

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 939 Use or Operation of a Drone by Certain Offenders

SPONSOR(S): Metz

TIED BILLS: IDEN./SIM. **BILLS:** SB 1122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N	Hall	White
2) Justice Appropriations Subcommittee	15 Y, 0 N	Smith	Gusky
3) Judiciary Committee	15 Y, 0 N	Hall	Camechis

SUMMARY ANALYSIS

A drone is an unmanned aircraft that is manufactured in varying sizes and can be flown by remote control or on a programmed flight path. Drones can be equipped with surveillance devices such as thermal imaging cameras, laser scanners, and devices that intercept electronic transmissions. The Federal Aviation Administration ("FAA") is in charge of overseeing the integration of drones into U.S. airspace. In order to comply with FAA regulations, a drone being used for recreational purposes must be registered and its user must comply with safety guidelines. Drones used for research or commercial purposes are subject to greater regulation.

The Florida Sexual Predators Act ("Act") contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of a list of enumerated offenses.

The bill creates a third degree felony for a sexual predator to use or operate a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate. The bill ranks the new criminal offense as a level seven offense in the Offense Severity Ranking Chart.

The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill has a positive insignificant impact on the prison population, meaning an increase of 10 or fewer prison beds. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drones

A drone is an unmanned aircraft that can be flown by remote control or on a programmed flight path¹ and can be as small as an insect or as large as a commercial airliner.² Drones can be equipped with various devices such as thermal imaging cameras,³ laser scanners,⁴ and devices that intercept electronic transmissions.⁵ While historically the use of drones was concentrated primarily in military, civil government, and commercial use, in recent years the demand for civilian drones used for recreational purposes has been on the rise.⁶

The Federal Aviation Administration (“FAA”) is in charge of overseeing the integration of drones into U.S. airspace.⁷ In doing so, it must balance the integration of drones with the safety of the nation’s airspace.⁸ The FAA has allowed the use of drones since 1990 for essential public operations such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research.⁹ More recently the FAA has exercised more control over the operation of drones in national airspace, such as prohibiting drone operations over major urban areas.¹⁰

The FAA requires recreational users to register drones and to follow the laws and safety guidelines that apply to operating drones in national airspace.¹¹ As of mid-March 2016, the FAA estimates there have been over 408,000 registrations for model aircraft and recreational drones.¹²

Florida law prohibits the use of a drone¹³ by law enforcement agencies or private persons or entities to record an image for the purpose of conducting surveillance on private property, where persons have a reasonable expectation of privacy, without the person’s consent.¹⁴ Under this law, a person is presumed to have a reasonable expectation of privacy on his or her privately owned property if he or

¹ Richard M. Thompson, II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, CONGRESSIONAL RESEARCH SERVICE (April 3, 2013), www.fas.org/sgp/crs/natsec/R42701.pdf.

² Jeremiah Gertler, *U.S. Unmanned Aerial Systems*, CONGRESSIONAL RESEARCH SERVICE (Jan. 3, 2012), www.fas.org/sgp/crs/natsec/R42136.pdf.

³ See, e.g., MICRODRONES, *Applications*, <https://www.microdrones.com/en/applications/> (last visited March 10, 2017).

⁴ *Id.*

⁵ Andy Greenberg, *Flying Drone Can Crack Wi-Fi Networks, Snoop on Cell Phones*, FORBES (July 28, 2011), <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/#48ff77237856> (last visited March 10, 2017).

⁶ Nick Wingfield, *A Field Guide to Civilian Drones*, THE NEW YORK TIMES (August 29, 2016), https://www.nytimes.com/interactive/2015/technology/guide-to-civilians-drones.html?_r=0.

⁷ FEDERAL AVIATION ADMIN., *Unmanned Aircraft Systems*, <https://www.faa.gov/uas/> (last visited March 10, 2017).

⁸ FEDERAL AVIATION ADMIN., *Fact Sheet—Unmanned Aircraft Systems (UAS)*, (Feb. 15, 2015) http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited March 10, 2017).

⁹ *Id.*

¹⁰ *Id.*

¹¹ FEDERAL AVIATION ADMIN., *Unmanned Aircraft Systems (UAS (Unmanned Aircraft Systems)) Frequently Asked Questions*, <https://www.faa.gov/uas/faqs/#ffr> (last visited March 10, 2017).

¹² FEDERAL AVIATION ADMIN., *FAA Aerospace Forecast, Fiscal Years 2016-2036*, https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf (last visited March 10, 2017).

¹³ “Drone” is defined to mean “a powered, aerial vehicle that: 1. Does not carry a human operator; 2. Uses aerodynamic forces to provide vehicle lift; 3. Can fly autonomously or be piloted remotely; 4. Can be expendable or recoverable; and 5. Can carry a lethal or nonlethal payload.” s. 934.50(2)(a), F.S.

¹⁴ Law enforcement must first obtain a search warrant signed by a judge to authorize the use of a drone for this purpose. See s. 934.50(3), F.S.

she is not observable by other persons located at ground level in a place where they have a legal right to be.¹⁵ Florida law currently does not regulate the use of drones in any other manner.

Sexual Predators

Section 775.21, F.S., provides the Florida Sexual Predators Act (“Act”). The Act contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

- A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim’s parent or guardian;¹⁶
 - Section 794.011, F.S. (sexual battery);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 847.0145, F.S. (buying or selling minors); or
- Any felony violation, or attempted violation of:
 - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
 - Section 394.4593(2), F.S. (sexual misconduct with a patient);
 - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the offender is not the victim’s parent or guardian;¹⁷
 - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
 - Section 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.;¹⁸
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 810.145(8)(b), F.S. (relating to video voyeurism);
 - Section 825.1025, F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).¹⁹

If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the

¹⁵ s. 934.50(3)(b), F.S.

¹⁶ These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the “rationally related” test. The Court held the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component, such rational basis is lost. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001).

¹⁷ *Id.*

¹⁸ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

¹⁹ s. 775.21(4)(a)1.a., F.S.

department as provided²⁰ in the Act, and is subject to the community and public notification as provided²¹ in the Act.²²

Section 775.21(10)(b), F.S. creates a third degree felony²³ for failure to comply with the registration requirements for a person designated as a sexual predator. Additionally, s. 775.21(10)(b), F.S., creates a third degree felony²⁴ for certain acts committed by a sexual predator who has been held criminally liable for committing crimes enumerated in the Act. Specifically, the section provides that a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication of guilt, any violation, or attempted violation, of ss. 787.01, 787.02, or 787.025(2)(c), F.S., where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S., excluding s. 794.011(10), F.S.; ss. 794.05; former 796.03; former 796.035; 800.04; 827.071; 847.0133; 847.0135(5); 847.0145; or 985.701(1), F.S.; or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree felony.

Florida law currently does not have any similar provisions in place to prohibit a sexual offender from using a drone or similar device for the purpose of viewing a minor.

Effect of the Bill

The bill creates s. 810.146, F.S., prohibiting a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, a violation or attempted violation of a qualifying offense, from using or operating a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate.

The bill defines key terms:

- A drone is defined in accordance with s. 934.50, F.S.
- A qualifying offense is an offense under:
 - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), when the victim of the offense was a minor;
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses involving persons less than 16 years of age);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0133, F.S. (protection of minors / obscenity);
 - Section 847.0135(5), F.S. (lewd and lascivious exhibition via a computer transmission);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); or
 - A violation of another jurisdiction's similar law when the victim of the offense was a minor.

The bill provides that a violation of s. 810.146, F.S., is a third felony and adds the new criminal prohibition to the Offense Severity Ranking Chart as a level seven offense.

The bill provides an effective date of October 1, 2017.

²⁰ Registration requirements are provided under s. 775.21(6), F.S.

²¹ Community and public notification requirements are provided under s. 775.21(7), F.S.

²² s. 775.21(4)(c), F.S.

²³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

²⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 810.146, F.S., relating to use or operation of a drone by certain offenders; penalty.

Section 2. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 3. Provides an effective date of October 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill has a positive insignificant impact on the prison population, meaning an increase of 10 or fewer prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: The bill may implicate the First Amendment rights of freedom of speech and freedom of press by limiting a person's ability to photograph minors who are in a public place. When a law restricts fundamental rights, the courts have examined how narrowly tailored the law is to accomplishing the government's purpose. The bill is narrowly tailored in that it applies only to sexual predators and applies only to using a drone for the purpose of viewing or recording an image of a minor. However, because of a lack of case law directly addressing this issue, it would be speculative to predict what the outcome would be if a court were asked to examine its constitutionality based on a First Amendment challenge.

B. RULE-MAKING AUTHORITY: The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A