

2014 -- H 7170

LC003448

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Representatives Tanzi, Ajello, Cimini, O`Grady, and Finn

Date Introduced: January 23, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is hereby amended by adding thereto the following chapter:

CHAPTER 5.3

UNMANNED AERIAL VEHICLES

12-5.3-1. Definitions. -- As used in this chapter:

(1) "Aggrieved person" means a person about whom information or data were collected or obtained by an unmanned aerial vehicle.

(2) "Person" means any individual, partnership, association, joint stock company, trust, or corporation, whether or not any of the foregoing is an officer, agent, or employee of the United States, a state, or a political subdivision of a state.

(3) "Unmanned aerial vehicle" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

12-5.3-2. Use of unmanned aerial vehicles. -- (a) Any use of unmanned aerial vehicles shall fully comply with all federal aviation administration requirements and guidelines.

(b) Unmanned aerial vehicles shall be acquired only after a public hearing and, for any state law enforcement agency, approval by the governor, and for any municipal law enforcement agency, approval by the city or town council overseeing that agency seeking such acquisition.

(c) Unmanned aerial vehicles shall be used only under the direction of the attorney general and in accordance with the procedures contained in this chapter.

1 (d) Unmanned aerial vehicles shall not be equipped with weapons.

2 (e) Except as otherwise provided in this chapter, it shall be unlawful for any state or
3 municipal law enforcement agency, or any individual or entity on such agency's behalf, to operate
4 an unmanned aerial vehicle, or to disclose or receive information acquired through the operation
5 of an unmanned aerial vehicle.

6 (f) It shall not be unlawful under this chapter for any state or municipal law enforcement
7 agency, or any individual or entity on such agency's behalf, to operate an unmanned aerial vehicle
8 without a court order approved in advance, or to disclose or receive information from such
9 operation, if:

10 (1) The unmanned aerial vehicle is used to assist a person in circumstances in which it is
11 reasonable to believe that there is an imminent threat to the life or physical safety of that person;
12 and

13 (2) The factual basis for the emergency is documented in writing by a supervisory official
14 and approved by the attorney general, and is presented to a court of competent jurisdiction as
15 soon as practicable, and no later than twenty-four (24) hours after the unmanned aerial vehicle's
16 use.

17 (g) Nothing contained herein shall be construed to bar a state or municipal agency, or any
18 individual or entity on such agency's behalf from operating an unmanned aerial vehicle, and for
19 disclosing information from such operation, if the use of the vehicle and the information or
20 evidence derived from such operation is not for any law enforcement, criminal, civil, or
21 intelligence-gathering purpose, or otherwise targeted at any individual.

22 (h) Unmanned aerial vehicles used pursuant to subsection (c) or (f) of this section shall be
23 operated in a manner to collect data only on the designated target and shall avoid data collection
24 on individuals, homes, or areas other than the target. Neither facial recognition nor other
25 biometric matching technology may be used on non-target data collected by an unmanned aerial
26 vehicle.

27 **12-5.3-3. Application for orders.** -- (a) The attorney general, or an assistant attorney
28 general specially designated by the attorney general, may apply ex parte to the presiding justice of
29 the superior court of competent jurisdiction for an order authorizing the use of unmanned aerial
30 vehicles. Each ex parte application for an order must be in writing, subscribed and sworn to by
31 the applicant.

32 (b) The application must contain:

33 (1) The identity of the officer making the application;

34 (2) A full and complete statement of the facts and circumstances relied upon by the

1 applicant to justify his or her belief that an order should be issued, including:

2 (i) Details as to the particular designated offense that has been, is being, or is about to be

3 committed;

4 (ii) A particular description of the location(s) where the unmanned aerial vehicle is

5 expected to be deployed;

6 (iii) A particular description of the information sought to be obtained; and

7 (iv) The identity of the person, if known, committing the offense.

8 (3) A full and complete statement as to whether or not other investigative procedures

9 have been tried and failed or why they reasonably appear to be unlikely to succeed if tried, or to

10 be too dangerous;

11 (4) A statement of the period of time for which the unmanned aerial vehicle is to be used;

12 (5) A full and complete statement of the facts concerning all previous applications,

13 known to the individual making the application, made to the presiding justice of the superior

14 court for authorization to use unmanned aerial vehicles involving any of the same persons or

15 locations specified in the application, and the action taken by the presiding justice of the superior

16 court on each application;

17 (6) An affirmation that the unmanned aerial vehicle shall be operated in a manner to

18 collect data only on the designated target; shall avoid data collection on individuals, homes, or

19 areas other than the target, and shall not use facial recognition or any other biometric matching

20 technology on non-target data collected by the unmanned aerial vehicle; and

21 (7) Where the application is for the extension of an order, a statement setting forth the

22 results thus far obtained from the use of the unmanned aerial vehicle, or a reasonable explanation

23 of the failure to obtain the results.

24 (c) The presiding justice of the superior court may require the applicant to furnish

25 additional testimony or documentary evidence in support of the application.

26 (d) Allegations of fact in the application may be based either upon the personal

27 knowledge of the applicant or upon information and belief. If the applicant personally knows the

28 fact alleged, it must be so stated. If the facts establishing reasonable cause are derived in whole or

29 in part from the statements of persons other than the applicant, the sources of the information and

30 belief must be either disclosed or described, and the application must contain facts establishing

31 the existence and reliability of the informant, or the reliability of the information supplied by the

32 informant. The application must also state, so far as possible, the basis of the informant's

33 knowledge or belief. If the applicant's information and belief is derived from tangible evidence or

34 recorded oral evidence, a copy or detailed description of the evidence should be annexed to or

1 included in the application. Affidavits of persons other than the applicant must be submitted in
2 conjunction with the application if they tend to support any fact or conclusion alleged in the
3 application. Accompanying affidavits may be based either on personal knowledge of the affiant,
4 or information and belief with the source of the information and reason for the belief specified.

5 **12-5.3-4. Issuance of orders.** -- (a) Upon the application as provided in § 12-5.3-3, the
6 presiding justice of the superior court, or the senior associate justice of the superior court when
7 the presiding justice shall disqualify himself or herself from entering the order, may enter an ex
8 parte order, as required or as modified, authorizing the use of an unmanned aerial vehicle if the
9 presiding justice of the superior court determines on the basis of the facts submitted by the
10 applicant that:

11 (1) There is probable cause for belief that an individual is committing, has committed, or
12 is about to commit a particular designated offense;

13 (2) There is probable cause for belief that relevant information concerning the offender or
14 the offense will be obtained through the use of an unmanned aerial vehicle;

15 (3) Normal investigative procedures have been tried and have failed or reasonably appear
16 to be unlikely to succeed if tried, or to be too dangerous; and

17 (4) The unmanned aerial vehicle can and will be used and operated in a manner to collect
18 data only on the designated target and shall avoid data collection on individuals, homes, or areas
19 other than the target.

20 **12-5.3-5. Form and content of orders.** -- (a) Each order authorizing the use of an
21 unmanned aerial vehicle shall specify:

22 (1) The identity, or a particular description of the person, if known, upon whom the
23 unmanned aerial vehicle will be used;

24 (2) The nature and location(s) of the areas where the unmanned aerial vehicle may be
25 deployed;

26 (3) A particular description of the type of information to be obtained through the use of
27 the unmanned aerial vehicle, and a statement of the particular offense to which they relate;

28 (4) The identity of the agency authorized to use the unmanned aerial vehicle; and

29 (5) The period of time during which the use of the unmanned aerial vehicle is authorized.

30 (b) No order entered under this section may authorize the use of an unmanned aerial
31 vehicle for any period longer than is necessary to achieve the objective of the authorization, nor
32 in any event longer than forty-eight (48) hours. Extensions of an order may be granted, but only
33 upon application for an extension made in accordance with § 12-5.3-3 and the court making the
34 findings required by § 12-5.3-4. The period of extension shall be no longer than the presiding

1 justice of the superior court deems necessary to achieve the purposes for which it was granted,
2 and in no event for longer than thirty (30) days. Every order and extension shall contain a
3 provision that the authorization to use the unmanned aerial vehicle shall be executed as soon as
4 practicable, shall be conducted in such a way as to avoid the collection of any information or data
5 on persons or places not the subject of the order, and must terminate upon attainment of the
6 authorized objective, or in any event in thirty (30) days.

7 (c) Whenever an order authorizing use of an unmanned aerial vehicle is entered pursuant
8 to this chapter, the order may require reports to be made to the presiding justice of the superior
9 court who issued the order showing what progress has been made toward achievement of the
10 authorized objective and the need for the unmanned aerial vehicle's continued use. These reports
11 shall be made at any intervals that the presiding justice of the superior court may require.

12 **12-5.3-6. Approval of use of unmanned aerial vehicles. --** (a) An order of approval of
13 the use of an unmanned aerial vehicle relating to an offense other than that specified in the order
14 of authorization may be issued where the court finds on an application for an order of approval
15 submitted in the same manner as an application for authorization as provided in § 12-5.3-3 that
16 the use was otherwise made in accordance with this chapter. This application shall be made as
17 soon as practicable.

18 (b) In addition to any other right to appeal, the state, by the attorney general, shall have
19 the right to appeal from a denial of an order of approval made under this section. The appeal shall
20 be claimed and taken in the manner provided by law and rule of court for prosecuting appeals in
21 civil actions.

22 **12-5.3-7. Return of inventory. --** (a) Within a reasonable time but not later than ten (10)
23 days after the termination of the period of the order or of extensions of the order, the presiding
24 justice of the superior court shall cause to be served on the person named in the order or
25 application, and any other parties upon whom information or data was collected, an inventory
26 which shall include:

27 (1) Notice of the entry of the order or the application for a denied order of approval;

28 (2) The date of the entry of the order or the denial of the application for an order of
29 approval;

30 (3) The period of authorized, approved or disapproved use;

31 (4) The fact that during the period information or data were or were not obtained.

32 (b) The judge, upon the filing of a motion, may in his or her discretion make available to
33 the person or the person's counsel for inspection any portions of the intercepted information and
34 data, applications, and orders that the judge determines to be in the interest of justice. On an ex

1 parte showing of good cause to the judge, the serving of the inventory required by this section
2 may be postponed for a period of ten (10) additional days. Any additional extensions shall be for
3 no longer than ten (10) days.

4 **12-5.3-8. Notice of intention.** -- The contents of any information or data derived from
5 use of an unmanned aerial vehicle shall not be received in evidence or otherwise disclosed in any
6 criminal proceeding unless each party, not less than ten (10) days before the proceeding, has been
7 furnished with a copy of the application, order, and inventory under which the collection of
8 information was authorized or approved. This ten (10) day period may be waived by the judge if
9 he or she finds that it was not possible to furnish the party with the information more than ten
10 (10) days before the proceeding and that the party will not be prejudiced by the delay in receiving
11 the information.

12 **12-5.3-9. Suppression of evidence.** -- (a) Any aggrieved person or entity may move to
13 suppress the contents of any information or data derived from the use of an unmanned aerial
14 vehicle on the grounds that:

15 (1) The information was unlawfully obtained;

16 (2) The order under which it was intercepted is insufficient on its face;

17 (3) The unmanned aerial vehicle was not used in conformity with the order; or

18 (4) Service was not made as provided in § 12-5.3-8.

19 (b) A motion under this section shall be made before the trial, unless there was no
20 opportunity to make the motion or the person was not aware of the grounds of the motion. If the
21 motion is granted, the contents of the information or other evidence derived from the unmanned
22 aerial vehicle shall be treated as having been obtained in violation of this chapter. The judge,
23 upon the filing of the motion by the aggrieved person, may in his or her discretion make available
24 to the aggrieved person or the person's counsel for inspection any portions of the information or
25 evidence derived from them that the judge determines to be in the interests of justice.

26 (c) If the motion shall be made before any court or judge other than the presiding justice
27 of the superior court, the motion shall be transferred to the presiding justice of the superior court
28 or to an associate justice of the superior court who shall be designated by the presiding justice, or
29 by the associate justice in charge of the criminal calendar in Providence county whenever the
30 presiding justice shall deem it necessary to disqualify himself or herself, for hearing and
31 determination. No motion under this section shall be heard or determined by a district court in
32 preliminary proceedings or otherwise.

33 (d) In addition to any other right of appeal, the state, by the attorney general, shall have
34 the right to appeal from an order allowing a motion to suppress made under this section. The

1 appeal shall be taken within thirty (30) days after the date of allowance of the motion to suppress.
2 If the motion to suppress is allowed prior to trial, the appeal shall be decided prior to trial. If the
3 motion to suppress is allowed during trial and the attorney general shall claim an appeal, the
4 evidence shall be admitted at trial, and the question of admissibility reserved for the supreme
5 court.

6 **12-5.3-10. Civil remedy.** -- (a) Any person who is surveilled or whose location or other
7 information or data are intercepted, disclosed, or used in violation of this chapter shall have a
8 civil cause of action against any person who intercepts, discloses, or uses the communications,
9 and shall be entitled to recover from that person:

10 (1) Actual damages, but not less than liquidated damages, computed at the rate of one
11 hundred dollars (\$100) per day for each day of violation, or one thousand dollars (\$1,000),
12 whichever is higher;

13 (2) Punitive damages; and

14 (3) Reasonable attorneys' fees and other litigation disbursements reasonably incurred.

15 (b) Good faith reliance on a court order issued under this chapter shall constitute a
16 complete defense to any civil or criminal action brought under this section or any other law.

17 **12-5.3-11. Data retention.** -- (a) No data collected on an individual, home, or area other
18 than the target that justified deployment may be used, copied, or disclosed for any purpose. Such
19 data shall be deleted as soon as possible, and in no event later than twenty-four (24) hours after
20 collection.

21 (b) Whenever any state or municipal law enforcement agency, or any individual or entity
22 on such agency's behalf, uses an unmanned aerial vehicle, no information acquired and no
23 evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding
24 in or before any court, agency, or other authority of the state or a political subdivision thereof if
25 the disclosure of that information would be in violation of this chapter.

26 **12-5.3-12. Reporting.** -- (a) In March of each year, the attorney general shall report to
27 the general assembly and make public on its website the following information regarding the use
28 of unmanned aerial vehicles for the preceding calendar year:

29 (1) The number of times an unmanned aerial vehicle was used, including the justification
30 for each deployment, and the approximate number of persons upon whom information was
31 gathered during each use;

32 (2) The number and types of uses of unmanned aerial vehicles for reasons other than
33 criminal investigations, including a description of the results of the use in each instance;

34 (3) The frequency and type of data collected on individuals or areas other than targets;

1 (4) The number of arrests resulting from information gathered and the offenses for which
2 arrests were made;

3 (5) The number of motions to suppress made with respect to such information, and the
4 number granted or denied; and

5 (6) The number of convictions resulting from such information and the offenses for
6 which the convictions were obtained.

7 SECTION 2. This act shall take effect upon passage.

=====
LC003448
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE

- 1 This act would regulate the use of unmanned aerial vehicles, and would delete the
- 2 process by which applications for use of such vehicles are made.
- 3 This act would take effect upon passage.

=====
LC003448
=====