

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 624

INTRODUCER: Criminal Justice Committee and Senator Young

SUBJECT: Drones

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 624 amends the definition of “critical infrastructure facility” in s. 330.41, F.S., to include:

- A state correctional institution or a private correctional facility;
- A secure juvenile detention center or facility, a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility; and
- A county detention facility.

The bill amends s. 934.50, F.S., to include exceptions to the prohibitions against drone use currently found in the “Freedom from Unwarranted Surveillance Act.” The exceptions are created to:

- Facilitate the collection of evidence at a crime scene or traffic crash scene; and
- Allow drone use by a local or state agency in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

The bill is effective October 1, 2018.

II. Present Situation:

Section 934.50, F.S., defines a drone as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;

- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.¹ They may be controlled manually or through an autopilot which uses a data link to connect the drone's pilot to the drone.² Other terms for "drones" are Unmanned Aerial Systems (UAS) and Unmanned Aerial Vehicles (UAV).

Protection of Critical Infrastructure Facilities in Florida from Drone Traffic

Section 330.41, F.S., protects critical infrastructure facilities by prohibiting any person from knowingly or willfully:

- Operating a drone over a critical infrastructure facility, unless the drone is in transit for commercial purposes and is in compliance with Federal Aviation Administration (FAA) regulations;
- Allowing a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allowing a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

"Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more. Any portion of an aboveground oil or gas pipeline.
- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.

A first violation of this prohibition is a second degree misdemeanor³ and a second or subsequent violation is a first degree misdemeanor.⁴

¹ 14 CFR Part 91, Docket No. FAA-2006-25714, 72 FR 6689, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007.

² *Id.*

³ A second degree misdemeanor is punishable by up to 60 days in jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 330.41, F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000.

The prohibition does not apply to prohibited actions which are committed by:

- A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity;
- A law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency; or
- An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.⁵

Additionally, the prohibition against operating a drone over a critical infrastructure facility does not apply to a drone operating in transit for commercial purposes in compliance with FAA regulations, authorizations, or exemptions.⁶

Introduction of Contraband into State Facilities

At least ten states have passed laws limiting drone operation near prisons.⁷ The legislation is likely a response to incidents that have been reported across the country of drones being used to drop contraband into prison yards.⁸

It is a felony offense in Florida to introduce contraband into or upon the grounds of a state correctional institution, a juvenile detention facility or commitment program, or a county detention facility.⁹

Florida Statutes define the following state facilities:

- *State correctional institution* means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.¹⁰
- *Privatized prisons* are authorized by ch. 957, F.S. The Department of Management Services contracts with private businesses who will establish cost-effective, privately operated correctional facilities in the State of Florida.¹¹
- *Detention center or facility* means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used

⁵ Section 330.41(4)(c), F.S.

⁶ Section 330.41(4)(d), F.S.

⁷ National Conference of State Legislatures, *2017 Unmanned Aircraft Systems (UAS) State Legislation Update*, available at <http://www.ncsl.org/research/transportation/2017-unmanned-aircraft-systems-uas-state-legislation-update.aspx> (last visited January 26, 2018).

⁸ *Drones pose security threat at the nation's prisons and what Pa. officials want to do about it*, PennLive, July 26, 2017, available at http://www.pennlive.com/politics/index.ssf/2017/07/drones_pose_security_threat_at.html (last visited January 25, 2018).

⁹ Sections 944.47, 985.711, and 951.22, F.S.

¹⁰ Section 944.02(8), F.S.

¹¹ Section 957.04(1)(e), F.S. Currently there are seven private prison facilities housing approximately 10,000 inmates in operation in Florida. E-mail from the Senate Appropriations Committee staff, January 30, 2018 (on file with the Senate Committee on Criminal Justice).

for the commitment of adjudicated delinquents shall not be considered a detention center or facility.¹²

- *Nonsecure residential facilities* are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors. Youth assessed and classified for placement in programs at this commitment level represent a low or moderate risk to public safety and require close supervision.¹³
- *High-risk residential facilities* are hardware-secure with perimeter fencing and locking doors. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels.¹⁴
- *Maximum-risk residential facilities* are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.¹⁵
- *County detention facility* means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.¹⁶

Using Drones for Traffic Crash Scene Investigations, Reconstruction

Several jurisdictions, including the Massachusetts State Police and the Lake County, Illinois, Police, have been reported to be using drones to assist in more efficient and timely traffic crash investigations.¹⁷

The North Carolina Department of Transportation and North Carolina State Highway Patrol conducted research demonstrating the speed and accuracy with which a large traffic crash scene can be investigated and cleared, unblocking a roadway for traffic to resume sooner than other techniques.¹⁸

¹² Section 985.03(19), F.S.

¹³ Section 985.03(44)(b), F.S.

¹⁴ Section 985.03(44)(c), F.S.

¹⁵ Section 985.03(44)(d), F.S.

¹⁶ Section 951.23(1)(a), F.S.

¹⁷ *How drones help Lake County police investigate crashes, get roads open faster*, Daily Herald, May 7, 2017, available at <http://www.dailyherald.com/news/20170506/how-drones-help-lake-county-police-investigate-crashes-get-roads-open-faster> (last visited January 25, 2014).

¹⁸ Research shows that documenting a collision scene using photogrammetry and UAS can be advantageous, especially in terms of speed and cost. With a combination of advanced imaging software and the latest unmanned aircraft systems (UAS) technology, we find that the North Carolina State Highway Patrol (NCSHP) can rapidly map collision scenes and simultaneously gather more information than legacy technologies. Indeed, large scenes can be documented in less than 30 minutes. *Collision Scene Reconstruction & Investigation Using Unmanned Aircraft Systems*, Division of Aviation, UAS Program Office, N.C. Department of Transportation, August 2017, available at <https://www.ncdot.gov/aviation/download/ncshp-uas-mapping-study.pdf> (last visited January 25, 2018).

Other Uses for Drones

Drones are being developed and used in many facets of land management including land management, forestry management, wildfire prevention and suppression, and crop analysis.

Engineers at the University of Nebraska-Lincoln designed a drone to execute and monitor prescribed burns, a common land management practice to help reduce wildfire risk by eliminating dry plant material that could fuel a wildfire.¹⁹

Researchers at Virginia Tech use a drone with sensors that capture data that will enable them to measure vegetative vigor based on chlorophyll activity differences.²⁰

Among the responsibilities of the Florida Department of Agriculture and Consumer Services (FDACS) are the following:

- Forestry and land management which includes wildfire prevention and suppression and managing over one million acres of state forests;
- Pest and crop disease observation and analysis; and
- Crop data collection.

The FDACS suggests that many uses for drones exist that would be beneficial to the FDACS in fulfilling its non-law enforcement²¹ missions.²²

Section 934.50, F.S. – Search and Seizure Using a Drone

Section 934.50, F.S., the “Freedom from Unwarranted Surveillance Act,” relates primarily to drone use by law enforcement.²³

The statute prohibits a person, state agency, or political subdivision from using a drone to record an image of either privately owned real property or a person lawfully on such property with the intent to thereby obtain information about the property or person, in violation of such person’s reasonable expectation of privacy, and without his or her written consent.²⁴

¹⁹ Digital Trends, *Researchers are using autonomous fire-bombing drones to prevent future wildfires*, November 10, 2015, available at <https://www.digitaltrends.com/cool-tech/unl-fire-starting-drone/> (last visited January 30, 2018).

²⁰ Agency 229 Annual Report, *Sky is the limit for using drones in land management*, September 28, 2016, available at <http://news.cals.vt.edu/229-report/2016/09/28/sky-is-the-limit-for-using-drones-in-land-management/> (last visited January 30, 2018).

²¹ The FDACS provides agricultural law enforcement throughout the state. The Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, available at <https://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement> (last visited January 29, 2018).

²² E-mail from Grace Lovett, Director, Office of Legislative Affairs, Florida Department of Agriculture and Consumer Services, January 25, 2018; (on file with the Senate Committee on Criminal Justice).

²³ Section 934.50(1), F.S. Section 934.50(3)(a), F.S., specifically prohibits a law enforcement agency from using a drone to gather evidence or other information unless one of the exceptions in s. 934.50(4), F.S., apply. Evidence obtained or collected in violation of the act is inadmissible as evidence in a criminal prosecution in the state courts. Section 934.50(6), F.S.

²⁴ Section 934.50(3)(b), F.S.

In addition to the exceptions specifically related to law enforcement agencies,²⁵ the statute exempts from this prohibition the following uses of drones:

- Use by a person or an entity engaged in a business or profession licensed by the state only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license;²⁶
- Use by a property appraiser solely for the purpose of assessing property for ad valorem taxation;
- Use to capture images by or for an electric, water, or natural gas utility: for operations, maintenance, and inspection of utility facilities including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity; for assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way; for utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or for conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit;
- Use for aerial mapping if the person or entity using a drone for this purpose is operating in compliance with FAA regulations;
- Use to deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with FAA regulations;
- Use to capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law; and
- Use by a communications service provider or a contractor for a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.²⁷

Section 934.50(5), F.S., provides remedies for a violation of these prohibitions, including punitive damages.

Section 330.41, F.S. - Preemption and Construction

Section 330.41(3)(a), F.S., preempts regulation of the operation of UAS to the state except as provided in federal regulations, authorizations, or exemptions.²⁸ However, the statute does not limit the authority of a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems if such laws or ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.²⁹

²⁵ Section 934.50(4)(a)-(c), F.S.

²⁶ This exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons. Section 934.50(4)(d), F.S.

²⁷ Section 934.50(4)(d)-(j), F.S.

²⁸ "Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification." Section 330.41(3)(b), F.S.

²⁹ Section 330.41(3)(c), F.S.

Any person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates must apply to the FAA for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016.³⁰

Section 330.41(4), F.S., relating to protecting critical infrastructure facilities, sunsets 60 days after the FAA process for designating critical infrastructure becomes effective.³¹ Section 330.41, F.S., must be construed in accordance with standards imposed by federal statutes, regulations, and FAA guidance on UAS.³²

III. Effect of Proposed Changes:

The bill amends s. 330.41(2)(a), F.S., to include the following structures within the definition of the term “critical infrastructure facility”:

- A state correctional institution as defined in s. 944.02, F.S., and a private prison as authorized in ch. 957, F.S.;
- A secure juvenile detention center or facility, nonsecure residential facility, high-risk residential facility, and maximum-risk residential facility as defined in s. 985.03, F.S.; and
- A county detention facility as defined in s. 951.23(1)(a), F.S.

Section 934.50(3)(a), F.S., specifically prohibits a law enforcement agency from using a drone to gather evidence or other information unless one of the exceptions in s. 934.50(4), F.S., apply. Evidence obtained or collected in violation of the act is inadmissible as evidence in a criminal prosecution in the state courts.³³

The bill amends s. 934.50, F.S., to include law enforcement using a drone to facilitate the collection of evidence at a crime scene or traffic crash scene among the exceptions authorized in s. 934.50(4), F.S.

The bill creates an additional exception to allow drone use by a local or state agency when used in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

The bill is effective October 1, 2018.

³⁰ Public Law 114-190, Section 2209(b)(1)(C) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209). This section provides for designation of “fixed site facilities.” Only the following can be so designated: critical infrastructure, such as energy production, transmission, and distribution facilities and equipment; oil refineries and chemical facilities; amusement parks; and other locations that warrant such restrictions. In determining whether to grant an application for designation, the FAA administrator may consider aviation safety, protection of persons and property on the ground, national security, or homeland security. In an affirmative designation, the FAA will outline the boundaries for UAS operation near the fixed site facility and such other limitations that the FAA administrator determines may be appropriate.

³¹ Section 330.41(4)(e), F.S.

³² Section 330.41(5), F.S.

³³ Section 934.50(6), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement 2018 Legislative Bill Analysis for SB 624 does not indicate a fiscal impact to the department.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 330.41 and 934.50.

³⁴ Florida Department of Law Enforcement, *2018 Legislative Bill Analysis*, November 2, 2017; (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 29, 2018:

The Committee Substitute amends the bill as follows:

- Adds private correctional facilities, nonsecure juvenile residential facilities, high-risk juvenile residential facilities, and maximum-risk juvenile residential facilities to the structures protected by the bill from certain drone operations under s. 330.41, F.S.
- Adds correctional facilities, juvenile facilities, and county jail facilities in the existing definition of “critical infrastructure facilities” rather than creating “fixed site facilities.”
- Creates a new exception for drone use to allow a local or state agency to use a drone in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

- B. **Amendments:**

None.