

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 15

Introduced by Senator Padilla

December 3, 2012

An act to amend Section 1708.8 of the Civil Code, and to amend Sections 632 and 647 of, and to add Title 14 (commencing with Section 14350) to Part 4 of, the Penal Code, relating to aviation.

LEGISLATIVE COUNSEL'S DIGEST

SB 15, as amended, Padilla. Aviation: unmanned aircraft systems.

Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil unmanned aircraft systems into the national airspace system by September 30, 2015. Existing federal law requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015.

Existing law provides that a person is subject to civil liability for constructive invasion of privacy when the person attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of another person engaged in a personal or familial activity under circumstances involving a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, as specified.

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.

Existing law makes it a crime for a person to look through a hole or opening or otherwise view, by means of any instrumentality, the interior of bedrooms, bathrooms, and various other areas in which an occupant has a reasonable expectation of privacy, with the intent to invade the privacy of one or more persons inside. Existing law makes it a crime for a person to use a concealed camcorder, motion picture camera, or photographic camera to secretly videotape, film, photograph, or record by electronic means, without consent, another identifiable person, under or through the clothing being worn by that person or if that person may be in a state of full or partial undress, under circumstances when that person has a reasonable expectation of privacy and when there is an intent to invade the privacy of that person, as specified.

This bill would, under the above-referenced civil and criminal provisions, provide that engaging in the prohibited activities with devices or instrumentalities affixed to or contained within an unmanned aircraft system is included within the prohibitions. With respect to the criminal provisions, the bill would impose a state-mandated local program by changing the definition of a crime.

This bill would also provide that an unmanned aircraft system may not be equipped with a weapon.

This bill would define “unmanned aircraft system” for all of these purposes.

This bill would also state the intent of the Legislature to enact legislation that would establish appropriate standards for the use of unmanned aircraft systems.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.*

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:

1 (a) Recent developments and innovations have allowed computer
2 technology to advance to the point where vehicles, including
3 aircraft, can operate without the need of an on-board operator.

4 (b) On February 14, 2012, President Obama signed into law the
5 Federal Aviation Administration Modernization and Reform Act
6 of 2012, which, among other things, requires the Federal Aviation
7 Administration to fully integrate government, commercial, and
8 recreational unmanned aircraft systems, commonly known as
9 “drones,” into United States airspace before October 2015.

10 (c) While privately and publicly operated unmanned aircraft
11 systems can have a legitimate role in areas such as agriculture,
12 scientific research, and public safety, these systems present new
13 challenges to the privacy and due process rights of Californians.

14 (d) Both public and private operators of unmanned aircraft
15 systems have a responsibility to not infringe on the rights, property,
16 or privacy of the citizens of California, and any data, information,
17 photographs, video, or recordings of individuals, both public and
18 private, should be minimized and retained in a manner consistent
19 with current privacy standards.

20 (e) It is the intent of the Legislature to enact legislation that
21 would establish appropriate standards for the use of unmanned
22 aircraft systems in California.

23 *SEC. 2. Section 1708.8 of the Civil Code is amended to read:*

24 1708.8. (a) A person is liable for physical invasion of privacy
25 when the defendant knowingly enters onto the land of another
26 person without permission or otherwise committed a trespass in
27 order to physically invade the privacy of the plaintiff with the
28 intent to capture any type of visual image, sound recording, or
29 other physical impression of the plaintiff engaging in a personal
30 or familial activity and the physical invasion occurs in a manner
31 that is offensive to a reasonable person.

32 (b) A person is liable for constructive invasion of privacy when
33 the defendant attempts to capture, in a manner that is offensive to
34 a reasonable person, any type of visual image, sound recording,
35 or other physical impression of the plaintiff engaging in a personal
36 or familial activity under circumstances in which the plaintiff had
37 a reasonable expectation of privacy, through the use of a visual or
38 auditory enhancing device, *including a device affixed to or*
39 *contained within an unmanned aircraft system as defined in Section*
40 *14350 of the Penal Code, regardless of whether there is a physical*

1 trespass, if this image, sound recording, or other physical
2 impression could not have been achieved without a trespass unless
3 the visual or auditory enhancing device was used.

4 (c) An assault or false imprisonment committed with the intent
5 to capture any type of visual image, sound recording, or other
6 physical impression of the plaintiff is subject to subdivisions (d),
7 (e), and (h).

8 (d) A person who commits any act described in subdivision (a),
9 (b), or (c) is liable for up to three times the amount of any general
10 and special damages that are proximately caused by the violation
11 of this section. This person may also be liable for punitive damages,
12 subject to proof according to Section 3294. If the plaintiff proves
13 that the invasion of privacy was committed for a commercial
14 purpose, the defendant shall also be subject to disgorgement to the
15 plaintiff of any proceeds or other consideration obtained as a result
16 of the violation of this section. A person who comes within the
17 description of this subdivision is also subject to a civil fine of not
18 less than five thousand dollars (\$5,000) and not more than fifty
19 thousand dollars (\$50,000).

20 (e) A person who directs, solicits, actually induces, or actually
21 causes another person, regardless of whether there is an
22 employer-employee relationship, to violate any provision of
23 subdivision (a), (b), or (c) is liable for any general, special, and
24 consequential damages resulting from each—said violation. In
25 addition, the person that directs, solicits, actually induces, or
26 actually causes another person, regardless of whether there is an
27 employer-employee relationship, to violate this section shall be
28 liable for punitive damages to the extent that an employer would
29 be subject to punitive damages pursuant to subdivision (b) of
30 Section 3294. A person who comes within the description of this
31 subdivision is also subject to a civil fine of not less than five
32 thousand dollars (\$5,000) and not more than fifty thousand dollars
33 (\$50,000).

34 (f) (1) The transmission, publication, broadcast, sale, offer for
35 sale, or other use of any visual image, sound recording, or other
36 physical impression that was taken or captured in violation of
37 subdivision (a), (b), or (c) shall not constitute a violation of this
38 section unless the person, in the first transaction following the
39 taking or capture of the visual image, sound recording, or other
40 physical impression, publicly transmitted, published, broadcast,

1 sold or offered for sale, the visual image, sound recording, or other
2 physical impression with actual knowledge that it was taken or
3 captured in violation of subdivision (a), (b), or (c), and ~~provide~~
4 *was provided* compensation, consideration, or remuneration,
5 monetary or otherwise, for the rights to the unlawfully obtained
6 visual image, sound recording, or other physical impression.

7 (2) For the purposes of paragraph (1), “actual knowledge” means
8 actual awareness, understanding, and recognition, obtained prior
9 to the time at which the person purchased or acquired the visual
10 image, sound recording, or other physical impression, that the
11 visual image, sound recording, or other physical impression was
12 taken or captured in violation of subdivision (a), (b), or (c). The
13 plaintiff shall establish actual knowledge by clear and convincing
14 evidence.

15 (3) Any person that publicly transmits, publishes, broadcasts,
16 sells or offers for sale, in any form, medium, format or work, a
17 visual image, sound recording, or other physical impression that
18 was previously publicly transmitted, published, broadcast, sold or
19 offered for sale, by another person, is exempt from liability under
20 this section.

21 (4) If a person’s first public transmission, publication, broadcast,
22 or sale or offer for sale, of a visual image, sound recording, or
23 other physical impression that was taken or captured in violation
24 of subdivision (a), (b), or (c), does not constitute a violation of this
25 section, that person’s subsequent public transmission, publication,
26 broadcast, sale or offer for sale, in any form, medium, format or
27 work, of the visual image, sound recording, or other physical
28 impression, does not constitute a violation of this section.

29 (5) This section applies only to a visual image, sound recording,
30 or other physical impression that is captured or taken in California
31 in violation of subdivision (a), (b), or (c) after January 1, 2010,
32 and shall not apply to any visual image, sound recording, or other
33 physical impression taken or captured outside of California.

34 (6) Nothing in this subdivision shall be construed to impair or
35 limit a special motion to strike pursuant to Section 425.16, 425.17,
36 or 425.18 of the Code of Civil Procedure.

37 (7) This section shall not be construed to limit ~~all~~ *any* other
38 ~~rights or remedies~~ *cause of action, right, or remedy* of the plaintiff
39 in law or equity, including, but not limited to, the publication of
40 private facts.

1 (g) This section shall not be construed to impair or limit any
2 otherwise lawful activities of law enforcement personnel or
3 employees of governmental agencies or other entities, either public
4 or private who, in the course and scope of their employment, and
5 supported by an articulable suspicion, attempt to capture any type
6 of visual image, sound recording, or other physical impression of
7 a person during an investigation, surveillance, or monitoring of
8 any conduct to obtain evidence of suspected illegal activity or
9 other misconduct, the suspected violation of any administrative
10 rule or regulation, a suspected fraudulent conduct, or any activity
11 involving a violation of law or business practices or conduct of
12 public officials adversely affecting the public welfare, health or
13 safety.

14 (h) In any action pursuant to this section, the court may grant
15 equitable relief, including, but not limited to, an injunction and
16 restraining order against further violations of subdivision (a), (b),
17 or (c).

18 (i) The rights and remedies provided in this section are
19 cumulative and in addition to any other rights and remedies
20 provided by law.

21 (j) It is not a defense to a violation of this section that no image,
22 recording, or physical impression was captured or sold.

23 (k) For the purposes of this section, “for a commercial purpose”
24 means any act done with the expectation of a sale, financial gain,
25 or other consideration. A visual image, sound recording, or other
26 physical impression shall not be found to have been, or intended
27 to have been, captured for a commercial purpose unless it is
28 intended to be, or was in fact, sold, published, or transmitted.

29 (l) For the purposes of this section, “personal and familial
30 activity” includes, but is not limited to, intimate details of the
31 plaintiff’s personal life, interactions with the plaintiff’s family or
32 significant others, or other aspects of the plaintiff’s private affairs
33 or concerns. “Personal and familial activity” does not include
34 illegal or otherwise criminal activity as delineated in subdivision
35 (g). However, “personal and familial activity” shall include the
36 activities of victims of crime in circumstances under which
37 subdivision (a), (b), or (c) would apply.

38 (m) (1) A proceeding to recover the civil fines specified in
39 subdivision (d) or (e) may be brought in any court of competent
40 jurisdiction by a county counsel or city attorney.

1 (2) Fines collected pursuant to this subdivision shall be allocated,
2 as follows:

3 (A) One-half shall be allocated to the prosecuting agency.

4 (B) One-half shall be deposited in the Arts and Entertainment
5 Fund, which is hereby created in the State Treasury.

6 (3) Funds in the Arts and Entertainment Fund created pursuant
7 to paragraph (2) may be expended by the California Arts Council,
8 upon appropriation by the Legislature, to issue grants pursuant to
9 the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter
10 9 (commencing with Section 8750) of Division 1 of Title 2 of the
11 Government Code).

12 (4) The rights and remedies provided in this subdivision are
13 cumulative and in addition to any other rights and remedies
14 provided by law.

15 (n) The provisions of this section are severable. If any provision
16 of this section or its application is held invalid, that invalidity shall
17 not affect other provisions or applications that can be given effect
18 without the invalid provision or application.

19 *SEC. 3. Section 632 of the Penal Code is amended to read:*

20 632. (a) Every person who, intentionally and without the
21 consent of all parties to a confidential communication, by means
22 of any electronic amplifying or recording device, *including a device*
23 *affixed to or contained within an unmanned aircraft system as*
24 *defined in Section 14350*, eavesdrops upon or records the
25 confidential communication, whether the communication is carried
26 on among the parties in the presence of one another or by means
27 of a telegraph, telephone, or other device, except a radio, shall be
28 punished by a fine not exceeding two thousand five hundred dollars
29 (\$2,500), or imprisonment in the county jail not exceeding one
30 year, or in the state prison, or by both that fine and imprisonment.
31 If the person has previously been convicted of a violation of this
32 section or Section 631, 632.5, 632.6, 632.7, or 636, the person
33 shall be punished by a fine not exceeding ten thousand dollars
34 (\$10,000), by imprisonment in the county jail not exceeding one
35 year, or in the state prison, or by both that fine and imprisonment.

36 (b) The term “person” includes an individual, business
37 association, partnership, corporation, limited liability company,
38 or other legal entity, and an individual acting or purporting to act
39 for or on behalf of any government or subdivision thereof, whether
40 federal, state, or local, but excludes an individual known by all

1 parties to a confidential communication to be overhearing or
2 recording the communication.

3 (c) The term “confidential communication” includes any
4 communication carried on in circumstances as may reasonably
5 indicate that any party to the communication desires it to be
6 confined to the parties thereto, but excludes a communication made
7 in a public gathering or in any legislative, judicial, executive or
8 administrative proceeding open to the public, or in any other
9 circumstance in which the parties to the communication may
10 reasonably expect that the communication may be overheard or
11 recorded.

12 (d) Except as proof in an action or prosecution for violation of
13 this section, no evidence obtained as a result of eavesdropping
14 upon or recording a confidential communication in violation of
15 this section shall be admissible in any judicial, administrative,
16 legislative, or other proceeding.

17 (e) This section does not apply (1) to any public utility engaged
18 in the business of providing communications services and facilities,
19 or to the officers, employees or agents thereof, where the acts
20 otherwise prohibited by this section are for the purpose of
21 construction, maintenance, conduct or operation of the services
22 and facilities of the public utility, or (2) to the use of any
23 instrument, equipment, facility, or service furnished and used
24 pursuant to the tariffs of a public utility, or (3) to any telephonic
25 communication system used for communication exclusively within
26 a state, county, city and county, or city correctional facility.

27 (f) This section does not apply to the use of hearing aids and
28 similar devices, by persons afflicted with impaired hearing, for
29 the purpose of overcoming the impairment to permit the hearing
30 of sounds ordinarily audible to the human ear.

31 *SEC. 4. Section 647 of the Penal Code is amended to read:*

32 647. Except as provided in subdivision (l), every person who
33 commits any of the following acts is guilty of disorderly conduct,
34 a misdemeanor:

35 (a) Who solicits anyone to engage in or who engages in lewd
36 or dissolute conduct in any public place or in any place open to
37 the public or exposed to public view.

38 (b) Who solicits or who agrees to engage in or who engages in
39 any act of prostitution. A person agrees to engage in an act of
40 prostitution when, with specific intent to so engage, he or she

1 manifests an acceptance of an offer or solicitation to so engage,
2 regardless of whether the offer or solicitation was made by a person
3 who also possessed the specific intent to engage in prostitution.
4 No agreement to engage in an act of prostitution shall constitute
5 a violation of this subdivision unless some act, in addition to the
6 agreement, is done within this state in furtherance of the
7 commission of an act of prostitution by the person agreeing to
8 engage in that act. As used in this subdivision, “prostitution”
9 includes any lewd act between persons for money or other
10 consideration.

11 (c) Who accosts other persons in any public place or in any
12 place open to the public for the purpose of begging or soliciting
13 alms.

14 (d) Who loiters in or about any toilet open to the public for the
15 purpose of engaging in or soliciting any lewd or lascivious or any
16 unlawful act.

17 (e) Who lodges in any building, structure, vehicle, or place,
18 whether public or private, without the permission of the owner or
19 person entitled to the possession or in control of it.

20 (f) Who is found in any public place under the influence of
21 intoxicating liquor, any drug, controlled substance, toluene, or any
22 combination of any intoxicating liquor, drug, controlled substance,
23 or toluene, in a condition that he or she is unable to exercise care
24 for his or her own safety or the safety of others, or by reason of
25 his or her being under the influence of intoxicating liquor, any
26 drug, controlled substance, toluene, or any combination of any
27 intoxicating liquor, drug, or toluene, interferes with or obstructs
28 or prevents the free use of any street, sidewalk, or other public
29 way.

30 (g) When a person has violated subdivision (f), a peace officer,
31 if he or she is reasonably able to do so, shall place the person, or
32 cause him or her to be placed, in civil protective custody. The
33 person shall be taken to a facility, designated pursuant to Section
34 5170 of the Welfare and Institutions Code, for the 72-hour
35 treatment and evaluation of inebriates. A peace officer may place
36 a person in civil protective custody with that kind and degree of
37 force which would be lawful were he or she effecting an arrest for
38 a misdemeanor without a warrant. No person who has been placed
39 in civil protective custody shall thereafter be subject to any criminal
40 prosecution or juvenile court proceeding based on the facts giving

1 rise to this placement. This subdivision shall not apply to the
2 following persons:

3 (1) Any person who is under the influence of any drug, or under
4 the combined influence of intoxicating liquor and any drug.

5 (2) Any person who a peace officer has probable cause to believe
6 has committed any felony, or who has committed any misdemeanor
7 in addition to subdivision (f).

8 (3) Any person who a peace officer in good faith believes will
9 attempt escape or will be unreasonably difficult for medical
10 personnel to control.

11 (h) Who loiters, prowls, or wanders upon the private property
12 of another, at any time, without visible or lawful business with the
13 owner or occupant. As used in this subdivision, “loiter” means to
14 delay or linger without a lawful purpose for being on the property
15 and for the purpose of committing a crime as opportunity may be
16 discovered.

17 (i) Who, while loitering, prowling, or wandering upon the private
18 property of another, at any time, peeks in the door or window of
19 any inhabited building or structure, without visible or lawful
20 business with the owner or occupant.

21 (j) (1) Any person who looks through a hole or opening, into,
22 or otherwise views, by means of any instrumentality, including,
23 but not limited to, a periscope, telescope, binoculars, camera,
24 motion picture camera, camcorder, or mobile phone, *or by means*
25 *of any of these instrumentalities affixed to or contained within an*
26 *unmanned aircraft system as defined in Section 14350*, the interior
27 of a bedroom, bathroom, changing room, fitting room, dressing
28 room, or tanning booth, or the interior of any other area in which
29 the occupant has a reasonable expectation of privacy, with the
30 intent to invade the privacy of a person or persons inside. This
31 subdivision shall not apply to those areas of a private business
32 used to count currency or other negotiable instruments.

33 (2) Any person who uses a concealed camcorder, motion picture
34 camera, or photographic camera of any type, *including any of those*
35 *devices when affixed to or contained within an unmanned aircraft*
36 *system*, to secretly videotape, film, photograph, or record by
37 electronic means, another, identifiable person under or through
38 the clothing being worn by that other person, for the purpose of
39 viewing the body of, or the undergarments worn by, that other
40 person, without the consent or knowledge of that other person,

1 with the intent to arouse, appeal to, or gratify the lust, passions,
2 or sexual desires of that person and invade the privacy of that other
3 person, under circumstances in which the other person has a
4 reasonable expectation of privacy.

5 (3) (A) Any person who uses a concealed camcorder, motion
6 picture camera, or photographic camera of any type, *including any*
7 *of those devices when affixed to or contained within an unmanned*
8 *aircraft system*, to secretly videotape, film, photograph, or record
9 by electronic means, another, identifiable person who may be in
10 a state of full or partial undress, for the purpose of viewing the
11 body of, or the undergarments worn by, that other person, without
12 the consent or knowledge of that other person, in the interior of a
13 bedroom, bathroom, changing room, fitting room, dressing room,
14 or tanning booth, or the interior of any other area in which that
15 other person has a reasonable expectation of privacy, with the
16 intent to invade the privacy of that other person.

17 (B) Neither of the following is a defense to the crime specified
18 in this paragraph:

19 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
20 employer, employee, or business partner or associate of the victim,
21 or an agent of any of these.

22 (ii) The victim was not in a state of full or partial undress.

23 (k) In any accusatory pleading charging a violation of
24 subdivision (b), if the defendant has been once previously convicted
25 of a violation of that subdivision, the previous conviction shall be
26 charged in the accusatory pleading. If the previous conviction is
27 found to be true by the jury, upon a jury trial, or by the court, upon
28 a court trial, or is admitted by the defendant, the defendant shall
29 be imprisoned in a county jail for a period of not less than 45 days
30 and shall not be eligible for release upon completion of sentence,
31 on probation, on parole, on work furlough or work release, or on
32 any other basis until he or she has served a period of not less than
33 45 days in a county jail. In all cases in which probation is granted,
34 the court shall require as a condition thereof that the person be
35 confined in a county jail for at least 45 days. In no event does the
36 court have the power to absolve a person who violates this
37 subdivision from the obligation of spending at least 45 days in
38 confinement in a county jail.

39 In any accusatory pleading charging a violation of subdivision
40 (b), if the defendant has been previously convicted two or more

1 times of a violation of that subdivision, each of these previous
2 convictions shall be charged in the accusatory pleading. If two or
3 more of these previous convictions are found to be true by the jury,
4 upon a jury trial, or by the court, upon a court trial, or are admitted
5 by the defendant, the defendant shall be imprisoned in a county
6 jail for a period of not less than 90 days and shall not be eligible
7 for release upon completion of sentence, on probation, on parole,
8 on work furlough or work release, or on any other basis until he
9 or she has served a period of not less than 90 days in a county jail.
10 In all cases in which probation is granted, the court shall require
11 as a condition thereof that the person be confined in a county jail
12 for at least 90 days. In no event does the court have the power to
13 absolve a person who violates this subdivision from the obligation
14 of spending at least 90 days in confinement in a county jail.

15 In addition to any punishment prescribed by this section, a court
16 may suspend, for not more than 30 days, the privilege of the person
17 to operate a motor vehicle pursuant to Section 13201.5 of the
18 Vehicle Code for any violation of subdivision (b) that was
19 committed within 1,000 feet of a private residence and with the
20 use of a vehicle. In lieu of the suspension, the court may order a
21 person's privilege to operate a motor vehicle restricted, for not
22 more than six months, to necessary travel to and from the person's
23 place of employment or education. If driving a motor vehicle is
24 necessary to perform the duties of the person's employment, the
25 court may also allow the person to drive in that person's scope of
26 employment.

27 (l) (1) A second or subsequent violation of subdivision (j) is
28 punishable by imprisonment in a county jail not exceeding one
29 year, or by a fine not exceeding two thousand dollars (\$2,000), or
30 by both that fine and imprisonment.

31 (2) If the victim of a violation of subdivision (j) was a minor at
32 the time of the offense, the violation is punishable by imprisonment
33 in a county jail not exceeding one year, or by a fine not exceeding
34 two thousand dollars (\$2,000), or by both that fine and
35 imprisonment.

36 *SEC. 5. Title 14 (commencing with Section 14350) is added to*
37 *Part 4 of the Penal Code, to read:*

1 *TITLE 14. UNMANNED AIRCRAFT SYSTEMS*

2
3 *14350. “Unmanned aircraft system” means unmanned aircraft*
4 *and associated elements, including communication links and the*
5 *components that control the unmanned aircraft, that are required*
6 *for the pilot in command to operate the unmanned aircraft safely*
7 *and efficiently within the national airspace system.*

8 *14351. An unmanned aircraft system may not be equipped with*
9 *a weapon.*

10 *SEC. 6. No reimbursement is required by this act pursuant to*
11 *Section 6 of Article XIII B of the California Constitution because*
12 *the only costs that may be incurred by a local agency or school*
13 *district will be incurred because this act creates a new crime or*
14 *infraction, eliminates a crime or infraction, or changes the penalty*
15 *for a crime or infraction, within the meaning of Section 17556 of*
16 *the Government Code, or changes the definition of a crime within*
17 *the meaning of Section 6 of Article XIII B of the California*
18 *Constitution.*

O