
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 271 **Hearing Date:** April 14, 2015
Author: Gaines
Version: April 6, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Unmanned Aircraft Systems*

HISTORY

Source: Author

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

Support: Unknown

Opposition: The California Public Defenders Association

PURPOSE

The purpose of this bill is to prohibit the unauthorized use of a drone on a school grounds during school hours or to capture images of the school grounds during school hours.

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).)

This bill provides that unless authorized by federal law, it shall be an infraction to operate an unmanned aircraft system on or above the grounds of a public school providing instruction in kindergarten or grades 1 to 12, inclusive during school hours and without the written permission of the school principal or higher authority, or his or her designee or equivalent authority..

This bill provides that unless authorized by federal law, it shall be an infraction to use an unmanned aircraft system to capture images of public school grounds providing instruction in kindergarten or grades 1 to 12 inclusive, during school hours and without the written permission of the school principal or higher authority, or his or her designee, or equivalent school authority.

This bill provides that a violation shall be punished by a fine of not more than \$50, plus penalty assessments, for a first offense, and a fine of not more than \$200, plus penalty assessments for a second offense.

This bill provides that it shall not apply to the operation of an unmanned aircraft system by law enforcement during a public safety emergency.

This bill defines unmanned aircraft system as an unmanned aircraft and associated elements, including communication links and the components that control the unmanned aircraft that are required for a pilot in command to operate safely and efficiently in the national airspace system.

This bill defines school hours as during any school session, extracurricular activity, or even sponsored by or participated in by the school, and the one-hour periods immediately preceding and following any session, activity or event.

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:

Currently, California has few laws governing drone use and data capture. As drone usage becomes more common, the potential for misuse and abuse of them will expand as well.

This bill is intended to stay ahead of the technological cure by providing safeguard for our children while they are at school. By prohibiting drone flights over public schools grades K-12 and prohibiting data capture (video footage or photographs, e.g.) of activity on school grounds, this bill would provide an important layer of privacy to our students at a place that should be a sanctuary.

In addition, it will help protect students from potential harassment, stalking, kidnap or other potential harm that could be facilitated through drones capturing their location, activities and movement patterns on campus.

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.

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)].

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. No Drones on School Grounds

This bill would prohibit the use of drones on school grounds and capturing images of a school during school hours or school activities without written permission of the school. The penalty is an infraction punishable by a fine of \$50 plus approximately 300% penalty assessments so approximately a \$200 fine. For a second or subsequent offense the penalty is \$200 plus approximately 300% penalty assessments so approximately an \$800 fine.

The prohibition applies when school is in session or during any extracurricular activity or event sponsored by or participated in by the school.

4. Exception for Law Enforcement During an Emergency

This bill contains an explicit exemption for the use of a drone by law enforcement during a law enforcement emergency.

5. Exception for the News Media

The author intends to offer an amendment to make exception to the prohibition for the news media. The intent of the amendment is to allow the media the same access they currently have on school grounds. They can use a drone but have to leave if asked.

6. Notice

Should the bill require notice on the school grounds that drones are prohibited or require a person be asked to leave before a ticket is issued or have a first violation be a warning? Will a neighbor of the school who goes to one field of the school to fly a drone while a soccer game is going on on another field necessarily know he or she is violating the law?

7. Opposition

The California Public Defenders Association is concerned that the definition of “unmanned systems” is too broad. Specifically they state:

This broad definition seems to lead to the criminalization of more than the author intends. This would seem to criminalize the operation of a remote-controlled airplane of the type used for children for recreation, rather than only the operation of more sophisticated drone aircraft as such are commonly understood in the popular mind. This legislation should include language defining “unmanned aircraft system” in a manner that does not potentially subject innocent recreation to criminal penalty.

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