

## States' Response to Evolving Drone Issues

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“Drone law” or “UAS law” is like saying “mobile phone law” or “motor vehicle law” and just as difficult to pigeonhole. The universe of what drone law encompasses or touches in the legal system is enormous. Additionally, the nature of America’s federalist system is the virtual opposite of the laws of physics: there is not one set of rules applicable everywhere but rather a mosaic of regulations, statutes, and common law rules at the federal, state, and local levels.

No one should be surprised about the predominance of state laws in the United States in this area since in our federal system the following are all traditionally areas of *state* laws: criminal law, tort law, and property rights law. Additionally, the Tenth Amendment is clear that:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”<sup>1</sup>

Additionally, UAS law for what? Laws applicable to whom? This short paper focuses not on the Federal Regulations from the FAA applicable to UAS operations, but rather on state statutory laws and common law remedies. The FAA and the aviation industry have successfully operated for decades using a self-certification system and a culture applying best practices and safety standards known to pilots and others. In the developing area of UAS law there is a convergence of the regulation-based approach of traditional aviation with other norms applicable with either comparably small flying objects and objects being operated remotely at comparably lower altitudes. Unlike the heavily regulated federal aviation area,<sup>2</sup> the other legal principles implicated are primary state law matters: state criminal penalties and certain civil offenses to the public that are pursued by government prosecutors based on complaints and “tort” or other common law claims that are most often pursued by private individuals or parties in state civil court proceedings.

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<sup>1</sup> U.S. CONST. AMEND. X.

<sup>2</sup> Even traditional aviation is not purely a federal law matters since states and localities have historically had the right to manage and control take-off and landing areas among other aspects. The interplay can be complicated. *See e.g.*, John Villaseñor, *Observations from Above: Unmanned Aircraft Systems & Privacy*, 36 Harv. J.L. & Pub. Pol’y 457,489-91 (Spring 2013).

A federal district judge has recently explained the tension in a UAS case:

It appears from oral argument as well as from the FAA’s website that **the FAA believes it has regulatory sovereignty over every cubic inch of outdoor air in the United States** (or at least over any airborne objects therein). If so, that ambition may be difficult to reconcile with the terms of the FAA’s statute that refer to “navigable airspace,” *see, e.g.*, 49 U.S.C. § 40103(b), and that might sensibly and plausibly be understood to condition the exercise of the FAA’s authority on either the protection of or regulation of activities related in some manner to navigable airspace and related equipment and facilities...

Congress surely understands that state and local authorities are (usually) well positioned to regulate what people do in their own backyards. The Constitution creates a limited national government in recognition of the traditional police power of state and local government. No clause in the Constitution vests the federal government with a general police power over all of the air or all objects that leave the ground. Although the Commerce Clause allows for broad federal authority over interstate and foreign commerce, it is far from clear that Congress intends—or could constitutionally intend—to regulate all that is airborne on one’s own property and that poses no plausible threat to or substantial effect on air transport or interstate commerce in general.<sup>3</sup>

Notably, compliance with governmental regulations and obtaining permits may prevent legal action by the regulating governmental entities, but that generally does not alone absolve an operator, as a matter of law, from common law tort liabilities. The Texas Supreme Court has succinctly made this point: “***a permit is not a get out of tort free card.***”<sup>4</sup>

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<sup>3</sup> *Huerta v. Haughwout*, No. 3:16-cv-358 (JAM), 2016 WL 3919799 \*4 (D. Conn. July 18, 2016) (emphasis added, citations omitted). On federal exclusivity arguments, *see also* Terry Klein, *Federal Preemption of State & Local UAV Enactments*, 12 No. 1 ABA SciTech Law. 16, 17 (Spring 2015).

<sup>4</sup> *FPL Farming, Ltd. v. Environmental Processing Sys., L.C.*, 351 S.W.3d 306, 310-11 (Tex. 2011) (holding that obtaining a permit under the Injection Well Act did not preempt plaintiff’s civil tort action from permitted activity); *MCI Sales & Serv., Inc. v. Hinton*, 329 S.W.3d 475, 494, 499 (Tex.

## I. State statutory laws addressing UAS.

A website that is very helpful in tracking state laws passed by the various state legislatures pertaining to UAS is from the National Conference of State Legislatures (NCSL).<sup>5</sup> According to the compilation on NCSL's website, "[a]t least 41 states have considered legislation related to UAS in the 2016 legislative session" and 14 passed 26 pieces of legislation.<sup>6</sup> This is in addition to 168 bills considered by 45 states in 2015.<sup>7</sup> One relatively high-profile and controversial bill, SB 142 passed in the California Legislature, but Governor Jerry Brown vetoed it.

While there are a number of the variations on these laws passed by state legislatures, they may be generally characterized in various areas:

1. Empowering and regulating use by law enforcement and other governmental agents;
2. Prohibiting the operation of UAS in particular areas, often described as "critical infrastructure" or "targeted facilities";
3. Regulating the rural use of UAS; and
4. Prohibiting certain UAS operations and protecting privacy.

Apart from state statutes, local governments like the cities of Chicago, Los Angeles, Miami, and Santa Clara have passed local laws regulating UAS.<sup>8</sup> To prevent inconsistencies within state boundaries, Virginia passed a statute prohibiting any local government from regulating the use of a privately owned, unmanned aircraft system, and Utah likewise forbids any local government from regulating the use of a UAS in a wildland fire scene.<sup>9</sup>

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2010) (holding the federal motor vehicle safety standards do not preempt jury findings that a bus manufacturer's buses were defectively designed).

<sup>5</sup> <http://www.ncsl.org/research/transportation/current-unmanned-aircraft-state-law-landscape.aspx>

<sup>6</sup> *see also* Amanda Essex, *Taking Off: State Unmanned Aircraft Systems Policies*, N.C.S.L pp. 13-16, at <http://www.ncsl.org/research/transportation/current-unmanned-aircraft-state-law-landscape.aspx>.

<sup>7</sup> *Id.*

<sup>8</sup> Michael N. Widener, *Local Regulating of Drone Activity in Lower Airspace*, 22 B.U. J. Sci. & Tech. L. 239, 241 (Summer 2016).

<sup>9</sup> VA Code Ann. § 15.2-926.3; Utah Code Ann 1953 § 65A-3-2.5(2). Consistent with this policy of equal treatment of all residents of a state, there is currently a challenge to a portion of the Texas statute that creates an arbitrary 25-mile zone near the border which treats people in those areas different

**1. Empowering and regulating use by law enforcement and other governmental agents**

State laws in this category tend to give express authority to law enforcement and other governmental agents to use UAS in a variety of settings including in connection with enforcing criminal laws where there is probable cause or a warrant, investigating vehicle accidents, and protecting the safety and welfare of people.<sup>10</sup>

**2. Prohibiting the operation of UAS in particular areas, often described as “critical infrastructure” or “targeted facilities”**

Several states have also made the capture of images illegal and subject to criminal sanctions, with a particularly emphasis on critical infrastructure or specific facilities.<sup>11</sup> State laws in this category expressly prohibit UAS operations, capturing images or data in conducting UAS operations, or both in certain places such as prisons and around certain things such as pipelines, refineries, electric utilities, chemical and rubber manufacturing facilities and nuclear power facilities.<sup>12</sup> Some also have created a statutory private right of action arising from a violation.<sup>13</sup>

**3. Regulating the rural use of UAS**

I placed this group together because much emphasis in the UAS literature tends to centers on urban centers, airports, and dense population centers--with some good reasons. However, much of the promise and concerns involving UAS operations are in rural places. UAS allow operations in places and in ways that were previously impossible or could only be accomplished with considerable risk to human life. This category includes state laws pertaining to the use of UAS in connection with agriculture, wildfire prevention and containment, as well as fish and game.

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from residents of the rest of the state with respect to UAS users capturing images of persons and property. *Flores v. Abbott*, No. 5:16-cv-00130 (S.D. Tex. 2016); see Tex. Gov’t. Code § 423.002(a)(14) attached hereto as part of Exhibit 1.

<sup>10</sup> In a case involving UAS usage and law enforcement, the federal court dismissed based on immunity grounds the complaint that the Hartford police department and some of its officers violated the First Amendment rights of a journalist trying to use a UAV at the scene of an automobile accident being investigated by the police. *Rivera v. Foley*, No. 3:14-cv-00196 (VLB), 2015 WL 1296258 \*\* 4-11 (D. Conn. Mar. 23, 2015).

<sup>11</sup> Tenn. Code Ann. § 39-13-903(a); Ark. Code Ann. § 5-60-103; Ariz. Rev. Stat. Ann. § 13-3729; Tex. Gov’t. Code § 423.0045, attached as Exhibit 2 hereto.

<sup>12</sup> See e.g., La. Rev. Stat. § 14:337; Tex. Gov’t. Code § 423.002, see also Essex, *Taking Off*, N.C.S.L p. 26, see *supra* n. 5.

<sup>13</sup> Ark. Code Ann. § 5-60-103; Tex. Gov’t. Code § 423.006.

Some states make the harassment of people engaged in the capture of fish and game unlawful.<sup>14</sup> Idaho forbids the use of UAS in hunting.<sup>15</sup> Louisiana’s statute regulates agriculture UAS usage.<sup>16</sup> Utah has a statute addressing wildfire maintenance stating that no one may fly a UAS in an area designated as a “wildland fire scene” unless operated in accordance with the permission of, and the restrictions established by, the “incident commander” who is the government official or employee in command of the response to a wildland fire.<sup>17</sup> Recklessly flying UAS in such an area is a crime.<sup>18</sup>

#### 4. Prohibiting certain UAS operations and protecting privacy

The specter of widespread UAS usage for “peeping Tom” or other voyeuristic purposes has proliferated the literature discussing the need for restricting UAS usage. The ability of individuals who believe they have had their individual privacy invaded may avail themselves to the common law remedies in the courts as discussed in Section 2 below.

Several states have also passed statutes targeting “peeping Tom” or other voyeuristic UAS uses.<sup>19</sup> Mississippi’s anti-voyeurism statute provides:

(b) Any person who looks through a window, hole or opening, or otherwise views **by means of any instrumentality, including,** but not limited to, a periscope, telescope, binoculars, **drones,** camera, motion-picture camera, camcorder or mobile phone, into the interior of a bedroom, bathroom, changing room, fitting room, dressing room, spa, massage room or therapy room or tanning booth, or **the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside and without the consent or**

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<sup>14</sup> N.H. Rev. Stat. § 207:57; Mich. Comp. L. Ann. § 324.40112.

<sup>15</sup> Idaho Code § 36-1101(b).

<sup>16</sup> La. Rev. Stat. § 3:41; see also Brendan P. Doherty & Bradley J. Schwab, *Drones on the Bayou: An Overview of the Current State of Unmanned Aircraft System Law*, Vol. 63 La. B.J. 392, 394 n.34 (Apr./May 2016).

<sup>17</sup> Utah Code Ann. 1953 § 65A-3-2.5(2).

<sup>18</sup> Utah Code Ann. 1953 § 65A-3-2.5(3) and (4).

<sup>19</sup> Ark. Code Ann. § 5-16-102; Miss. Code Ann. § 97-29-61; Kan. Stat. Ann. § 60-31a02.

*knowledge of every person present*, for the lewd, licentious and indecent purpose of spying upon the occupant or occupants thereof, shall be guilty of a felony.<sup>20</sup>

California passed its privacy law “largely to protect against the use of UAS by paparazzi.”<sup>21</sup> Furthermore, some states--like Texas--have passed detailed statutes expressly defining the types of images or data that UAS operators may or may not capture in their operations.<sup>22</sup>

In 2016, “six states--Arizona, Louisiana, Oregon, Tennessee, Utah, and Vermont--have passed legislation related to criminal penalties.”<sup>23</sup> Additionally, the Texas statute criminalizes this conduct and also creates a private right of action for a violation of the statute.<sup>24</sup>

## II. UAS operations may give rise to common law remedies.

Much of American law comes from the “common law”--rules and norms arising from judicial resolutions of actual, real-life disputes that have occurred rather than from the minds and pens of legislators in the abstract without a specific case or controversy in front of them. The “common law” has numerous categories and doctrines, and the discussion here is limited to a few of them:

1. Trespass and Nuisance;
2. Invasion of Privacy/Intrusion upon Seclusion; and
3. Negligence and Strict Liability.

As in the case of discovery disputes relating to the new technologies and “e-discovery”, while new rules and norms may become generally accepted in UAS disputes, the first wave of disputes will likely be analyzed using the traditional established legal definitions for these doctrines. These doctrines have their origins over the course of centuries in a myriad of applications. While each state or other jurisdiction may have its own variants of the common law doctrines and may have applicable statutes that alter rights, remedies, defenses, or other aspects of the

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<sup>20</sup> Miss. Code Ann. § 97-29-61(b) (emphasis added).

<sup>21</sup> Cal. Civ. Code § 1708.8; Essex, *Taking Off*, N.C.S.L pp. 13-16, *see supra* n. 5.

<sup>22</sup> Tex. Gov’t. Code §§ 423.003(a) and 433.004(a).

<sup>23</sup> Essex, *Taking Off*, N.C.S.L p. 23, *see supra* n. 5.

<sup>24</sup> Tex. Gov’t. Code § 423.006.

common law, there are general and common elements and the Restatements which can be used for a general discussion like this one. As I practice in Texas, the focus here is on the Texas authorities on these common law doctrines.

## 1. Trespass and Nuisance

Discussing trespass and nuisance together makes sense because both are claims and causes of action that arise from the rights of being a land owner. Trespass involves physical invasions onto one's land while nuisance involves other disturbances on the use and enjoyment of one's land without necessarily a physical presence. The right to demand that the others, by their mode or uses of adjacent land or other instrumentalities not unduly interfere with one's enjoyment and use of land is well-recognized as one of the four "bundle of rights" of property ownership.<sup>25</sup>

A tort claim for trespass may arise from any intentional use of another's real property, without authorization and without a privilege by law to do so.<sup>26</sup> By contrast, a tort claim for nuisance does not necessarily require a physical invasion of the land, but requires a showing that a condition substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy the land.<sup>27</sup> [http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026387384&pubNum=4644&fi=co\\_pp\\_sp\\_4644\\_763&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Keycite\)-co\\_pp\\_sp\\_4644\\_763](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026387384&pubNum=4644&fi=co_pp_sp_4644_763&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Keycite)-co_pp_sp_4644_763)

"Nuisance" refers to a kind of damage done, rather than to any particular type of conduct.<sup>28</sup> Stated differently, a "nuisance may be a right thing in the wrong place, *like a pig in the parlor* instead of the barnyard."<sup>29</sup> The mere fact that a nuisance arises from lawful or useful conduct, or from some condition that is necessary to an otherwise lawful enterprise or activity is not an excuse.<sup>30</sup>

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<sup>25</sup> See e.g., 3 TIFFANY REAL PROP. § 714 (3d ed. 2014).

<sup>26</sup> *FPL Farming*, 351 S.W.3d at 419, W. P. KEETON, PROSSER & KEETON ON TORTS 70 (5th ed. 1984).

<sup>27</sup> *Crosstex North Tex. Pipeline, LP v. Gardiner*, No. 15-0049, 2016 WL 3483165 \*\* 6-7 (Tex. 2016).

<sup>28</sup> *Crosstex North Tex. Pipeline*, 2016 WL 3483165 at \*\* 6-7. Nuisance has been a recognized common law cause of action for centuries and had even been recognized as a well-established claim by Blackstone as well as other leading commentators of Anglo-American Common Law jurisprudence. See e.g., 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 217 (1768).

<sup>29</sup> *Euclid, Ohio, v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926) (emphasis added).

<sup>30</sup> *Storey v. Central Hide & Rendering Co.*, 226 S.W.2d 615, 618 (Tex. 1950); *C.C. Carlton Indus., Ltd. v. Blanchard*, 311 S.W.3d 654, 660 (Tex. App.—Austin 2010, no pet.) ("we note that, even if a

Analytically combing these together in the context of UAS makes additional sense because trespass and nuisance issues may focus on the height of flight, the flight path, the noise, and other aspects of the UAS operation. Ambiguity remains as to how far into the air a landowner has the potential right to exclude aircraft from the landowner's property. The oft-cited *U.S. v. Causby*<sup>31</sup> case is a starting point, but hardly provides unambiguous guidance. As the Supreme Court wrote in 1946:

It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe—*Cujus est solum ejus est usque ad coelum*. **But that doctrine has no place in the modern world. The air is a public highway, as Congress has declared. Were that not true, every transcontinental flight would subject the operator to countless trespass suits. Common sense revolts at the idea.** To recognize such private claims to the airspace would clog these highways, seriously interfere with their control and development in the public interest, and transfer into private ownership that to which only the public has a just claim.<sup>32</sup>

While the owner does not in any physical manner occupy that stratum of airspace or make use of it in the conventional sense, he does use it in somewhat the same sense that space left between buildings for the purpose of light and air is used. The superadjacent airspace at this low altitude is so close to the land that continuous invasions of it affect the use of the surface of the land itself. **We think that the landowner, as an incident to his ownership, has a claim to it and that invasions of it are in the same category as invasions of the surface.**<sup>33</sup>

This case thus created part of the framework now faced by the UAS community and others. Prior to the UAS revolution, incursions into this space were incidental, transitory, or worked out through zoning and other arrangements. With the proliferation of UAS with capabilities to fly in uncontrolled Class G airspace and in

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commercial enterprise holds a valid permit to conduct a particular business, the manner in which it performs its activity may give rise to an action for nuisance.”)

<sup>31</sup> *U.S. v. Causby*, 328 U.S. 256, 66 S.Ct. 1062 (1946)

<sup>32</sup> *Causby*, 328 U.S. at 261 (emphasis added).

<sup>33</sup> *Causby*, 328 U.S. at 265 (emphasis added).

other low-altitude areas, the conflicts between the interests of landowners and the interests of operators as laid out in *Causby* are likely to resurface and be refined.

## 2. Invasion of Privacy/Intrusion upon Seclusion

Separate and apart from concerns about the operations of UAS physically invading the space of others are concerns about the collection of photo, video or other images and data from UAS--concerns about privacy invasions. Typically people in public spaces (or that can be seen in “plain view”) have little or no “expectation of privacy” from governmental inspection or view.<sup>34</sup> Similarly, for that matter, people in public spaces have little or no “expectation of privacy” from other private people who also have access to the public spaces. However, the Supreme Court has recognized that people have a non-expressly textual constitutional right of privacy in their homes or other private places and in connection with certain personal matters.<sup>35</sup>

The actual tort cause of action for invasion of privacy typically requires proof of an intentional intrusion, physical or otherwise, upon another’s solitude, seclusion, or private affairs or concerns, which would be highly offensive to a reasonable person.<sup>36</sup> One article has noted some of the peculiar aspects of this tort in the context of UAS:

“Drone usage presents a unique question to the tort of inclusion upon seclusion, in part due to the nature of the relationship between operator and aircraft. While some operators maintain eye contact with their drones at all times, possibly through the use of FPV cameras, others, such as the hobbyist who discovered the river of pig blood, capture images inadvertently.”<sup>37</sup>

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<sup>34</sup> See e.g, *California v. Ciraolo*, 478 U.S. 1014, 106 S.Ct. 1809, 1815 (1986); see also, Villaseñor, *Observations from Above*, 36 Harv. J.L. & Pub. Pol’y at 476-90; Marc J. Blitz, James Grimsley, Stephen E. Henderson, & Joseph Thai, *Regulating Drones Under the First and Fourth Amendments*, 57 Wm & Mary L. Rev. 49, 65-77 (Oct. 2015); Hillary B. Farber, *Eyes in the Sky & Privacy Concerns on the Ground, Sensing and Surveillance: Issues in Privacy in Unmanned Aircraft*, in UNMANNED AIRCRAFT IN THE NATIONAL AIRSPACE: CRITICAL ISSUES, TECHNOLOGY, AND THE LAW, Donna A. Dullo (ed.), reprinted in *The Sci Tech Lawyer* 8-9 (Summer 2015).

<sup>35</sup> *Griswold v. Connecticut*, 381 U.S. 479, 482-86 85 S.Ct. 1678 (1965).

<sup>36</sup> *Valenzuela v. Aquino*, 853 S.W.2d 512, 513 (Tex. 1993); RESTATEMENT (SECOND) OF TORTS § 652B.

<sup>37</sup> Benjamin D. Mathews, *Potential Tort Liability for Personal Use of Drone Aircraft*, 46 St. Mary’s L.J. 573, 587 (2015); Villaseñor, *Observations from Above*, 36 Harv. J.L. & Pub. Pol’y at 506 n. 271; see also

### 3. Negligence and Strict Liability

Two additional likely available tort theories in a proper case might be negligence and strict liability, particularly in the event of a crash of physical damage to property or persons.

Negligence focuses on the conduct of an actor who may have failed to act prudently and thus his or her conduct may have caused or contributed to a harm. Strict liability on the other hand is a policy determination that holds someone responsible regardless of fault, merely because they manufactured or had some role in having the product be placed in the stream of commerce in a particular way or in some very rare circumstances merely because the activity engaged in is inherently “abnormally dangerous” or “ultrahazardous.”<sup>38</sup>

In all likelihood, strict liability claims are more likely against UAS manufacturers or resellers while claims sounding in negligence are more likely to arise against operators or owners who enable operators to fly the UAS.

### III. What about damages to the UAS?

Another series of predominantly state-law remedies that may likely arise are in the context of someone harming or destroying a UAS. A person who physically takes control of a UAS and refuses to return it to the owner of the UAS may be liable for other torts like conversion. A person who intentionally (and perhaps negligently or recklessly) destroys a UAS, may be liable as well. A well-publicized dispute in this area in the so-called “Drone Slayer” shooting down a UAS in Kentucky.<sup>39</sup> In the *Boggs* case, the operator Boggs, asserted a claim in his federal complaint for trespass to chattels because Meredith allegedly “intentionally intermeddled with personal property in the possession of the Plaintiff, specifically, his unmanned aircraft” and

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Jordan M. Cash, *Droning On & On: A Tort Approach to Regulating Hobbyist Drones*, 46 U. Mem. L. Rev. 695, 725-31 (Spring 2016).

<sup>38</sup> For a presentation of some strict liability considerations in the UAS area, see generally Brendan Murphy & Daniel P. Ridlon, *Risk Management Issues for Manufacturers & Operators*, presented at Drone Law Seminar, The Seminar Group, Seattle Feb. 4, 2016.

<sup>39</sup> *Boggs v. Meredith*, No. 3:16-cv-00006-DJH (W.D. Ky. 2016).

the damages caused by Meredith shooting down the drone that Boggs argues was valued at approximately \$1,500.<sup>40</sup>

However, there may be other ways of destroying or disabling a UAS without the use of a firearm, such as by having a trained animal that can snatch them out of the sky<sup>41</sup> or by the use of geofencing.<sup>42</sup>

#### **IV. Concluding observations**

While much of the focus has been on FAA regulations, the non-military proliferation of UAS for hobbyists, recreational, educational, and commercial use is likely to implicate state and local laws far beyond the regulations promulgated at the federal level. Our federalist legal system will provide an interesting, and at times frustrating, laboratory for legal norms applicable to UAS usage and information and images obtained through UAS usage.

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<sup>40</sup> *Id.*, Complaint for Declaratory Judgment and Damages, Doc. # 1 (1/4/2016) p. 8 of 9, ¶¶ 27-29.

<sup>41</sup> Evan Ackerman, *Dutch Police Training Eagles to Take Down Drones*, IEEE Spectrum, 1 Feb. 2016, <http://spectrum.ieee.org/automaton/robotics/drones/dutch-police-training-eagles-to-take-down-drones>.

<sup>42</sup> See generally, Gregory S. McNeal, *Drones & the Future of Aerial Surveillance*, 84 Geo. Wash. L. Rev. 354, 394 n. 214 (March 2016) (describing geofencing).

Vernon's Texas Statutes and Codes Annotated  
Government Code (Refs & Annos)  
Title 4. Executive Branch (Refs & Annos)  
Subtitle B. Law Enforcement and Public Protection (Refs & Annos)  
Chapter 423. Use of Unmanned Aircraft

V.T.C.A., Government Code § 423.002

§ 423.002. Nonapplicability

Effective: September 1, 2015

[Currentness](#)

(a) It is lawful to capture an image using an unmanned aircraft in this state:

(1) for the purpose of professional or scholarly research and development or for another academic purpose by a person acting on behalf of an institution of higher education or a private or independent institution of higher education, as those terms are defined by [Section 61.003, Education Code](#), including a person who:

(A) is a professor, employee, or student of the institution; or

(B) is under contract with or otherwise acting under the direction or on behalf of the institution;

(2) in airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace;

(3) as part of an operation, exercise, or mission of any branch of the United States military;

(4) if the image is captured by a satellite for the purposes of mapping;

(5) if the image is captured by or for an electric or natural gas utility:

(A) for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity;

(B) for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities;

(C) for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and

(D) for utility facility routing and siting for the purpose of providing utility service;

(6) with the consent of the individual who owns or lawfully occupies the real property captured in the image;

(7) pursuant to a valid search or arrest warrant;

(8) if the image is captured by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority:

(A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, not including misdemeanors or offenses punishable by a fine only;

(B) for the purpose of documenting a crime scene where an offense, not including misdemeanors or offenses punishable by a fine only, has been committed;

(C) for the purpose of investigating the scene of:

(i) a human fatality;

(ii) a motor vehicle accident causing death or serious bodily injury to a person; or

(iii) any motor vehicle accident on a state highway or federal interstate or highway;

(D) in connection with the search for a missing person;

(E) for the purpose of conducting a high-risk tactical operation that poses a threat to human life; or

(F) of private property that is generally open to the public where the property owner consents to law enforcement public safety responsibilities;

(9) if the image is captured by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of:

(A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared;

(B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or

(C) conducting routine air quality sampling and monitoring, as provided by state or local law;

- (10) at the scene of a spill, or a suspected spill, of hazardous materials;
  - (11) for the purpose of fire suppression;
  - (12) for the purpose of rescuing a person whose life or well-being is in imminent danger;
  - (13) if the image is captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image;
  - (14) of real property or a person on real property that is within 25 miles of the United States border;
  - (15) from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception;
  - (16) of public real property or a person on that property;
  - (17) if the image is captured by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, and is captured without the intent to conduct surveillance on an individual or real property located in this state;
  - (18) in connection with oil pipeline safety and rig protection;
  - (19) in connection with port authority surveillance and security;
  - (20) if the image is captured by a registered professional land surveyor in connection with the practice of professional surveying, as those terms are defined by [Section 1071.002, Occupations Code](#), provided that no individual is identifiable in the image; or
  - (21) if the image is captured by a professional engineer licensed under Subchapter G, Chapter 1001, Occupations Code<sup>1</sup>, in connection with the practice of engineering, as defined by [Section 1001.003, Occupations Code](#), provided that no individual is identifiable in the image.
- (b) This chapter does not apply to the manufacture, assembly, distribution, or sale of an unmanned aircraft.

#### Credits

Added by [Acts 2013, 83rd Leg., ch. 1390 \(H.B. 912\), § 2, eff. Sept. 1, 2013](#). Amended by [Acts 2015, 84th Leg., ch. 360 \(H.B. 2167\), § 1, eff. Sept. 1, 2015](#).

Footnotes

1 [V.T.C.A., Occupations Code § 1001.301 et seq.](#)

V. T. C. A., Government Code § 423.002, TX GOVT § 423.002

Current through the end of the 2015 Regular Session of the 84th Legislature

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Vernon's Texas Statutes and Codes Annotated  
Government Code (Refs & Annos)  
Title 4. Executive Branch (Refs & Annos)  
Subtitle B. Law Enforcement and Public Protection (Refs & Annos)  
Chapter 423. Use of Unmanned Aircraft

V.T.C.A., Government Code § 423.0045

§ 423.0045. Offense: Operation of Unmanned Aircraft over Critical Infrastructure Facility

Effective: September 1, 2015

[Currentness](#)

(a) In this section:

(1) "Critical infrastructure facility" means:

(A) one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property, are reasonably likely to come to the attention of intruders, and indicate that entry is forbidden:

(i) a petroleum or alumina refinery;

(ii) an electrical power generating facility, substation, switching station, or electrical control center;

(iii) a chemical, polymer, or rubber manufacturing facility;

(iv) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(v) a natural gas compressor station;

(vi) a liquid natural gas terminal or storage facility;

(vii) a telecommunications central switching office;

(viii) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(ix) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;

(x) a transmission facility used by a federally licensed radio or television station;

(xi) a steelmaking facility that uses an electric arc furnace to make steel; or

(xii) a dam that is classified as a high hazard by the Texas Commission on Environmental Quality; or

(B) any portion of an aboveground oil, gas, or chemical pipeline that is enclosed by a fence or other physical barrier that is obviously designed to exclude intruders.

(2) “Dam” means any barrier, including any appurtenant structures, that is constructed for the purpose of permanently or temporarily impounding water.

(b) A person commits an offense if the person intentionally or knowingly:

(1) operates an unmanned aircraft over a critical infrastructure facility and the unmanned aircraft is not higher than 400 feet above ground level;

(2) allows an unmanned aircraft to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or

(3) allows an unmanned aircraft to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(c) This section does not apply to conduct described by Subsection (b) that is committed by:

(1) the federal government, the state, or a governmental entity;

(2) a person under contract with or otherwise acting under the direction or on behalf of the federal government, the state, or a governmental entity;

(3) a law enforcement agency;

(4) a person under contract with or otherwise acting under the direction or on behalf of a law enforcement agency;

(5) an owner or operator of the critical infrastructure facility;

(6) a person under contract with or otherwise acting under the direction or on behalf of an owner or operator of the critical infrastructure facility;

(7) a person who has the prior written consent of the owner or operator of the critical infrastructure facility;

(8) the owner or occupant of the property on which the critical infrastructure facility is located or a person who has the prior written consent of the owner or occupant of that property; or

(9) an operator of an unmanned aircraft that is being used for a commercial purpose, if the operator is authorized by the Federal Aviation Administration to conduct operations over that airspace.

(d) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted under this section.

**Credits**

Added by [Acts 2015, 84th Leg., ch. 1033 \(H.B. 1481\), § 1, eff. Sept. 1, 2015](#).

V. T. C. A., Government Code § 423.0045, TX GOVT § 423.0045

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