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COMMENTS IN SUPPORT OF 14-H 7170 – RELATING TO CRIMINAL PROCEDURE March 4, 2014

The ACLU of RI strongly supports this legislation and its restrictions on the use of unmanned aerial vehicles, commonly referred to as drones, by law enforcement. Advancements in technology have made drones smaller, cheaper, and more powerful, ending drone use solely as a military surveillance tool and raising considerable interest among state and local law enforcement agencies. This tremendous step forward in surveillance capability carries serious implications for the privacy rights of all individuals, and strict parameters should be placed on the use of this equipment prior to its use by Rhode Island law enforcement.

Although manned aerial surveillance has been possible for decades, its tremendous costs have been a disincentive to law enforcement agencies to engage in this sort of surveillance. Through a combination of increasingly cheaper, more sophisticated technology and financial incentives provided by the federal government, law enforcement entities across the country have begun obtaining and using drones, as their relatively low financial and labor costs combined with their ability to collect and store massive amounts of information are understandably enticing as a law enforcement tool. However, unmanned aerial surveillance is much less costly and thereby unrestricted by the natural barriers that have thus far governed such aerial surveillance. As a result, statutory barriers are critical; eight¹ states have already enacted laws to restrict the use of drones by law enforcement, and 35 others are considering drone legislation this year.

The use of any surveillance equipment raises a number of privacy concerns, including the need for a narrowly tailored warrant before surveillance can begin and the implications for the privacy of those untargeted individuals who happen to be caught by surveillance equipment. Given the swift progression of technology and the immense incentive for law enforcement to utilize drones, it is critical that these privacy protections be in place before drones are in use in Rhode Island. Relying on law enforcement to dictate how drones should be used and then on the courts to determine whether that use is unconstitutional would be a long, costly process that will ultimately result in compromised privacy of innocent individuals.

In addition, the technology available with drone use far exceeds that addressed by existing case law, and that technology is only going to become more sophisticated with time. In 1986, the US Supreme Court held that warrantless aerial surveillance of private property was not automatically a violation of the Fourth Amendment protections against unreasonable search and seizure, in part because “[a]ny member of the public flying in this airspace who glanced down could have seen everything that these officers observed.”² Drones carry considerably more potential for intrusion than the helicopter surveillance the Court was considering. While each

¹ Idaho, Illinois, Montana, North Carolina, Oregon, Tennessee, Texas, Virginia.

² *California v. Ciraolo*, 476 U.S. 207 (1986).

drone is different, the potential exists for drones to carry surveillance equipment ranging from high-powered zoom lenses to infrared imaging, recording devices, and even GPS tracking – each of which carries their own individual privacy implications – all while being less noticeable to the individual under surveillance. Also in 1986, the Supreme Court noted, “surveillance of private property by using highly sophisticated surveillance equipment not generally available to the public, such as satellite technology, might be constitutionally proscribed absent a warrant.”³ In the past 25 years surveillance technology has improved, but the legislative and legal protections against unreasonable surveillance have not.

This legislation implements those protections by requiring a warrant based on probable cause or reasonable suspicion be obtained prior to drone surveillance, except in those emergency cases where law enforcement has reason to believe there is imminent threat to the life or physical safety of a person – similar to the requirements of the state wiretapping law, a process law enforcement has been familiar with for decades. The legislation further requires surveillance be conducted only on an articulated target and that any data captured on a non-target individual must be deleted within 24 hours, ensuring that no individual may see their privacy infringed upon because a drone was on its way to monitor some other individual. Surveillance of any one target is limited to 48 hours, unless a court determines that an extension of up to 30 days is warranted. Finally, the legislation requires annual reporting on drone use, allowing the General Assembly to evaluate the technology and its use in Rhode Island.

Passage of this legislation will ensure that clear guidelines for drone use within Rhode Island are established before law enforcement obtains this technology and before any individual’s privacy is unduly impacted, and the ACLU of Rhode Island strongly encourages its swift approval.

³ Dow Chemical Co. v. United States, 476 U.S. 227 (1986).