

BILL ANALYSIS

Senate Research Center
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H.B. 3075
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2017, the legislature passed H.B. 1424, which created an offense for operating an unmanned aircraft over a correctional facility, with certain exceptions. The penalties for the offense range from a Class A to Class B misdemeanor. The National Press Photographers Association, Texas Press Association, and a journalist filed a lawsuit in federal court alleging that the criminal penalties restricted the journalist's First Amendment right to newsgathering and speech and restricted the journalist from utilizing such aircraft for certain newsgathering activities. In March 2022, the U.S. District Court for the Western District of Texas ruled much of the statute unconstitutional. Concerned observers now note a lack of restrictions on unmanned aircraft flights above correctional facilities.

H.B. 3075 seeks to address security concerns by restricting the unauthorized operation of unmanned aircraft over these facilities. Officers will be able to investigate those persons operating an unmanned aircraft and determine the reason for operating an unmanned aircraft over a correctional facility.

H.B. 3075 amends current law relating to the operation of an unmanned aircraft over a correctional facility or detention facility and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Penal Code, by adding Section 38.115, as follows:

Sec. 38.115. OPERATION OF UNMANNED AIRCRAFT OVER CORRECTIONAL FACILITY OR DETENTION FACILITY. (a) Defines "contraband," "correctional facility," and "detention facility."

(b) Provides that a person commits an offense if the person intentionally or knowingly:

(1) operates an unmanned aircraft over a correctional facility or detention facility and the unmanned aircraft is not higher than 400 feet above ground level;

(2) allows an unmanned aircraft to make contact with a correctional facility or detention facility, including any person or object on the premises of or within the facility; or

(3) allows an unmanned aircraft to come within a distance of a correctional facility or detention facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(c) Provides that this section does not apply to conduct described by Subsection (b) that is committed by:

- (1) the federal government, this state, or a governmental entity;
- (2) a person under contract with or otherwise acting under the direction or on behalf of the federal government, this state, or a governmental entity;
- (3) a person who has the prior written consent of the owner or operator of the correctional facility or detention facility;
- (4) a law enforcement agency; or
- (5) a person under contract with or otherwise acting under the direction or on behalf of a law enforcement agency.

(d) Provides that an offense under this section is a Class B misdemeanor, except that the offense is:

- (1) a Class A misdemeanor if the actor has previously been convicted under this section; or
- (2) a state jail felony if, during the commission of the offense, the actor used the unmanned aircraft to:
 - (A) provide contraband to a person in the custody of the correctional facility or detention facility; or
 - (B) otherwise introduce contraband into the correctional facility or detention facility.

SECTION 2. Amends the heading to Section 423.0045, Government Code, to read as follows:

Sec. 423.0045. OFFENSE: OPERATION OF UNMANNED AIRCRAFT OVER CRITICAL INFRASTRUCTURE FACILITY.

SECTION 3. Amends Sections 423.0045(b) and (c), Government Code, as follows:

(b) Provides that a person commits an offense if the person intentionally or knowingly:

- (1) operates an unmanned aircraft over a critical infrastructure facility, rather than operates an unmanned aircraft over a correctional facility, detention facility, or critical infrastructure facility, and the unmanned aircraft is not higher than 400 feet above ground level; or

(2)-(3) makes conforming changes to these subdivisions.

(c) Provides that this section does not apply to conduct described by Subdivision (b) that is committed by:

(1)-(5) redesignates existing Paragraphs (A)-(E) as Subdivisions (1)-(5);

(6) creates this subdivision from existing text; or

(7)-(9) redesignates existing Subparagraphs (B)-(D) as Subdivisions (7)-(9).

Deletes existing text providing that this section does not apply to conduct described by Subsection (b) that involves a correctional facility, detention facility, or critical infrastructure facility, and is committed by certain entities or conduct described by

Subsection (b) that involves a critical infrastructure facility and is committed by certain entities. Makes nonsubstantive changes.

SECTION 4. Repealers: Sections 423.0045(a)(1) (relating to defining "correctional facility") and (3) (relating to defining "detention facility"), Government Code.

SECTION 5. Makes application of the changes in law made by this Act to Section 423.0045. Government Code, prospective.

SECTION 6. Effective date: September 1, 2023.