

Law Enforcement Use of Drones

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Categories : [Procedure](#), [Search and Seizure](#), [Uncategorized](#)

Tagged as : [aircraft](#), [drones](#), [fourth amendment](#), [unmanned](#)

Date : April 6, 2015

Drones are remote-controlled aircraft. They can be equipped with cameras, and may be useful for surveillance. Does the use of drones by law enforcement officers raise any legal concerns?

The short answer is yes, in at least four ways.

Federal approval required. First, it appears that before any governmental entity may use drones, the entity must obtain a Certificate of Authorization from the Federal Aviation Administration. The FAA describes the COA process briefly [here](#). However, failure to obtain FAA approval likely would not require the suppression of any evidence, such as video footage, obtained by an unauthorized drone. Violations of federal statutes and regulations don't normally require suppression, so long as the violations are not also constitutional violations. (Constitutional violations are discussed below.)

State CIO approval required. Second, before any governmental entity in North Carolina may use drones, the entity must obtain approval from the State CIO. This requirement is the result of several legislative enactments:

- Section 7.16 of the 2013 appropriations bill, [L. 2013-360](#), provides that “[u]ntil July 1, 2015, no State or local governmental entity or officer may procure or operate and unmanned aircraft system . . . unless the State CIO approves.”
- Section 7.11 of the 2014 appropriations bill, [L. 2014-100](#), extends the ban on unapproved governmental use of drones through December 31, 2015.

Would a violation of this requirement necessitate the suppression of any evidence obtained thereby? Maybe. Although the statutory exclusionary rule in G.S. 15A-928 applies only to violations of Chapter 15A, the appellate courts have sometimes suppressed evidence as a sanction for other statutory violations by state actors, as Shea noted [here](#) in connection with a violation of Chapter 20.

Compliance with new drone statute required. Third, section 34.30 of the 2014 appropriations bill, [S.L. 2014-100](#), enacted new [Article 16B of Chapter 15A](#). That article generally prohibits the use of drones to conduct surveillance of “[p]rivate real property,” “[a] person,” or “a dwelling occupied by a person and that dwelling’s curtilage” without consent. But it contains exceptions allowing law enforcement to conduct drone surveillance with a warrant, or without a warrant when there is a high risk of a terrorist attack; when the surveillance involves an area that is in an officer’s plain view; or when exigent circumstances exist. It also allows law enforcement “[t]o photograph gatherings to which the general public is invited on public or private land.”

The statute contains an exclusionary rule and provides for a civil cause of action against violators. The appropriations bill also enacted new Article 10 of Chapter 63, requiring public drone operators to be trained and licensed.

The statute doesn’t define “surveillance,” which has led [some to criticize](#) the statute for vagueness. The exception

allowing law enforcement officers to photograph public gatherings on private property has also [been controversial](#).

Compliance with the Fourth Amendment required. Fourth, any law enforcement activity involving drones must comply with the Fourth Amendment. However, it is far from clear how the Fourth Amendment applies to drones. Will they be governed by the precedents concerning aircraft flyovers, like *California v. Ciraolo*, 476 U.S. 207 (1986), which generally allow considerable leeway to law enforcement? Does the increasing prevalence of hobbyists' drones mean that there can be no reasonable expectation of privacy from drones? Or does the existence of inexpensive drones present a novel Fourth Amendment concern that will require a novel doctrine to address it, as the Supreme Court arguably charted new courses regarding GPS tracking in *United States v. Jones*, 565 U.S. ___ (2012), and regarding cell phone searches incident to arrest in *Riley v. California*, 573 U.S. ___ (2014)? There are not many court decisions in this area, but there are plenty of law review articles, including Chris Schlag, *The New Privacy Battle: How the Expanding Use of Drones Continues to Erode Our Concept of Privacy and Privacy Rights*, 13 U. Pitt. J. Tech. L. & Pol'y 1 (2013); Timothy T. Takahashi, *Drones and Privacy*, 14 Colum. Sci. & Tech. L. Rev. 72 (2013); Andrew B. Talai, Comment, *Drones and Jones: The Fourth Amendment and Police Discretion in the Digital Age*, 102 Cal. L. Rev. 729 (2014); and Matthew R. Koerner, Comment, *Drones and the Fourth Amendment: Redefining Expectations of Privacy*, 64 Duke L.J. 1129 (2015).

Other possible issues. In certain cases, drone use might implicate other legal concerns. For example, the use of a drone to make audio recordings of otherwise private conversations might run afoul of the electronic surveillance statute, G.S. 15A-287.

Concluding thoughts. As far as I know, law enforcement agencies in North Carolina aren't using drones now. Recall that State CIO approval is required to use drones prior to December 31, 2015. In March 2014, the State CIO issued [a report](#) and made [a presentation](#) on drone use to a legislative committee. The presentation stated that NC State's Next Generation Air Transport project was the only governmental entity approved to use drones at that time. (Of course, some agencies might have sought approval since that time.) A few agencies apparently own drones, presumably purchased before the 2013 moratorium took effect, as reported in [this Independent Weekly](#) story. Perhaps agencies are waiting for the legal landscape to settle. The General assembly is considering more changes to the drone laws this session, including [House Bill 4](#), which appears to me to be technical in nature, and [Senate Bill 622](#), which would remove the exemption that allows law enforcement surveillance of gatherings to which the general public is invited on private land. In the long run, though, the use of drones by law enforcement is likely inevitable.