



State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

OFFICE OF CHIEF PUBLIC DEFENDER
30 TRINITY STREET - 4th Floor
HARTFORD, CONNECTICUT 06106

DEBORAH DEL PRETE SULLIVAN
LEGAL COUNSEL, DIRECTOR
(860) 509-6405 Telephone
(860) 509-6495 Fax
deborah.d.sullivan@jud.ct.gov

OFFICE OF CHIEF PUBLIC DEFENDER

TEJAS BHATT, Assistant Public Defender

Program Review and Investigations Committee

Public Hearing February 23, 2015

Raised Bill No. 974

**AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE LEGISLATIVE
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING THE
USE OF DRONES BY LAW ENFORCEMENT OFFICERS AND OTHER STATE
EMPLOYEES**

Although not opposed to the regulation of the use of drones by law enforcement, the Office of Chief Public Defender is opposed to Section 3 of Raised Bill No. 974. Section 3 pertains to the use of drones by law enforcement, as defined within this bill, and the procedures for the retention, modification, destruction of the information obtained by law enforcement as a result of the drone usage and reporting of the usage of drones. Section 3 of the bill, specifically subsection (c) (3) would permit law enforcement to conduct a search, not based upon the constitutionally required probable cause standard, but only upon a belief of a reasonable and articulable suspicion that a crime has been or is being committed. As drafted, this creates an unrecognized exception to the warrant requirement for searches of an individual's home or property. Given the invasive and intrusive capabilities of drones and their potential to search, zoom in on and record an individual's activities in the privacy of their home, the Office of Chief Public Defender urges this legislature to follow the lead of a majority of states to consider this issue by requiring that a warrant, supported by probable cause and signed by a neutral judge, be obtained in all non-emergency situations.

Raised Bill 974, An Act Concerning the Use of Drones by Law Enforcement Agencies and Other State employees, incorporates a number of recommendations made by the Drone Use Regulation Study. The recommendation pertaining to the use of drones by law enforcement without a warrant, outlined in Section 3(c)(3), cannot withstand constitutional muster. Section 3 (c)(3) provides:

(c) A law enforcement officer shall not operate an unmanned aerial vehicle in a manner to collect information about an individual or privately owned property unless . . . (3) there is a reasonable and articulable suspicion that an offense has been or is being committed by such individual or on such property and the operation of the unmanned aerial vehicle is limited to a total of twenty-four hours within a thirty-day period.

Allowing for searches only upon a belief of reasonable and articulable suspicion creates an unrecognized exception to the warrant requirement for searches of an individual's home or personal and/or business property.

Law enforcement is required to obtain a warrant signed by a neutral magistrate. The reasonable and articulable suspicion standard is more commonly used to detain individuals on the street when police have believe a crime has been or is being committed, usually limited to frisking for weapons to ensure officer safety and to quickly eliminate suspects. Applying this low standard to searches of an individual's home and property would drastically reduce the Constitutional protections every resident of Connecticut has.

Typically, there are only 3 situations wherein a search without a warrant is permitted. They are: 1) exigent circumstances; 2) to conduct protective sweeps; and, 3) in the case of emergencies. All three of these exceptions recognize situations where there is need for swift action by the police:

Exigent Circumstances: The first of these, the exigent circumstance exception, generally refers to those situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search or seizure, for which probable cause exists, unless they act swiftly and, without seeking prior judicial authorization, those that present a risk of danger to human life; the destruction of evidence; or the flight of a suspect.

Protective Sweep: The purpose of the protective sweep doctrine is to allow police officers to take steps to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack.

Emergency Doctrine: The emergency doctrine is rooted in the caretaking function of the police. The purpose of the emergency doctrine is to allow the police to make a warrantless entry to render emergency aid and assistance to a person whose life or limb is in immediate jeopardy.

The sanctity of a person's home must be carefully and zealously safeguarded especially because drones - or Unmanned Aerial Vehicles (UAVs) - are capable of highly advanced and near-constant surveillance through live-feed video cameras, thermal imaging, communications intercept capabilities, and backend software tools such as license plate recognition, GPS tracking, and facial recognition. They are also extremely small in comparison to other methods of aerial surveillance, such as a camera outfitted on a helicopter. Thus, a drone could be used to reach private areas that were before now not accessible to the public or law enforcement.

Of other states that have passed drone legislation, Alaska, Florida, Idaho, Illinois, Indiana, Iowa, Montana, North Carolina, Oregon, Tennessee, Utah, Virginia and Wisconsin, all require warrants or the existence of an exception to the warrant requirement. Texas permits the use of a drone with reasonable suspicion, but only in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed a felony.

Thus, Connecticut's proposal to permit the use of drones for reasonable suspicion without any attendant exigent circumstances would be the outlier. Therefore, the Office of Chief Public Defender urges that Section 3 of Raised Bill 971 be amended to be in compliance with constitutional safeguards and require probable cause before any drone search is conducted by law enforcement in this state.