

Attack of the Drones: Illegal Use of Unmanned Aircraft in Texas

Regional Judges Seminar FY 2015

Robby Chapman, Program Director, TMCEC

OUTLINE

A. What are drones?

- a. Definitions
- b. Practical drone use

B. Federal Regulation

- a. FAA Rules
- b. Modernization and Reform Act 2012
- c. Challenges and controversies

C. Texas Privacy Act

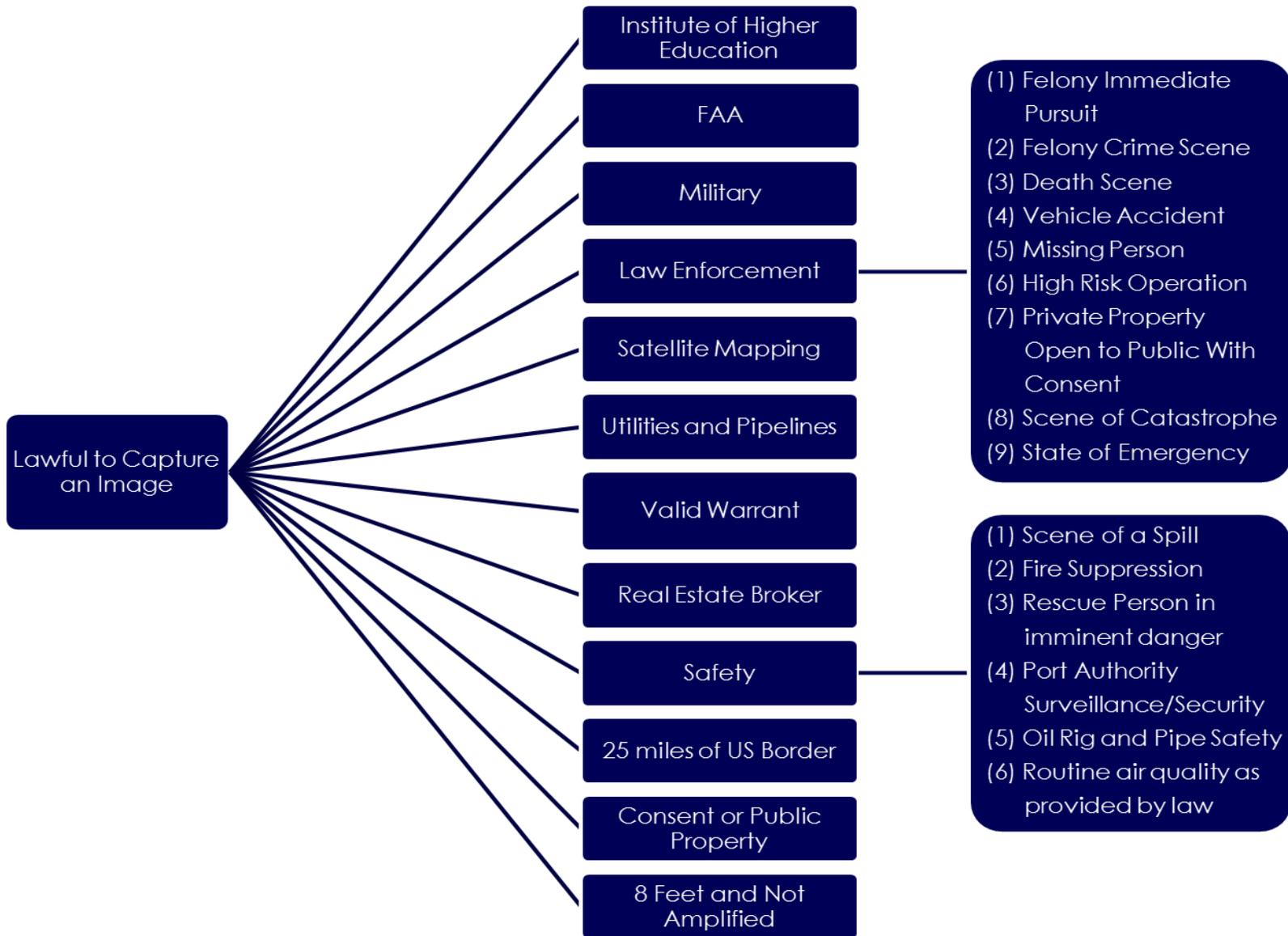
- a. History
- b. Lawful and unlawful uses
 - i. Chart: Nineteen Lawful uses
 - ii. Chart: Misdemeanors
- c. Other statutory provisions

D. Legal Issues

- a. Proving the case at trial
- b. Warrants and illegal searches
- c. Illegal or incidental images as discovery and evidence

NOTES

Lawfully Capture an Image Using Unmanned Aircraft Under the Texas Privacy Act



Texas Privacy Act Criminal Offenses

Offense	Penalty	Fine	Defense
Capture image with intent to conduct surveillance	Class C	\$500	Destroyed image without disclosing, displaying, or distributing
Capture image with intent to conduct surveillance <u>and</u> possess image	Class C	\$500	Destroyed image
Capture image with intent to conduct surveillance <u>and</u> disclose, display, distribute, or other use	Class B	\$2000 180 Jail	Stopped disclosing, displaying, distributing, or using

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Sec. 423.001. DEFINITION.

In this chapter, "image" means any capturing of sound waves, thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, odor, or other conditions existing on or about real property in this state or an individual located on that property.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1390 (H.B. [912](#)), Sec. 2, eff. September 1, 2013.

Sec. 423.002. NONAPPLICABILITY.

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

(1) for purposes of professional or scholarly research and development by a person acting on behalf of an institution of higher education, as 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;

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(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;

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(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; or

(19) in connection with port authority surveillance and security.

(b) This chapter does not apply to the manufacture, assembly, distribution, or sale of an unmanned aircraft.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1390 (H.B. [912](#)), Sec. 2, eff. September 1, 2013.

Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED AIRCRAFT TO CAPTURE IMAGE.

(a) A person commits an offense if the person uses an unmanned aircraft to capture an image of an individual or privately owned real property in this state with the intent to conduct surveillance on the individual or property captured in the image.

(b) An offense under this section is a Class C misdemeanor.

(c) It is a defense to prosecution under this section that the person destroyed the image:

(1) as soon as the person had knowledge that the image was captured in violation of this section; and

(2) without disclosing, displaying, or distributing the image to a third party.

(d) In this section, "intent" has the meaning assigned by Section 6.03, Penal Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1390 (H.B. [912](#)), Sec. 2, eff. September 1, 2013.

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Sec. 423.004. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE OF IMAGE.

(a) A person commits an offense if the person:

- (1) captures an image in violation of Section 423.003; and
- (2) possesses, discloses, displays, distributes, or otherwise uses that image.

(b) An offense under this section for the possession of an image is a Class C misdemeanor. An offense under this section for the disclosure, display, distribution, or other use of an image is a Class B misdemeanor.

(c) Each image a person possesses, discloses, displays, distributes, or otherwise uses in violation of this section is a separate offense.

(d) It is a defense to prosecution under this section for the possession of an image that the person destroyed the image as soon as the person had knowledge that the image was captured in violation of Section 423.003.

(e) It is a defense to prosecution under this section for the disclosure, display, distribution, or other use of an image that the person stopped disclosing, displaying, distributing, or otherwise using the image as soon as the person had knowledge that the image was captured in violation of Section 423.003.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1390 (H.B. [912](#)), Sec. 2, eff. September 1, 2013.

Sec. 423.005. ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT SUBJECT TO DISCLOSURE.

(a) Except as otherwise provided by Subsection (b), an image captured in violation of Section 423.003, or an image captured by an unmanned aircraft that was incidental to the lawful capturing of an image:

- (1) may not be used as evidence in any criminal or juvenile proceeding, civil action, or administrative proceeding;
- (2) is not subject to disclosure, inspection, or copying under Chapter 552; and
- (3) is not subject to discovery, subpoena, or other means of legal compulsion for its release.

(b) An image described by Subsection (a) may be disclosed and used as evidence to prove a violation of this chapter and is subject to discovery, subpoena, or other means of legal compulsion for that purpose.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1390 (H.B. [912](#)), Sec. 2, eff. September 1, 2013.

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Sec. 423.006. CIVIL ACTION.

(a) An owner or tenant of privately owned real property located in this state may bring against a person who, in violation of Section 423.003, captured an image of the property or the owner or tenant while on the property an action to:

(1) enjoin a violation or imminent violation of Section 423.003 or 423.004;

(2) recover a civil penalty of:

(A) \$5,000 for all images captured in a single episode in violation of Section 423.003; or

(B) \$10,000 for disclosure, display, distribution, or other use of any images captured in a single episode in violation of Section 423.004; or

(3) recover actual damages if the person who captured the image in violation of Section 423.003 discloses, displays, or distributes the image with malice.

(b) For purposes of recovering the civil penalty or actual damages under Subsection (a), all owners of a parcel of real property are considered to be a single owner and all tenants of a parcel of real property are considered to be a single tenant.

(c) In this section, "malice" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

(d) In addition to any civil penalties authorized under this section, the court shall award court costs and reasonable attorney's fees to the prevailing party.

(e) Venue for an action under this section is governed by Chapter 15, Civil Practice and Remedies Code.

(f) An action brought under this section must be commenced within two years from the date the image was:

(1) captured in violation of Section 423.003; or

(2) initially disclosed, displayed, distributed, or otherwise used in violation of Section 423.004.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1390 (H.B. [912](#)), Sec. 2, eff. September 1, 2013.

Sec. 423.007. RULES FOR USE BY LAW ENFORCEMENT.

The Department of Public Safety shall adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1390 (H.B. [912](#)), Sec. 2, eff. September 1, 2013.

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Sec. 423.008. REPORTING BY LAW ENFORCEMENT AGENCY.

(a) Not earlier than January 1 and not later than January 15 of each odd-numbered year, each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000, that used or operated an unmanned aircraft during the preceding 24 months shall issue a written report to the governor, the lieutenant governor, and each member of the legislature and shall:

- (1) retain the report for public viewing; and
- (2) post the report on the law enforcement agency's publicly accessible website, if one exists.

(b) The report must include:

- (1) the number of times an unmanned aircraft was used, organized by date, time, location, and the types of incidents and types of justification for the use;
- (2) the number of criminal investigations aided by the use of an unmanned aircraft and a description of how the unmanned aircraft aided each investigation;
- (3) the number of times an unmanned aircraft was used for a law enforcement operation other than a criminal investigation, the dates and locations of those operations, and a description of how the unmanned aircraft aided each operation;
- (4) the type of information collected on an individual, residence, property, or area that was not the subject of a law enforcement operation and the frequency of the collection of this information; and
- (5) the total cost of acquiring, maintaining, repairing, and operating or otherwise using each unmanned aircraft for the preceding 24 months.