

CHAPTER 29-29.4 SURVEILLANCE BY UNMANNED AERIAL VEHICLE

29-29.4-01. Definitions.

As used in this chapter:

1. "Autonomously" means to operate or govern itself without direct human control.
2. "Flight data" means imaging or other observation recording.
3. "Flight information" means flight duration, flight path, and mission objective.
4. "Law enforcement agency or agents" has the meaning provided for law enforcement officer in section 12.1-01-04.
5. "Less than lethal weapon" means a designed and manufactured object, substance, or weapon that does not create a substantial risk of serious bodily injury or death when used by an individual with proper training.
6. "Lethal weapon" means an object, substance, or device designed to cause serious bodily injury or death.
7. "Remotely" means directly controlled by human action and decisions.
8. "Robot" means a powered artificial machine or system that upon activation will operate in whole or in part autonomously to perform physical tasks or decisionmaking without real-time human control. The term includes a system capable of using force, conducting surveillance, or moving independent of direct human input. The term does not include a law enforcement body-worn camera, a law enforcement in-car camera or license plate reader, or any other law enforcement camera that does not require a search warrant.
9. "Unmanned aerial vehicle" means any aerial vehicle that is operated without the possibility of direct human intervention within or on the aerial vehicle. The term does not include satellites.
10. "Unmanned aerial vehicle system" means an unmanned aerial vehicle and associated elements, including communication links and the components that control the unmanned aerial vehicle, which are required for the pilot in command to operate safely and efficiently in state airspace.

29-29.4-02. Limitations on use of unmanned aerial vehicle systems and robots.

1. Information obtained from an unmanned aerial vehicle or robot is not admissible in a prosecution or proceeding within the state unless the information was obtained:
 - a. Pursuant to the authority of a search warrant; or
 - b. In accordance with exceptions to the warrant requirement.
2. Information obtained from the operation of an unmanned aerial vehicle or robot may not be used in an affidavit of probable cause in an effort to obtain a search warrant, unless the information was obtained under the circumstances described in subdivision a or b of subsection 1 or was obtained through the monitoring of public lands or international borders.

29-29.4-03. Warrant requirements.

A warrant for the use of an unmanned aerial vehicle or robot for the purpose of surveillance must satisfy the requirements of the Constitution of North Dakota. In addition, the warrant must contain a data collection statement that includes:

1. The persons that will have the power to authorize the use of the unmanned aerial vehicle or robot;
2. The locations in which the unmanned aerial vehicle system or robot will operate;
3. The maximum period for which the unmanned aerial vehicle system will operate in each flight or deployment; and
4. Whether the unmanned aerial vehicle system or robot will collect information or data about individuals or groups of individuals, and if so:
 - a. The circumstances under which the unmanned aerial vehicle system or robot will be used; and

- b. The specific kinds of information or data the unmanned aerial vehicle system or robot will collect about individuals and how that information or data, as well as conclusions drawn from that information or data, will be used, disclosed, and otherwise handled, including:
 - (1) The period for which the information or data will be retained; and
 - (2) Whether the information or data will be destroyed, and if so, when and how the information or data will be destroyed.

29-29.4-04. Exceptions.

This chapter does not prohibit any use of an unmanned aerial vehicle or robot for surveillance during the course of:

1. Patrol of national borders. The use of an unmanned aerial vehicle or robot to patrol within twenty-five miles [40.23 kilometers] of a national border, for purposes of policing that border to prevent or deter the illegal entry of any individual, illegal substance, or contraband.
2. Exigent circumstances. The use of an unmanned aerial vehicle or robot by a law enforcement agency is permitted when exigent circumstances exist. For the purposes of this subsection, exigent circumstances exist when a law enforcement agency possesses reasonable suspicion that absent swift preventative action, there is an imminent danger to life or bodily harm.
3. An environmental or weather-related catastrophe. The use of an unmanned aerial vehicle or robot by state or local authorities to preserve public safety, protect property, survey environmental damage to determine if a state of emergency should be declared, or conduct surveillance for the assessment and evaluation of environmental or weather-related damage, erosion, flood, or contamination.
4. Research, education, training, testing, or development efforts undertaken by or in conjunction with a school or institution of higher education within the state and its political subdivisions, nor to public and private collaborators engaged in mutually supported efforts involving research, education, training, testing, or development related to unmanned aerial vehicle systems, unmanned aerial vehicle system technologies, or robot and potential applications.

29-29.4-05. Prohibited use - Exceptions.

1. A law enforcement agency may not authorize the use of, including granting a permit to use, an unmanned aerial vehicle armed with any lethal weapons.
2. This chapter prohibits any use of an unmanned aerial vehicle or robot for:
 - a. Domestic use in private surveillance. A law enforcement agency may not authorize the use of, including granting a permit to use, an unmanned aerial vehicle or robot to permit any private person to conduct surveillance on any other private person without the express, informed consent of that other person or the owner of any real property on which that other private person is present.
 - b. Surveillance of the lawful exercise of constitutional rights, unless the surveillance is otherwise allowed under this chapter.
3. A law enforcement agency may not authorize the use of a robot to deploy a lethal weapon, unless the weapon is controlled remotely, cannot be activated autonomously, and is used to:
 - a. Neutralize an inanimate object at risk of exploding or causing an immediate threat to public safety or property; or
 - b. Prevent an imminent and substantial risk of serious bodily injury or death to a law enforcement officer or another individual, in a circumstance where the use of lethal force by an officer would be legally justified.
4. A law enforcement agency may not authorize the use of an unmanned aerial vehicle or robot to deploy a less than lethal weapon, unless the weapon is controlled remotely and cannot be activated autonomously.

5. A law enforcement agency, before authorizing any use of force, shall adopt a policy on the use of force by an unmanned aerial vehicle or robot, which includes the individuals with authority to authorize the use of force by an unmanned aerial vehicle or robot.

29-29.4-06. Documentation of unmanned aerial vehicle or robot use.

1. The person authorized to conduct the surveillance under this chapter shall document all use of an unmanned aerial vehicle or robot for surveillance. The person shall document all surveillance flights as to duration, flight path, and mission objectives.
2. The flight information must be verified as accurate and complete by the supervising person authorized by a court to conduct the surveillance.
3. The flight information required under this section must be retained for five years.
4. Any imaging or any other forms of data lawfully obtained under this chapter which are not accompanied by a reasonable and articulable suspicion that the images or data contain evidence of a crime, or are relevant to an ongoing investigation or trial, may not be retained for more than ninety days.
5. Except for the operational capabilities of the unmanned aerial vehicle system or robot and other operational information strictly related to the technical conduct and physical security of the surveillance operation, a person accused of a crime that includes evidence gathered through the use of an unmanned aerial vehicle system or robot surveillance may obtain all information relating to the person acquired in the course of the surveillance through subpoena and discovery proceedings available in criminal proceedings.
6. A law enforcement agency deploying a robot armed with a lethal weapon shall document the requirements provided in section 29-29.4-05.
7. Any other person that has an interest in obtaining the documentation required by this section may obtain that documentation pursuant to chapter 44-04.