

JAN 22 2021

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 unmanned aircraft systems, also known as drones, may be utilized
4 for unauthorized surveillance purposes. The legislature further
5 finds that the proliferation and accessibility of unmanned
6 aircraft systems in the State have created concerns about a
7 person's right to privacy in the person's own home.

8 The purpose of this Act is to subject the use of drones for
9 unauthorized surveillance to criminal penalties under the
10 offenses for violations of privacy.

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

13 "**§711-1110.9 Violation of privacy in the first degree.**

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



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- 1 (a) The person intentionally or knowingly installs or
2 uses, or both, in any private place, without consent
3 of the person or persons entitled to privacy therein,
4 any device for observing, recording, amplifying, or
5 broadcasting another person in a [~~stage~~] state of
6 undress or sexual activity in that place; [~~or~~]
- 7 (b) The person knowingly discloses or threatens to
8 disclose an image or video of another identifiable
9 person either in the nude, as defined in section 712-
10 1210, or engaging in sexual conduct, as defined in
11 section 712-1210, without the consent of the depicted
12 person, with intent to harm substantially the depicted
13 person with respect to that person's health, safety,
14 business, calling, career, education, financial
15 condition, reputation, or personal relationships or as
16 an act of revenge or retribution; provided that:
- 17 (i) This paragraph shall not apply to images or
18 videos of the depicted person made:
- 19 (A) When the person was voluntarily nude in
20 public or voluntarily engaging in sexual
21 conduct in public; or



1 (B) Pursuant to a voluntary commercial
2 transaction; and
3 (ii) Nothing in this paragraph shall be construed to
4 impose liability on a provider of "electronic
5 communication service" or "remote computing
6 service" as those terms are defined in section
7 803-41, for an image or video disclosed through
8 the electronic communication service or remote
9 computing service by another person~~[-]~~; or

10 (c) The person intentionally or knowingly uses any
11 unmanned aircraft system to observe, record, amplify,
12 or broadcast another person in a state of undress or
13 sexual activity in any private place, without the
14 consent of the person entitled to privacy therein.

15 (2) Violation of privacy in the first degree is a class C
16 felony. In addition to any penalties the court may impose, the
17 court may order the destruction of any recording made in
18 violation of this section.

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



1 (4) For purposes of this section:

2 "Aircraft" means any contrivance used or designed for
3 navigation of or flight in the air.

4 "Unmanned aircraft" means an aircraft operated without the
5 possibility of direct human intervention from within or on the
6 aircraft.

7 "Unmanned aircraft system" means an unmanned aircraft and
8 its associated elements, including communication links and the
9 components that control the unmanned aircraft, that are required
10 to operate the unmanned aircraft."

11 SECTION 3. Section 711-1111, Hawaii Revised Statutes, is
12 amended as follows:

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

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

17 (a) Trespasses on property for the purpose of subjecting
18 anyone to eavesdropping or other surveillance in a
19 private place;

20 (b) Peers or peeps into a window or other opening of a
21 dwelling or other structure adapted for sojourn or



1 overnight accommodations for the purpose of spying on
2 the occupant thereof or invading the privacy of
3 another person with a lewd or unlawful purpose, under
4 circumstances in which a reasonable person in the
5 dwelling or other structure would not expect to be
6 observed;

7 (c) Trespasses on property for the sexual gratification of
8 the actor;

9 (d) Installs or uses, or both, in any private place,
10 without consent of the person or persons entitled to
11 privacy therein, any means or device for observing,
12 recording, amplifying, or broadcasting sounds or
13 events in that place other than another person in a
14 [~~stage~~] state of undress or sexual activity; provided
15 that this paragraph shall not prohibit a person from
16 making a video or audio recording or taking a
17 photograph of a law enforcement officer while the
18 officer is in the performance of the officer's duties
19 in a public place or under circumstances in which the
20 officer has no reasonable expectation of privacy and
21 the person is not interfering with the officer's



1 ability to maintain safety and control, secure crime
2 scenes and accident sites, protect the integrity and
3 confidentiality of investigations, and protect the
4 public safety and order;

5 (e) Installs or uses outside a private place any device
6 for hearing, recording, amplifying, or broadcasting
7 sounds originating in that place which would not
8 ordinarily be audible or comprehensible outside,
9 without the consent of the person or persons entitled
10 to privacy therein;

11 (f) Covertly records or broadcasts an image of another
12 person's intimate area underneath clothing, by use of
13 any device, and that image is taken while that person
14 is in a public place and without that person's
15 consent;

16 (g) Intercepts, without the consent of the sender or
17 receiver, a message or photographic image by
18 telephone, telegraph, letter, electronic transmission,
19 or other means of communicating privately; but this
20 paragraph does not apply to:



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- 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~~[or]~~; or
- 20 (j) Uses any unmanned aircraft system to observe, record,
- 21 amplify, or broadcast sounds or events occurring in



S.B. NO. 600

1 any private place, other than a person in a state of
2 undress or sexual activity, without the consent of the
3 person entitled to privacy therein."

4 2. By amending subsection (3) to read:

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

6 "Aircraft" means any contrivance used or designed for
7 navigation of or flight in the air.

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

10 "Intimate areas underneath clothing" does not include
11 intimate areas visible through a person's clothing or intimate
12 areas exposed in public.

13 "Public place" means an area generally open to the public,
14 regardless of whether it is privately owned, and includes but is
15 not limited to streets, sidewalks, bridges, alleys, plazas,
16 parks, driveways, parking lots, buses, tunnels, buildings,
17 stores, and restaurants.

18 "Unmanned aircraft" means an aircraft operated without the
19 possibility of direct human intervention from within or on the
20 aircraft.



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1 "Unmanned aircraft system" means an unmanned aircraft and
2 its associated elements, including communication links and the
3 components that control the unmanned aircraft, that are required
4 to operate the unmanned aircraft."

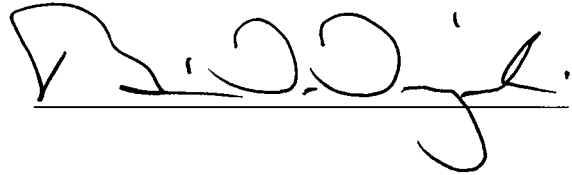
5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

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

11

INTRODUCED BY:



A handwritten signature in black ink, appearing to read "R. O. O'Neil", is written over a horizontal line.



S.B. NO. 690

Report Title:

Violation of Privacy; Unmanned Aircraft Systems; Drones

Description:

Adds the improper use of unmanned aircraft systems to the criminal offenses of violation of privacy in the first degree and violation of privacy in the second degree.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

