violation of privacy in the first degree for a person to knowingly install or use outside a private place any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity without consent of the person therein. Clarifies that lack of consent of the person entitled to privacy is required to violate privacy in the second degree when installing or using in a private place a device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity. Makes it a violation of privacy in the second degree for a person to install or use outside a private place any device for observing, hearing, recording, amplifying, or broadcasting sounds or events occurring in that place which would not ordinarily be visible, audible, or comprehensible outside, without the consent of the person entitled to privacy therein. Defines "device".

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