



Testimony of

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Regarding Drones

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Good morning Chairman Argall and members of the Senate Majority Policy Committee. My name is Dave Freed, and I am the Communications Chair of the Pennsylvania District Attorneys Association and District Attorney of Cumberland County. On behalf of the Association, we thank you for the opportunity to speak with you about drones, including whether and how drone use should be regulated.

Drones are unmanned aircraft systems and include any remote-controlled flying system. Used by the military, law enforcement, and civilians, they are becoming more and more prevalent in today's world.

Drones have the ability to gather photographic, video, and thermal images and transmit them over great distances. This presents the opportunity to improve public safety. Drones give law enforcement and other first responders the ability to assess—from a safe vantage point—hostage and active-shooter situations, natural disasters, and other tactical situations in a way that would not otherwise be possible without endangering the lives of officers on the ground.

Unregulated civilian drone use presents safety concerns. Drones can, and have, crashed into people and buildings without warning on numerous occasions. In the last few years alone, drones have crashed at a major league baseball game, a Memorial Day parade, a music festival, Yellowstone National Park, and New York's Times Square. They have also created a national security crisis at the White House, prevented firefighters from fighting a wildfire in California, and nearly caused a passenger airline to crash.

Drone use also presents privacy concerns. Unauthorized surveillance of people in private spaces, classified government facilities, airports, and other traditionally protected spaces raises questions about the proper use of drones in these contexts.

The challenge that we face is how to appropriately balance these issues.

How can the use of drones enhance public safety?

Drones can be launched safely—in accordance with Federal Aviation Administration regulations—by qualified field personnel, in a timely manner, during all types of events and emergency incidents.

Drone technology creates a truly unique opportunity to enhance public safety. Law enforcement can use it to locate and observe a target and engage in tactical planning without endangering officers' lives. First responders dealing with a natural disaster can quickly, efficiently, and safely search miles of land or water for survivors and relay actionable information to rescuers. Police can react immediately to AMBER alert tips on highways when there are not officers nearby.

In 2014, an individual shot two state troopers, killing Corporal Bryon Keith Dickson and wounding Trooper Alex Douglass. The suspect, Eric Frein, was on the run for almost seven

weeks. There were close to 1,000 police officers looking for him each day, at a cost to the Pennsylvania taxpayers of more than \$11 million in total. It is hard to imagine a situation better suited for the type of technology we are discussing here today. Not only is it more efficient to search large areas using an unmanned aircraft, but it is also substantially safer.

In Cumberland County we have used drone technology to enhance our investigative and forensic efforts at very low cost. There is little more important than having an accurate depiction of a crime scene. We have used our drone extensively to document outdoor crime scenes. Drones are far less expensive to use than helicopters or planes and are not nearly as subject to weather conditions. Additionally we have used our drone for airborne reconnaissance in our drug eradication efforts. This is again an area where the drone substitutes for other aircraft.

How do we use drones to promote public safety while safeguarding citizens' right to privacy?

As of right now, Pennsylvania law does not address the use of drones by law enforcement, commercial entities, or the general public. The use of drones by all of these groups raises legitimate privacy concerns that can (and should) be addressed by legislation. Regulation of government use, however, should be treated differently because of the existing constitutional restrictions that control how law enforcement operates.

Numerous states have proposed legislation to regulate government drone use, and fourteen of those states have passed laws outlining the proper use of drones by law enforcement agencies. Uniform regulation is beneficial, because it would provide consistent, state-wide requirements for all jurisdictions.

Many states that have passed legislation require government agencies to obtain warrants prior to using drones. This means that a police officer must present to a judge specific facts supporting a determination that there is probable cause a crime has been committed, and the judge must then make a legal finding as to the sufficiency of those facts. These states also permit law enforcement to use drones without a warrant if the use falls into a narrow category of judicially-recognized exceptions to the Fourth Amendment's (or state constitution's) warrant requirement. These are the same exceptions to the warrant requirement that are applicable in every day search and seizure cases.

This approach makes sense for a number of reasons. First, the Fourth Amendment's warrant requirement applies to a law enforcement officer on the ground, so the same should apply to an aircraft controlled by a law enforcement officer. Second, requiring law enforcement to obtain a warrant before gathering information eliminates many privacy concerns, because it would prevent the use of drones for broad surveillance. Finally, imposing this requirement while recognizing the existing exceptions to the warrant requirement balances privacy concerns with law enforcement's need to act quickly in emergency situations.

Three states have also gone further by specifically allowing law enforcement to use drones to diagram crime scenes or traffic accidents. Although these situations do not present a specific exception to the warrant requirement, these states have undoubtedly recognized the usefulness and non-intrusive nature of the information being collected as compared to the lack of countervailing policy rationales.

What are the dangers of allowing the public to use drones without regulation?

As with the use of law enforcement drones, public and commercial use of drones should be regulated. An estimated 400,000 drones were purchased in the United States during the 2015 holiday season alone, and this type of technology is only increasing in popularity. These drones are being used for numerous purposes by a variety of people ranging from hobbyists to nefarious actors—all of which implicate public safety and privacy concerns.

Ultimately, a flying object operated by an untrained, unlicensed individual creates a safety risk in and of itself. With no wind resistance, a 2.2 pound drone falling from 400 feet will hit the ground with approximately 939 pounds of force (or the weight of a bull shark). Anything in its path will likely be destroyed or severely damaged. Add the possibility of pilot error—which can occur with even the most experienced drone aviators—mechanical defects, and unreliable wireless transmission links, and the danger becomes more apparent.

Beyond any physical danger created, personal drones present privacy concerns in the same ways as government-operated drones. Just a few months ago, for example, a Virginia man was arrested for using a drone to eavesdrop on a neighbor. Whether the person is surveilling a neighbor or a nuclear facility, the potential for one person to violate the privacy rights of another—or even implicate national security—is very real.

As to criminally-oriented uses, law enforcement has already seen drug cartels using drones to run drugs across the border; cohorts flying drones with cell phones, drugs, and other contraband over prison walls; and terrorists attempting to arm drones with explosives and firearms.

Unfortunately, existing state law does not adequately address these situations. The Federal Aviation Administration has promulgated advisory safety guidelines for drone use, but these guidelines are not mandatory and do not go far enough. It seems clear that the question is not whether state regulation is appropriate, the question is what type of state regulation is appropriate.

Forty-five states have introduced legislation in this area, and at least twenty-six states have passed bills related to drones. Many of these laws prohibit the use of a drone to capture images of or surveil a private person, dwelling, or private property—similar to the language in the instant bill. Other states also prevent the use of an unmanned aircraft within a certain distance of critical facilities and airports (some criminalize this conduct as well), the weaponization of a drone, or its use for hunting purposes.

Whether the Pennsylvania legislature decides to protect privacy rights by expanding trespass laws to the airspace over a person's home or creating a new statutory scheme specifically applicable to drones, we hope our testimony has helped you to inform your discussion on this topic. Thank you for the opportunity to speak about this issue.