SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 170	**Hearing Date:**	April 14, 2015
Author:	Gaines		
Version:	April 7, 2015		
Urgency:	No	**Fiscal:**	Yes
Consultant:	MK		

Subject: ***Unmanned Aircraft Systems: Correctional Facilities***

HISTORY

Source: Author

Prior Legislation: SB 15 (Padilla) - failed Assembly Public Safety, 2014
AB 1327 (Gorell) - Vetoed, 2014

Support: California State Sheriffs' Association

Opposition: California Attorneys for Criminal Justice

PURPOSE

The purpose of this bill is to make the intentional operation of an unmanned aircraft system in airspace over laying a prison or jail a misdemeanor, and to create an enhancement for using an unmanned aircraft system to deliver contraband into a prison or jail.

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 unmanned aircraft systems into national airspace as soon as practicable, not later than September 30, 2015. (112 P.L. 95, 332.)

Existing law prohibits wiretapping or eavesdropping on confidential communications. (Penal Code § 630.)

Existing law makes it a crime for a person, intentionally, and without requisite consent, to eavesdrop on a confidential communication by means of any electronic amplifying or recording device. (Penal Code § 632.)

Existing law makes a person liable for "physical invasion of privacy" for knowingly entering onto the land of another person or otherwise committing a trespass in order to physically invade the privacy of another person with the intent to capture any type of visual image, sound recording, or other physical impression of that person engaging in a personal or familial activity, and the physical invasion occurs in a manner that is offensive to a reasonable person. (Civil Code § 1708.8 (a).)

Existing law makes a person liable for "constructive invasion of privacy" for attempting to capture, in a manner highly offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of another person engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there was a physical trespass, if the image or recording could not have been achieved without a trespass unless the visual or auditory enhancing device was used. (Civil Code § 1708.8 (b).)

Existing law provides that a person who commits an invasion of privacy for a commercial purpose shall, in addition to any other damages or remedies provided, be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section. Existing law defines "commercial purpose" to mean any act done with the expectation of sale, financial gain, or other consideration. (Civil Code § 1708.8 (d), (k).)

Existing law makes it a felony for smuggling a controlled substance into prison or jail. (Penal Code §4573.)

Existing law makes it a felony to bring drugs or alcoholic beverages into a penal institution. (Penal Code § 4573.5)

Existing law makes it a felony to possess controlled substances where prisoners are kept. (Penal Code §4573.6)

Existing law makes it a felony to possess drugs or paraphernalia in prison or jail. (Penal Code § 4573.8)

Existing law makes it a felony to sell or give drugs to a person in custody in State Prison or Institution. (Penal Code §4573.9)

Existing law makes it a felony for smuggling firearms, deadly weapons or tear gas into prison or jail. (Penal Code §4574.)

Existing law makes it a misdemeanor to possess a wireless communication device including a cell phone, pager, etcetera in a local correctional facility is a misdemeanor. (Penal Code § 4575.(a).)

Existing law makes it an infraction to possess any tobacco products in a local correctional facility. (Penal Code § 4575.(b).)

Existing law makes it a misdemeanor to possess with the intent to deliver a wireless communication device in a prison. (Penal Code §4576)

This bill would add an enhancement of one year on any felony, or double the fine for any infraction or misdemeanor, if the contraband is brought into a prison or jail by use of an unmanned aircraft device.

This bill also makes it a misdemeanor to intentionally operate an unmanned aircraft system below the navigable airspace overlying a state prison or jail without prior permission.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity."(Defendants' February 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).

While significant gains have been made in reducing the prison population, the state now 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:

> Keeping contraband out of prison is essential to running a safe and orderly facility. Studies show that the presence of contraband increases the risk of violence or disruptive behavior. However, even with the close monitoring of individuals and mail coming into prisons, creating contraband-free facilities has always been a challenge.
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> With public access to drones increasing, this issue is escalating. As drones become smaller and easier to operate, virtually anyone will be able to use the devise to drop contraband into a prison. Already there have been instances in South Carolina, George, and Canada of attempts to use drones to drop contraband into prisons. It is imperative that California's penal code addresses this reality and creates a penalty for people who commit this action.
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> Additionally, drones can be used to gather sensitive information from inside the prison walls. This information can be used for a variety of dangerous exploits, including inmate escapes and prison riots. Placing restrictions on the use of drones over prisons and the capturing of images helps prevent these situations.

2. Unmanned Aircraft Systems

This bill would use the term "unmanned aircraft systems," as defined, to reference what are commonly known as drones. That term, also used by the Federal Aviation Administration (FAA), would be defined to include the unmanned aircraft itself (the drone) and the associated elements (which include the components that control the aircraft). Regarding the types of aircraft that may be considered unmanned aircraft systems, the FAA's fact sheet notes:

> Unmanned Aircraft Systems (UAS) come in a variety of shapes and sizes and serve diverse purposes. They may have a wingspan as large as a Boeing 737 or smaller than a radio-controlled model airplane. Regardless of size, the responsibility to fly safely applies equally to manned and unmanned aircraft operations.
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> Because they are inherently different from manned aircraft, introducing UAS into the nation's airspace is challenging for both the FAA and aviation community. UAS must be integrated into a National Airspace System (NAS) that is evolving from ground-based navigation aids to a GPS-based system in NextGen. Safe integration of UAS involves gaining a better understanding of operational issues, such as training requirements, operational specifications and technology considerations.

Although not always thought of when the word "drone" is used, hobby-size airplanes and helicopters that are equipped with digital cameras are becoming more and more affordable for the average consumer. Those hobby aircraft may be used for pure novelty, surveying one's yard,

or even checking to see the condition of a roof. With respect to the treatment of model aircraft as an unmanned aircraft system, the FAA has issued the following clarification:

> The current FAA policy for UAS operations is that no person may operate a UAS in the National Airspace System without specific authority. For UAS operating as public aircraft the authority is the [Certificate of Waiver or Authorization], for UAS operating as civil aircraft the authority is special airworthiness certificates, and for model aircraft the authority is AC 91-57 [(the model aircraft operating standards)].
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> The FAA recognizes that people and companies other than modelers might be flying UAS with the mistaken understanding that they are legally operating under the authority of AC 91-57. AC 91-57 only applies to modelers, and thus specifically excludes its use by persons or companies for business purposes.

3. Misdemeanor for Flying Over a Prison or Jail

This bill makes it a misdemeanor to fly an unmanned aircraft system (drone) over a prison or jail without permission. The penalty would be up to six month in jail or by a fine not exceeding $1,000.

4. Enhancement for Delivering Contraband by Drone

This bill would create an enhancement for delivering contraband to a prison or jail by drone. If the underlying contraband provision is a felony then this bill would add one year to the underlying sentence. If the underlying contraband provision is an infraction or misdemeanor the fines for those offenses would be doubled.

Are enhancements an effective means of deterrent? Is an enhancement appropriate in this circumstance?

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