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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Representatives Tanzi, Cimini, Ajello, Valencia, and Blazejewski

Date Introduced: February 28, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is  
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 5.3

4 UNMANNED AERIAL VEHICLES

5 **12-5.3-1. Definitions.** -- As used in this chapter:

6 (1) "Aggrieved person" means a person about whom information or data were collected  
7 or obtained by an unmanned aerial vehicle.

8 (2) "Person" means any individual, partnership, association, joint stock company, trust, or  
9 corporation, whether or not any of the foregoing is an officer, agent, or employee of the United  
10 States, a state, or a political subdivision of a state.

11 (3) "Unmanned aerial vehicle" means an aircraft that is operated without the possibility of  
12 direct human intervention from within or on the aircraft.

13 **12-5.3-2. Use of unmanned aerial vehicles.** -- (a) Any use of unmanned aerial vehicles  
14 shall fully comply with all federal aviation administration requirements and guidelines.

15 (b) Unmanned aerial vehicles shall be acquired only after a public hearing and, for any  
16 state law enforcement agency, approval by the governor, and for any municipal law enforcement  
17 agency, approval by the city or town council overseeing that agency seeking such acquisition.

18 (c) Unmanned aerial vehicles shall be used only under the direction of the attorney  
19 general and in accordance with the procedures contained in this chapter.

1 (d) Unmanned aerial vehicles shall not be equipped with weapons.

2 (e) Except as otherwise provided in this chapter, it shall be unlawful for any state or  
3 municipal law enforcement agency, or any individual or entity on such agency's behalf, to operate  
4 an unmanned aerial vehicle, or to disclose or receive information acquired through the operation  
5 of an unmanned aerial vehicle.

6 (f) It shall not be unlawful under this chapter for any state or municipal law enforcement  
7 agency, or any individual or entity on such agency's behalf, to operate an unmanned aerial vehicle  
8 without a court order approved in advance, or to disclose or receive information from such  
9 operation, if:

10 (1) The unmanned aerial vehicle is used to assist a person in circumstances in which it is  
11 reasonable to believe that there is an imminent threat to the life or physical safety of that person;  
12 and

13 (2) The factual basis for the emergency is documented in writing by a supervisory official  
14 and approved by the attorney general, and is presented to a court of competent jurisdiction as  
15 soon as practicable, and no later than twenty-four (24) hours after the unmanned aerial vehicle's  
16 use.

17 (g) Nothing contained herein shall be construed to bar a state or municipal agency, or any  
18 individual or entity on such agency's behalf from operating an unmanned aerial vehicle, and for  
19 disclosing information from such operation, if the use of the vehicle and the information or  
20 evidence derived from such operation is not for any law enforcement, criminal, civil, or  
21 intelligence-gathering purpose, or otherwise targeted at any individual.

22 (h) Unmanned aerial vehicles used pursuant to subsection (c) or (f) shall be operated in a  
23 manner to collect data only on the designated target and shall avoid data collection on individuals,  
24 homes, or areas other than the target. Neither facial recognition nor other biometric matching  
25 technology may be used on non-target data collected by an unmanned aerial vehicle.

26 **12-5.3-3. Application for orders.** -- (a) The attorney general, or an assistant attorney  
27 general specially designated by the attorney general, may apply ex parte to the presiding justice of  
28 the superior court of competent jurisdiction for an order authorizing the use of unmanned aerial  
29 vehicles. Each application ex parte for an order must be in writing, subscribed and sworn to by  
30 the applicant.

31 (b) The application must contain:

32 (1) The identity of the officer making the application;

33 (2) A full and complete statement of the facts and circumstances relied upon by the  
34 applicant to justify his or her belief that an order should be issued, including:

1           (i) Details as to the particular designated offense that has been, is being, or is about to be  
2 committed;

3           (ii) A particular description of the location(s) where the unmanned aerial vehicle is  
4 expected to be deployed;

5           (iii) A particular description of the information sought to be obtained; and  
6           (iv) The identity of the person, if known, committing the offense.

7           (3) A full and complete statement as to whether or not other investigative procedures  
8 have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to  
9 be too dangerous;

10           (4) A statement of the period of time for which the unmanned aerial vehicle is to be used;

11           (5) A full and complete statement of the facts concerning all previous applications,  
12 known to the individual making the application, made to the presiding justice of the superior  
13 court for authorization to use unmanned aerial vehicles involving any of the same persons or  
14 locations specified in the application, and the action taken by the presiding justice of the superior  
15 court on each application;

16           (6) An affirmation that the unmanned aerial vehicle shall be operated in a manner to  
17 collect data only on the designated target; shall avoid data collection on individuals, homes, or  
18 areas other than the target, and shall not use facial recognition or any other biometric matching  
19 technology on non-target data collected by the unmanned aerial vehicle; and

20           (7) Where the application is for the extension of an order, a statement setting forth the  
21 results thus far obtained from the use of the unmanned aerial vehicle, or a reasonable explanation  
22 of the failure to obtain the results.

23           (c) The presiding justice of the superior court may require the applicant to furnish  
24 additional testimony or documentary evidence in support of the application.

25           (d) Allegations of fact in the application may be based either upon the personal  
26 knowledge of the applicant or upon information and belief. If the applicant personally knows the  
27 fact alleged, it must be so stated. If the facts establishing reasonable cause are derived in whole or  
28 in part from the statements of persons other than the applicant, the sources of the information and  
29 belief must be either disclosed or described, and the application must contain facts establishing  
30 the existence and reliability of the informant, or the reliability of the information supplied by the  
31 informant. The application must also state, so far as possible, the basis of the informant's  
32 knowledge or belief. If the applicant's information and belief is derived from tangible evidence or  
33 recorded oral evidence, a copy or detailed description of the evidence should be annexed to or  
34 included in the application. Affidavits of persons other than the applicant must be submitted in

1 conjunction with the application if they tend to support any fact or conclusion alleged in the  
2 application. Accompanying affidavits may be based either on personal knowledge of the affiant,  
3 or information and belief with the source of the information and reason for the belief specified.

4 **12-5.3-4. Issuance of orders.** -- (a) Upon the application as provided in section 12-5.3-3,  
5 the presiding justice of the superior court, or the senior associate justice of the superior court  
6 when the presiding justice shall disqualify himself or herself from entering the order, may enter  
7 an ex parte order, as required or as modified, authorizing the use of an unmanned aerial vehicle if  
8 the presiding justice of the superior court determines on the basis of the facts submitted by the  
9 applicant that:

10 (1) There is probable cause for belief that an individual is committing, has committed, or  
11 is about to commit a particular designated offense;

12 (2) There is probable cause for belief that relevant information concerning the offender or  
13 the offense will be obtained through the use of an unmanned aerial vehicle;

14 (3) Normal investigative procedures have been tried and have failed or reasonably appear  
15 to be unlikely to succeed if tried, or to be too dangerous; and

16 (4) The unmanned aerial vehicle can and will be used and operated in a manner to collect  
17 data only on the designated target and shall avoid data collection on individuals, homes, or areas  
18 other than the target.

19 **12-5.3-5. Form and content of orders.** -- (a) Each order authorizing the use of an  
20 unmanned aerial vehicle shall specify:

21 (1) The identity, or a particular description of the person, if known, upon whom the  
22 unmanned aerial vehicle will be used;

23 (2) The nature and location(s) of the areas where the unmanned aerial vehicle may be  
24 deployed;

25 (3) A particular description of the type of information to be obtained through the use of  
26 the unmanned aerial vehicle, and a statement of the particular offense to which they relate;

27 (4) The identity of the agency authorized to use the unmanned aerial vehicle; and

28 (5) The period of time during which the use of the unmanned aerial vehicle is authorized.

29 (b) No order entered under this section may authorize the use of an unmanned aerial  
30 vehicle for any period longer than is necessary to achieve the objective of the authorization, nor  
31 in any event longer than forty-eight (48) hours. Extensions of an order may be granted, but only  
32 upon application for an extension made in accordance with section 12-5.3-3 and the court making  
33 the findings required by section 12-5.3-4. The period of extension shall be no longer than the  
34 presiding justice of the superior court deems necessary to achieve the purposes for which it was

1 granted, and in no event for longer than thirty (30) days. Every order and extension shall contain  
2 a provision that the authorization to use the unmanned aerial vehicle shall be executed as soon as  
3 practicable, shall be conducted in such a way as to avoid the collection of any information or data  
4 on persons or places not the subject of the order, and must terminate upon attainment of the  
5 authorized objective, or in any event in thirty (30) days.

6 (c) Whenever an order authorizing use of an unmanned aerial vehicle is entered pursuant  
7 to this chapter, the order may require reports to be made to the presiding justice of the superior  
8 court who issued the order showing what progress has been made toward achievement of the  
9 authorized objective and the need for the unmanned aerial vehicle's continued use. These reports  
10 shall be made at any intervals that the presiding justice of the superior court may require.

11 **12-5.3-6. Approval of use of unmanned aerial vehicles.** -- (a) An order of approval of  
12 the use of an unmanned aerial vehicle relating to an offense other than that specified in the order  
13 of authorization may be issued where the court finds on an application for an order of approval  
14 submitted in the same manner as an application for authorization as provided in section 12-5.3-3  
15 that the use was otherwise made in accordance with this chapter. This application shall be made  
16 as soon as practicable.

17 (b) In addition to any other right to appeal, the state, by the attorney general, shall have  
18 the right to appeal from a denial of an order of approval made under this section. The appeal shall  
19 be claimed and taken in the manner provided by law and rule of court for prosecuting appeals in  
20 civil actions.

21 **12-5.3-7. Return of inventory.** -- (a) Within a reasonable time but not later than ten (10)  
22 days after the termination of the period of the order or of extensions of the order, the presiding  
23 justice of the superior court shall cause to be served on the person named in the order or  
24 application, and any other parties upon whom information or data was collected, an inventory  
25 which shall include:

26 (1) Notice of the entry of the order or the application for a denied order of approval;

27 (2) The date of the entry of the order or the denial of the application for an order of  
28 approval;

29 (3) The period of authorized, approved or disapproved use;

30 (4) The fact that during the period information or data were or were not obtained.

31 (b) The judge, upon the filing of a motion, may in his or her discretion make available to  
32 the person or the person's counsel for inspection any portions of the intercepted information and  
33 data, applications, and orders that the judge determines to be in the interest of justice. On an ex  
34 parte showing of good cause to the judge, the serving of the inventory required by this section

1 may be postponed for a period of ten (10) additional days. Any additional extensions shall be for  
2 no longer than ten (10) days.

3 **12-5.3-8. Notice of intention. --** The contents of any information or data derived from  
4 use of an unmanned aerial vehicle shall not be received in evidence or otherwise disclosed in any  
5 criminal proceeding unless each party, not less than ten (10) days before the proceeding, has been  
6 furnished with a copy of the application, order, and inventory under which the collection of  
7 information was authorized or approved. This ten (10) day period may be waived by the judge if  
8 he or she finds that it was not possible to furnish the party with the information more than ten  
9 (10) days before the proceeding and that the party will not be prejudiced by the delay in receiving  
10 the information.

11 **12-5.3-9. Suppression of evidence. --** (a) Any aggrieved person or entity may move to  
12 suppress the contents of any information or data derived from the use of an unmanned aerial  
13 vehicle on the grounds that:

14 (1) The information was unlawfully obtained;

15 (2) The order under which it was intercepted is insufficient on its face;

16 (3) The unmanned aerial vehicle was not used in conformity with the order; or

17 (4) Service was not made as provided in section 12-5.3-8.

18 (b) A motion under this section shall be made before the trial, unless there was no  
19 opportunity to make the motion or the person was not aware of the grounds of the motion. If the  
20 motion is granted, the contents of the information or other evidence derived from the unmanned  
21 aerial vehicle shall be treated as having been obtained in violation of this chapter. The judge,  
22 upon the filing of the motion by the aggrieved person, may in his or her discretion make available  
23 to the aggrieved person or the person's counsel for inspection any portions of the information or  
24 evidence derived from them that the judge determines to be in the interests of justice.

25 (c) If the motion shall be made before any court or judge other than the presiding justice  
26 of the superior court, the motion shall be transferred to the presiding justice of the superior court  
27 or to an associate justice of the superior court who shall be designated by the presiding justice, or  
28 by the associate justice in charge of the criminal calendar in Providence county whenever the  
29 presiding justice shall deem it necessary to disqualify himself or herself, for hearing and  
30 determination. No motion under this section shall be heard or determined by a district court in  
31 preliminary proceedings or otherwise.

32 (d) In addition to any other right of appeal, the state, by the attorney general, shall have  
33 the right to appeal from an order allowing a motion to suppress made under this section. The  
34 appeal shall be taken within thirty (30) days after the date of allowance of the motion to suppress.

1 If the motion to suppress is allowed prior to trial, the appeal shall be decided prior to trial. If the  
2 motion to suppress is allowed during trial and the attorney general shall claim an appeal, the  
3 evidence shall be admitted at trial, and the question of admissibility reserved for the supreme  
4 court.

5 **12-5.3-10. Civil remedy.** -- (a) Any person who is surveilled or whose location or other  
6 information or data are intercepted, disclosed, or used in violation of this chapter shall have a  
7 civil cause of action against any person who intercepts, discloses, or uses the communications,  
8 and shall be entitled to recover from that person:

9 (1) Actual damages, but not less than liquidated damages, computed at the rate of one  
10 hundred dollars (\$100) per day for each day of violation, or one thousand dollars (\$1,000),  
11 whichever is higher;

12 (2) Punitive damages; and

13 (3) Reasonable attorneys' fees and other litigation disbursements reasonably incurred.

14 (b) Good faith reliance on a court order issued under this chapter shall constitute a  
15 complete defense to any civil or criminal action brought under this section or any other law.

16 **12-5.3-11. Data retention.** -- (a) No data collected on an individual, home, or area other  
17 than the target that justified deployment may be used, copied, or disclosed for any purpose. Such  
18 data shall be deleted as soon as possible, and in no event later than twenty-four (24) hours after  
19 collection.

20 (b) Whenever any state or municipal law enforcement agency, or any individual or entity  
21 on such agency's behalf, uses an unmanned aerial vehicle, no information acquired and no  
22 evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding  
23 in or before any court, agency, or other authority of the state or a political subdivision thereof if  
24 the disclosure of that information would be in violation of this chapter.

25 **12-5.3-12. Reporting.** -- (a) In March of each year, the attorney general shall report to  
26 the general assembly and make public on its website the following information regarding the use  
27 of unmanned aerial vehicles for the preceding calendar year:

28 (1) The number of times an unmanned aerial vehicle was used, including the justification  
29 for each deployment, and the approximate number of persons upon whom information was  
30 gathered during each use;

31 (2) The number and types of uses of unmanned aerial vehicles for reasons other than  
32 criminal investigations, including a description of the results of the use in each instance;

33 (3) The frequency and type of data collected on individuals or areas other than targets;

34 (4) The number of arrests resulting from information gathered and the offenses for which

1 arrests were made;

2 (5) The number of motions to suppress made with respect to such information, and the  
3 number granted or denied; and

4 (6) The number of convictions resulting from such information and the offenses for  
5 which the convictions were obtained.

6 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL PROCEDURE

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1           This act would regulate the use of unmanned aerial vehicles, and would delete the  
2 process by which applications for use of such vehicles are made.

3           This act would take effect upon passage.

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