STATE OF NEW YORK

3311

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. KIM, SIMON, TAYLOR -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to imposing limitations on the use of drones for law enforcement purposes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "protect our privacy (POP) act".

§ 2. The civil rights law is amended by adding a new section 52-d to read as follows:

§ 52-d. Limitations on the use of drones; law enforcement purposes. 1. The use of drones to observe, monitor, document, record, investigate, or collect data by law enforcement at concerts, protests, demonstrations, or other actions protected by the first amendment to the United States Constitution or sections eight and nine of article one of the state constitution is prohibited.

2. People have a reasonable expectation of privacy and a constitutional right to be free from warrantless observation, monitoring, documentation, recording, or investigation by a drone. A search warrant, issued upon a finding of probable cause, shall be required for any use of drones for law enforcement purposes that is not specifically prohibited by subdivision one of this section. A search warrant cannot permit the use of drones for the purposeful or incidental observation, documentation, recording, investigation, or collection of data by law enforcement at concerts, protests, demonstrations, or other actions protected by the first amendment to the United States Constitution or sections eight and nine of article one of the state constitution.

3. The use for law enforcement purposes of any drone owned, controlled, or maintained by a private company, private individual, or other government agency shall be subject to the provisions of subdivisions one and two of this section. A search warrant, issued upon a find-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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ing of probable cause, shall be required for law enforcement to obtain any data or information obtained by a drone that is owned, controlled, or maintained by a private company, private individual, or other government agency. A search warrant cannot authorize obtaining any data or information relating to the purposeful or incidental observation, documentation, recording, investigation, or collection of data at concerts, protests, demonstrations, or other actions protected by the first amendment to the United States Constitution or sections eight and nine of article one of the state constitution except in the investigation or prosecution for violations of subdivisions one or two of this section.

4. Law enforcement is prohibited from using drones equipped with facial recognition software or using facial recognition on video or images obtained or created by a drone, including videos or images obtained or created by drones owned, controlled, or maintained by a private company, a private individual, or other government agency. This section shall retroactively apply to videos or images obtained or created by drones prior to the effective date of this section.

5. Drones equipped with devices used for crowd control purposes or any lethal or non-lethal weapons are prohibited.

6. Data or information obtained by drones and within the control of any government agency or in the possession of a private company or individual on behalf of any government agency shall be subject to release under the freedom of information law, provided that all personal identifying information, except for that of law enforcement personnel acting within their official responsibilities or performing an official function, shall be redacted prior to such release.

7. All data or information obtained by the use of drones for law enforcement purposes that are not part of an ongoing criminal investigation or proceeding shall be destroyed in one year or less, absent a subpoena or court order. Data or information not destroyed in one year or less pursuant to a subpoena or court order and that is within the control of any government agency or in the possession of a private company or individual on behalf of any government agency shall be destroyed once the proceedings or investigations that the subpoena or court order related to have ended.

8. As used in this section:

a. "Drone" means an aerial vehicle or a balloon float or other device that can fly autonomously or be piloted remotely.

b. "Law enforcement" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, the enforcement of local government codes and the enforcement of penal, traffic, regulatory, game or controlled substance laws and includes an agent of the law enforcement agency.

c. "Search warrant" means a search warrant as defined in section 690.05 of the criminal procedure law.

§ 3. This act shall take effect immediately.