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CRIMINAL PROCEDURE (725 ILCS 167/) Freedom from Drone Surveillance Act.

(725 ILCS 167/1)

Sec. 1. Short title. This Act may be cited as the Freedom from Drone Surveillance Act.

(Source: P.A. 98-569, eff. 1-1-14.)

(725 ILCS 167/5)

Sec. 5. Definitions. As used in this Act:

"Authority" means the Illinois Criminal Justice Information Authority.

"Drone" means any aerial vehicle that does not carry a human operator.

"Information" means any evidence, images, sounds, data, or other information gathered by a drone.

"Law enforcement agency" means any agency of this State or a political subdivision of this State which is vested by law with the duty to maintain public order and to enforce criminal laws.

"Parade" means a march, procession, or other similar activity consisting of persons, animals, vehicles, or things, or any combination thereof, upon a public street, sidewalk, alley, or other public place, which requires a street closing or otherwise requires stopping or rerouting vehicular traffic because the parade will not or cannot comply with normal and usual traffic regulations or controls. "Parade" does not include a political protest, march, demonstration, or other assembly protected by the First Amendment.

"Routed event" means a parade, walk, or race that:

(1) is hosted by the State of Illinois or a county, municipality, township, or park district;

(2) is outdoors and open to the public; and

(3) has an estimated attendance of more than 50 people.

"Routed event" does not include any political protest, march, demonstration, or other assembly protected by the First Amendment.

"Special event" means a concert or food festival that:

(1) is hosted by the State of Illinois or a county, municipality, township, or park district;

(2) is outdoors and open to the public; and

(3) has an estimated attendance of:

(i) 150 or more people in a unit of local government with a population that is less than 50,000;

(ii) 250 or more people in a unit of local government with a population that is greater than or equal to 50,000 but less than 100,000;

(iii) 350 or more people in a unit of local government with a population that is greater than or equal to 100,000 but less than 500,000; or

(iv) 500 or more people in a unit of local government with a population that is 500,000 or more.

"Special event" does not include any political protest, march, demonstration, or other assembly protected by the First Amendment.

(Source: P.A. 103-101, eff. 6-16-23.)

(725 ILCS 167/10)

Sec. 10. Prohibited use of drones. Except as provided in Section 15, a law enforcement agency may not use a drone to gather information.

(Source: P.A. 98-569, eff. 1-1-14.)

(725 ILCS 167/15)

Sec. 15. Exceptions. This Act does not prohibit the use of a drone by a law enforcement agency:

(1) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is that risk.

(2) If a law enforcement agency first obtains a search warrant based on probable cause issued under Section 108-3 of the Code of Criminal Procedure of 1963. The warrant must be limited to a period of 45 days, renewable by the judge upon a showing of good cause for subsequent periods of 45 days.

(3) If a law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent harm to life, or to forestall the imminent escape of a suspect or the destruction of evidence. The use of a drone under this paragraph (3) is limited to a period of 48 hours. Within 24 hours of the initiation of the use of a drone under this paragraph (3), the chief executive officer of the law enforcement agency must report in writing the use of a drone to the local State's Attorney.

(4) If a law enforcement agency is not undertaking a criminal investigation but is attempting to locate a missing person, engaging in search and rescue operations, or aiding a person who cannot otherwise be safely reached.

(5) If a law enforcement agency is using a drone solely for crime scene and traffic crash scene photography. Crime scene and traffic crash photography must be conducted in a geographically confined and time-limited manner to document specific occurrences. The use of a drone under this paragraph (5) on private property requires either a search warrant based on probable cause under Section 108-3 of the Code of Criminal Procedure of 1963 or lawful consent to search. The use of a drone under this paragraph (5) on lands, highways, roadways, or areas belonging to this State or political subdivisions of this State does not require a search warrant or consent to search. Any law enforcement agency operating a drone under this paragraph (5) shall make every reasonable attempt to only photograph the crime scene or traffic crash scene and avoid other areas.

(6) If a law enforcement agency is using a drone during a disaster or public health emergency, as defined by Section 4 of the Illinois Emergency Management Agency Act. The use of a drone under this paragraph (6) does not require an official declaration of a disaster or public health emergency prior to use. A law enforcement agency may use a drone under this paragraph (6) to obtain information necessary for the determination of whether or not a disaster or public health emergency should be declared, to monitor weather or emergency conditions, to survey damage, or to otherwise coordinate response and recovery efforts. The use

of a drone under this paragraph (6) is permissible during the disaster or public health emergency and during subsequent response and recovery efforts.

(7) To conduct an infrastructure inspection of a designated building or structure at the express request of a local government agency. Any law enforcement agency operating a drone under this paragraph (7) shall make every reasonable attempt to photograph only the building or structure and to avoid other areas.

(8) To demonstrate the capabilities and functionality of a police drone for public relations purposes, provided that no information is collected or recorded by the drone during such demonstration.

(9) In response to Public Safety Answering Point (PSAP) dispatched calls for service, when the sole purpose for using a drone is for one or more first responders to locate victims, to assist with immediate victim health or safety needs, or to coordinate the response of emergency vehicles and personnel to an emergency. As used in this paragraph (9), "Public Safety Answering Point" and "PSAP" have the meaning given to those terms in Section 2 of the Emergency Telephone System Act.

(10) If a law enforcement agency is using a drone at a routed event or special event. The use of a drone under this paragraph (10) requires that:

(A) notice is posted at the event location for at least 24 hours before the event and clearly communicates that drones may be used at the upcoming event for the purpose of real-time monitoring of participant safety;

(B) notice is posted, if practical, at major entry points to the event clearly informing the attendees that a drone may be used for the purpose of real-time monitoring of participant safety; and

(C) the drone is flown in accordance with Federal Aviation Administration safety regulations.

Under this paragraph (10), a law enforcement agency may use the drone:

(i) in advance of an event, before event participants have begun to assemble, for the sole purpose of creating maps and determining appropriate access routes, staging areas, and traffic routes, provided that no personal identifying information is recorded and provided further that no recorded information is used in any criminal prosecution; or

(ii) during the event to proactively support public safety personnel by monitoring the event footprint in real time:

(I) to detect a breach of event space, including a breach by an unauthorized vehicle, an interruption of a parade route, or a breach of an event barricade or fencing;

(II) to evaluate crowd size and density;

(III) to identify activity that could present a public safety issue for the crowd as a whole, including crowd movement;

(IV) to assist in the response of public safety personnel to a real-time public safety incident at the event; and

(V) to assess the traffic and pedestrian flow around the event in real time.

(Source: P.A. 103-101, eff. 6-16-23.)

(725 ILCS 167/17)

Sec. 17. Use of facial recognition. A law enforcement agency

operating a drone under this Act is prohibited from using, during a flight, onboard facial recognition software that works in conjunction with the drone. A law enforcement agency operating a drone under this Act is prohibited from using any information gathered by a drone with any facial recognition software, unless either (i) the law enforcement agency is using a drone to counter a high risk of a terrorist attack by a specific individual or organization and the United States Secretary of Homeland Security has determined that credible intelligence indicates that there is such a risk or (ii) the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent harm to life or to forestall the imminent escape of a suspect or the destruction of evidence.

(Source: P.A. 103-101, eff. 6-16-23.)

(725 ILCS 167/18)

Sec. 18. Use of weapons. A law enforcement agency operating a drone under this Act is prohibited from equipping or using on a drone any firearm, weaponized laser, kinetic impact projectile, chemical agent or irritant, or any other lethal or non-lethal weapon.

(Source: P.A. 103-101, eff. 6-16-23.)

(725 ILCS 167/20)

Sec. 20. Information retention.

(a) If a law enforcement agency uses a drone under Section 15 of this Act, the agency shall destroy all information gathered by the drone within the following timeframes:

(1) All information gathered pursuant to paragraph

(1), (2), (3), (4), (5), (6), or (9) of Section 15 shall be destroyed within 30 days after being gathered.

(2) All information gathered pursuant to paragraph

(10) of Section 15 shall be destroyed within 24 hours after being gathered.

(3) All information gathered pursuant to paragraph

(7) of Section 15 shall be turned over to the requesting local government agency as soon as practicable, and all gathered information shall be destroyed immediately after the information has been turned over.

(b) Notwithstanding subsection (a), a supervisor at a law enforcement agency may retain particular information if:

(1) there is reasonable suspicion that the information contains evidence of criminal activity;

(2) the information is relevant to an ongoing investigation or pending criminal trial;

(3) a supervisor at the agency deems that the information will be used exclusively for training purposes, provided that any such information shall not contain any personally identifiable information; or

(4) the information consists of only flight path data, metadata, or telemetry information of the drone.

(Source: P.A. 103-101, eff. 6-16-23.)

(725 ILCS 167/25)

Sec. 25. Information disclosure.

(a) If a law enforcement agency uses a drone under Section 15 of this Act, the agency shall not disclose any information gathered by the drone, except that a supervisor of that agency may disclose particular information to another governmental agency if (1) there is reasonable suspicion that the information contains evidence of criminal activity or (2) the information is relevant to an ongoing investigation or pending criminal trial.

(b) Records of drone usage, including flight path data,

metadata, or telemetry information of specific flights, if available, may be disclosed subject to the Freedom of Information Act and rules adopted under that Act.

(c) A law enforcement agency that uses a drone under Section 15 shall neither sell any information gathered by the drone nor disclose any information gathered by the drone to any person to whom disclosure is not authorized under this Section.

(d) Nothing in this Act prevents the disclosure of information through a court order or subpoena in connection with a criminal proceeding or if the disclosure is in regard to a completed traffic crash investigation.

(Source: P.A. 103-101, eff. 6-16-23.)

(725 ILCS 167/30)

Sec. 30. Admissibility. If the court finds by a preponderance of the evidence that a law enforcement agency used a drone to gather information in violation of the information gathering limits in Sections 10 and 15 of this Act, then the information shall be presumed to be inadmissible in any judicial or administrative proceeding. The State may overcome this presumption by proving the applicability of a judicially recognized exception to the exclusionary rule of the Fourth Amendment to the U.S. Constitution or Article I, Section 6 of the Illinois Constitution to the information. Nothing in this Act shall be deemed to prevent a court from independently reviewing the admissibility of the information for compliance with the aforementioned provisions of the U.S. and Illinois Constitutions.

(Source: P.A. 98-569, eff. 1-1-14.)

(725 ILCS 167/35)

Sec. 35. Reporting.

(a) If a law enforcement agency owns one or more drones, then subsequent to the effective date of this Act, it shall report in writing annually by April 1 to the Authority the number of drones that it owns, the number of times a drone was used pursuant to each paragraph of Section 15, including the date of use, time of use, reason for use, location, whether video was recorded, and whether the video is designated for retention for training purposes. The report shall contain a copy of the agency's latest policy concerning drones as of the most recent April 1.

(b) On July 1 of each year, the Authority shall publish on its publicly available website a concise report that lists every law enforcement agency that owns a drone, and for each of those agencies, the number of drones that it owns, the number of times a drone was used pursuant to each paragraph of Section 15, including the date of use, time of use, reason for use, location, whether video was recorded, whether the video is designated for retention for training purposes. The report shall contain a copy of the agency's latest policy concerning drones as of the most recent April 1.

(c) Each law enforcement agency that uses a drone shall implement and make publicly available on its website the law enforcement agency's policy governing the operation, use, administration, and oversight of its drone program.

(Source: P.A. 103-101, eff. 6-16-23.)

(725 ILCS 167/40)

Sec. 40. Law enforcement use of private drones.

(a) Except as provided in Section 15, a law enforcement agency may not acquire information from or direct the acquisition of information through the use of a drone owned by a private third party. In the event that law enforcement acquires

information from or directs the acquisition of information through the use of a privately owned drone under Section 15 of this Act, any information so acquired is subject to Sections 20 and 25 of this Act.

(b) Nothing in this Act prohibits private third parties from voluntarily submitting information acquired by a privately owned drone to law enforcement. In the event that law enforcement acquires information from the voluntary submission of that information, whether under a request or on a private drone owner's initiative, the information is subject to Sections 20 and 25 of this Act.

(Source: P.A. 98-831, eff. 1-1-15.)

(725 ILCS 167/45)

Sec. 45. Policy; violations.

(a) Each law enforcement agency using drones under this Act shall have a policy outlining drone use consistent with this Act. The policy shall include that, if an agency learns of violations of this Act, the agency shall immediately take actions to prevent future violations of the Act through any one or more of the following means: training, discipline, including progressive discipline for repeat violations, or other means that will prevent repeated violations of the Act by law enforcement. If an agency learns of willful and wanton violations of this Act, the agency shall immediately remove the pilot from its drone program and take action to prevent future willful and wanton violations of the Act.

(b) The Attorney General shall have authority to conduct investigations into patterns and practices of violations of this Act. The Attorney General may:

(1) require a law enforcement agency, law enforcement official, or any other person or entity to file a statement or report in writing under oath or otherwise, as to all information the Attorney General may consider necessary;

(2) examine under oath any law enforcement official or any other person alleged to have participated in or with knowledge of the alleged violation; or

(3) issue subpoenas, obtain records, conduct hearings, or take any other actions in aid of any investigation.

If a law enforcement agency, law enforcement official, or other person or entity fails to comply, in whole or in part, with a subpoena or other investigative request issued under paragraph (3) of this subsection, the Attorney General may compel compliance through an action in the circuit court.

(c) Following completion of an investigation under subsection (b), the Attorney General may, upon his or her own information or upon the complaint of any person, maintain an action for declaratory, injunctive, or any other equitable relief in the circuit court against any law enforcement agency, law enforcement official, or other person or entity who violates any provision of this Act. These remedies are in addition to, and not in substitution for, other available remedies, penalties, or disciplinary action.

(d) Upon entry of an adverse judgment under this Act demonstrating a pattern or practice of violations of this Act, a law enforcement agency shall forfeit its ability to use drones under Section 15 of this Act for not less than 6 months for a first adverse judgment and up to one year for a second adverse judgment demonstrating a pattern or practice of violating this Act.

(e) Nothing in this Section is intended to prohibit or limit any other remedy available by law.

(Source: P.A. 103-101, eff. 6-16-23.)

