

Act 169:

An act relating to privacy protection and a code of administrative rules

Overview

Law Enforcement use of Drones

General Prohibition on Drones:

Act 169 regulates the use of drones by law enforcement agencies. The general rule established by the act is that a law enforcement agency cannot use a drone or information acquired through the use of a drone for the purpose of investigating, detecting, or prosecuting crime unless the agency has obtained a warrant or unless one of the court-recognized exceptions to the warrant requirement applies.¹

This act also prohibits a law enforcement agency from using a drone to gather or retain data on private citizens peacefully exercising their constitutional rights of free speech and assembly, unless the drone is being used either: (1) for observational, public safety purposes that do not involve gathering or retaining data; or (2) pursuant to a warrant.

Permissible Use for Drones:

The act does permit law enforcement agencies to use drones operated for purposes other than the investigation, detection, or prosecution of crime, including search and rescue operations and aerial photography for the assessment of accidents, forest fires and other fire scenes, flood stages, and storm damage.

The act also requires that, when a drone is used pursuant to a warrant or an exception to the warrant requirement, the drone must be operated in a manner intended to collect data only on the target of the surveillance and to avoid data collection on any other person, home, or area.

Exclusionary Rule:

The act contains an exclusionary rule, which makes inadmissible in court any information gathered in violation of the rules established by this section.

¹ Courts have developed five generally recognized exceptions to the warrant requirement: (1) a search incident to a lawful arrest; (2) a search with consent; (3) a search in exigent circumstances, which means when 'the exigencies of the situation' make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment, such as the need to prevent the imminent destruction of evidence in, to pursue a fleeing suspect (i.e., "hot pursuit"), and to assist persons who are seriously injured or are threatened with imminent injury; (4) the seizure of objects in plain view; and (5) a search pursuant to a regulatory statute that regulates or licenses a commercial enterprise in circumstances where the regulated party can be said to have submitted to warrantless searches as a part of the regulatory scheme, such as housing and building code violation inspections.

Capitol Complex Security Working Group
9/26/2016
RDW

Reports:

This act requires that by September 1 of each year, a law enforcement agency that has used a drone in the previous 12 months must provide a detailed report on the use of the drone to the Department of Public Safety. The Department of Public Safety is required to submit this information to the House and Senate Committees on Government Operations and on Judiciary by December 1 each year.

Non-Law Enforcement Use of Drones

General Rule:

The general rule established by the act is that no person may use a drone unless they comply with Federal Aviation Administration requirements and guidelines.

Prohibition on Dangerous or Deadly Weapon

This act also prohibits a person from equipping a drone with a dangerous or deadly weapon.

Report:

This act requires the Aviation Program within the Agency of Transportation to submit a report to the Senate and House Committees on Judiciary with proposals for the necessary regulation of drones by December 15, 2016.