

2017 HOUSE JUDICIARY

HB 1167

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB1167
1/16/2017
26918

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibited uses for unmanned aerial vehicles; and to provide a penalty.

Minutes:

1,2,3

Chairman K. Koppelman: Opened the hearing on HB 1167.

Rep, Rick Becker (2:00-10:40) This bill addresses a law that was passed last session which dealt with drones. It was attempted in 2013. It came back in 2015. Law enforcement and UND came to this committee with several amendments that would alleviate the vast majority of their concerns. All of their recommendations were incorporated into the bill and it passed. There was a concern it might restrict law enforcement. The primary intent of the bill was to require law enforcement to have search warrants if there were going to conduct surveillance on private citizens. For most people that would be an assumption that would be had and for law enforcement as well as other they felt we don't need this law because the 4th amendment is already in place. But for other people there was a gray area and there was the desire to use drones to retrieve data which would support in court the application for a search warrant. It underscored the need for clarification for a black and white line that the use of drones still fell within the normal prevue of needing a search warrant. In the 2015 bill it prohibited all weapons lethal or non-lethal. At the request of law enforcement; they wanted to change it to illegal weapons being prohibited. At the request of law enforcement one of the changes was to change the aspect of all weapons being prohibited to lethal weapons being prohibited. (5:32-7:10) See Grand Forks Herald Article (1). This bill really covers all weapons. The bill in 2011 allows drones to do a lot of things and they are in full use and are fantastic tools for law enforcement. I do not think weapons should be allowed on drones. If we take DAPL for example it should be by boots on the ground because that is the human component. If we allow the drones to do it it could be initially a person on the frontlines that has that same assessment. It takes away the human interaction.

Chairman K. Koppelman: (9:40) We had the bill you were talking about on drones. Please clarify what we did pass for the committee.

Rep. Rick Becker: The only thing that did not pass was in the 2013 session which was the whole package of search warrants and weapons. In 2015 we did pass a drone bill which was

only one. The difference is as submitted and as amended. The amendments incorporated the various things from UND and law enforcement. My purpose is to include the less lethal. I put civil remedies in there and you can decide on that. There is only one bill voted on successively and that was the amended bill coming out of this committee.

Jennifer Cook, Attorney for the American Civil Liberty Union of ND: Here to urge a do pass on this bill. It is true the daily beast did make a ruckus about the passage of what supposedly was the utilization of less lethal weapons on drones. The bill was silent as to that. Other states have now done laws on UAS is drone use throughout the US and internationally. We want to keep in mind when law enforcement uses drones that we keep those in mind. We have attended lots of drone conferences around the country and those conferences are attended by industry, law enforcement and other government representatives. There is a broad consensus that armed domestic drones should not be used with weapons. ND specifically outlaws less lethal or nonlethal weapons. The other concern we have is nonlethal weapons. Drone technology has become significantly cheaper and more accessible to the general public and law enforcement. ACLU has done a 100-page report which I will mail to each of you that looks at crowd control. In large crowds it can cause mass panic. In 2015 39 people were killed in conjunction with law enforcement use of teasers. Distance equals inaccuracy. We are concerned it would increase the militarization of drones. We are also concerned this will open the door to increasing weaponization of drones. We know the army and pentagon have already created small drones that function as guided missiles. We strongly urge a do pass.

Chairman K. Koppelman: Everything we have talked about with referred to this bill has been law enforcement use, but there are also some privacy issues. Is that something the ACLU have discussed as an issue elsewhere?

Jennifer Cook: We do have concerns on that when we talk about commercial use of drones or individual use of drones we do have privacy concerns.

Opposition:

Bruce Burkett: ND Peace Officers Assoc: (23:20-27:07) (2 & 3). I was a pilot what is the responsibility of policing these drones? We don't allow drones for hunting and we should use them correctly. I am against weaponization of drones. We don't allow drones for hunting. I think they are good technically and we should use them correctly.

Representative Nelson: Are you aware of any area drones to deliver tear gas?

Bruce Burkett: I do not know of any. In law enforcement there is a rule on use of force. I spent lots of hours on the DAPL situation and drone use there was a safety item for us.

Representative Magrum: So are you recommending we remove section 2 completely?

Bruce Burkett: We would take Section 1 no problem because there is already accountability in the existing law.

Representative Magrum: I did not understand that.

Bruce Burkett: Section 2 is to add on injury to potentially have someone take you to court on any little thing when nothing has really happened yet. I think our 2015 already does that.

Chairman K. Koppelman: Section 2 I am not aware of anything in statute that would prohibit civil action if a wrongful deed occurred. We seem to be singling out law enforcement when we talk about drone use. We also have the general public out there and the miss use of them. Is that a concern at all for law enforcement?

Bruce Burkett: I think you can have stocking. The use of private drones will have them see something and they call law enforcement. They can call in a crime so those things happen. Certainly that will happen when some private person is flying a drone and sees something on a neighbor and they will call law enforcement and they have to respond. Every law you pass here is enforcement by law enforcement.

Neutral: None

Hearing closed

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1167
2/13/2017
28245

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibited uses for unmanned aerial vehicles; and to provide a penalty.

Minutes:

Chairman K. Koppelman: Re-Opened the meeting on HB 1167. Went over what this bill seeks to do. The existing bill says law enforcement cannot use lethal weapons on a drone. This bill seeks to extend this further. As I read the bill it doesn't ban you or I from doing that. Lines 14-16 is already possible.

Representative Maragos: Is there a definition of less lethal or non-lethal anywhere? Who determine lethal and non-lethal?

Representative Roers Jones: This is referring to tear gas and tasers. All those things are included in lethal.

Representative Satrom: Did we have anyone from law enforcement weigh in on this?

Chairman K. Koppelman: Bruce Burkett did testify on this in opposition to the bill.

Do Not Pass Motion Made by Vice Chairman Karls: Seconded by Representative Nelson

Discussion:

Representative Nelson: This section of law if on aerial. That includes the lethal use of force in some cases. This is just a step too far so I am supporting the do not pass.

Representative Hanson: Less lethal weapons can still cause serious injury or death. During testimony they were chemicals, sound weapons and rubber bullets among other things. It could escalate the situation and become more dangerous.

Chairman K. Koppelman: I believe the intention is good here. The bill before us is really narrow. This is focusing in only on drones and law enforcement. I think our law enforcement does a good job. I think we have protections to protect the public now.

Representative Klemin: This bill is largely a press reaction. Section 2 we do that anyway. I don't think it is necessary.

Roll Call Vote: 9 Yes 4 No 2 Absent Carrier: Representative Maragos:

Closed.

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1167

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Karls Seconded By Rep. Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson		✓
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston		✓			
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum		✓			
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	—				
Rep. Vetter		✓			

Total (Yes) 9 No 4

Absent 2

Floor Assignment : Rep. Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1167: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HB 1167 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1167

Grand Forks area law enforcement officials want to make one thing clear: They have no intention of weaponizing unmanned aircraft in the near future, despite some saying it's legal to under state law.

North Dakota's **new statute** governing law enforcement use of unmanned aircraft bans attaching lethal weapons to the devices but leaves out language concerning less-than lethal weapons, such as Tasers or pepper spray dispensers.

"State law is so wide open that you can, but we're not going to," Grand Forks County Sheriff Bob Rost said. "And we wouldn't even think of it."

The ban is a small portion of the law, which focuses on law officers getting warrants before conducting surveillance with the devices, but its existence has made headlines across the globe this past week.

Law enforcement agencies technically could outfit a unmanned aircraft with a nonlethal weapon, and so could departments in 43 other states.

A Herald analysis of state legislation spanning 2013 to 2015 found only seven states outright prohibit some form of weaponized unmanned aircraft.

North Dakota bans lethal weapons, while Maine, Nevada, North Carolina, Oregon, Virginia and Wisconsin don't make a distinction between lethal and less-than lethal weapons.

Before North Dakota's law came about, Rost said the department has a policy against the use of weapons on unmanned aircraft that was set up in 2012, when it partnered with UND's **Unmanned Aircraft Systems Research and Compliance Committee** to start research into potential uses of the technology for law enforcement.

"We wanted to make sure that, in being able to utilize these aircraft, we follow a procedure," he added. "We wanted to make sure any missions we fly were first screened by the compliance committee to ensure we're doing everything properly."

Cause and effect

North Dakota's law went into effect Aug. 1, but Rost and Grand Forks Police Chief Mark Nelson don't foresee an immediate impact on their operations.

They say none of the five scenarios during which they could launch aircraft are situations that require a warrant as defined by criminal statutes.

"Right now, I'd be hard pressed to find a legitimate need to weaponize," Nelson said.

The law is a product of a **House Bill 1328**, of which Rep. Rick Becker, R-Bismarck, was a primary sponsor. The bill introduced this year in the North Dakota Legislature was Becker's **second attempt** to regulate law enforcement use of unmanned aircraft. The first bill was killed in 2013.

The provision that bans outfitting the devices with lethal weapons was a compromise between proponents and a law enforcement lobbyist, Becker said.

"The bill, even amended, still accomplishes a tremendous amount," he said.

"Requiring search warrants for law enforcement to do surveillance, I think, is a huge, huge win for civil liberties and prohibiting lethal weapons is a good first step."

Becker confirmed he has plans to introduce legislation to ban the remaining nonlethal weapons when the Legislature meets again in 2017. He added he is aware of the Grand Forks County Sheriff's Department's policy.

"The point of wanting it to become law is because of departmental policies change," Becker said. "We can't rely on each city and each county's department policy, we just need a simple law the way it was originally introduced."

The lobbyist, Bruce Burkett, suggested changes on behalf of the North Dakota Peace Officers Association. The association's president, Michael Reitan, police

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chief of West Fargo, elaborated on the amendment during an interview with National Public Radio this week.

"Well, talking to law enforcement agencies that have SWAT teams, they felt that there needed to be an ability to deliver nonlethal munitions into certain situations -- a barricaded subject -- and the possibility of allowing the use of pepper spray to be deployed from a drone," he said.

Following its adoption, North Dakota's law puts it among 16 other states that have statutes regulating law enforcement's use of unmanned aircraft.

"This was an area that needed improvement," Becker said of North Dakota lacking regulation. "North Dakota is on the forefront of drone technology, research and education, and with this law, we can also be on the forefront of protecting civil liberties when it comes to UAS."

A majority of the 17 states have laws that define requirements and exceptions for obtaining a warrant for unmanned device use and create rules for the use of storage of evidence gained from these aircraft.

The laws vary from state to state. For example, in North Dakota, officers must procure a warrant for surveillance, while Virginia requires agencies to obtain a warrant for any use of an unmanned aircraft.

Limited effect

While the lethal weapons ban will remain on North Dakota's books until at least the next legislative session, it presently only affects Grand Forks County law enforcement.

The Sheriff's Department is the only law enforcement agency in the state so far with clearance to operate unmanned aircraft. It and the Grand Forks Police Department operate a UAS unit consisting of two police representatives, two sheriff representatives and two UND pilots.

The agencies' use of the devices began in 2012 as a research project under the purview of the UND Unmanned Aircraft Systems Research and Compliance Committee.

The committee approved five mission sets for which the agencies are allowed to use their devices: crime and traffic scene analysis, disaster scene management, missing person searches and major event traffic monitoring.

"Even if we were to weaponize, where would it fit in with the five approved mission sets that we have?" Nelson said.

The research project has since ended, but Rost and Nelson say their agencies are still adhering to standards set by the committee.

"We were at a crossroads to say, 'Is there really oversight needed on this from the research committee?' Nelson said. "And procedurally, the answer is 'no,' but we've elected to ... take that extra step, and if there's something outside of the five approved mission sets, we're going to run it through the committee and ensure there is transparency."

Nelson and two sheriff's deputies, BJ Maxson and Al Frazier, continue to serve on the compliance committee with representatives from UND, the city of Grand Forks and the Grand Forks community.

The UAS unit has flown 16 missions since its inception and regularly conducts training flights. Currently, the Sheriff's Department has authorization to fly its three unmanned aircraft in 17 counties concentrated in the northeastern corner of North Dakota. Its UAS unit also has assisted law enforcement in Minnesota, Rost said, specifically flying over the scene of a house explosion in rural Bemidji.



The New American

THAT FREEDOM SHALL NOT PERISH

- HOME U.S. NEWS WORLD NEWS ECONOMY SCITECH CULTURE OP-ED REVIEWS

Monday, 31 August 2015
North Dakota Authorizes Police to Use Weaponized Drones

Written by **Joe Wolverton, II, J.D.**
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Police in North Dakota may now legally deploy drones equipped with Tasers and tear gas.

In ironic betrayal of a bill's original intent, HB 1328 authorizes law enforcement to weaponize drones and use them against citizens, provided that the weapons are "less than lethal."

The measure, originally drafted by state representative Rick Becker, called for tight regulation on the use of the unmanned aerial vehicles by police and for protection from their misuse against citizens and the Constitution.



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HB 1167

Chairman Koppelman and members of the House Judiciary Committee;

My name is Bruce Burkett representing the North Dakota Peace Officers Association. NDPOA encompasses membership from the numerous disciplines of Law Enforcement in North Dakota. Our organization has a lot of history with Chapter 29-29.4. This chapter was created during the 2015 legislature, in our view to prohibit law enforcement from using drone technology to solve crimes. Like new developing technology we testified in 2015 that the bill was not needed, that any legal proceedings in criminal court must be able to comply with rules of evidence that protects fourth amendment rights. The state commerce department, UND and all the law enforcement groups were against the bill. That bill started in this committee in 2015 and lingered here till all most crossover time. The committee at that time after listening to our concerns asked law enforcement to review the wording of the proposal and bring back a draft that would satisfy law enforcement needs and meet the areas of concern of our citizens. To develop a proposed amendment to the bill we spent two weeks drafting operational procedures that provide law enforcement with resources to protect public safety. Our draft is the bulk of 29-29.4 that became law.

During each legislative session we hold weekly meeting to go over legislation that might involve law enforcement. Included in the discussion are inputs from the sheriff's group, city police group, state crime bureau and other state law enforcement, corrections and parole, highway patrol.

Section 1 of HB 1167 has very little impact on our actual use of drones by law enforcement. It doesn't change on how we have used them in the past.

On the other hand Section 2 appears to unjustly single out law enforcement when no wrongful use of drones by law enforcement has occurred. It certainly is not needed. If an operation using a drone violates protected rights of persons (which include corporations) there are plenty of legal processes to recover damages civil or otherwise.

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Attached is the complete wordage of 29-29.4 as it was passed by house and senate. (In 2015)

CHAPTER 29-29.4 SURVEILLANCE BY UNMANNED AERIAL VEHICLE

29-29.4-01. Definitions. As used in this chapter:

- 1. "Flight data" means imaging or other observation recording.*
- 2. "Flight information" means flight duration, flight path, and mission objective.*
- 3. "Law enforcement agency or agents" has the meaning provided for law enforcement officer in section 12.1-01-04.*
- 4. "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.*
- 5. "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 system.

- 1. Information obtained from an unmanned aerial vehicle 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 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 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;*
- 2. The locations in which the unmanned aerial vehicle system will operate;*

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3. *The maximum period for which the unmanned aerial vehicle system will operate in each flight; and*

4. *Whether the unmanned aerial vehicle system will collect information or data about individuals or groups of individuals, and if so:*

a. The circumstances under which the unmanned aerial vehicle system will be used; and

b. The specific kinds of information or data the unmanned aerial vehicle system 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 for surveillance during the course of:

1. Patrol of national borders. The use of an unmanned aerial vehicle 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 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 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 or unmanned aerial vehicle system technologies and potential applications.

29-29.4-05. Prohibited use.

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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 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 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.

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

1. The person authorized to conduct the surveillance under this chapter shall document all use of an unmanned aerial vehicle 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 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 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. Any other person that has an interest in obtaining the documentation required by this section may obtain that documentation pursuant to chapter 44-04.