

BILL ANALYSIS

C.S.H.B. 3075
By: Kacal
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.H.B. 3075 seeks to address security concerns by restricting the unauthorized operation of unmanned aircraft over these facilities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3075 amends the Penal Code to create the stand-alone offense of operation of an unmanned aircraft over a correctional facility or detention facility, which consists of the same conduct as the Government Code offense of operation of an unmanned aircraft over a correctional facility, detention facility, or critical infrastructure facility with respect to a correctional or detention facility. The bill establishes exceptions to the new Penal Code offense, which are the same exceptions in the Government Code offense, with the following changes:

- the bill does not retain the exception for an operator of an unmanned aircraft that is being used for a commercial purpose; and
- the bill provides an additional exception for a person who has the prior written consent of the owner or operator of the correctional facility or detention facility.

The bill assigns the same Class B misdemeanor penalty to the new offense but enhances the penalty as follows:

- to a Class A misdemeanor for a subsequent conviction of the offense; and
- to a state jail felony if, during the commission of the offense, the actor used the unmanned aircraft to provide contraband to a person in the custody of the correctional facility or detention facility or otherwise introduce contraband into the facility.

C.S.H.B. 3075 amends the Government Code to make conforming changes.

C.S.H.B. 3075 applies only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

C.S.H.B. 3075 repeals Sections 423.0045(a)(1) and (3), Government Code.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3075 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced included defenses to prosecution for the offense of operation of an unmanned aircraft over a correctional facility or detention facility, the substitute changes those defenses to exceptions from the application of the offense that consist of the same elements, and includes an additional exception for a person who has the prior written consent of the owner or operator of the correctional facility or detention facility, which was not present in the introduced as a defense.