

**HB 97-FN - AS INTRODUCED**

2017 SESSION

17-0102

04/01

**HOUSE BILL 97-FN**

AN ACT relative to the use of drones.

SPONSORS: Rep. Kurk, Hills. 2; Rep. Berch, Ches. 1; Rep. Cushing, Rock. 21

COMMITTEE: Executive Departments and Administration

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**ANALYSIS**

This bill regulates the use of drones by government agencies and individuals. This bill establishes criminal penalties and civil remedies for violations of the law.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

17-0102

04/01

**STATE OF NEW HAMPSHIRE**

*In the Year of Our Lord Two Thousand Seventeen*

AN ACT relative to the use of drones.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Chapter; Drones. Amend RSA by inserting after chapter 422-C the following new chapter:

CHAPTER 422-D

DRONES

422-D:1 Definitions. In this chapter:

I. "Airspace" means the space above the ground in New Hampshire.

II. "Automated surveillance" means surveillance employing a mechanical or electronic device, computer or software, including but not limited to facial recognition technology, that functions continuously without continuous input from a human operator.

III. "Commercial purpose" means to exchange for money, goods or services or to exchange with the intention of directly or indirectly benefiting any business or other undertaking intended for profit.

IV. "Critical infrastructure" means a petroleum or chemical production, transportation, storage or processing facility; a chemical manufacturing facility; a pipeline and any appurtenance thereto; a wastewater treatment facility; a water treatment facility; a power generating station, plant or substation and any appurtenance thereto; any transmission line

that is owned in whole or in part by a utility regulated under state law; a telecommunications central switching office; a flood control, hydroelectric power generation or water supply dam or reservoir; a county, city, or town jail or detention facility, police station or fire station; and any prison, facility, or institution under the control of the department of corrections. The term shall not include any facility or infrastructure of a utility that is located underground.

V. "Drone" means a powered, aerial vehicle, excluding a geosynchronous satellite, that:

- (a) Does not carry a human operator;
- (b) Uses aerodynamic forces to provide vehicle lift;
- (c) Can fly autonomously or be piloted remotely; and
- (d) May be expendable or recoverable.

VI. "Government" means the federal government, the state government and any political subdivisions thereof, and state and municipal agencies and departments, including employees and agents.

VII. "Image" means a record, including a photograph, of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.

VIII. "Imaging device" means a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

IX. "Individual" means a living human being.

X. "Information" means any evidence, images, sounds, or data gathered by a drone.

XI. "Law enforcement agency" means a lawfully established state, county, or municipal agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of the criminal laws.

XII. "Law enforcement officer" means a duly sworn employee of a law enforcement agency who is invested with the power of arrest or the detection of crime.

XIII. "Person" means individuals, partnerships, limited liability companies, corporations, and any other organizations, including for-profit and not-for-profit entities, but excluding government.

XIV. "Surveillance" means the willful act of tracking or following, while photographing, taking images of, listening to, or making a recording of: (a) a recognizable individual or a group of individuals, including their movements, activities or communications, or (b) motor vehicles identifiable by their license plates. The term does not include such activities on real estate in which a person has a legal interest.

422-D:2 Government Use of Drones Limited; Exceptions.

I. Except as provided in paragraph II:

- (a) No government shall use a drone, or obtain, receive, use, or retain information acquired by or through a drone, to engage in surveillance, to acquire evidence, or to enforce laws;
- (b) No government shall use a drone equipped with an imaging device to record an image of an identifiable individual on privately-owned real property in violation of such individual's reasonable expectation of privacy without his or her consent. For purposes of this subparagraph, an individual is presumed to have a reasonable expectation of privacy on privately-owned real property if he or she (1) is within an enclosed structure or (2) is not observable by individuals located at ground level in a public place where they have a legal right to be, regardless of whether he or she is observable from the air; and
- (c) No government shall operate a drone at a height of less than 250 feet over privately-owned real property unless it has the consent of its owner.

II.(a) Notwithstanding the provisions of paragraph I, a government may use a drone, or obtain, receive, use or retain information acquired by or through a drone, for law enforcement purposes under the following conditions only:

- (1) If surveillance is undertaken, with the prior consent of the person who is the subject of surveillance and the owner or lessee of the property which is the subject of the surveillance.
- (2) If a government first obtains a search warrant signed by a judge and based on probable cause or the use of a drone is pursuant to a legally-recognized exception to the warrant requirement. A search warrant authorizing the use of a drone shall specify the period for which operation of the drone is authorized, which period shall not exceed 10 days unless subsequently renewed by a judge.
- (3) If a government possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent harm to life or serious damage to property, or to forestall the imminent escape of a suspect, or the destruction of evidence, or to assist in locating missing, abducted or lost individuals, hunters or hikers, or to rescue persons in natural disasters, injured persons or persons in need of medical assistance.

(4) To counter a high risk of a terrorist attack or incident by a specific individual or organization which the United States Department of Homeland Security determines that credible intelligence indicates that there is such a risk.

(5) To increase situational awareness in understanding the nature, scale, and scope of an incident which has occurred and for planning and coordinating an effective and legal response, provided the incident is limited geographically and in time.

(6) To support the tactical deployment of law enforcement personnel and equipment in emergency situations.

(7) To document a specific crime scene, traffic crash scene or other major incident scene, such as a disaster caused by natural or human activity, provided such documentation is conducted in a geographically confined and time-limited manner.

(8) For purposes of training law enforcement officers or others in the proper, safe, and legal use of drones.

(b) A government which uses a drone, or obtains, receives, uses or retains information acquired by or through a drone, pursuant to paragraph II may do so only if (1) specifically authorized by the chief law enforcement officer of a law enforcement agency, or a supervisor designated by the chief law enforcement officer, (2) is not operated in an unsafe manner, and (3) is not operated in violation of United States Federal Aviation Administration regulations.

(c) The use of a drone by a government under subparagraphs II(a)(4) shall be limited to a period of 48 hours of its initial use after which a search warrant or other court order signed by a judge shall be required. The use of a drone by a government under subparagraphs II(a)(5)-(8) shall be limited to a period of 48 hours of its initial use after which reauthorization shall be required.

(d) Within 5 business days of the initiation of the use of a drone under subparagraph II(a), the government shall report in writing the use of a drone to the attorney general who shall annually post such reports on the department of justice website in a searchable format.

III. Unless the fact of a violation is being disputed, information obtained by a government in violation of paragraphs I and II shall, within 12 hours after the discovery of the violation, be permanently and irretrievably destroyed, shall not be transferred to another government or person, shall not be admissible in any judicial or administrative proceeding and shall not be used to establish reasonable suspicion or probable cause to believe that an offense has been committed.

IV. Images of identifiable individuals obtained by a government pursuant to paragraphs I or II shall be blurred, deleted or otherwise de-identified as soon as practicable but in any case within 30 days after being obtained unless such images may be evidence in a criminal investigation.

V. No government shall own, use, or exercise control over a drone that is equipped with any kind of lethal or non-lethal weapon.

VI. A government that owns, uses, or exercises control over a drone that causes injury to a person or a person's property shall be liable for such injury.

VII. A government that owns, uses, or exercises control over one or more drones shall annually on July 1 submit a written or electronic report to the attorney general containing information on the number of such drones, the number of times each such drone was used during the prior year and, in general terms, the purpose of each such use. The attorney general shall annually post such reports on the department of justice website in a searchable format.

422-D:3 Non-Government Use of Drones Limited; Exceptions.

I. No person shall use a drone to engage in automated surveillance.

II. No person shall use a drone to engage in surveillance for commercial purposes without the prior consent of each affected person and each owner or possessor of affecting buildings or structures or parts thereof. It shall not be a defense to a charge of violating this chapter that the buildings or structures were not marked with a no-trespassing sign or similar notice.

III.(a) No person shall use a drone equipped with an imaging device to record or view an image or listen to or record the sound of an identifiable individual on privately-owned real property in which the person does not have a legally recognized interest in violation of such individual's reasonable expectation of privacy without his or her consent. For purposes of this subparagraph, an individual is presumed to have a reasonable expectation of privacy on privately-owned real property if he or she:

(1) Is within an enclosed structure; or

(2) Is not observable by individuals located at ground level in a public place where they have a legal right to be, regardless of whether he or she is observable from the air.

(b) This paragraph shall not apply to the unintentional recording or viewing of an image, or to the unintentional listening to or recording the sound of, an individual.

IV. No person shall:

- (a) Operate a drone within a horizontal distance of 500 feet or a vertical distance of 400 feet from critical infrastructure without the written consent of the owner of the critical infrastructure;
- (b) Allow a drone to make contact with critical infrastructure facility, including any individual or object on the premises of or within the critical infrastructure; or
- (c) Allow a drone 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 or its occupants.

V. No person shall own, use, or exercise control over a drone that is equipped with any kind of lethal or nonlethal weapon. This prohibition shall not apply to a person who is a federal government military contractor using or exercising control over a drone which is equipped with a nonlethal weapon and which is flying over real property in which the person has a legal interest.

VI. Any person that owns, uses, or exercises control over a drone in this state that causes injury to a person or a person's property shall be liable for the injury.

VII. No person shall use a drone to harass or stalk another person.

VIII. No person shall operate a drone at a height of less than 250 feet over privately-owned real property unless the person has the consent of its owner.

422-D:4 Airport Prohibition. No government or person shall operate a drone within 5 miles of any airport in this state in a manner that does not comply with relevant federal law and Federal Aviation Administration regulations and guidelines in effect at the time.

422-D:5 Identification. Each owner of a drone shall identify the drone with the owner's name, address and telephone number in permanent ink in a font size not less than 12 picas.

422-D:6 Federal Preemption. If federal law preempts any provision of this chapter, that provision shall not apply.

422-D:7 Applicability. The provisions of this chapter shall not apply to the New Hampshire national guard in the conduct of its official duties.

422-D:8 Construction. This chapter shall be construed to provide the greatest possible protection of the privacy of the people of this state. Nothing in this chapter shall be construed to impose liability in connection with news gathering activity.

422-D:9 Penalties.

I. A government employee or agent who knowingly violates RSA 422-D:2, other than the reporting requirements in 422-D:2, II(c) and 422-D:2, VII, shall be guilty of a misdemeanor. A government employee or agent who violates the reporting requirements in RSA 422-D:2, II(c) or 422-D:2, VII shall be guilty of a violation for a first offense and a misdemeanor for any subsequent offense.

II. A government which violates RSA 422-D:2 may be subject to a civil penalty of up to \$10,000 which shall be deposited in the general fund of the state.

III. A person who suffers damages or injury caused by a government's use of a drone pursuant to this chapter may bring a civil action to recover actual damages which shall be limited to medical expenses, treatment, and rehabilitation, property damage, permanent physical impairment, court costs, and reasonable attorney's fees from the government. No claim for pain and suffering, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, or consortium, or other nonpecuniary losses shall be compensable under this chapter. This paragraph shall not be construed as a waiver of the sovereign immunity of the state.

IV. A person who violates RSA 422-D:3, I-VII shall be guilty of a misdemeanor.

V. Any person who suffers injury caused by a drone operated in violation of this chapter shall be entitled to damages from the person who committed the violation of not less than \$1,000 and an award of reasonable attorney fees.

VI. In addition to any other remedies allowed by law, a person who willfully gains unauthorized control over a drone shall be liable to the owner of the drone in an amount of not less than \$1,000 and an award of reasonable attorney fees.

2 Effective Date. This act shall take effect July 1, 2018.

LBAO

17-0102

11/18/16

**HB 97-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to the use of drones.

FISCAL IMPACT:     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input checked="" type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2018	FY 2019
Violation Level Offense	\$48	\$48
Class B Misdemeanor	\$49	\$50
Class A Misdemeanor	\$71	\$72
Circuit Court - Search Warrant Request	\$71	\$72
Superior Court - Search Warrant Request	\$274	\$279
Complex Civil Case	\$727	\$735
Appeals	Varies	Varies
It should be noted average case cost estimates for FY 2018 and FY 2019 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$275/Case	\$275/Case*

Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
<p>It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).</p> <p><i>* The Council’s budget request for the FY 2018-19 biennium includes an increase to \$300 per case for contract attorney misdemeanor cases.</i></p>		
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110

Proposed RSA 422-D:22 would bar evidence illegally obtained by a government through the use of a drone from being admitted in a judicial proceeding. This provision would not add cases, but it would add time to a trial where the issue was raised and, possibly, could result in an appeal to the New Hampshire Supreme Court.

This bill would require a government entity that uses a drone to file a report with the Department of Justice, which would be required to annually post the reports in searchable format on its website. The bill imposes a civil penalty for any government that violates the provisions of the statute. Penalty revenue would be deposited in the general fund. The Department of Justice investigates and prosecutes criminal conduct by certain government officials and may become involved in investigations and prosecutions under this proposed statute. The Department cannot estimate how many such cases would arise, but it is anticipated that the majority of cases would be prosecuted by local and county prosecutors. The bill does not specify what agency has enforcement authority. If the Department of Justice is responsible and assuming a straightforward enforcement action without significant constitutional issues, it would likely take between 70 and 100 hours of an attorney’s time. The Department has no basis upon which to estimate the number of potential enforcement actions. In addition, the Department of Justice would provide legal counsel to any state agency using or contemplating the use of a drone to ensure compliance with the statute. The Department expects this could be done within the current budget. In the event a state agency or state employee is sued for a violation of the statute, or if an injury is caused by the state operation of a drone, the Department would have to defend that action. It is not possible to determine how many cases may be brought against a state agency or state employee, and therefore it is not possible to project how much time would be needed to defend alleged violations of the act.

The Department of Safety assumes state, county and local expenditures would increase by an indeterminable amount from investigating and prosecuting violations of the proposed statute.

**AGENCIES CONTACTED:**

Judicial Branch, Judicial Council, Departments of Justice and Safety, and New Hampshire Association of Counties