

**CS/CS/SB 92** by **JU, CJ, Negron (CO-INTRODUCERS) Brandes, Evers, Bradley;** (Similar to CS/CS/H 0119)  
Searches and Seizures

**CS/SB 86** by **ED, Flores (CO-INTRODUCERS) Benacquisto;** (Similar to CS/CS/H 0113) Distribution of Materials  
Harmful to Minors

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND**  
**CIVIL JUSTICE**  
**Senator Bradley, Chair**  
**Senator Joyner, Vice Chair**

**MEETING DATE:** Tuesday, March 19, 2013  
**TIME:** 1:00 —3:00 p.m.  
**PLACE:** *Mallory Horne Committee Room, 37 Senate Office Building*

**MEMBERS:** Senator Bradley, Chair; Senator Joyner, Vice Chair; Senators Altman, Braynon, Clemens, Dean, Diaz de la Portilla, Flores, Garcia, Grimsley, Hays, Smith, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/CS/SB 92</b> Judiciary / Criminal Justice / Negrón (Similar CS/CS/H 119)	Searches and Seizures; Citing this act as the "Freedom from Unwarranted Surveillance Act"; prohibiting a law enforcement agency from using a drone to gather evidence or other information; authorizing an aggrieved party to initiate a civil action in order to prevent or remedy a violation of the act; prohibiting a law enforcement agency from using in any court of law in this state evidence obtained or collected in violation of the act, etc.  CJ 01/15/2013 Fav/CS CA 02/06/2013 Favorable JU 03/12/2013 Fav/CS ACJ 03/19/2013 Favorable AP	Favorable Yeas 12 Nays 0
2	<b>CS/SB 86</b> Education / Flores (Similar CS/CS/H 113)	Distribution of Materials Harmful to Minors; Prohibiting an adult from knowingly distributing to a minor or posting on school property certain specified materials harmful to minors; providing an exception, etc.  ED 02/19/2013 Fav/CS CJ 03/11/2013 Favorable ACJ 03/19/2013 Favorable AP	Favorable Yeas 12 Nays 0
3	Review and Discussion of Fiscal Year 2013-14 Budget Issues relating to:		Temporarily Postponed

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Criminal and Civil Justice  
Tuesday, March 19, 2013, 1:00 —3:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
		<ul style="list-style-type: none"><li>Department of Legal Affairs</li><li>Department of Corrections</li><li>Department of Law Enforcement</li><li>Parole Commission</li><li>Department of Juvenile Justice</li><li>Supreme Court</li><li>District Court of Appeal</li><li>Trial Courts</li><li>Judicial Qualifications Commission</li><li>Justice Administrative Commission</li><li>Guardian Ad Litem</li><li>Clerks of Court</li><li>State Attorneys</li><li>Public Defenders</li><li>Appellate Public Defenders</li><li>Capital Collateral Regional Counsel</li><li>Regional Conflict Counsels</li></ul>	
		Other Related Meeting Documents	

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/CS/SB 92

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Negron and others

SUBJECT: Searches and Seizures

DATE: March 14, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Anderson</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Shankle</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
4.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Favorable</b>
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/CS/SB 92 creates the “Freedom from Unwarranted Surveillance Act,” which prohibits law enforcement agencies from using drones to gather evidence or other information, unless:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization.
- The law enforcement agency first obtains a search warrant authorizing the use of a drone.
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life, such as to facilitate the search for a missing person, to prevent serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

This bill will not have a fiscal impact because it prohibits state and local law enforcement agencies from using drones to gather evidence or information unless the use of the drone falls under one of the bill’s exceptions to the prohibition.

Evidence gathered in violation of the bill is inadmissible in a criminal prosecution in any court of law in this state. Provisions are made for civil actions by an aggrieved party against a law enforcement agency that violates the prohibitions in the bill.

The bill defines the terms “drone” and “law enforcement agencies” for the purposes of the act.

This bill has an effective date of July 1, 2013.

This bill creates an unnumbered section of the Florida Statutes.

## II. Present Situation:

### Drones Historically Utilized by Military in Warfare, Hostile Situations

Drones, also called Unmanned Aerial Vehicles and Unmanned Aerial Systems, will be referred to as “drones” in this bill analysis.

Although drones were utilized as far back as the war in Vietnam, the term “drone” recently became part of the vernacular since the use of drones by the U.S. military has become common knowledge among the civilian population.<sup>1</sup> Because drones are unmanned aircraft, they are especially useful in search and destroy missions where military personnel would otherwise be placed in harm’s way.

Drones are highly capable of gathering military intelligence because drones are difficult to detect and can carry sophisticated surveillance equipment. For example, the U.S. Army recently acquired a 1.8 gigapixel camera to use on its drones which can track objects on the ground from 65 miles away while the drone is flying at an altitude of 20,000 feet.<sup>2</sup> Drones can be equipped with infrared cameras,<sup>3</sup> license plate readers,<sup>4</sup> and “ladar” (laser radar).<sup>5</sup> It has been reported that in 2011 the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.<sup>6</sup>

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<sup>1</sup> *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, [www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial\\_vehicles.xml](http://www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml).

<sup>2</sup> *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf).

<sup>3</sup> These cameras are capable of “seeing” based upon the relative levels of heat in its viewing area. For example, see <http://www.draganfly.com/uav-helicopter/draganflyer-x6/features/flir-camera.php>.

<sup>4</sup> *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf); *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, [www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial\\_vehicles.xml](http://www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml).

<sup>5</sup> “Ladar” is reported to produce three-dimensional images and has the capability to “see” through trees and foliage. *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf); U.S. Army, UAS Center for Excellence, *Eyes of the Army, US Army Roadmap for Unmanned Aircraft Systems 2010-2035* (2010).

<sup>6</sup> Clay Dillow, Popular Science, September 28, 2011, [popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind](http://popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind).

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.<sup>7</sup> They may be controlled manually or through an autopilot which uses a data link to connect the drone's pilot to the drone.<sup>8</sup>

### **Non-Military Drone Flight in the United States**

As far back as 2007, the Federal Aviation Administration (FAA) was aware of approximately 50 companies, universities, and government organizations developing and producing some 155 drone designs in the United States.<sup>9</sup>

Drones have been used in a multitude of tasks by U.S. government agencies. The U.S. Customs and Border Patrol began using them in 2004.<sup>10</sup> In February 2010, the U.S. Customs and Border Patrol began operating a center in Cocoa Beach flying eight drones along Florida's shorelines and the Gulf Coast.<sup>11</sup>

Other documented non-military tasks include earthquake damage assessment at Japan's Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.<sup>12</sup>

At the University of Florida, over the last 12 years, the Unmanned Aerial Systems Research Group has been developing an 11 pound drone having a 9 foot wingspan, which is called "Nova 2.1." According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.<sup>13</sup>

The drone industry is becoming motivated to move into more civilian markets.<sup>14</sup> Reportedly, Florida is competing to secure a position as a leading development, testing, and manufacturing site for drones.<sup>15</sup>

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<sup>7</sup> 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, Unmanned Aircraft Operations in the National Airspace System, February 6, 2007.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, [www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial\\_vehicles.xml](http://www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml).

<sup>11</sup> Howard Altman, *Space Florida Probing Drone's Future Potential*, Tampa Bay Online, August 5, 2012, [www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/](http://www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/).

<sup>12</sup> James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, [www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html](http://www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html).

<sup>13</sup> James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>; *UF Team's Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>.

<sup>14</sup> *Drones for Hire*, Air & Space Smithsonian, James Chiles, January 2013, [www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html](http://www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html).

<sup>15</sup> *Florida Vies to be America's Drone Capital*, RT, June 29, 2010, <http://rt.com/usa/news/florida-drone-space-unmanned-091/print/>.

## **Integrating Drones into the Nation's Airspace System**

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Act), which requires the FAA to safely open the nation's airspace to drones by September 2015.<sup>16</sup> Under the timetable set forth by Congress, the FAA authorized government public safety agencies to operate drones under certain restrictions and made the process for approving authorization requests more efficient.<sup>17</sup>

However, the FAA appears to be proceeding with caution in its implementation of the 2012 Federal Act. The FAA has delayed selecting the six test sites for drones mandated by Congress. Further, although it seems to be outside the congressional mandate and beyond the scope of the FAA's airspace-safety responsibilities, the FAA notified Congress that "privacy issues" are a concern as drones are integrated into the airspace.<sup>18</sup>

The 2012 Act directed the FAA to "allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less" under certain restrictions. The Act specified that these drones must be flown within the line of sight of the operator, less than 400 feet above the ground, during daylight conditions, inside Class G (uncontrolled) airspace and more than five miles from any airport or other location with aviation activities.<sup>19</sup>

Prior to the passage of the Act in 2012, the FAA and the Department of Justice worked on an agreement to streamline the Certificate of Authorization (COA) process for law enforcement agencies. Initially, law enforcement organizations will receive a COA for training and performance evaluation. When the organization shows proficiency in flying its drone, it will receive an operational COA. The agreement between the FAA and the Department of Justice expands the allowable drone weight up to 25 pounds.<sup>20</sup>

## **Drone Use by Law Enforcement Agencies in Florida**

The FAA issued COAs to Florida law enforcement agencies beginning in 2009. Those early COAs for training and trial purposes were issued to the Miami-Dade Police Department and the Polk County Sheriff's Office.

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<sup>16</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf).

<sup>17</sup> *FAA Makes Progress with UAS Integration*, Federal Aviation Administration, May 14, 2012, [www.faa.gov/news/updates/?newsId=68004](http://www.faa.gov/news/updates/?newsId=68004); Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012.

<sup>18</sup> A *Bloomberg* report quotes the FAA Acting Chief as having written to members of the Congressional Unmanned Systems Caucus: "However, increasing the use of UAS in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated." Alan Levine, *FAA Going Slow on Drones as Privacy Concerns Studied*, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow->.

<sup>19</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=14153](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153).

<sup>20</sup> FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=14153](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153).

Reportedly, officials in Polk County, Florida, decided after a year of drone trials that the costs of meeting FAA regulations were too high and halted use of its fixed-wing model drone in 2010.<sup>21</sup>

The Miami-Dade Police Department received its COA for drone operational status in July 2011. It was renewed in December 2012 for a 2-year period. The department has two Honeywell Corporation T-Hawk Model drones. As of January 8, 2013, the T-Hawk drones had not flown an actual operation.<sup>22</sup>

Several Chiefs of Police in Florida have indicated that drones would benefit their agencies by reducing the risk to officers and citizens in high risk situations involving hostages, active shooters or armed, barricaded suspects.<sup>23</sup> One police chief suggested that drones could aid police agencies in their ability to patrol and search for persons in areas like bodies of water or a wooded area.<sup>24</sup> According to another police chief, drone technology provides an opportunity to conduct patrols that are normally conducted by traditional aviation at a fraction of the cost.<sup>25</sup> A third police chief mentioned that a drone would be useful in serving high-risk search warrants, natural disasters, and other emergencies.<sup>26</sup> A fourth suggested that drones could diminish public safety risks that might otherwise occur during a high-speed car-chase because a drone could more safely follow a fleeing vehicle.<sup>27</sup>

### **Federal and Other State Legislation**

Senator Rand Paul filed a bill in Congress in 2012 which was essentially identical to SB 92. Neither the Senate bill nor its House companion bill made it out of committee.<sup>28</sup> Similar legislation is expected to be filed in California, Illinois, New Jersey, Oregon, Missouri, Michigan, Indiana, and Virginia.<sup>29</sup>

### **III. Effect of Proposed Changes:**

The short title for the bill is the “Freedom from Unwarranted Surveillance Act.” The bill prohibits law enforcement agencies from using drones to gather evidence or other information, except in certain narrow circumstances. Evidence obtained or collected by a law enforcement agency using a drone, unless it is permitted under one of the bill’s exceptions, is not admissible in a criminal prosecution in any court of law in this state.

<sup>21</sup> Howard Altman, *Space Florida Probing Drone’s Future Potential*, Tampa Bay Online, August 5, 2012, [www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/](http://www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/).

<sup>22</sup> Miami-Dade Police Department Fact Sheet, Special Patrol Bureau/Aviation Unit, Micro Air Vehicle “MAV” Program, provided to Senate Committee on Criminal Justice Staff, January 8, 2013.

<sup>23</sup> Memo provided to Senate Committee on Criminal Justice Staff on December 12, 2012, by the Florida Police Chiefs Association.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Preserving Freedom from Unwarranted Surveillance Act of 2012*, S.3287, H.R. 5925.

<sup>29</sup> Dave Kolpack, *New ND Lawmaker 1 of Many Drafting Drone Measures*, AP, January 4, 2013. The North Dakota bill appears to have been filed in response to a local case where the Border Patrol offered the use of its drone to verify that three armed men were no longer armed or on the premises where law enforcement was investigating an alleged cattle rustling situation. See *State v. Brossart*, No. 32-2011 CR-00049 (N.E. Cen. D., N.D. 2012).

The bill provides exceptions to the prohibition of drone use by a law enforcement agency in an information or evidence-gathering capacity. Under the exceptions, a law enforcement agency may use a drone if:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization.
- The law enforcement agency first obtains a search warrant authorizing the use of a drone.
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life, such as to facilitate the search for a missing person, to prevent serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

The bill defines a drone as a powered aerial vehicle that:

- Is unmanned;
- Is capable of flying autonomously or being piloted remotely;
- Uses aerodynamic forces to provide lift;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

This definition is consistent with the standard definition of drones used by numerous military organizations.<sup>30</sup>

The bill defines a law enforcement agency as a lawfully established state or local public agency which is responsible for the prevention and detection of crime, local code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

In addition to the inadmissibility of evidence the bill allows for an aggrieved party to initiate a civil action to prevent or remedy a violation of the prohibitions in the bill.

The bill takes effect on July 1, 2013.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>30</sup> United States Army Combined Arms Center, Unmanned Aerial Vehicle, <http://usacac.army.mil/cac2/call/thesaurus/toc.asp?id=31004> (last visited Mar. 7, 2012).

#### D. Other Constitutional Issues:

The Fourth Amendment to the United States Constitution guarantees the people in this country security in their houses, persons, papers, and possessions from unreasonable searches and seizures by government actors.<sup>31</sup>

Article I, Section 12 of the Constitution of Florida contains the same guarantees as the Fourth Amendment, with an additional provision extending protection to private communications. Article I, Section 12 also states that it “shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the Fourth Amendment to the United States Constitution.”<sup>32</sup>

The U.S. Supreme Court has not heard a case that implicates the Fourth Amendment as related to a search by a drone. However, the court has heard several cases involving aerial searches by law enforcement officers in more conventional aircraft. In *Florida v. Riley* and *California v. Ciraolo*, which were cases involving surveillance from altitudes of 400 and 1,000 feet in close proximity to homes, the court found that no search had occurred.<sup>33</sup> Therefore it may be argued that a drone flying or hovering at an uncommon altitude, utilizing uncommon surveillance equipment could implicate the Fourth Amendment.

A court may not need to address the question of the reasonableness of a police search by use of a drone under Fourth Amendment. The protection provided in the bill could be viewed by courts as a statutorily-created citizen protection that does not implicate the Fourth Amendment.<sup>34</sup> Additionally, states are generally free to place even more rigorous restraints upon state governmental intrusion than federal law requires.<sup>35</sup>

Courts could focus on the fact that the bill *does not subject citizens* to a drone search let alone an unreasonable one, but rather the bill *prohibits or limits* certain *law enforcement conduct*, and that it is within the Legislature’s power to protect citizens from police

<sup>31</sup> U.S. CONST. amend. IV.

<sup>32</sup> FLA. CONST. art. I, s. 12 provides:  
Searches and seizures.—

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

<sup>33</sup> *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989).

<sup>34</sup> The bill provides that evidence obtained is not admissible in a criminal prosecution in any court of law in Florida if that evidence is obtained in violation of the bill’s prohibited drone use by law enforcement, unless the drone use falls within one of the bill’s exceptions.

<sup>35</sup> *Traylor v. State*, 596 So. 2d 957, 961 (Fla. 1992).

conduct just as it is within its power to subject citizens to police action. If the court finds that law enforcement violated the drone law, the court should rule the evidence derived as a result of that violation inadmissible.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill does not apply to the use of drones for any purposes other than state and local law enforcement use to gather evidence or other information. It does not restrict the use of drones for commercial or private research and information gathering in any way and, therefore, should have no impact on the scientific, commercial, or educational sectors.

Law enforcement agencies are not permitted to use information or evidence that is gathered through the prohibited use of a drone in a criminal prosecution. Therefore, citizens should not be subject to criminal prosecution in cases that are based upon information or evidence gathered beyond the scope of the bill's exceptions, unless the case can be prosecuted on some independent basis.

**C. Government Sector Impact:**

State and local law enforcement agencies are prohibited by the bill from using drones to gather evidence or information unless the use of the drone falls under one of the bill's exceptions to the prohibition. The evidence obtained or collected in violation of the prohibition, and outside the exceptions in the bill, is inadmissible as evidence in a criminal prosecution. Therefore, some criminal cases built around such evidence may be weakened or unprovable.

Law enforcement agencies may be subject to civil remedies, such as monetary damages or possibly an injunction preventing further drone activity, if sought by an aggrieved party under the provisions of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Judiciary on March 12, 2013:**

- The bill authorizes a law enforcement agency to use a drone when the law enforcement agency has reasonable suspicion that swift action is necessary to achieve purposes including, but not limited to, facilitating the search for a missing person.

**CS by Criminal Justice on January 15, 2013:**

- The CS includes local government code enforcement within the definition of law enforcement agency.
- The CS adopts additional exceptions to the drone-use prohibition in the bill. One of the additional exceptions allows law enforcement to use a drone if it is first authorized by a judge in a search warrant. The other exception to the prohibition occurs when a law enforcement agency possesses reasonable suspicion that under particular circumstances, swift action is necessary in order to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

- B. **Amendments:**

None.

By the Committees on Judiciary; and Criminal Justice; and  
Senators Negrón, Brandes, Evers, and Bradley

590-02273-13

201392c2

A bill to be entitled

An act relating to searches and seizures; creating the  
"Freedom from Unwarranted Surveillance Act"; defining  
the terms "drone" and "law enforcement agency";  
prohibiting a law enforcement agency from using a  
drone to gather evidence or other information;  
providing exceptions; authorizing an aggrieved party  
to initiate a civil action in order to prevent or  
remedy a violation of the act; prohibiting a law  
enforcement agency from using in any court of law in  
this state evidence obtained or collected in violation  
of the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Searches and seizure using a drone.—

(1) SHORT TITLE.—This act may be cited as the "Freedom from  
Unwarranted Surveillance Act."

(2) DEFINITIONS.—As used in this act, the term:

(a) "Drone" means a powered, aerial vehicle that:

1. Does not carry a human operator;
2. Uses aerodynamic forces to provide vehicle lift;
3. Can fly autonomously or be piloted remotely;
4. Can be expendable or recoverable; and
5. Can carry a lethal or nonlethal payload.

(b) "Law enforcement agency" means a lawfully established  
state or local public agency that is responsible for the  
prevention and detection of crime, local government code  
enforcement, and the enforcement of penal, traffic, regulatory,

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

590-02273-13

201392c2

game, or controlled substance laws.

(3) PROHIBITED USE OF DRONES.—A law enforcement agency may  
not use a drone to gather evidence or other information.

(4) EXCEPTIONS.—This act does not prohibit the use of a  
drone:

(a) To counter a high risk of a terrorist attack by a  
specific individual or organization if the United States  
Secretary of Homeland Security determines that credible  
intelligence indicates that there is such a risk.

(b) If the law enforcement agency first obtains a search  
warrant signed by a judge authorizing the use of a drone.

(c) If the law enforcement agency possesses reasonable  
suspicion that, under particular circumstances, swift action is  
needed to prevent imminent danger to life or serious damage to  
property, to forestall the imminent escape of a suspect or the  
destruction of evidence, or to achieve purposes including, but  
not limited to, facilitating the search for a missing person.

(5) REMEDIES FOR VIOLATION.—An aggrieved party may initiate  
a civil action against a law enforcement agency to obtain all  
appropriate relief in order to prevent or remedy a violation of  
this act.

(6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or  
collected in violation of this act is not admissible as evidence  
in a criminal prosecution in any court of law in this state.

Section 2. This act shall take effect July 1, 2013.

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

**BILL:** CS/SB 86

**INTRODUCER:** Education Committee and Senators Flores and Benacquisto

**SUBJECT:** Distribution of Materials Harmful to Minors

**DATE:** March 12, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	<b>Fav/CS</b>
2.	Clodfelter	Cannon	CJ	<b>Favorable</b>
3.	Sadberry	Sadberry	ACJ	<b>Favorable</b>
4.			AP	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 86 provides that it is a third-degree felony for an adult to knowingly distribute material harmful to a minor or to post materials harmful to a minor on public and private school property. The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, or secondary school.

The Criminal Justice Impact Conference has determined that the bill would create an insignificant fiscal impact due to low prison bed impact.

The bill provides an effective date of October 1, 2013.

This bill amends section 847.012 of the Florida Statutes.

## II. Present Situation:

### Definition of “Harmful to Minors”

Currently, the law provides for a three-pronged test to determine whether material is harmful to minors. Florida law defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.<sup>1</sup>

### “Obscene Materials”

Chapter 847, F.S., addresses the regulation of obscenity and provides several definitions that are used in the chapter. An adult is defined as a person of at least 18 years of age.<sup>2</sup> A minor, likewise, is considered to be someone who is under the age of 18 years.<sup>3</sup> The term “obscene” is defined as the status of materials which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;<sup>4</sup> and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>5</sup>

Currently, it is a first-degree misdemeanor for a person to knowingly distribute, sell, lend, give away, transmit, transmute, or show, certain obscene materials.<sup>6,7</sup> It is a second-degree misdemeanor for a person to knowingly have certain obscene materials in one’s possession, custody, or control.<sup>8,9</sup> Both offenses are elevated to third-degree felonies if a violation is based on materials that depict a minor engaged in any act or conduct that is harmful to minors.<sup>10</sup>

<sup>1</sup> s. 847.001(6), F.S.

<sup>2</sup> s. 847.001(1), F.S.

<sup>3</sup> s. 847.001(8), F.S.

<sup>4</sup> s. 847.001(16), F.S., defines “sexual conduct” as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such a person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstances constitute “sexual conduct.”

<sup>5</sup> s. 847.001(10), F.S.

<sup>6</sup> A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year, and a fine not exceeding \$1,000 may be imposed. *See* ss. 775.082 and 775.083, F.S.

<sup>7</sup> s. 847.011(1)(a), F.S.

<sup>8</sup> A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, and a fine not exceeding \$500 may be imposed. *See* ss. 775.082 and 775.083, F.S.

<sup>9</sup> s. 847.011(2), F.S.

<sup>10</sup> s. 847.011(1)(c), F.S. A third-degree felony is punishable by a state prison sentence not exceeding five years, and a fine not exceeding \$5,000 may be imposed. *See* ss. 775.082 and 775.083, F.S.

### **Selling or Distributing Harmful Materials to Minors**

Current law provides that it is a third-degree felony to knowingly sell, rent, or loan for monetary consideration to a minor:<sup>11</sup>

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The term “knowingly” is defined as having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- The character and content of any material (described above) which is reasonably susceptible of examination by the defendant; and
- The age of the minor.<sup>12</sup>

A person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent may not be raised as a defense in a prosecution for a violation of s. 847.012, F.S.<sup>13</sup>

### **III. Effect of Proposed Changes:**

The bill makes it a third degree felony for an adult to knowingly distribute to a minor, or to post on school property, any of the materials described in current s. 847.012(3), F.S. This includes material harmful to minors in any format: pictures, photographs, drawings, sculptures, motion picture films, videocassettes, similar visual representations or images, books, pamphlets, magazines, printed matter however reproduced, or sound recordings. The bill creates an exception for instructional materials used in the instruction of a course by personnel defined in s. 1012.01, F.S. Sale of material harmful to minors to a minor at any location is already prohibited by s. 847.012(3), F.S.

The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, or secondary school.

As a third degree felony, this new offense would be punishable by up to five years in prison and a \$5,000 fine.

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<sup>11</sup> s. 847.012(3) & (5), F.S.

<sup>12</sup> s. 847.012(1), F.S.

<sup>13</sup> s. 847.012(2), F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill creates an additional criminal offense. The Criminal Justice Impact Conference has determined that the bill would have an insignificant prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education on February 19, 2013:**

- Provides an exception for instructional materials used in the instruction of a course by approved personnel as defined in s. 1012.01, F.S.
- Removes the term “career center” from the list of school properties.
- Revises the bill by changing the types of schools covered and by creating an exception for instructional materials used by approved educational personnel.

## B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By the Committee on Education; and Senators Flores and Benacquisto

581-01707-13

201386c1

1 A bill to be entitled  
 2 An act relating to the distribution of materials  
 3 harmful to minors; amending s. 847.012, F.S.;  
 4 prohibiting an adult from knowingly distributing to a  
 5 minor or posting on school property certain specified  
 6 materials harmful to minors; providing that it is a  
 7 third-degree felony for any person to knowingly  
 8 distribute to a minor or post on school property  
 9 certain materials harmful to minors; defining the term  
 10 "school property"; providing an exception; providing  
 11 an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15 Section 1. Present subsections (5) through (9) of section  
 16 847.012, Florida Statutes, are renumbered as subsections (6)  
 17 through (10), respectively, and a new subsection (5) is added to  
 18 that section, to read:

19 847.012 Harmful materials; sale or distribution to minors  
 20 or using minors in production prohibited; penalty.—

21 (5) An adult may not knowingly distribute to a minor on  
 22 school property, or post on school property, any material  
 23 described in subsection (3). As used in this subsection, the  
 24 term "school property" means the grounds or facility of any  
 25 kindergarten, elementary school, middle school, junior high  
 26 school, or secondary school, whether public or nonpublic. This  
 27 subsection does not apply to the distribution or posting of  
 28 instructional materials that by design serve as a major tool for  
 29 assisting in the instruction of a subject or course by school

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581-01707-13

201386c1

30 officers, instructional personnel, administrative personnel,  
 31 school volunteers, educational support employees, or managers as  
 32 those terms are defined in s. 1012.01.

33 Section 2. This act shall take effect October 1, 2013.

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**MEETING  
MATERIALS  
NOT AVAILABLE**



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Communications, Energy, and Public Utilities, Vice  
Chair  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and Human  
Services  
Transportation  
Health Policy  
Agriculture  
Transportation

### JOINT COMMITTEE:

Joint Committee on Administrative Procedures

### SENATOR RENE GARCIA

38th District

The Honorable Rob Bradley  
208 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Bradley:

Due to unforeseen circumstances I was not be able to attend the Appropriations Subcommittee on Criminal and Civil Justice Meeting scheduled for Wednesday March 19, 2013. Please do not hesitate to contact my office if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García

District 38

RG:dm

CC: Tim Sadberry, Staff Director

### REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-19-13  
Meeting Date

Topic Drone Bill  
Name Bob Dillinger  
Job Title Public Defender - 6<sup>th</sup>  
Address CTC  
Clearwater FL 33762  
City State Zip

Bill Number 92  
*(if applicable)*  
Amendment Barcode \_\_\_\_\_  
*(if applicable)*  
Phone 727-464-6866  
E-mail pd6@wearethehope.org

Speaking:  For  Against  Information  
Representing P. D. ASSOC

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.  
**This form is part of the public record for this meeting.** S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/19/13  
Meeting Date

Topic Searches & Seizures  
Name Ron Bilbao  
Job Title SR. Legislative Associate  
Address 4500 Biscayne Blvd  
Miami FL 33137  
City State Zip

Bill Number SR 92  
*(if applicable)*  
Amendment Barcode \_\_\_\_\_  
*(if applicable)*  
Phone 919-923-7288  
E-mail rbilbao@aclufl.org

Speaking:  For  Against  Information  
Representing ACLU of Florida

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.  
**This form is part of the public record for this meeting.** S-001 (10/20/11)

# CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Senate Subcommittee on Criminal and Civil Justice Appropriations

Judge:

Started: 3/19/2013 1:03:52 PM

Ends: 3/19/2013 1:36:40 PM

Length: 00:32:49

1:03:54 PM Meeting called to order.  
1:04:17 PM Chairman Bradley opens.  
1:05:30 PM TAB 1- CS/CS/SB 92  
1:05:45 PM Senator Negron, recognized.  
1:07:23 PM Senator Braynon asks what is happening and why we need to limit drone use.  
1:07:49 PM Sen. Negron responds that it is an emerging technology with an emerging market.  
1:09:04 PM Sen. Braynon asks if police might use drones for surveillance.  
1:09:16 PM Sen. Negron responds that this is about setting reasonable ground rules for drone use.  
1:11:11 PM Senator Altman asks about crowd monitoring.  
1:12:11 PM Sen. Negron responds that he does not find that use appropriate.  
1:13:49 PM Sen. Altman asks if it would be appropriate to station law enforcement above the stadium looking down.  
1:14:28 PM Sen. Negron responds that it would be appropriate.  
1:15:11 PM Senator Soto asks what the budget differences are between using drones and helicopters.  
1:15:41 PM Sen. Negron responds that the cost to use a helicopter is much greater.  
1:16:06 PM Sen. Soto asks if he get a fiscal picture of how this will all look.  
1:16:33 PM Sen. Negron responds that he will work on that.  
1:16:47 PM Senator Joyner asks a question about Miami's position regarding drone use.  
1:17:05 PM Sen. Negron responds that they only use their drone for tactical purposes.  
1:18:16 PM Senator Diaz de la Portilla asks if tactical purposes is a defined exception.  
1:18:45 PM Sen. Negron says that he used the legal term, exigent circumstances.  
1:19:17 PM Sen. Diaz de la Portilla asks if there is a difference.  
1:19:26 PM Sen. Negron says that they mean essentially the same thing.  
1:20:18 PM Senator Dean asks about getting search warrants.  
1:21:17 PM Sen. Negron responds that the police can still do that.  
1:22:02 PM Sen. Dean comments that he has seen the police in Las Vegas use a drone.  
1:23:07 PM Bob Dillinger, Public Defender, waives in support.  
1:23:17 PM Ron Bilbao, ACLU of Florida, recognized.  
1:26:43 PM Chmn. Bradley asks if the amendment that Ron Bilbao is proposing was already rejected.  
1:27:18 PM Mr. Bilbao responds that it was.  
1:27:27 PM Sen. Joyner asks about the amendment.  
1:27:41 PM Sen. Negron explains how the amendment died.  
1:29:27 PM Sen. Braynon expresses his support for the proactive approach.  
1:29:55 PM Sen. Altman asks for more flexibility for police officers.  
1:30:29 PM Senator Smith comments on the budget.  
1:30:58 PM Sen. Diaz de la Portilla expresses his support for the bill.  
1:32:02 PM By committee vote, the bill is recommended favorably.  
1:33:11 PM TAB 2- CS/SB 86  
1:33:28 PM Senator Flores, recognized.  
1:34:55 PM By committee vote, the bill is recommended favorably.  
1:36:27 PM Meeting adjourned.