



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 251**

131st General Assembly  
(As Introduced)

**Sens.** Skindell and Jordan, Seitz

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## **BILL SUMMARY**

- Generally bars a law enforcement officer from using a drone to gather evidence and information in a criminal investigation unless the use is under a search warrant or specified exigent circumstances involving an immediate danger of a person's death or serious physical injury exist and a warrant cannot be obtained.
- Under exceptions to the general rule, allows in specified circumstances the use of a drone solely for crime scene or traffic accident scene video or photography or for locating missing persons.
- Provides procedures for drone use under the general rule or an exception and for the use and retention of information and evidence gathered by use under the general rule.
- Provides a civil cause of action for a person injured in any manner due to a violation of a provision described above.
- Provides procedures regarding a possible disciplinary action against a law enforcement officer who violates a provision described above.
- Requires reports to the Attorney General by law enforcement agencies that use a drone and by judges who issue a search warrant for drone use and reports by the Attorney General regarding drone use and effectiveness statewide under those provisions.

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## **CONTENT AND OPERATION**

The bill regulates the use of drones for gathering evidence and information by law enforcement officers in Ohio. As used in the bill, a "drone" is any powered, aerial

vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicular lift, can fly automatically or be piloted remotely, and may be expendable or recoverable.<sup>1</sup>

## **General rule – conditions allowing drone use**

Under the bill, subject to two exceptions described below, no "law enforcement officer" of the state or an Ohio political subdivision may use a drone to gather evidence or "information" from a person or property in a criminal investigation unless either of two specified conditions are satisfied (see "**Definitions**" regarding words in quotation marks).<sup>2</sup>

Under the first condition, an officer may use a drone for such a purpose if the officer first obtains a search warrant based on probable cause under the relevant statute or Criminal Rule (summarized below in "**Background**") that authorizes the use of the drone and the drone is used in accordance with the authorization specified in the warrant. An application for such a warrant must specify the target of the criminal investigation and each offense with respect to which the drone will be used and the warrant is requested. If an officer obtains a warrant, it must be limited to a period not to exceed 48 hours. The court may grant extensions of that period, but they may not be longer than the issuing judge determines necessary to achieve the purposes for which it was granted or for more than 30 days.<sup>3</sup> A judge who grants a warrant must annually comply with the bill's reporting requirements to the Attorney General (the AG), as described below.<sup>4</sup>

Under the second condition, an officer may use a drone for such a purpose if: (1) the officer has reasonable suspicion of the commission of a crime in which the circumstances would warrant swift action to prevent immediate danger of death or serious physical injury to an individual and drone use in the situation is needed without delay, and (2) a warrant cannot be obtained with due diligence in time to prevent the immediate danger of death or serious physical injury and the officer believes, in good faith, that it requires the drone use for this prevention. Not later than 48 hours after the drone use without a warrant, the officer who used the drone must file with the appropriate court of common pleas an application for the use. The application must be a written statement setting forth the facts giving rise to the emergency

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<sup>1</sup> R.C. 2933.67(A).

<sup>2</sup> R.C. 2933.67(B).

<sup>3</sup> R.C. 2933.67(B)(1) and (C).

<sup>4</sup> R.C. 2933.67(G).

circumstances warranting the needed swift action. If the court denies the application, the information collected by the drone use must be treated as being obtained in violation of the bill's provisions, and an inventory must be served on the person named in the application.<sup>5</sup>

## **Exceptions allowing drone use**

The bill specifies that law enforcement officers may use drones without satisfying either condition described above under the general drone-use rule: (1) solely for crime scene or traffic accident scene video or photography, provided the use is conducted in a geographically confined area and in a time-limited manner to document specific occurrences, or (2) to locate missing persons whose physical or mental state is such that not locating them would cause serious risk of physical injury or death, provided the use does not constitute a criminal investigation.<sup>6</sup>

## **Operation of drone under general rule or exception**

Drones operated under the bill's general drone-use rule must be operated in a manner so as to collect information about the target and avoid collecting information about individuals other than the target or about homes or property other than those of the target. Drones operated under either exception to the general rule must be operated in a manner so as to avoid collecting information other than as necessary with respect to the crime scene or traffic accident scene or to locating the missing person. Operation of a drone under the general rule or an exception to it must comply with all applicable Federal Aviation Administration requirements and guidelines. No drone operated under the general rule or an exception to it may be equipped with any kind of weapon.<sup>7</sup>

## **Evidence gathered through drone use**

Except as otherwise described in this paragraph, a "law enforcement agency" (see "**Definitions**") that uses a drone under the bill's general drone-use rule must give notice to the target of information collected by the use not later than 48 hours after the information is collected. An agency may request the court that issues the warrant to issue an order with the warrant delaying notification for a period not to exceed 90 days, if the court determines there is reason to believe that notification would result in an adverse result involving: endangering another person's life or physical safety; flight from prosecution; destruction of or tampering with evidence; intimidation of potential

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<sup>5</sup> R.C. 2933.67(B)(2).

<sup>6</sup> R.C. 2933.67(D) and (E)

<sup>7</sup> R.C. 2933.67(H) to (J).

witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial. If the court issues an order delaying notification, the agency may delay the notice in accordance with the order.<sup>8</sup>

Evidence collected in violation of the bill's general drone-use rule is inadmissible in any criminal proceeding. The bill's provisions may not be construed to limit a court from independently ruling on the admissibility of evidence collected from drones by law enforcement officers for compliance with provisions of the U.S. and Ohio Constitutions.<sup>9</sup>

If a law enforcement officer uses a drone under the bill's general drone-use rule or an exception to it, the officer's law enforcement agency must destroy all information gathered within 30 days after the information is collected unless either: there is reasonable suspicion that the information contains evidence of criminal activity; or the information is relevant to an ongoing criminal investigation or pending criminal trial.<sup>10</sup>

### **Civil action for injured person**

Any person injured in any manner due to a violation of the bill's provisions described above may file a civil action with the appropriate court of common pleas. The court may award compensatory damages, punitive or exemplary damages, and reasonable attorney's fees.<sup>11</sup>

### **Collateral information and evidence**

No information collected by a law enforcement officer through drone use under the bill's general drone-use rule that is about an individual other than the target or about a home or property other than those of the target may be used, copied, or disclosed for any purpose. Any such information must be deleted as soon as possible and in no event later than 24 hours after the information is collected.

No information collected and no evidence derived from information collected by a drone may be received in evidence in any proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or of a political subdivision if the information was used, copied,

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<sup>8</sup> R.C. 2933.67(M).

<sup>9</sup> R.C. 2933.67(F).

<sup>10</sup> R.C. 2933.67(L).

<sup>11</sup> R.C. 2933.67(K).

disclosed, or retained in violation of either provision described in the preceding paragraph.<sup>12</sup>

### **Possible disciplinary action against law enforcement officer**

If a law enforcement agency served by a particular law enforcement officer determines that the officer has violated any of the bill's provisions described above, finds that the officer acted recklessly with respect to the violation, and makes a written determination of the decision and findings, the agency promptly must initiate a proceeding to determine whether disciplinary action against the officer by the agency is warranted. An agency served by a law enforcement officer also must promptly initiate such a proceeding if a court makes such a determination and finding regarding the officer and the agency receives a copy of the court's decision and findings.

When a law enforcement agency is required to initiate a proceeding with respect to an officer who serves the agency, the head of the agency must determine whether disciplinary action against the officer is warranted. Upon making that determination, the agency head must notify the AG and provide the AG with the reasons for the determination.<sup>13</sup>

### **Reports to and by the Attorney General**

#### **Law enforcement agency reports**

Not later than January 31 of each year, each law enforcement agency that, under the bill's general drone-use rule or an exception to it, used or had used on its behalf a drone during the immediately preceding 12 months must report to the AG, and make public on its Internet website, all of the following information:<sup>14</sup>

(1) The number of times a drone was used by or on behalf of the agency, organized by the types of incidents and the types of justification for deployment;

(2) The number of criminal investigations aided by drone use by or on behalf of the agency, including a description of how the drone was of assistance to each investigation;

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<sup>12</sup> R.C. 2933.68.

<sup>13</sup> R.C. 2933.69.

<sup>14</sup> R.C. 2933.70(A).

(3) The number of times drones were used by or on behalf of the agency for reasons other than criminal investigations, including a description of how the drone was of assistance in each instance;

(4) The frequency and type of data collected through drone use by or on behalf of the agency about individuals other than the target or about a home or property other than those of the target;

(5) The total cost to the agency of its drone program.

### **Court reports**

Not later than January 31 of each year, each judge who issued a warrant for drone use under the bill's general drone-use rule or an extension of such a warrant that expired during the preceding calendar year, or who denied issuance of such a warrant or extension during that calendar year, must submit to the AG a report that contains all of the following:<sup>15</sup>

(1) The fact that a warrant or extension was applied for and the kind of warrant or extension applied for and whether the warrant or extension was granted as applied for, was modified, or was denied;

(2) The period of drone use authorized by the warrant and the number and duration of any extensions issued;

(3) The offense or offenses specified in the warrant or extension;

(4) The name of the law enforcement officer who applied for the warrant and the name of the person who authorized the application;

(5) When a law enforcement officer used a drone under the bill's condition that authorizes drone use when a warrant cannot be obtained with due diligence in time to prevent an immediate danger of death or serious physical injury to an individual, the number of applications subsequently filed regarding that use, the period of time stated on and the offense or offenses stated in each application, the name of the officer who submitted each application, and the number of applications that were denied.

### **Attorney General report**

Not later than June 30 of each year, the AG must compile, transmit to the President and Minority Leader of the Senate and the Speaker and Minority Leader of

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<sup>15</sup> R.C. 2933.70(B).

the House of Representatives, and post on the AG's Internet website, a report that contains all of the following:<sup>16</sup>

(1) The information required in a court's report with respect to each application for a warrant or extension of a warrant, and to each application in the absence of a warrant, made during the preceding calendar year;

(2) A general description of the information gathered under warrants or extensions or gathered in the absence of a warrant under an application referenced in paragraph (1), including: the approximate nature and frequency of incriminating conduct regarding which information was gathered; the approximate number of persons regarding whom information was gathered; and the approximate nature, amount, and cost of manpower and other resources used in collecting the information.

(3) The number of arrests resulting from the information and the offenses for which arrests were made;

(4) The number of trials resulting from the information, the number of motions to suppress made with respect to the information, the number of those motions that were granted or denied, and the number of convictions resulting from the information and the offenses for which the convictions were obtained;

(5) A general assessment of the importance of the information;

(6) A summary and analysis of the data described in reports the AG receives from law enforcement agencies and courts.

## Definitions

As used in the bill:<sup>17</sup>

**"Information"** means any image, sound, data, or other video or audio information gathered.

**"Law enforcement officer"** means any of the following:

(1) A sheriff, deputy sheriff, constable, township or joint police district police officer, marshal, deputy marshal, municipal police officer, metropolitan housing authority police officer, or State Highway Patrol trooper;

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<sup>16</sup> R.C. 2933.70(C).

<sup>17</sup> R.C. 2933.67(A); and by reference to R.C. 2901.01(A)(11)(a), (b), (h), (i), (j), (k), and (n), not in the bill.

(2) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, with a statutory duty to conserve the peace or to enforce all or certain laws and statutory authority to arrest violators, within the limits of that duty and authority;

(3) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(4) A veterans' home police officer, regional transit authority police officer, or port authority special police officer;

(5) A municipal special police officer employed at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in federal law, and that is required to be under a security program and is governed by federal aviation security rules.

**"Law enforcement agency"** means a municipal police department, the office of a sheriff, the office of a village marshal, a township or joint township police district, the office of a township constable, the State Highway Patrol, a prosecuting attorney, the office of the AG, or a state or local governmental body that enforces criminal laws and has law enforcement officers who have a statutory power of arrest.

## **Background**

The statute and Criminal Rule regarding the issuance of search warrants based on probable cause that are referred to in the bill provide as follows:<sup>18</sup>

**R.C. 2933.22** specifies that a warrant of search or seizure may issue only upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the property and things to be seized, and that a warrant of search to conduct an inspection of property may issue only upon probable cause to believe that conditions exist upon the property that are or may become hazardous to the public health, safety, or welfare.

**Criminal Rule 41** specifies in relevant part that if the judge before whom an affidavit requesting the issuance of a search warrant is sworn is satisfied that probable cause exists, the judge must issue a warrant identifying the property to be seized and naming or describing the person or place to be searched or the person or property to be tracked. The warrant may be issued to the requesting prosecuting attorney or law enforcement officer through electronic means. The finding of probable cause may be

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<sup>18</sup> R.C. 2933.22 and Criminal Rule 41, not in the bill.



based upon hearsay in whole or in part, provided there is a substantial basis for believing the hearsay source to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally, and may examine under oath the affiant and any witnesses the affiant may produce.

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## HISTORY

### ACTION

### DATE

Introduced

12-08-15

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