



**Testimony of Becky Straus, Legislative Director
In Support of HB 2710 with Dash 1 Amendment
House Committee on Judiciary
April 2, 2013**

Chair Barker and Members of the Committee:

Thank you for the opportunity to appear before you today in support of HB 2710 with the Dash 1 Amendment, which together would provide clear guidelines for use of drones by law enforcement agencies in Oregon.

The ACLU strongly believes that the use of drones needs to be regulated in Oregon — sooner rather than later. Undoubtedly, this is an area of technology that is quickly developing and there is a great danger to the privacy of Oregonians if this technology is abused. At least 30 states are looking at drone regulation bills this session. We commend the Committee for joining this conversation and for the foresight of Representative Huffman in championing a proposal.

What is a drone?

Unmanned aerial vehicles (UAVs), commonly known as “drones” are designed to reach and fly around airspace without a human pilot onboard. Some drones are remote controlled by a human on the ground, others purely automated. Many drones can reach great heights so as to elude the human eye and, because of their size and unique maneuverability, redefines what it means for those in possession to engage in surveillance. Surveillance drones can be equipped with sophisticated imaging technology to survey terrain, people, homes, even small objects from great distance and with great detail.¹

Current state of aerial surveillance law in Oregon

Unlike Constitutional interpretation at the federal level, which analyzes privacy law on the basis of a person’s “reasonable expectation of privacy,” Oregon courts take a more privacy protective view and evaluate whether an act by government is so intrusive as to constitute a search, thereby triggering a requirement that government first obtain a search warrant. This standard is an objective standard based not on the privacy that one *expects*, but on the privacy that one *deserves*.

The Oregon Supreme Court has said that “a police officer’s unaided observation, purposive or not, from a lawful vantage point is not a search under Article I, section 9, of the Oregon Constitution.”² And it has said, too, that an officer’s use of sensory enhancing technology, depending on the degree to which it alters the capability of the naked eye, may reach that

¹ <http://epic.org/privacy/drones/#background>

² *State v. Ainsworth*, 801 P.2d 749 (Or. 1990)

requisite level of intrusion that triggers the need for a search warrant.³ The Court has neither offered a bright line rule about what constitutes sensory enhancement nor ruled on the constitutionality of aerial surveillance with drone technology.

It is in this context that we express our support for HB 2710-1, which asks the legislature to provide guidance both for courts and for law enforcement agencies on this issue. It is our view that surveillance with a drone does rise to the level of intrusion upon Oregonians – advanced sensory enhancement – as to require that, before law enforcement agencies deploy them for this purpose, they obtain a warrant based on probable cause that the drone will capture evidence of a crime. The search warrant requirement is longstanding in both federal and state jurisprudence and this bill proposes only that we commit to applying such principles to surveillance using drones.

HB 2710-1

1. Definitions. Lists defined terms: drones, law enforcement agency, and public body
2. Surveillance. Permits law enforcement to use a drone for the purpose of surveillance of a person only with a warrant (references ORS 133.525-133.703) or during an emergency when there is risk of serious physical harm to an individual. Law enforcement must document any use for emergency purposes.
3. Intercepting communications. Permits law enforcement to use a drone for intercepting communications only with a warrant (references ORS 133.724 and ORS 165.540).
4. Target only. Directs law enforcement to limit collection of information with a drone to the target person and avoid collection of information on other persons or places.
5. Destruction of footage. Requires footage captured by law enforcement use of drones to be destroyed within 30 days unless needed as evidence in a criminal prosecution.
6. No weapons. Prohibits all public bodies from using a drone that is capable of being used as a weapon.
7. Public oversight. Directs public bodies that use drones to adopt policies for their use.
8. FAA compliance and local approval. Affirms that any public bodies using drones must comply with all Federal Aviation Administration (FAA) requirements. Requires that acquisition of drones by an agency of a local government be approved by the governing body of that local government.
9. Dash 1. Clarifies that images captured during authorized use of a drone for law enforcement purpose that are tangential to the intended target may not be used for a law enforcement purpose. Further clarifies that public bodies may use drones for any non-law enforcement purpose, but may not use that footage for a law enforcement purpose.

Thank you for your consideration of HB 2710-1. Please feel free to be in touch at any time with comments or questions.

³ See *State v. Rodal*, 985 P.2d 863, 865 (Or. App. 1999) (officer's use of eyeglasses was insufficient to convert aerial surveillance into a search) and *State v. Louis*, 672 P.2d 708, 710-11 (Or. 1983) (The use of a 135 mm lens does not, standing alone constitute a Article I, Section 9 "search" since it "does not shed light into darkness and provides only modest enlargement, not more than three times normal vision.")