



May 10, 2025

House Committee on Judiciary
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Opposition to Senate Bill 238A

Dear Chair Kropf, Vice-Chair Chotzen, Vice-Chair Wallan, and members of the Committee,

Thank you for the opportunity to provide testimony on behalf of the ACLU of Oregon. My name is Michael Abrams and I serve as Policy Counsel. The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 46,000 members and donor supporters statewide. We strongly oppose Senate Bill 238A, which would drastically expand the use of “unmanned aircraft systems”, that is, “drones”, by law enforcement throughout Oregon.

This bill was rapidly moved through the Senate, without prior engagement with affected community and local stakeholders, other than law enforcement. And in the Senate, only minor changes were made, meaning the bill remains a grave danger to the civil rights of all Oregonians.

Statutory Analysis

Sections 1(1)(a) and 1(1)(b) grant law enforcement overly broad authority that is likely to expand surveillance in ways that threaten civil liberties and could chill free speech.

Incentivizing more law enforcement drone use through sections 1(a) and 1(b) is the primary effect of the bill.

- **Most of the other uses of drones specified in SB 238A are already permitted under current law, including:**
 - ORS 837.335 (search and rescue)
 - ORS 837.340 (investigating crime/accident scenes)
 - ORS 837.330 (consent of private property owner)
 - ORS 837.320 (warrants/exigent circumstances)
- **These provisions currently provide guardrails that define and restrain drone use to a few intended, legitimate purposes, but are largely repealed by SB 238A.**
 - For example, current statute requires law enforcement to file a sworn statement justifying the use of a drone within 48 hours. ORS 837.335(2)(b).
 - There is no such requirement in SB 238A.
 - **This means law enforcement could blur the lines between an extended search and rescue operation to engage in surveillance** without a court stepping in until well after the law has been violated.

Fundamentally, **proponents have not shown that they cannot effectively use drones under the existing law**, which was carefully crafted not long ago in 2013 in HB 2710.

- In particular, **the exigent circumstances exception already permits warrantless drone use during emergencies**. So that begs the question, what is the intent of their proposal?

Moreover, **Section 1** creates new authority for law enforcement to operate drones “in connection with **lawful police activity**,” **a term that is not defined**.

- And **because the bill removes the warrant requirement it leaves it to the police—not a court—to decide what is lawful**.
- History has made it abundantly clear that law enforcement is not a good check on its own authority. **That is why the Fourth Amendment requires the police to go to a court to get a warrant**, and does not allow them to make constitutional determinations for themselves.

Section 1(a) permits law enforcement to use drones while “[r]esponding to any call for law enforcement service.”

- This means drones could constantly be flying—and potentially recording—on their way to and from service calls.
- **Numerous bystanders and unrelated activity can be monitored, leading to an era of mass aerial surveillance.**
- **Imagine a drone flying overhead while a family sits in their backyard.** The drone is responding to a nearby neighbor’s 911 call but captures footage of the family and their property, because of their proximity to the scene.
 - The law does not clearly require law enforcement to identify their drones and so **this family may need to call the police, to report the police**, to understand why a drone is suddenly hovering nearby.

Section 1(b) is no less concerning.

- It permits drone use in “[r]esponding to a public safety emergency in which personal injury or damage to property could occur.”
- **This can easily be used to justify mass surveillance of public protests under the guise of the undefined term “public safety emergency.”**
- And **there is no standard given for determining what “could occur,”** meaning law enforcement has the discretion to decide themselves.
 - This risks empowering **discriminatory enforcement and chilling constitutionally protected activities** like protest.

Similarly, the text of **section 1(2)** does not have a clear purpose and instead appears to permit widespread drone use “not in connection with police activity.”

The Bill Preempts Local Governments, Provides Insufficient Data Safeguards, and May Lead to Avoidable Lawsuits

SB 238A does not permit local governments to limit drone use by their law enforcement.

- A city or county should be able to direct their law enforcement agency to either not use drones or to use them under more restricted circumstances.
 - **A local jurisdiction should be able to impose its own warrant requirement on its law enforcement agency.**

- However, **SB 238A appears to leave ORS 837.385 intact**, which **preempts local governments'** authority to "enact an ordinance or resolution that regulates the ownership or operation of unmanned aircraft systems or otherwise engage in the regulation of the ownership or operation of unmanned aircraft systems."
 - This significant change to policing in Oregon should not cut local governments out of the picture.

This bill is particularly dangerous because **existing law does not provide sufficient safeguards to account for the tremendous amount of data** that law enforcement could capture if this bill passes.

- **ORS 837.360** sets **inadequate reporting requirements** for drone use.
- **ORS 837.362** states that any "public body", including **law enforcement agencies, must establish "policies and procedures"** that must include:
 - The length of time data will be retained
 - "Specifications for third party storage of data, including handling, security and access to the data by the third party."
 - "A policy on disclosure of data through intergovernmental agreements."
- While these are **important requirements, the failure to provide minimum standards or more specific safeguards, particularly regarding third party storage and intergovernmental data sharing agreements**, makes this provision inadequate to manage the expansion of drone use this bill incentivizes.

Finally, although the bill now references ORS 181A.250, it still lacks the protections needed to prevent rights violations. **Without clearer limits, Oregonians may be forced to go to court to protect their rights.**

- **That's avoidable**—especially since **law enforcement has not shown they're unable to operate under current drone rules**, including the warrant requirement and its exceptions.

At a time of **unprecedented federal aggression, fascist executive orders, and militarized law enforcement, it is wrong and dangerous** for this Legislature to authorize the widespread, unregulated **warrantless use of drones by law enforcement**. It is unnecessary and risks enabling the lawless and repressive policies of the Trump Administration.

The ACLU of Oregon urges the Legislature not to change Oregon's drone laws without extensive conversation with all stakeholders including affected community members, civil liberties groups, local governments, other community-based organizations, as well as law enforcement. **We urge this committee to vote "no" and mitigate this threat to civil liberties.**

Respectfully,

Michael Abrams, Policy Counsel
ACLU of Oregon

If you have any questions or requests for clarifications, please email Jessica Maravilla, Policy Director, at jmaravilla@aclu-or.org