

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0054.01 Richard Sweetman x4333

HOUSE BILL 15-1115

HOUSE SPONSORSHIP

Lawrence,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PRIVACY IN REGARD TO EMERGING TECHNOLOGIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

A person commits the crime of first degree criminal trespass if he or she is not a peace officer or other agent of a state or local government agency acting in his or her official capacity and he or she knowingly and intentionally uses an unmanned aerial vehicle (UAV) to observe, record, transmit, or capture images of another person when the other person has a reasonable expectation of privacy.

A person commits harassment if he or she is not a peace officer or other agent of a state or local government agency acting in his or her

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

official capacity and, with intent to harass, annoy, or alarm another person, he or she uses a UAV to track a person's movements in or about a public place without the person's authorization.

The bill amends existing law concerning the retention of passive surveillance records by government agencies to contemplate the retention of records that are obtained through the use of UAVs.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) The growing use of unmanned aerial vehicles for a wide
5 variety of public and private purposes will pose many public policy issues
6 for the general assembly to resolve in the near future; and

7 (b) Foremost among these issues is the threat to individual privacy
8 that is posed by a person who misuses an unmanned aerial vehicle to
9 observe, monitor, or record a person or a person's property without his or
10 her authorization.

11 (2) The general assembly further finds that:

12 (a) As new technologies emerge, unmanned aerial vehicles present
13 a seemingly incalculable potential to assist public agencies, private
14 companies, and individuals in countless activities, including law
15 enforcement, search-and-rescue operations, aerial surveying and mapping,
16 managing agriculture and livestock, managing forests and wildlife,
17 studying climatology, broadcasting media, and many more;

18 (b) The development of unmanned aerial vehicle technology is a
19 vital and growing industry, into which many large and small aviation
20 companies are investing millions of dollars;

21 (c) As a leading state in the aviation and aerospace industries,
22 Colorado is uniquely poised to position itself over the next ten years as a

1 global center for unmanned aerial vehicle technology; and

2 (d) This act is not intended to limit the sale, design, or
3 manufacturing of unmanned aerial vehicles.

4 (3) The general assembly further finds that:

5 (a) The federal government, in the form of the federal aviation
6 administration (FAA), traditionally occupies the field of aviation law;

7 (b) The FAA has been slow to develop and release regulations
8 concerning the use of unmanned aerial vehicles, much to the frustration
9 of companies that would like to begin developing and manufacturing such
10 vehicles;

11 (c) The federal "FAA Modernization and Reform Act of 2012"
12 requires the FAA to devise a comprehensive plan to safely accelerate the
13 integration of civil unmanned aircraft systems into the national air space
14 by September 2015;

15 (d) In April 2014, the Association of Unmanned Vehicle Systems
16 International (AUVSI), which represents the unmanned aerial vehicle
17 industry, and thirty-one other industry associations sent a letter to the
18 FAA urging it to expedite the rule-making process; and

19 (e) According to AUVSI, the unmanned aerial vehicle industry
20 will create more than one hundred thousand jobs and generate eighty-two
21 billion dollars in revenue in ten years, once the FAA rules are finalized.

22 (4) Therefore, the general assembly hereby declares that:

23 (a) Until the FAA issues its rules regarding unmanned aerial
24 vehicles, Colorado and other states should avoid enacting regulations that
25 may conflict with the rules or otherwise encroach upon the federal
26 government's authority to regulate the use of air space by aircraft; but

27 (b) Because of the threat to individual privacy that is posed by a

1 person who misuses an unmanned aerial vehicle, and because of the utter
2 paucity of regulation and guidance produced by the FAA to date, it is
3 appropriate at this time for the general assembly to:

4 (I) Update Colorado's existing first degree criminal trespass
5 offense and harassment offense to contemplate the misuse of unmanned
6 aerial vehicles; and

7 (II) Enact guidelines for the storage, retention, and destruction of
8 data gathered by government agencies through the use of unmanned aerial
9 vehicles.

10 **SECTION 2.** In Colorado Revised Statutes, 18-1-901, **amend** (3)
11 (s); and **add** (3) (t) as follows:

12 **18-1-901. Definitions.** (3) (s) (I) ~~"Utility" means an enterprise~~
13 ~~which provides gas, sewer, electric, steam, water, transportation, or~~
14 ~~communication services, and includes any carrier, pipeline, transmitter,~~
15 ~~or source, whether publicly or privately owned or operated.~~ "UNMANNED
16 AERIAL VEHICLE" MEANS AN AIRCRAFT THAT DOES NOT CARRY A HUMAN
17 OPERATOR AND IS CAPABLE OF FLIGHT UNDER REMOTE CONTROL OR
18 AUTONOMOUS PROGRAMMING.

19 (II) "UNMANNED AERIAL VEHICLE" DOES NOT MEAN:

20 (A) A SATELLITE IN ORBIT AROUND THE PLANET; OR

21 (B) AN UNMANNED AERIAL VEHICLE BEING USED BY THE FEDERAL
22 GOVERNMENT OR BY A PERSON ACTING PURSUANT TO A CONTRACT WITH
23 THE FEDERAL GOVERNMENT TO CONDUCT SURVEILLANCE OF SPECIFIC
24 ACTIVITIES.

25 (t) "UTILITY" MEANS AN ENTERPRISE THAT PROVIDES GAS, SEWER,
26 ELECTRIC, STEAM, WATER, TRANSPORTATION, OR COMMUNICATION
27 SERVICES, AND THE TERM INCLUDES ANY CARRIER, PIPELINE,

1 TRANSMITTER, OR SOURCE, WHETHER PUBLICLY OR PRIVATELY OWNED OR
2 OPERATED.

3 **SECTION 3.** In Colorado Revised Statutes, **amend** 18-4-502 as
4 follows:

5 **18-4-502. First degree criminal trespass.** (1) A person commits
6 the crime of first degree criminal trespass if ~~such person~~ HE OR SHE:

7 (a) Knowingly and unlawfully enters or remains in a dwelling of
8 another;

9 (b) ~~or if such person~~ Enters any motor vehicle with intent to
10 commit a crime therein; OR

11 (c) (I) IS NOT A PEACE OFFICER OR AN EMPLOYEE OR OTHER AGENT
12 OF A STATE OR LOCAL GOVERNMENT AGENCY ACTING IN HIS OR HER
13 OFFICIAL CAPACITY; AND

14 (II) HE OR SHE KNOWINGLY AND INTENTIONALLY USES AN
15 UNMANNED AERIAL VEHICLE TO OBSERVE, RECORD, TRANSMIT, OR
16 CAPTURE IMAGES OF ANOTHER PERSON WHEN THE OTHER PERSON HAS A
17 REASONABLE EXPECTATION OF PRIVACY.

18 (2) First degree criminal trespass is a class 5 felony.

19 **SECTION 4.** In Colorado Revised Statutes, 18-9-111, **add** (1.2)
20 as follows:

21 **18-9-111. Harassment.** (1.2) A PERSON COMMITS HARASSMENT
22 IF HE OR SHE:

23 (a) IS NOT A PEACE OFFICER OR AN EMPLOYEE OR OTHER AGENT OF
24 A STATE OR LOCAL GOVERNMENT AGENCY ACTING IN HIS OR HER OFFICIAL
25 CAPACITY; AND

26 (b) WITH INTENT TO HARASS, ANNOY, OR ALARM ANOTHER
27 PERSON, HE OR SHE USES AN UNMANNED AERIAL VEHICLE TO TRACK A

1 PERSON'S MOVEMENTS IN OR ABOUT A PUBLIC PLACE WITHOUT THE
2 PERSON'S AUTHORIZATION.

3 **SECTION 5.** In Colorado Revised Statutes, **amend** 24-72-113 as
4 follows:

5 **24-72-113. Limit on retention of passive surveillance records**

6 - **definitions.** (1) As used in this section, UNLESS THE CONTEXT
7 OTHERWISE REQUIRES:

8 (a) (I) "Passive surveillance" means the use by a government
9 entity of a digital video camera; video tape camera; closed circuit
10 television camera; film camera; photo radar recorder; UNMANNED AERIAL
11 VEHICLE, AS DEFINED IN SECTION 18-1-901 (3) (s), C.R.S.; or other image
12 recording device positioned to capture moving or still pictures or images
13 of human activity on a routine basis or for security or other purposes,
14 including monitoring or recording traffic, weather conditions, office
15 activities, transit facilities, parking garages, sports venues, schools, day
16 care centers, hospitals or other medical facilities, recreational facilities,
17 playgrounds, swimming pools, or utility facilities.

18 (II) "Passive surveillance" does not include:

19 (A) Surveillance triggered by a certain event or activity and that
20 does not monitor at regular intervals; ~~"Passive surveillance" does not~~
21 ~~include~~ OR

22 (B) The use of toll collection cameras.

23 (b) (I) "PASSIVE SURVEILLANCE RECORD" MEANS A RECORD THAT
24 IS CREATED AS A RESULT OF PASSIVE SURVEILLANCE.

25 (II) "PASSIVE SURVEILLANCE RECORD" DOES NOT INCLUDE:

26 (A) A RECORD THAT IS CREATED AS A RESULT OF PASSIVE
27 SURVEILLANCE PERFORMED BY A CORRECTIONAL FACILITY, LOCAL JAIL, OR

1 PRIVATE CONTRACT PRISON, AS DEFINED IN SECTION 17-1-102, C.R.S., ANY
2 JUVENILE FACILITY OPERATED BY THE COLORADO DEPARTMENT OF HUMAN
3 SERVICES, AS LISTED IN SECTIONS 19-2-402, 19-2-403, AND 19-2-406
4 THROUGH 19-2-408, C.R.S.; OR

5 (B) A RECORD THAT IS CREATED AS A RESULT OF PASSIVE
6 SURVEILLANCE AND MAINTAINED AS REQUIRED BY FEDERAL LAW.

7 (2) (a) The custodian, as defined in section 24-72-202, may only
8 access a passive surveillance record beyond the first anniversary after the
9 date of the creation of the passive surveillance record, and up to the third
10 anniversary after the date of the creation of the passive surveillance
11 record, if there has been a notice of claim filed, or an accident or other
12 specific incident that may cause the passive surveillance record to become
13 evidence in any civil, labor, administrative, or felony criminal proceeding,
14 in which case the passive surveillance record may be retained. The
15 custodian shall preserve a record of the reason for which the passive
16 surveillance record was accessed and the person who accessed the passive
17 surveillance record beyond the first anniversary after its creation. All
18 passive surveillance records must be destroyed after the third anniversary
19 after the date of the creation of the passive surveillance record unless
20 retention is authorized by this section.

21 ~~(b) This section does not apply to passive surveillance records of~~
22 ~~any correctional facility, local jail, or private contract prison, as defined~~
23 ~~in section 17-1-102, C.R.S., any juvenile facility operated by the~~
24 ~~Colorado department of human services, as listed in sections 19-2-402,~~
25 ~~19-2-403, and 19-2-406 through 19-2-408, C.R.S., or any passive~~
26 ~~surveillance records made or maintained as required under federal law.~~

27 **SECTION 6. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part will not take effect
7 unless approved by the people at the general election to be held in
8 November 2016 and, in such case, will take effect on the date of the
9 official declaration of the vote thereon by the governor.