

STATE OF NEW YORK

5251

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. KIM, SIMON, TAYLOR, JACKSON, MAMDANI -- 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:

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

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

5 § 52-e. Limitations on the use of drones; law enforcement purposes. 1.
6 The use of drones by a law enforcement agency, or employee thereof, or
7 for law enforcement purposes, is prohibited, and no warrant may be
8 sought or issued authorizing such use of drones. It is also prohibited
9 for law enforcement to enter into an agreement with a private entity or
10 individual, whether paid or otherwise, to obtain information from
11 drones.

12 2. Notwithstanding subdivision one of this section, law enforcement
13 agencies may use drones for the following purposes:

14 a. Search and rescue.

15 b. Examining conditions of dangerous areas after natural disasters.

16 3. Notwithstanding subdivision two of this section, a law enforcement
17 agency or employee thereof may not use a drone for documentation,
18 recording, investigation, or collection of data at concerts, protests,
19 demonstrations, or other actions protected by the first amendment to the
20 United States constitution or sections eight and nine of article one of
21 the New York state constitution, nor may a law enforcement agency or
22 employee thereof possess or use an armed drone.

23 4. Any data obtained from drones pursuant to subdivision two of this
24 section may not be used for any law enforcement purposes. Furthermore,
25 any personally identifying information collected from such drones may

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

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1 not be shared with any federal, state, local, or private entity or indi-
2 vidual unless such entity or individual agrees to keep such information
3 confidential. Any individual whose personally identifying data is shared
4 in violation of this subdivision or in violation of a confidentiality
5 agreement pursuant to this subdivision shall have a private right of
6 action against the entity or individual who shares such data.

7 5. This section shall apply retroactively with respect to law enforce-
8 ment data collected from using drones equipped with facial recognition
9 software or using facial recognition on video or images obtained or
10 created by a drone, including videos or images obtained or created by
11 drones owned, controlled, or maintained by a private company, a private
12 individual, or other government agency, and any such data may not be
13 used in any ongoing investigations or prosecutions and shall be promptly
14 deleted.

15 6. Data or information obtained by drones and within the control of
16 any government agency or in the possession of a private company or indi-
17 vidual on behalf of any government agency shall be subject to release
18 under the freedom of information law, provided that all personal identi-
19 fying information, except for that of law enforcement personnel acting
20 within their official responsibilities or performing an official func-
21 tion, shall be redacted prior to such release.

22 7. All existing data or information obtained by the use of drones for
23 law enforcement purposes that are not part of an ongoing criminal inves-
24 tigation or proceeding shall be destroyed in one year or less, absent a
25 subpoena or court order. Existing data or information not destroyed in
26 one year or less pursuant to a subpoena or court order and that is with-
27 in the control of any government agency or in the possession of a
28 private company or individual on behalf of any government agency shall
29 be destroyed once the proceedings or investigations that the subpoena or
30 court order related to have ended.

31 8. a. Suppression. i. Upon motion from a defendant, a court shall
32 order that evidence be suppressed or excluded if the court finds that
33 such evidence was obtained in violation of this section.

34 ii. This paragraph shall apply regardless of the court which issued
35 the order and regardless of whether the issuance of the order was
36 permissible under the procedures of that court.

37 iii. This paragraph shall apply regardless of any claim that the
38 information or evidence is attenuated from an unlawful order or request,
39 would inevitably have been discovered, or was simultaneously or subse-
40 quently obtained or reobtained through other means.

41 b. Private right of action. i. Any individual whose records were
42 obtained by any government entity in violation of this section may
43 institute a civil action against such government entity for any or all
44 of the following:

45 (1) one thousand dollars per violation or actual damages, whichever is
46 greater;

47 (2) punitive damages;

48 (3) injunctive or declaratory relief;

49 (4) any other relief the court deems proper.

50 ii. In assessing the amount of punitive damages, the court shall
51 consider:

52 (1) the number of people whose rights were violated;

53 (2) whether the violation directly or indirectly targeted persons
54 engaged in the exercise of activities protected by the United States
55 constitution or the New York state constitution; and

56 (3) the persistence of violations by the particular government entity.

1 iii. In any action brought under this section, the court shall award
2 reasonable attorneys' fees, expenses and costs to a prevailing plain-
3 tiff.

4 9. As used in this section:

5 a. "Drone" means any remotely or autonomously piloted device, includ-
6 ing devices that travel by air (such as quadcopters and fixed-wing
7 aircraft), land, or water.

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

13 c. "Law enforcement purposes" includes activities regularly conducted
14 by law enforcement agencies, including but not limited to the
15 prevention, investigation, detection or prosecution of criminal offences
16 or the execution of criminal penalties, including but not limited to
17 crowd control and safeguarding against and the prevention of threats to
18 public security.

19 d. "Search and rescue" means the employment, coordination, and utili-
20 zation of available resources and personnel in locating, relieving
21 distress and preserving life of, and removing survivors from the site of
22 a disaster, emergency, or hazard to a place of safety in case of lost,
23 stranded, entrapped, or injured persons.

24 e. "Armed drone" means a drone equipped with a firearm or dangerous
25 weapon as defined in section 265.00 of the penal law or any other tool
26 designed to cause death, serious bodily injury, or incapacitation.

27 10. If any provision of this section or its application to any person
28 or circumstance is held invalid, the invalidity shall not affect other
29 provisions or applications of this section which can be given effect
30 without the invalid provision or application, and to this end the
31 provisions of this section are severable.

32 § 3. This act shall take effect immediately.