
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 penal code
2 may not adequately address situations in which technological
3 advances provide unique equipment that may be utilized for
4 unauthorized surveillance purposes. These technological
5 advances such as unmanned aircraft systems, also known as
6 drones, often outpace statutory protections and present a
7 substantial privacy risk. The legislature also finds that the
8 proliferation and accessibility of unmanned aircraft systems has
9 created concerns throughout the State about a person's right to
10 privacy in their own home. The legislature believes that
11 including the term "unmanned aircraft system" under Hawaii's
12 violation of privacy statutes will encompass all technological
13 advances that result in new devices, thereby reducing the need
14 for further legislation to update the law.

15 The purpose of this Act is to:



1 (1) Clarify that under certain circumstances, the use of
2 an unmanned aircraft system may be a violation of
3 privacy; and

4 (2) Increase the penalty for violation of privacy in the
5 second degree to a class C felony for offenses
6 involving the use of an unmanned aircraft system.

7 SECTION 2. Section 711-1100, Hawaii Revised Statutes, is
8 amended by adding a new definition to be appropriately inserted
9 and to read as follows:

10 "Unmanned aircraft system" means any object that is a
11 system consisting of an unmanned aircraft that is remotely
12 controlled, either from the ground or from a manned aircraft, by
13 use of data links and onboard sensors."

14 SECTION 3. Section 711-1110.9, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

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

19 (a) The person intentionally or knowingly installs or
20 uses, or both, in any private place, without consent
21 of the person or persons entitled to privacy therein,



1 any device, including an unmanned aircraft system, for
2 observing, recording, amplifying, or broadcasting
3 another person in a stage of undress or sexual
4 activity in that place; or

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

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

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

20 (B) Pursuant to a voluntary commercial
21 transaction; and



1 (ii) Nothing in this paragraph shall be construed to
2 impose liability on a provider of "electronic
3 communication service" or "remote computing
4 service" as those terms are defined in section
5 803-41, for an image or video disclosed through
6 the electronic communication service or remote
7 computing service by another person."

8 SECTION 4. Section 711-1111, Hawaii Revised Statutes, is
9 amended as follows:

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

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

14 (a) Trespasses on property for the purpose of subjecting
15 anyone to eavesdropping or other surveillance in a
16 private place;

17 (b) Peers or peeps into a window or other opening of a
18 dwelling or other structure adapted for sojourn or
19 overnight accommodations for the purpose of spying on
20 the occupant thereof or invading the privacy of
21 another person with a lewd or unlawful purpose, under



1 circumstances in which a reasonable person in the
2 dwelling or other structure would not expect to be
3 observed;

4 (c) Trespasses on property for the sexual gratification of
5 the actor;

6 (d) Installs or uses, or both, in any private place,
7 without consent of the person or persons entitled to
8 privacy therein, any means or device, including an
9 unmanned aircraft system, for observing, recording,
10 amplifying, or broadcasting sounds or events in that
11 place other than another person in a stage of undress
12 or sexual activity; provided that this paragraph shall
13 not prohibit a person from making a video or audio
14 recording or taking a photograph of a law enforcement
15 officer while the officer is in the performance of the
16 officer's duties in a public place or under
17 circumstances in which the officer has no reasonable
18 expectation of privacy and the person is not
19 interfering with the officer's ability to maintain
20 safety and control, secure crime scenes and accident
21 sites, protect the integrity and confidentiality of



- 1 investigations, and protect the public safety and
2 order;
- 3 (e) Installs or uses outside a private place any device,
4 including an unmanned aircraft system, for hearing,
5 recording, amplifying, or broadcasting sounds
6 originating in that place which would not ordinarily
7 be audible or comprehensible outside, without the
8 consent of the person or persons entitled to privacy
9 therein;
- 10 (f) Covertly records or broadcasts an image of another
11 person's intimate area underneath clothing, by use of
12 any device, including an unmanned aircraft system, and
13 that image is taken while that person is in a public
14 place and without that person's consent;
- 15 (g) Intercepts, without the consent of the sender or
16 receiver, a message or photographic image by
17 telephone, telegraph, letter, electronic transmission,
18 or other means of communicating privately; but this
19 paragraph does not apply to:



- 1 (i) Overhearing of messages through a regularly
2 installed instrument on a telephone party line or
3 an extension; or
- 4 (ii) Interception by the telephone company, electronic
5 mail account provider, or telephone or electronic
6 mail subscriber incident to enforcement of
7 regulations limiting use of the facilities or
8 incident to other operation and use;
- 9 (h) Divulges, without the consent of the sender or the
10 receiver, the existence or contents of any message or
11 photographic image by telephone, telegraph, letter,
12 electronic transmission, or other means of
13 communicating privately, if the accused knows that the
14 message or photographic image was unlawfully
15 intercepted or if the accused learned of the message
16 or photographic image in the course of employment with
17 an agency engaged in transmitting it; or
- 18 (i) Knowingly possesses materials created under
19 circumstances prohibited in section 711-1110.9."



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1 2. By amending subsection (4) to read:

2 "(4) Violation of privacy in the second degree is a
3 misdemeanor[-]; provided that if the device used to commit the
4 offense is an unmanned aircraft system, violation of privacy in
5 the second degree is a class C felony. In addition to any
6 penalties the court may impose, the court may order the
7 destruction of any recording made in violation of this section."

8 SECTION 5. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.

14

INTRODUCED BY: George Tideman / By Request

JAN 16 2019



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Report Title:

Unmanned Aircraft System; Violation of Privacy

Description:

Clarifies that under certain circumstances, the use of an unmanned aircraft system may be a violation of privacy. Increases the penalty for violation of privacy in the second degree to a class C felony for offenses involving the use of an unmanned aircraft system.

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