



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

H.B. NO. 5217: AN ACT CONCERNING THE USE OF UNMANNED AIRCRAFT

JOINT COMMITTEE ON JUDICIARY
February 24, 2014

The Division of Criminal Justice commends the Joint Committee on Judiciary for raising H.B. No. 5217 and acknowledging the necessity to examine the need for potential legislation to deal with advances in technology that threaten to render our existing statutes obsolete. H.B. No. 5217 deals with the regulation of the use of unmanned aircraft, or what are commonly referred to as "drones."

The Division respectfully recommends that the Committee proceed with extreme caution in its consideration of this legislation. It seems that advances in technology are occurring so quickly these days that there isn't enough time to keep with the questions those advances raise let alone the answers to those questions.

The Division must respectfully oppose the bill as it is now written in that it would establish an unnecessary and legally troublesome double-standard regarding the legal consequences of the use of an unmanned aircraft. For example, the bill essentially states that if the police fly a drone over property without a warrant authorizing such activity the evidence collected as a result of said surveillance would be inadmissible in a court proceeding. However, if a private citizen or other non-law enforcement entity were to do the same and then give the same evidence to the police, it would not necessarily be inadmissible.

The fact is section 5 of the bill is totally unnecessary because the improper use of unmanned aircraft by the police for criminal investigative purposes is already fully regulated by the Fourth Amendment to the United States Constitution and Article First, section 7 of the Connecticut Constitution, both of which afford protection to reasonable expectations of privacy and punish unlawful incursions thereon with the suppression of evidence, and even civil liability.

In the context of aerial observations, what is important is not whether the craft is manned or unmanned, but where the thing is, and what it enables one to see. Under the long-standing "open fields" doctrine, persons have no reasonable expectation of privacy in open, outdoor areas, not included within the curtilage of a residence. *Oliver v. United States*, 466 U.S. 170, 179 (1984); *State v. Brown*, 198 Conn. 348, 356 (1986). Reasonably conducted, manned aerial overflight observations of such areas have long been upheld. *California v. Ciraolo*, 476 U.S. 207, 213 (1986); *Florida v. Riley*, 488 U.S. 445, 450 (1989); *State v. Salvatore*, 57 Conn. App. 396, 403, 749 A.2d 71, 75 (2000). Search law, being

broadly conceptual, is readily adaptable to emerging technologies as it was in *Kyllo v. United States*, 533 U.S. 27 (2001) (forward looking infrared device), to name just one example.

If the concern is that police will use drones in violation of constitutional principles, i.e., simply in an Orwellian manner to clandestinely gather intelligence unrelated to a legitimate law enforcement purpose, that concern might easily, and more appropriately, be addressed with legislation criminalizing such conduct.

The shortcomings with section 5 of the bill are but one significant reason why the Division would respectfully recommend that the Committee proceed with extreme caution in considering such legislation as H.B. No. 5217. Another area of obvious concern is the relationship between any state legislation and existing or potential federal legislation given the role of the federal government in the regulation of airspace. We must avoid the temptation to enact hastily considered legislation that fails to take into consideration all of the implications and ramifications of such legislation.

Again, and in conclusion, the Division commends the Committee for recognizing the need to examine these issues, but we do not believe that H.B. No. 5217 as now drafted is the appropriate way to do so. The Division stands ready to work with the Committee and the law enforcement community to undertake a comprehensive examination of these issues so that appropriate action can be taken.

Thank you.