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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 1355                      **Hearing Date:** April 3, 2018  
**Author:** Hill  
**Version:** February 16, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** EC

**Subject:** *Unmanned Aircraft Systems: Correctional Facilities*

### HISTORY

**Source:** Author

**Prior Legislation:** AB 2148 (Holden), vetoed, 2016  
SB 2320 (Calderon), vetoed, 2016  
SB 809 (Gaines), referred to Senate Public Safety and Education, never heard in Senate Public Safety, 2015  
SB 170 (Gaines), vetoed, 2015  
SB 271 (Gaines), vetoed 2015  
AB 1327 (Gorell), vetoed 2014  
SB 15 (Padilla), failed passage in Assembly Public Safety

**Support:** California Correctional Peace Officers Association; California Peace Officers' Association; California State Sheriffs' Association

**Opposition:** Association of National Advertisers; Association for Unmanned Vehicle Systems International; CalChamber; Consumer Technology Association

### PURPOSE

*The purpose of this bill is to make a person who knowingly and intentionally operates an unmanned aircraft system on or above the grounds of a state prison or jail, guilty of an infraction punishable by a fine of \$500.*

*Existing federal law* requires an aircraft to be registered with the Federal Aviation Administration (FAA), prohibits a person from operating a United States registered aircraft unless that aircraft displays specified nationality and registration marks, and, unless authorized by the FAA, prohibits a person from placing on any aircraft a design, mark, or symbol that modifies or confuses those nationality and registration marks. (14 CFR 45.21)

*Existing law* prohibits wiretapping or eavesdropping on confidential communications. (Penal Code § 630.)

*Existing law* makes it a crime for a person, intentionally, and without requisite consent, to eavesdrop on a confidential communication by means of any electronic amplifying or recording device. (Penal Code § 632.)

*Existing law* makes a person liable for “physical invasion of privacy” for knowingly entering onto the land of another person or otherwise committing a trespass in order to physically invade the privacy of another person with the intent to capture any type of visual image, sound recording, or other physical impression of that person engaging in a personal or familial activity, and the physical invasion occurs in a manner that is offensive to a reasonable person. (Civil Code § 1708.8 (a).)

*Existing law* makes a person liable for “constructive invasion of privacy” for attempting to capture, in a manner highly offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of another person engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there was a physical trespass, if the image or recording could not have been achieved without a trespass unless the visual or auditory enhancing device was used. (Civil Code § 1708.8, subd. (b).)

*Existing law* provides that a person who commits an invasion of privacy for a commercial purpose shall, in addition to any other damages or remedies provided, be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section. Existing law defines “commercial purpose” to mean any act done with the expectation of sale, financial gain, or other consideration. (Civil Code § 1708.8, subd. (d), (k).)

*Existing law* makes it a felony for smuggling a controlled substance into a penal institution. (Penal Code § 4573.)

*Existing law* makes it a felony to bring drugs or alcoholic beverages into a penal institution. (Penal Code § 4573.5.)

*Existing law* makes it a felony to possess controlled substances in a penal institution. (Penal Code § 4573.6.)

*Existing law* makes it a felony to possess drugs or paraphernalia into a penal institution. (Penal Code § 4573.8.)

*Existing law* makes it a felony to sell or give drugs to a person in custody in a penal institution. (Penal Code § 4573.9.)

*Existing law* makes it a felony for smuggling firearms, deadly weapons or tear gas into a penal institution. (Penal Code § 4574.)

*Existing law* makes it a misdemeanor to possess a wireless communication device in a local correctional facility. (Penal Code § 4575, subd. (a).)

*Existing law* makes it an infraction to possess any tobacco products in a local correctional facility. (Penal Code § 4575, subd. (b).)

*Existing law* makes it a misdemeanor to possess with the intent to deliver a wireless communication device in a prison. (Penal Code § 4576.)

*This bill* makes a person who knowingly intentionally operates an unmanned aircraft system on or above the grounds of a state prison or jail, is guilty of an infraction, punishable of a fine of \$500.

*This bill* defines “unmanned aircraft” as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

*This bill* defines “unmanned aircraft system” means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

## COMMENTS

### 1. Need for This Bill

The author states:

As drones become smaller and easier to operate, virtually anyone will be able to use these devices to drop contraband into a prison or county jail. Additionally, unmanned aircraft systems can be used to gather sensitive information from prisons and jails which can be used for a variety of dangerous exploits, including inmate escapes and riots.

There are several recent examples of drones being used to drop contraband into prisons and jails, including:

- An inmate at a high-security federal prison in Victorville, CA recruited someone to use a drone to smuggle in two cell phones in March 2015. The phones were not found by prison officials for five months.<sup>1</sup>
- In August, 2015 at the Mansfield Correctional Institution in Mansfield, OH inmates were able to get their hands on 144.5 grams of tobacco, 65.4 grams of marijuana and 6.6 grams of heroin after a drone dropped a package over a prison yard.<sup>2</sup>
- In May, 2017 inmates at the Richard A. Handlon Correctional Facility in Michigan received two packages containing cell phones. A third package containing additional phones, tobacco and cannabis was intercepted by prison officials.<sup>3</sup>

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<sup>1</sup> “Inmates Fly Mobile Phones, Drugs and Porn into Jail - via Drone,” USA TODAY, accessed March 21, 2018, <https://www.usatoday.com/story/news/2017/06/15/inmates-increasingly-look-drones-smuggle-contraband-into-their-cells/102864854/>.

<sup>2</sup> “Prison Yard Free-for-All after Drone Drops Drugs - CNN,” accessed March 21, 2018, <https://www.cnn.com/2015/08/04/us/prison-yard-drone-drugs-ohio/index.html>.

<sup>3</sup> “Drone Breach at Michigan Prison Went Undetected for 2 Months,” Text.Article, Associated Press, October 2, 2017, <http://www.foxnews.com/us/2017/10/02/drone-breach-at-michigan-prison-went-undetected-for-2-months.html>.

- A drone carrying cell phones, tobacco, oxycodone and cannabis crashed into the yard at Washington State Prison in Georgia in July, 2017.<sup>4</sup>
- In October, 2017 a small drone crashed inside the perimeter of Elmwood Correctional Facility in Milpitas, CA. Methamphetamines were found on the drone.<sup>5</sup>

SB 1355 makes it illegal to knowingly and intentionally operate an unmanned aircraft system on or above the grounds of a state prison or a jail. A violation would result in an infraction punishable by a fine of \$500.

## 2. Unmanned Aircraft System or Drones

This bill uses the term “unmanned aircraft systems,” or UAS as defined, to reference what are commonly known as drones. Drones, the term also used by the FAA, is defined to include the UAS itself and the associated elements, the components that control the aircraft. The FAA’s fact sheet notes the types of UAS:

UAS come in a variety of shapes and sizes and serve diverse purposes. They may have a wingspan as large as a jet airliner or smaller than a radio-controlled model airplane.

Because they are inherently different from manned aircraft, introducing UAS into the nation’s airspace is challenging for both the FAA and aviation community. UAS must be integrated into the busiest, most complex airspace in the world — one that is evolving from ground-based navigation aids to a GPS-based system in NextGen. And because UAS technology also continues to evolve, the agency’s rules and policies must be flexible enough to accommodate that progress.<sup>6</sup>

When considering these drones, hobby-size airplanes and helicopters equipped with digital cameras are becoming more and more affordable for the average consumer. Those hobby aircrafts may be used for pure novelty, surveying one’s yard, or even checking to see the condition of a roof. With respect to the treatment of model aircraft as a UAS system, the FAA has issued the following clarification:

The current FAA policy for UAS operations is that no person may operate a UAS in the National Airspace System without specific authority. For UAS operating as public aircraft the authority is the [Certificate of Waiver or Authorization], for UAS operating as civil aircraft the authority is special airworthiness certificates, and for model aircraft the authority is AC 91-57 [(the model aircraft operating standards)].

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<sup>4</sup> “Drone Carrying Cellphones, Marijuana Crashes into Georgia Prison Yard,” accessed March 21, 2018, <https://www.ajc.com/news/drone-carrying-cell-phone-marijuana-crashes-prison-yard/qjaLpPvJDNJcVnRIKOsFsM/>.

<sup>5</sup> Robert H and a, “Santa Clara County Targets Drug-Dropping Drones Over Jails,” NBC Bay Area, accessed March 21, 2018, <http://www.nbcbayarea.com/news/local/Santa-Clara-County-Targets-Drug-Dropping-Drones-Over-Jails-455717553.html>.

<sup>6</sup> “Fact Sheet – Unmanned Aircraft Systems (UAS),” template, accessed March 20, 2018, [https://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=18297](https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297).

The FAA recognizes that people and companies other than modelers might be flying UAS with the mistaken understanding that they are legally operating under the authority of AC 91-57. AC 91-57 only applies to modelers, and thus specifically excludes its use by persons or companies for business purposes.

### **3. No Drones above State Prisons or Jails**

This bill prohibits the use of UAS or drones on state prisons or jails without written permission of the California Department of Corrections and Rehabilitation (CDCR) or the county sheriff. The penalty is an infraction punishable by a fine of \$500 plus approximately 310% in penalty assessments. The fine, in total, will amount to approximately \$2,050. Traditionally, an infraction is no more than \$250.

A person charged with an infraction does not have the constitutional right to counsel or a jury trial. A fine in excess of \$2,000 is high penalty for a person who does not have right to counsel or a jury trial, should the fine be lowered?

### **4. Exceptions**

This bill does not apply to a prison employee who operates the UAS within the scope of their employment, or a person who receives prior permission from CDCR or county sheriff to operate the UAS over the prison.

Nor does this bill apply to any entity for which the FAA has authorized the use of the UAS and the UAS is operated in accordance with the terms and conditions of the authorization.

### **5. Governor's Veto**

In 2015, Senator Gaines authored SB 170 which would make a person who knowingly and intentionally operates a UAS on or above the grounds of a state prison or a jail, guilty of a misdemeanor. SB 170 made the same exceptions to a prison employee acting within their scope of employment, a person who receives prior permission from CDCR or the county sheriff, and any entity that is authorized by the FAA in accordance with the terms and conditions of the authorization.

Governor Brown returned the bill unsigned with the following veto message:

[SB 170] creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.

Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective.

This bill is a narrowed version of SB 170 (Gaines) as the act of knowingly and intentionally operating a UAS on or above the grounds of a state prison or a jail constitutes a \$500 infraction instead of a misdemeanor.

**6. Argument in Support**

The California State Sheriff’s Association states:

In recent years, California jails and prisons have experienced a growing number of incidents in which someone has operated a drone in order to drop contraband into facilities. These “drone drops” have become so problematic that counties like Santa Clara are considering local ordinances that prohibit drones near jails. SB 1355 does not prohibit drone technology, but instead creates a penalty to deter any unauthorized person from operating a drone near a prison or jail facility.

**7. Argument in Opposition**

The California Chamber of Commerce states:

Not only does SB 1355 seek to regulate the airspace, it is redundant. Laws against careless, reckless, and illegal behavior, such as delivering contraband to prison, already exist, rendering UAS-specific legislation duplicative. This bill also risks being premature, considering the formation law year of the federal UAS Integration Pilot Program. The pilot program creates an opportunity for state, local, and tribal governments, along with the UAS industry, to collaborate with the FAA to further develop a federal policy framework for integrating UAS into the national airspace.

**-- END --**