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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Lampton and Young

Margaret E. Marcy, Attorney

### SUMMARY

- Prohibits voyeurism, criminal trespass, aggravated trespass, and criminal trespass on a place of public amusement using an unmanned aerial vehicle system.
- Applies the current law penalties to the new offenses.

### DETAILED ANALYSIS

#### Use of an unmanned aerial vehicle

An unmanned aerial vehicle, or UAV (commonly known as a drone), is a powered, aerial vehicle to which all of the following apply:

- It does not carry a human operator and is operated without the possibility of direct human intervention either within or on the vehicle;
- It uses aerodynamic forces to provide lift;
- It can fly autonomously or be piloted remotely; and
- It is either expendable or recoverable.

An unmanned aerial vehicle system (UAVS) consists of both the UAV and the associated elements, including communication links and the components that control the UAV.<sup>1</sup> While federal laws, enforced by the Federal Aviation Administration (FAA), regulate the operational safety and licensing requirements for UAVS, state and local laws may regulate and control other elements of their use, such as privacy concerns.<sup>2</sup> The bill creates statewide criminal prohibitions related to trespass with a UAV and UAVS.

<sup>1</sup> R.C. 2911.21(F)(6) and (7).

<sup>2</sup> 49 United States Code 40103.

## Trespass offenses

Current law generally prohibits a person from entering or remaining on the land or premises of another person, unless granted permission to do so.<sup>3</sup> Under common law, property ownership of land and premises includes the surface land and its buildings, all of the minerals below the land's surface, and the airspace above the land's surface.<sup>4</sup> Under that principle, a person would not be able to fly his or her UAV into airspace that is a part of another's premises without permission. However, trespass with a UAV is not included explicitly under current statutory law. The following table describes the various criminal trespass offenses where the bill specifically prohibits a person from using a UAV in order to commit a trespass and applies the current law penalties to that trespass.

Trespass prohibitions		
Offense	Prohibition	Penalty
"Voyeurism" R.C. 2907.08 Bill adds "including through the use of a UAVS"	(B) For the purpose of sexually arousing or gratifying oneself, commit trespass or otherwise surreptitiously invade the privacy of another person, to spy or eavesdrop upon that person;	Third degree misdemeanor
	(C) Knowingly commit trespass or otherwise secretly or surreptitiously videotape, film, photograph, broadcast, stream other otherwise record another person, in a place where the person has a reasonable expectation of privacy, for the purpose of viewing the private areas of that person;	Second degree misdemeanor
	(D) Same as (C) above, but when the person recorded is a minor; and	Fifth degree felony
	(E) Secretly or surreptitiously videotape, film, photograph, or otherwise record another person above, under, or through the clothing	First degree misdemeanor

<sup>3</sup> R.C. 2911.21.

<sup>4</sup> "It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe... [However,] the air is a public highway, as Congress has declared. Were that not true, every transcontinental flight would subject the operator to countless trespass suits." *United States v. Causby*. 328 U.S. 256, 260-261, (1946). That case held that "Flights over private land are not a taking, unless they are so low and so frequent as to be a direct and immediate interference with the enjoyment and use of the land" (see at 266), implying that lower airspace still belongs to the surface owner.

Trespass prohibitions		
Offense	Prohibition	Penalty
	being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person.	
<p>“Criminal trespass” R.C. 2911.21(A)</p> <p>The listed offenses only apply if the person was not given permission by the landowner</p>	<p>(1) Knowingly enter or remain above the land or premises of another through use of a UAVS;</p> <p>(2) Knowingly enter or remain above the land or premises of another through use of a UAVS when the use of such land or premises is lawfully restricted to certain persons, purposes, modes, or hours, and the offender either knows the restriction or is reckless in violating the restriction;</p> <p>(3) Recklessly enter or remain above the land or premises of another through use of a UAVS, when notice against unauthorized access or presence to such land or premises is given by actual communication to the offender, or by signs/fences/other legal means that make it clear access is restricted;</p> <p>(4) Being above the land or premises of another through use of a UAVS and negligently failing or refusing to leave after being notified by the owner, the owner’s agent, or signage to leave; and</p> <p>(5) Knowingly enter or remain above a critical infrastructure facility through use of a UAVS</p>	<p>Fourth degree misdemeanor</p> <p>Fourth degree misdemeanor</p> <p>Fourth degree misdemeanor</p> <p>Fourth degree misdemeanor</p> <p>First degree misdemeanor</p>
<p>“Aggravated trespass” R.C. 2911.211(A)</p>	<p>(1) Enter or remain above the land or premises of another through use of a UAVS with the purpose of committing a misdemeanor offense that involves causing physical harm to another person or causing the other person to</p>	<p>First degree misdemeanor</p>

Trespass prohibitions		
Offense	Prohibition	Penalty
	believe that the offender will cause them physical harm; and  (2) Enter or remain above a critical infrastructure facility through use of a UAVS with the purpose to destroy or tamper with the facility.	Third degree felony
“Criminal trespass on a place of public amusement” <sup>5</sup> R.C. 2911.23	(B) Without permission, knowingly enter or remain above the land or premises of any restricted portion of a place of public amusement through the use of a UAVS and, as a result, interrupt or cause the delay of the activity taking place at that place (if notice requirements are met).	First degree misdemeanor, plus potentially 30 to 120 hours of supervised community service

## HISTORY

Action	Date
Introduced	03-20-24

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<sup>5</sup> “Place of public amusement” means a stadium, theater, or other facility at which a live performance, sporting event, or other activity takes place for public entertainment. R.C. 2911.23(A)(1).