



No on SB 238A - No Drones Without Judicial Oversight

Chair Kropf, Vice-Chairs Chotzen & Wallan, and members of the House Judiciary Committee,

We are members of the Multnomah County Democrats' Criminal Justice Study Group and we oppose SB 238A.

As amended, SB 238 would provide a legislative blank check for law enforcement agencies to begin deploying seemingly unlimited quantities of drones in a wide variety of situations.

- Section 1(1)(a)-(e), while presented as a list of possible uses, is an “including but not limited to” list, meaning that while it lists “for example” uses, the list is in no way a limitation on uses.

This massive delegation of power to law enforcement could easily usher in an era of mass aerial surveillance that has a severe chilling effect on public speech, assembly, and movement, potentially in violation of Oregonian's state constitutional rights against unreasonable searches. As amended, SB 238 would risk exacerbating existing biases in law enforcement, particularly with respect to the over policing and mass incarceration of Black, Indigenous, and other people of color (BIPOC).

- This is especially concerning in the current political climate, where the federal government has aggressively ramped up targeting of undocumented populations.
- Section 1(1) states that “[a] law enforcement agency may... disclose information acquired through the operation of an unmanned aircraft system, in connection with lawful police activity.” This risks a conflict with statutes like the Sanctuary Promise Act, ORS 181A.820 and ORS 180.805, and the Anti-Surveillance law, ORS 181A.250, which limit the ability of law enforcement to collect and share certain kinds of personal data.

And while not all uses of drones by law enforcement will be subject to constitutional challenge, there will be a high risk of protracted, costly legal challenges to drone deployments authorized by this legislation. A statute cannot create an exemption to the constitutional warrant requirement of Article I, Section 9.

Furthermore, the warrant requirements that already exist in ORS 837.320 better balance the needs of law enforcement while protecting the rights of Oregonians, including existing constitutional and statutory rights, against targeted surveillance based on one's political, religious, or social viewpoints.

We do recognize that there are some safety interests outside the criminal context that may benefit from the use of drones, such as for search and rescue operations. However, Oregon has current law (ORS 837.335) which already permits drone use for search and rescue operations, but that law also imposes guardrails and protections (such as a requirement that police have a reasonable belief that there is an imminent threat to life and safety AND that they document the factual basis with a sworn statement), all of which would be repealed if SB 238 passes as amended.

We strongly believe that law enforcement's use of drones outside of the criminal context should be severely limited. This is why we have laws like ORS 181A.250, which prohibit police surveillance for non-criminal purposes.

Law enforcement should not be permitted to engage in widespread, ongoing public monitoring under the guise of what "could" occur, including a possible broken window. ○ But that is precisely what this bill permits. These types of broad authorities are the types that lead to discriminatory policing, abuse of power, and wasted resources.

Finally, current law already addresses the circumstances when getting a warrant is impractical. The current statute—ORS 837.320—creates an exigent circumstances exception that incorporates similar constitutional exceptions to the warrant requirement.

Removing this well-struck balance in the development of constitutional case law severely undermines the public interest in a limited police power that yields to honoring people's freedom.

The -1 amendment to SB 238 proposes changes to current law that would create such loose restrictions, that there is very little difference between these proposed changes and just repealing the existing regulations altogether.

Due to these serious privacy and constitutional concerns about this expansion of a new, very easily abused surveillance technology, we urge this committee to oppose the -1 Amendment to SB 238.

Respectfully,

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