

JAN 18 2019

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 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. These
5 technological advances such as unmanned aircraft systems, also
6 known as unmanned aerial systems or drones, often outpace
7 statutory protections and present a substantial privacy risk.
8 The legislature further finds that the proliferation and
9 accessibility of unmanned aircraft systems have created concerns
10 about a person's right to privacy in the person's own home in
11 the State.

12 The purpose of this Act is to make violation of privacy a
13 more serious offense when unmanned aircraft systems are used to
14 commit the offense.

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



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1 "§711-1110.9 Violation of privacy in the first degree.

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

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

11 (b) The person knowingly discloses or threatens to
12 disclose an image or video of another identifiable
13 person either in the nude, as defined in section
14 712-1210, or engaging in sexual conduct, as defined in
15 section 712-1210, without the consent of the depicted
16 person, with intent to harm substantially the depicted
17 person with respect to that person's health, safety,
18 business, calling, career, education, financial
19 condition, reputation, or personal relationships or as
20 an act of revenge or retribution; provided that:



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- 1 (i) This paragraph shall not apply to images or
- 2 videos of the depicted person made:
- 3 (A) When the person was voluntarily nude in
- 4 public or voluntarily engaging in sexual
- 5 conduct in public; or
- 6 (B) Pursuant to a voluntary commercial
- 7 transaction; and
- 8 (ii) Nothing in this paragraph shall be construed to
- 9 impose liability on a provider of "electronic
- 10 communication service" or "remote computing
- 11 service" as those terms are defined in section
- 12 803-41, for an image or video disclosed through
- 13 the electronic communication service or remote
- 14 computing service by another person.

15 (2) Violation of privacy in the first degree is a class C
16 felony[-]; provided that violation of privacy in the first
17 degree shall be a class B felony if an unmanned aircraft system
18 is used to commit the offense. In addition to any penalties the
19 court may impose, the court may order the destruction of any
20 recording made in violation of this section.



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1 (3) Any recording or image made or disclosed in violation
2 of this section and not destroyed pursuant to subsection (2)
3 shall be sealed and remain confidential.

4 (4) For purposes of this section, "unmanned aircraft
5 system" means a system consisting of an unmanned aerial vehicle;
6 autonomous or human-operated control system; and associated
7 elements, including communication links and components that
8 control the unmanned aerial vehicle, that are required to
9 operate the unmanned aerial vehicle."

10 SECTION 3. Section 711-1111, Hawaii Revised Statutes, is
11 amended by amending subsections (3) and (4) to read as follows:

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

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

15 "Intimate areas underneath clothing" does not include
16 intimate areas visible through a person's clothing or intimate
17 areas exposed in public.

18 "Public place" means an area generally open to the public,
19 regardless of whether it is privately owned, and includes but is
20 not limited to streets, sidewalks, bridges, alleys, plazas,



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1 parks, driveways, parking lots, buses, tunnels, buildings,
2 stores, and restaurants.

3 "Unmanned aircraft system" means a system consisting of an
4 unmanned aerial vehicle; autonomous or human-operated control
5 system; and associated elements, including communication links
6 and components that control the unmanned aerial vehicle, that
7 are required to operate the unmanned aerial vehicle.

8 (4) Violation of privacy in the second degree is a
9 misdemeanor[-]; provided that violation of privacy in the second
10 degree shall be a class C felony if an unmanned aircraft system
11 is used to commit the offense. In addition to any penalties the
12 court may impose, the court may order the destruction of any
13 recording made in violation of this section."

14 SECTION 4. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Clarence J. Fishman D/s



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Report Title:

Violation of Privacy; Unmanned Aircraft Systems; Drones

Description:

Makes violation of privacy a more serious offense if an unmanned aircraft system is used to commit the offense.

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