
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2320 **Hearing Date:** June 21, 2016
Author: Calderon
Version: May 4, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Unmanned Aircraft Systems*

HISTORY

Source: Author

Prior Legislation: SB 167 (Gaines) not heard 2015
SB 170 (Gaines) Vetoed 2015
SB 262 (Galgiani) Failed Senate Judiciary 2015
SB 263 (Gaines) not heard 2015
SB 271 (Gaines) Vetoed 2015
AB 56 (Quirk) inactive Senate Floor
SB 15 (Padilla) failed Assembly Public Safety 2014
AB 1327 (Gorell) Vetoed 2014

Support: Unknown

Opposition: City of Thousand Oaks

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to include using an Unmanned Aircraft System (UAS) in a number of statutes prohibiting behavior by an individual.

Existing federal regulations require all drone owners to register their drones with the Federal Aviation Administration (FAA). Commercial drone operators, but not recreational drone operators, must also obtain FAA authorization, which is granted on a case-by-case basis.

Existing law establishes a Division of Aeronautics within the California Department of Transportation (Caltrans). (Public Utilities Code §§ 21001 et seq)

Existing federal law, the Aviation Administration Modernization and Reform Act of 2012, requires the Secretary of Transportation to develop a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the national airspace system. The plan is required to provide for safe integration of civil UAS into national airspace as soon as practicable, not later than September 30, 2015. (112 P.L. 95, 332.)

Existing law makes it a misdemeanor to violate a protective order that prohibits a person from coming within a specified distance of another person. If the violation results in physical injury, or is second violation in a year then the penalty is a fine of up to \$2,000 and/or not less than and 30 days to one year in county jail. (Penal Code § 237.6)

This bill provides that a person who is subject to a protective order and prohibited by that order to stay a specified distance from another person shall not: operate a UAS in a way that causes it to fly within the prohibited distance of the other person or capture images of the other person by using an UAS. Doing either of these things will be considered a violation of the protective order.

Existing law requires specified offenders to register as a sex offender. (Penal Code §290 *et seq.*)

This bill provides that a judge may order a person required to register as a sex offender for an offense committed on or after January 1, 2017 to not operate an UAS if the judge finds that the restriction is in the public interests.

Existing law states that every person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person's employment to view that scene or activities, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor. (Penal Code § 402 (a).)

Existing law provides that every person who knowingly resists or interferes with the lawful efforts of a lifeguard in the discharge or attempted discharge of an official duty in an emergency situation, when the person knows or reasonably should know that the lifeguard is engaged in the performance of his or her official duty, is guilty of a misdemeanor. (Penal Code § 402 (b).)

Existing law specifies that “emergency” includes a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a power plant accident, a toxic chemical or biological spill, or any other natural or human-caused event. (Penal Code § 402(c).)

This bill provides that for the purposes of Penal Code Section 402, a person includes a person who operates or uses an UAS.

Existing law provides that a person who willfully, maliciously and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of stalking which is punishable as a wobbler. (Penal Code § 646.9)

This bill provides that for purposes of Penal Code Section 646.9 a person includes a person who operates or uses a UAS.

Existing law provides that a person who knowingly brings into any Correctional institution or jail any alcoholic beverage, any drugs other than controlled substances or any container or device intended to be used for unlawfully injecting or consuming any drug is guilty of a felony. (Penal Code § 4573.5)

This bill provides that for purposes of Penal Code Section 4573.6a person includes a person who operates or uses a UAS.

This bill defines unmanned aircraft as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

This bill defines unmanned aircraft system as an unmanned aircraft and associated elements, including, but not limited to, communication links and components that control the unmanned aircraft that were required of the pilot in command to operate safely and efficiently in the national airspace system.

This bill makes uncodified Legislative findings and declarations.

This bill has uncodified intent language stating that it is the intent of the Legislature that a person be prohibited from, without the owner or business operator's written consent, operating or using an unmanned system to knowingly and intentionally fly within 250 feet of the perimeter of any critical infrastructure facility for the purpose of conducting surveillance of the facility, gathering evidence or collecting information about the facility, or photographically or electronically recording critical infrastructure data.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed

capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Unmanned aircraft systems (UAS), commonly called unmanned aerial vehicles (UAVs) or drones, are being put to use in a growing number of applications, including law enforcement, infrastructure inspection, precision agriculture, wildlife tracking, search and rescue operations, disaster response, border patrol, photography and film.

UAS are aircraft subject to regulation by the Federal Aviation Administration (FAA) to ensure safety of flight, and safety of people and property on the ground. The FAA is in the process of developing rules that are intended to safely integrate small unmanned aircraft systems into the national airspace system and that are expected to be released in late 2016 or 2017.

In the absence of a complete federal regulatory structure, the state has an obligation to provide common sense legislation that will protect the public from unsafe operations of drones. With almost 1 million UAS sold in 2015, a jump from 430,000 in 2014, human interactions with UAS will only increase. Without any significant actions from the FAA, updating specific code sections in California to clarify specific unsafe operations of the UAS is illegal is of utmost importance.

2. Using a UAS to Violate a Protective Order

This bill would make it a violation of a protective order for a person who has a protective order that includes a stay-away order to use a UAS to: operate an unmanned aircraft system in a way that causes an unmanned aircraft to fly within the prohibited distance of the other person or to capture images of the other person by using a UAS. A violation of a protective order is a misdemeanor.

3. As a Condition for a Registered Sex Offender

This bill provides that a judge may order a person who commits an offense on or after January 1, 2017 and is required to register as a sex offender to not operate a UAS if the judge finds the restriction is in the public interest.

Since many sex offenses carry long sentences, will this restriction even make sense by the time the person is released? How will this restriction be enforced once the person is off parole?

4. Obstructing, Interfering with or Impeding Emergency Personnel

The Penal Code specifies that it is a misdemeanor to obstruct, delay, or resist specified positions who are engaged in the discharge of their duties. The list includes firemen, emergency rescue personnel, emergency medical technicians, police officers, peace officers, and public officers in positions for which it is a crime to interfere with discharge of their duties. In addition, a Military & Vet. Code section makes it a misdemeanor for a person to delay or obstructs National Guard or California State Military Reserve from performing any military duty.

In addition, Penal Code section 402 prohibits conduct that impedes specified personnel responding to an emergency. Arguably a person could not be prosecuted under Penal Code Section 402 when using a drone from a remote location, because the section only prohibits conduct that impedes specified individuals performing their duties in coping with an emergency when the “person goes to the scene of an emergency, or stops at the scene of an emergency, . . .”

This bill clarifies that a person operating a UAS is included in the definition of Penal Code § 402.

This section does the same thing as AB 1680 (Rodriguez) which is also being heard at the June 21, 2016 hearing.

5. Stalking

This bill provides that a person for the purposes of violating the stalking provision includes a person operating or using a UAS. Stalking is a misdemeanor so using a UAS to stalk would be a misdemeanor.

6. Uncodified Intent

In addition to uncodified Legislative findings and declarations, this bill expresses uncodified intent that a person is prohibited from operating a UAS within 250 of the perimeter of any critical infrastructure facility for the purpose of conducting surveillance. Critical infrastructure facility is defined as an airport, electrical power generation system, petroleum refinery, a

manufacturing facility that utilizes any combustible chemicals, a chemical or rubber manufacturing facility or a petroleum or chemical storage facility.

This intent is uncodified and the bill does not address this issue and uncodified intent has no legal impact so it is not clear why it is in the bill.

-- END --