
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2787.2/13 2nd draft

ATTY/TYPIST: ML:eab

BRIEF DESCRIPTION: Promoting the safe, authorized, and responsible
use of unmanned aerial vehicles.

1 AN ACT Relating to promoting the safe, authorized, and responsible
2 use of unmanned aerial vehicles; amending RCW 9.94A.535; adding a new
3 chapter to Title 14 RCW; creating new sections; prescribing penalties;
4 providing an expiration date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that technological
7 developments in unmanned aerial vehicles have expanded the vehicles'
8 capacity to be widely deployed in our state and in our communities.
9 This can have tremendous economic benefits, as such unmanned aerial
10 vehicles can be used to efficiently and effectively survey land to
11 fight wildfires, assist in emergency rescue operations, and gather data
12 about our physical environment with high value for commercial
13 applications. At the same time, widespread deployment of unmanned
14 aerial vehicles, like any new technology, presents the potential for
15 abuse, if the technology is used to further criminal goals or abridge
16 individual rights.

17 (2) The legislature further finds that the recreational use of
18 certain small unmanned aerial vehicles is exempt from federal
19 regulation under the federal aviation administration's modernization

1 and reform act of 2012. The potential for these small unmanned aerial
2 vehicles to operate in close proximity to human dwellings and
3 activities presents opportunities for widespread use and enjoyment by
4 hobbyists. At the same time, it increases the likelihood of physical
5 trespass onto private property and invasions of personal privacy by the
6 hobbyists' unmanned aerial vehicles.

7 (3) The legislature finds that there exists an important public
8 interest in the ability to answer questions such as: What unmanned
9 aerial vehicles are operating near me and what are each of their
10 surveillance capabilities?; and

11 If an unmanned aerial vehicle is operating in an inappropriate
12 manner, how do I contact the owner/operator?

13 To address this issue, the legislature intends to create a registry
14 and licensing system for unmanned aerial vehicles otherwise exempt from
15 federal regulation.

16 (4) Finally, in anticipation of federal authorization of commercial
17 use of unmanned aerial vehicles beginning in 2015, the legislature
18 intends to establish a center of excellence in the department of
19 commerce to investigate efforts that may be undertaken at the state
20 level to minimize negative impacts and promote the safe, responsible
21 use of this technology, to maximize its benefits to the state and its
22 citizens.

23 NEW SECTION. **Sec. 2.** The definitions in this section apply
24 throughout this chapter unless the context clearly requires otherwise.

25 (1) "Airspace of the state" means all airspace within the
26 territorial limits of this state that is within class G airspace,
27 outside of five statute miles from any airport, heliport, seaplane
28 base, spaceport, or other location with aviation activities, and not
29 otherwise classified as controlled by the federal aviation
30 administration.

31 (2) "Department" means department of licensing.

32 (3) "Director" means the director of the department of licensing.

33 (4) "Owner" means a person who has a lawful right to possession of
34 an unmanned aerial vehicle by purchase, exchange, gift, lease,
35 inheritance, or legal action, whether or not the unmanned aerial
36 vehicle is subject to a security interest, and means registered owner

1 where the reference to owner may be construed as either to registered
2 or legal owner.

3 (5) "Person" includes any individual, corporation, partnership,
4 association, cooperative, limited liability company, trust, joint
5 venture, or any other legal or commercial entity and any successor,
6 representative, agent, agency, or instrumentality thereof.

7 (6) "Sensing device" means a device capable of acquiring data or
8 information from its surroundings through any means, including but not
9 limited to, cameras, thermal detectors, microphones, chemical
10 detectors, radiation gauges, and wireless receivers in any frequency.

11 (7) "Unmanned aerial vehicle" means an aircraft exempt from federal
12 regulation pursuant to the federal aviation administration
13 modernization and reform act of 2012 (49 U.S.C. 40101 Sec. 336,
14 "special rule for model aircraft").

15 NEW SECTION. **Sec. 3.** Except as otherwise specifically authorized
16 in this chapter, a person may not operate an unmanned aerial vehicle in
17 the airspace of this state.

18 (1) In the airspace above public lands, a person may operate an
19 unmanned aerial vehicle only under the following circumstances:

20 (a) The unmanned aerial vehicle is licensed and registered as set
21 forth in section 4 of this act; and

22 (b) Operation of an unmanned aerial vehicle in the airspace above
23 the parcel is not otherwise prohibited by law or rule.

24 (2) In the airspace above private lands, a person may operate an
25 unmanned aerial vehicle only under the following circumstances:

26 (a) The unmanned aerial vehicle is not equipped with a sensing
27 device and the person has obtained the consent of the private property
28 owner; or

29 (b) The unmanned aerial vehicle is equipped with a sensing device
30 and the person has followed the licensing and registration requirements
31 set forth in section 4 of this act.

32 (3) Any person operating an unmanned aerial vehicle must do so in
33 a manner that does not unreasonably interfere with the private property
34 or personal privacy rights of another person.

35 (4) Any person operating an unmanned aerial vehicle in the airspace
36 of this state has a duty to give way to manned aircraft.

1 NEW SECTION. **Sec. 4.** (1) The department is responsible for
2 administering the laws of this state relating to the licensing and
3 registration of an unmanned aerial vehicle.

4 (2) The director may adopt rules to implement this section.

5 (3) The department shall establish a registry for unmanned aerial
6 vehicles operated in the state's airspace that are equipped with
7 sensing devices.

8 (a) A person seeking to register an unmanned aerial vehicle that is
9 equipped with a sensing device must file a data collection statement
10 with the department. The data collection statement must include:

11 (i) The purpose for which the unmanned aerial vehicle will be used
12 and the circumstances under which the use of the unmanned aerial
13 vehicle will be authorized and by whom;

14 (ii) The specific kinds of information the unmanned aerial vehicle
15 will be capable of collecting, including whether that information is
16 personally identifiable or not;

17 (iii) The length of time for which the information will be
18 retained;

19 (iv) The geographic area in which the unmanned aerial vehicle will
20 operate;

21 (v) Methods used to minimize, de-identify, or aggregate data, and
22 to delete old data;

23 (vi) Parties with whom information will be shared;

24 (vii) The possible impact on individuals' privacy and the specific
25 steps the operator of the unmanned aerial vehicle will take to mitigate
26 the impact on individuals' privacy, including protections against
27 unauthorized disclosure;

28 (viii) The name of the person responsible for the safe and
29 appropriate use of the unmanned aerial vehicle; and

30 (ix) An individual point of contact for citizens' complaints.

31 (b)(i) In registering an unmanned aerial vehicle that is equipped
32 with a sensing device, the department shall assign a registration
33 number that is a unique identifier to the unmanned aerial vehicle by
34 which a third party is able to determine the owner of the unmanned
35 aerial vehicle and easily locate online the data collection statement.

36 (ii) Operation of an unmanned aerial vehicle equipped with a
37 sensing device in the airspace of this state is prohibited unless the

1 unique identifier registration number assigned by the department is
2 affixed to the unmanned aerial vehicle.

3 (c) The department shall ensure that each data collection statement
4 is publicly available and easily searchable online by the unique
5 identifier registration number as well as by geographical area in which
6 the unmanned aerial vehicle will be deployed.

7 (4) The department shall establish a license to ensure all persons
8 operating an unmanned aerial vehicle in the state's airspace are aware
9 of safe operating practices that pose minimal risk of injury to others.

10 (a) Within one hundred eighty days of the effective date of this
11 section, the department shall publish online and make available
12 throughout the state a brief handbook outlining authorized and safe
13 operation practices for unmanned aerial vehicles.

14 (b) The department shall make the license available online.

15 (c) To obtain a license, a person must certify that:

16 (i) The person has read the manual of authorized and safe operation
17 practices published by the department under (a) of this subsection;

18 (ii) Any unmanned aerial vehicle the person operates is clearly
19 labeled with the owner's name and contact information; and

20 (iii) A person may not operate an unmanned aerial vehicle equipped
21 with a sensing device unless and until the unmanned aerial vehicle is
22 registered with the department as required by subsection (3) of this
23 section.

24 (d) If the person seeking a license to operate an unmanned aerial
25 vehicle under (c) of this subsection is sixteen years old or younger,
26 a legal guardian must also certify that the guardian has fulfilled the
27 licensing requirements of this section.

28 (e) Operation of an unmanned aerial vehicle without obtaining the
29 license required by this subsection (4) is a class 4 civil infraction.

30 (5) If an unmanned aerial vehicle is found parked, standing, or
31 stopped on public or private property in violation of this chapter, the
32 registration number or, in the case of an unmanned aerial vehicle that
33 is not equipped with a sensing device, the owner's contact information,
34 must be reported to the department.

35 NEW SECTION. **Sec. 5.** Before accepting an application for a
36 license or registration under section 4 of this act, the department or
37 subagent appointed by the director shall require the applicant to pay

1 an unmanned aerial vehicle safety enforcement fee in addition to any
2 other fees and taxes required by law. The fee is intended to ensure
3 that the department recovers costs incurred in administering the
4 program authorized under this chapter. This fee must be initially set
5 at twenty-five dollars, but the director may adjust this fee by rule as
6 necessary to ensure adequate but not excessive recovery of costs
7 incurred to implement the program authorized by this chapter.

8 NEW SECTION. **Sec. 6.** (1) Except as provided by subsection (2) of
9 this section, any person who operates an unmanned aerial vehicle
10 equipped with a sensing device and collects data of any kind with the
11 sensing device without having filed the data collection statement
12 required under section 4 of this act has committed a civil infraction
13 and is subject to a monetary penalty not to exceed five hundred dollars
14 for the first violation. Subsequent violations by the same person are
15 subject to the following fines:

16 (a) For the second violation, a fine not to exceed one thousand
17 dollars;

18 (b) For the third and successive violations, a fine of at least one
19 thousand dollars.

20 (2) It is a misdemeanor for a person to willfully fail to file the
21 data collection statement required under section 4 of this act or to
22 deliberately file a substantially inaccurate statement.

23 (3) Within their respective jurisdictions, all law enforcement
24 officers may enforce this chapter and the rules adopted by the
25 department under this chapter.

26 (4) The director is authorized to issue notices of and enforce
27 civil infractions in the manner prescribed under chapter 7.80 RCW.

28 NEW SECTION. **Sec. 7.** Any person operating an unmanned aerial
29 vehicle in the airspace of this state is liable for all damages that
30 state or local government property may sustain as a result of illegal
31 or negligent operation of the vehicle. When the operator is not the
32 owner of the unmanned aerial vehicle but is operating or moving it with
33 the express or implied permission of the owner, the owner and the
34 operator are jointly and severally liable for any damage. Damage to
35 any state or local government property may be recovered in a civil
36 action instituted in the name of the state of Washington by the

1 department of transportation or other affected government agency. Any
2 measure of damage determined by the state or local government to its
3 property under this section is prima facie the amount of damage caused
4 thereby and is presumed to be the amount recoverable in any civil
5 action therefor. The damages available under this section include the
6 incident response costs, including traffic control, incurred by the
7 department of transportation or other state or local agency.

8 NEW SECTION. **Sec. 8.** (1) An unmanned aerial vehicle center of
9 excellence is created in the department of commerce to address the use
10 and operation of unmanned aerial vehicles by commercial entities and
11 public agencies in this state.

12 (2) The purpose of the center of excellence is to recommend a state
13 program of actions and policies to address issues relating to the safe
14 and civically responsible operation of unmanned aerial vehicles in the
15 state's airspace by commercial entities and public agencies, including:

16 (a) Identification and examination of privacy protections and
17 information practices that if implemented would help ensure that the
18 operation of unmanned aerial vehicles is consistent with and does not
19 abridge individual rights and expectations;

20 (b) Identification of regulatory approaches not preempted by
21 federal law, including business licensing or other state certification
22 requirements and other areas where states are free to adopt stronger
23 consumer and public safety protections than those established in
24 federal law; and

25 (c) Development of a list of prime directives that ensure
26 transparent, accountable, and responsible procurement of, operation of,
27 and data acquisition by unmanned aerial vehicles. One purpose of these
28 guidelines is to serve as a model template that local jurisdictions may
29 adopt prior to procuring unmanned aerial vehicles for public purposes.

30 (3) The director of the department of commerce shall appoint the
31 members of the center of excellence, who may include, but are not
32 limited to, representatives from relevant state agencies, affected
33 industries, committees of the legislature, and nonprofit organizations
34 dedicated to protecting consumers and civil liberties.

35 (4) The members of the center of excellence must be appointed and
36 the group convened by July 15, 2014. By March 15, 2015, the center of
37 excellence shall produce a report on its activities, together with

1 recommendations for regulation of unmanned aerial vehicles operated by
2 commercial entities consistent with the purpose described in section 1
3 of this act and subsection (1) of this section, to the governor's
4 office and to the appropriate policy and fiscal committees of the
5 senate and house of representatives.

6 (5) This section expires December 31, 2015.

7 **Sec. 9.** RCW 9.94A.535 and 2013 2nd sp.s. c 35 s 37 are each
8 amended to read as follows:

9 The court may impose a sentence outside the standard sentence range
10 for an offense if it finds, considering the purpose of this chapter,
11 that there are substantial and compelling reasons justifying an
12 exceptional sentence. Facts supporting aggravated sentences, other
13 than the fact of a prior conviction, shall be determined pursuant to
14 the provisions of RCW 9.94A.537.

15 Whenever a sentence outside the standard sentence range is imposed,
16 the court shall set forth the reasons for its decision in written
17 findings of fact and conclusions of law. A sentence outside the
18 standard sentence range shall be a determinate sentence.

19 If the sentencing court finds that an exceptional sentence outside
20 the standard sentence range should be imposed, the sentence is subject
21 to review only as provided for in RCW 9.94A.585(4).

22 A departure from the standards in RCW 9.94A.589 (1) and (2)
23 governing whether sentences are to be served consecutively or
24 concurrently is an exceptional sentence subject to the limitations in
25 this section, and may be appealed by the offender or the state as set
26 forth in RCW 9.94A.585 (2) through (6).

27 (1) Mitigating Circumstances - Court to Consider

28 The court may impose an exceptional sentence below the standard
29 range if it finds that mitigating circumstances are established by a
30 preponderance of the evidence. The following are illustrative only and
31 are not intended to be exclusive reasons for exceptional sentences.

32 (a) To a significant degree, the victim was an initiator, willing
33 participant, aggressor, or provoker of the incident.

34 (b) Before detection, the defendant compensated, or made a good
35 faith effort to compensate, the victim of the criminal conduct for any
36 damage or injury sustained.

1 (c) The defendant committed the crime under duress, coercion,
2 threat, or compulsion insufficient to constitute a complete defense but
3 which significantly affected his or her conduct.

4 (d) The defendant, with no apparent predisposition to do so, was
5 induced by others to participate in the crime.

6 (e) The defendant's capacity to appreciate the wrongfulness of his
7 or her conduct, or to conform his or her conduct to the requirements of
8 the law, was significantly impaired. Voluntary use of drugs or alcohol
9 is excluded.

10 (f) The offense was principally accomplished by another person and
11 the defendant manifested extreme caution or sincere concern for the
12 safety or well-being of the victim.

13 (g) The operation of the multiple offense policy of RCW 9.94A.589
14 results in a presumptive sentence that is clearly excessive in light of
15 the purpose of this chapter, as expressed in RCW 9.94A.010.

16 (h) The defendant or the defendant's children suffered a continuing
17 pattern of physical or sexual abuse by the victim of the offense and
18 the offense is a response to that abuse.

19 (i) The defendant was making a good faith effort to obtain or
20 provide medical assistance for someone who is experiencing a drug-
21 related overdose.

22 (j) The current offense involved domestic violence, as defined in
23 RCW 10.99.020, and the defendant suffered a continuing pattern of
24 coercion, control, or abuse by the victim of the offense and the
25 offense is a response to that coercion, control, or abuse.

26 (2) Aggravating Circumstances - Considered and Imposed by the Court
27 The trial court may impose an aggravated exceptional sentence
28 without a finding of fact by a jury under the following circumstances:

29 (a) The defendant and the state both stipulate that justice is best
30 served by the imposition of an exceptional sentence outside the
31 standard range, and the court finds the exceptional sentence to be
32 consistent with and in furtherance of the interests of justice and the
33 purposes of the sentencing reform act.

34 (b) The defendant's prior unscored misdemeanor or prior unscored
35 foreign criminal history results in a presumptive sentence that is
36 clearly too lenient in light of the purpose of this chapter, as
37 expressed in RCW 9.94A.010.

1 (c) The defendant has committed multiple current offenses and the
2 defendant's high offender score results in some of the current offenses
3 going unpunished.

4 (d) The failure to consider the defendant's prior criminal history
5 which was omitted from the offender score calculation pursuant to RCW
6 9.94A.525 results in a presumptive sentence that is clearly too
7 lenient.

8 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
9 the Court

10 Except for circumstances listed in subsection (2) of this section,
11 the following circumstances are an exclusive list of factors that can
12 support a sentence above the standard range. Such facts should be
13 determined by procedures specified in RCW 9.94A.537.

14 (a) The defendant's conduct during the commission of the current
15 offense manifested deliberate cruelty to the victim.

16 (b) The defendant knew or should have known that the victim of the
17 current offense was particularly vulnerable or incapable of resistance.

18 (c) The current offense was a violent offense, and the defendant
19 knew that the victim of the current offense was pregnant.

20 (d) The current offense was a major economic offense or series of
21 offenses, so identified by a consideration of any of the following
22 factors:

23 (i) The current offense involved multiple victims or multiple
24 incidents per victim;

25 (ii) The current offense involved attempted or actual monetary loss
26 substantially greater than typical for the offense;

27 (iii) The current offense involved a high degree of sophistication
28 or planning or occurred over a lengthy period of time; or

29 (iv) The defendant used his or her position of trust, confidence,
30 or fiduciary responsibility to facilitate the commission of the current
31 offense.

32 (e) The current offense was a major violation of the Uniform
33 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
34 trafficking in controlled substances, which was more onerous than the
35 typical offense of its statutory definition: The presence of ANY of
36 the following may identify a current offense as a major VUCSA:

37 (i) The current offense involved at least three separate

1 transactions in which controlled substances were sold, transferred, or
2 possessed with intent to do so;

3 (ii) The current offense involved an attempted or actual sale or
4 transfer of controlled substances in quantities substantially larger
5 than for personal use;

6 (iii) The current offense involved the manufacture of controlled
7 substances for use by other parties;

8 (iv) The circumstances of the current offense reveal the offender
9 to have occupied a high position in the drug distribution hierarchy;

10 (v) The current offense involved a high degree of sophistication or
11 planning, occurred over a lengthy period of time, or involved a broad
12 geographic area of disbursement; or

13 (vi) The offender used his or her position or status to facilitate
14 the commission of the current offense, including positions of trust,
15 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
16 other medical professional).

17 (f) The current offense included a finding of sexual motivation
18 pursuant to RCW 9.94A.835.

19 (g) The offense was part of an ongoing pattern of sexual abuse of
20 the same victim under the age of eighteen years manifested by multiple
21 incidents over a prolonged period of time.

22 (h) The current offense involved domestic violence, as defined in
23 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or
24 more of the following was present:

25 (i) The offense was part of an ongoing pattern of psychological,
26 physical, or sexual abuse of a victim or multiple victims manifested by
27 multiple incidents over a prolonged period of time;

28 (ii) The offense occurred within sight or sound of the victim's or
29 the offender's minor children under the age of eighteen years; or

30 (iii) The offender's conduct during the commission of the current
31 offense manifested deliberate cruelty or intimidation of the victim.

32 (i) The offense resulted in the pregnancy of a child victim of
33 rape.

34 (j) The defendant knew that the victim of the current offense was
35 a youth who was not residing with a legal custodian and the defendant
36 established or promoted the relationship for the primary purpose of
37 victimization.

1 (k) The offense was committed with the intent to obstruct or impair
2 human or animal health care or agricultural or forestry research or
3 commercial production.

4 (l) The current offense is trafficking in the first degree or
5 trafficking in the second degree and any victim was a minor at the time
6 of the offense.

7 (m) The offense involved a high degree of sophistication or
8 planning.

9 (n) The defendant used his or her position of trust, confidence, or
10 fiduciary responsibility to facilitate the commission of the current
11 offense.

12 (o) The defendant committed a current sex offense, has a history of
13 sex offenses, and is not amenable to treatment.

14 (p) The offense involved an invasion of the victim's privacy.

15 (q) The defendant demonstrated or displayed an egregious lack of
16 remorse.

17 (r) The offense involved a destructive and foreseeable impact on
18 persons other than the victim.

19 (s) The defendant committed the offense to obtain or maintain his
20 or her membership or to advance his or her position in the hierarchy of
21 an organization, association, or identifiable group.

22 (t) The defendant committed the current offense shortly after being
23 released from incarceration.

24 (u) The current offense is a burglary and the victim of the
25 burglary was present in the building or residence when the crime was
26 committed.

27 (v) The offense was committed against a law enforcement officer who
28 was performing his or her official duties at the time of the offense,
29 the offender knew that the victim was a law enforcement officer, and
30 the victim's status as a law enforcement officer is not an element of
31 the offense.

32 (w) The defendant committed the offense against a victim who was
33 acting as a good samaritan.

34 (x) The defendant committed the offense against a public official
35 or officer of the court in retaliation of the public official's
36 performance of his or her duty to the criminal justice system.

37 (y) The victim's injuries substantially exceed the level of bodily

1 harm necessary to satisfy the elements of the offense. This aggravator
2 is not an exception to RCW 9.94A.530(2).

3 (z)(i)(A) The current offense is theft in the first degree, theft
4 in the second degree, possession of stolen property in the first
5 degree, or possession of stolen property in the second degree; (B) the
6 stolen property involved is metal property; and (C) the property damage
7 to the victim caused in the course of the theft of metal property is
8 more than three times the value of the stolen metal property, or the
9 theft of the metal property creates a public hazard.

10 (ii) For purposes of this subsection, "metal property" means
11 commercial metal property, private metal property, or nonferrous metal
12 property, as defined in RCW 19.290.010.

13 (aa) The defendant committed the offense with the intent to
14 directly or indirectly cause any benefit, aggrandizement, gain, profit,
15 or other advantage to or for a criminal street gang as defined in RCW
16 9.94A.030, its reputation, influence, or membership.

17 (bb) The current offense involved paying to view, over the internet
18 in violation of RCW 9.68A.075, depictions of a minor engaged in an act
19 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
20 (g).

21 (cc) The offense was intentionally committed because the defendant
22 perceived the victim to be homeless, as defined in RCW 9.94A.030.

23 (dd) The current offense involved a felony crime against persons,
24 except for assault in the third degree pursuant to RCW 9A.36.031(1)(k),
25 that occurs in a courtroom, jury room, judge's chamber, or any waiting
26 area or corridor immediately adjacent to a courtroom, jury room, or
27 judge's chamber. This subsection shall apply only: (i) During the
28 times when a courtroom, jury room, or judge's chamber is being used for
29 judicial purposes during court proceedings; and (ii) if signage was
30 posted in compliance with RCW 2.28.200 at the time of the offense.

31 (ee) During the commission of the current offense, the defendant
32 was driving in the opposite direction of the normal flow of traffic on
33 a multiple lane highway, as defined by RCW 46.04.350, with a posted
34 speed limit of forty-five miles per hour or greater.

35 (ff) The defendant committed the current offense with the
36 assistance of an unmanned aerial vehicle.

1 NEW SECTION. **Sec. 10.** Sections 2 through 7 of this act constitute
2 a new chapter in Title 14 RCW.

3 NEW SECTION. **Sec. 11.** Nothing in this act may be construed to
4 enhance or diminish any existing authority regarding the regulation of
5 the commercial use of unmanned aerial vehicles.

6 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 immediately.

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