

2019 HOUSE JUDICIARY

HB 1231

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1231
2/11/2019
32523

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Elaine Stromme

Explanation or reason for introduction of bill/resolution:

Relating to prohibited uses for unmanned aerial vehicles.

Minutes:

Attachments: 1

Chairman Koppelman: Opened the hearing on HB 1231.

Rep. Rick Becker: Introduced the bill. (Attachment #1) One of the amendments prohibited weapons on drones. That got changed to no lethal weapons. We were the first state to allow non-lethal weapons. There was not testimony in opposition last session. Law enforcement said Section 1 was not problem for them. It is important to take the option of weapons on drones off. This handout was from two years ago.

Rep. Paur: Is tear gas be considered a non-lethal weapon?

Rep. Rick Becker: Yes

Rep. McWilliams: What about deterrents' like tear gas or pepper spray.

Rep. Rick Becker: Yes it does fall under the privy of a weapon.

Rep. Jones: What is the distinction between law enforcement and our military?

Rep. Rick Becker: The military is under federal law and not part of our statute.

Rep. Hanson: What kind of tools should law enforcement be able to use?

Rep. Rick Becker: We are limiting the conversation to weapons deployed from drones. I don't know.

Rep. Hanson: What would be the difference between a law enforcement view and an aerial device?

Rep. Rick Becker: The aspect of law enforcement being so far away out of view I can't think of a reason that would be necessary.

Rep. McWilliams: I would think a drone would be more of an obstacle issue?

Rep. Rick Becker: I am not familiar with that.

Chairman K. Koppelman: If your intent was to just delete the word weapon, is that what you are trying to do?

Rep. Rick Becker: I would like to delete the word lethal too. The intent in the beginning was that law enforcement could not use drones against citizens, regardless of how unlikely it may be. In that line of thinking we added lethal.

Chairman K. Koppelman: ok.

Rep. Rick Becker: That was the way the first bill was. Lethal got added in later with an amendment.

Chairman K. Koppelman: Can tear gas ever be lethal?

Rep. Rick Becker: No. There is no such thing as non-lethal.

Chairman K. Koppelman: We don't prohibit the law enforcement from using a helicopter do we?

Rep. Rick Becker: Those types of technology like helicopters that is more of a human to human technology.

Opposition:

Donnell Preskey, ND Association of Counties: The current language we are opposed to. Law enforcement believe less than lethal is an option to keep our citizens and even officers safe.

Rep. Magrum: Whenever you come in who is the sheriff's group? Can we get a list of the sheriff's that you are quoting on this?

Donnell Preskey: Sheriff's and Deputies Association existed since the 60s. I have been serving as executive director now and they are more organized now. There are about 22 Sheriff's from our 53 counties represented. I could defiantly share a list with you.

Rep. Jones: Could an attorney argue in fighting crime that a camera mounted on a drone is a not lethal weapon because it is gathering information. Would that be against this law?

Donnell Preskey: That is out of my realm of expertise.

Rep. Rick Becker: What really changed in the mindset because we have the Bob Ross from Grand Forks, who said we would not use a lethal weapon, then the police chief said he would be hard pressed to find a need to weaponized. What has changed?

Donnell Preskey: Tear gas and other things are options that can be used in dangerous situations. What has changed, the officers you talked to worked for the police Association not the sheriff's association. The sheriff's association were not really organized last session so they were not present because they were busy with the protest South of Bismarck, Mandan.

Rep. Rick Becker: What is the range for the technology for deploying that type of weapon?

Donnell Preskey: I do not know much use of drones.

Rep. Paur: In the situation you described it would have helped to use a flash.

Rep. Magrum: We keep talking about the DAPL situation. Do you think that would have turned out better if we would have armed the drones?

Donnell Preskey: I don't know. I understand there was a joint SWAT team there.

Chairman K. Koppelman: In the bill we have a lengthy description of

Donnell Preskey; I don't know, but I can reach out to others to assist you.

Chairman K. Koppelman: Can you give us a better idea what law enforcement would like to deploy regarding the drones.

Chairman K. Koppelman: Maybe definition in statute would help? Would you please check on what would be better wording? The current law says any lethal weapon.

Don Larson: Grand Sky Technology, Grand Forks: One area that is becoming really important is counter drone events.

Chairman K. Koppelman: Any neutral testimony? Seeing none.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1231
2/12/2019
32609

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to prohibited uses for unmanned aerial vehicles.

Minutes:

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Chairman Koppelman: Opened the meeting on HB 1231. This bill deals with drones and law enforcements agencies.

Rep. Rick Becker: I checked into the less lethal nonlethal aspect. The other option would be to strike the word lethal. Then it wouldn't include all weapons. If we were going to list things they still recommend listing like this. Because less lethal is the term that law enforcement uses were nonlethal is the term the legislators tend to use. I am fine if the committee is interested in striking all of the adding language in this bill and then striking the one word lethal. Which currently exists in code which then adds up to having the same effect.

Chairman K. Koppelman: Then the question becomes what is a weapon?

Rep. Rick Becker: The weapon is not defined in this section. Legislative Council made me aware that to attempt to define it in this section might muddy the water some and leave open the possibility that if we didn't define it perfectly it might leave things out that should have been in.

Chairman K. Koppelman: Or we could kill the bill, I just think that the main concern Someone contacted me. North Dakota is the first state to weaponized drones. No, we did just the opposite. What they were talking about that by saying lethal weapons were banned, the implication was that other kinds of weapons were not. Your intent is noble but I am not sure anything is hurt if we don't pass it.

Rep. Jones: I like that proposed amendment that he had. I move an amendment that we strike the underlined language on line 7 and also strike the word "lethal".

Rep. Becker: Seconded.

Chairman K. Koppelman: So the amendment is to remove the new language in the bill and strike the word “lethal” from current statute.

Rep. Hanson: I will resist the amendment and the bill. I think we are tying law enforcements hands. I think the amendment is potentially vague and hard for law enforcement to define. We need to make sure they have all the tools they can possibly have to ensure officer safety as well as the safety of the neighborhood.

Rep. McWilliams: I agree. I want to make sure our officers have all the tools that they want. I don't agree having a gun on a drone. Having the ability to drop tear gas or a smoke grenade could be a good crowd deterrent. If we try to say we will address it next time; that situation will have come and gone. If we leave it in here; if there is a drone in Minnesota or surrounding states then they have legal authority to use it.

Rep. Vetter: I agree with the two former speakers. It might affect our growing Unmanned Aircraft Systems (UAS) industry and how does it hamper it? I am going to oppose.

Rep. Jones: I am trying to get through the definition of weapons. Weapons are instruments that are able to fire out a projectile by an explosion. Something we think of as a weapon. Tear gas bomb is not defined as a weapon. Law enforcement will still be able to use them for all kinds of things. I think it is a good bill.

Chairman K. Koppelman: Isn't that what current law does though by saying that they can't be armed with any lethal weapon.

Rep. Jones: I think there was some perception that by defining lethal we are implying that we could put something on there that was nonlethal that was still a weapon.

Rep. McWilliams: I think there is a big difference between perception and reality and we need to do a better job if there is confusion between what is lethal and what we are allowing in our current law and in public relations.

Rep. Buffalo: Just hearing the language used in the discussion I think it is important to decipher the difference between an armed shooter and a stand-off. An armed shooter stand-off for example what happened in Fargo versus peaceful protest or civil disobedience with people practicing their first amendment rights. DAPL keeps being brought up but we sometimes fail to recognize what happened there. With the lack of tribal consultation if we want to work farther upstream to get to the heart of the matter and prevent further situations occurring. I just thought I would add those comments.

Representative Simons: I had friends on both sides of the protest. Not only were they shot at they had a number of different things. Now we are saying law enforcement can fly drones over the protestors. They were just exercising their first amendment rights. Which I support 100%. If we had drones flying over with lethal weapons that would make the protestors our victims. This might be an issue.

Rep. Jones: All this bill is doing is saying they cannot authorize the use of an unmanned vehicle with a weapon. We are simply taking out the confusion when the word lethal did.

We just take that word out and say we are not going to allow weapons mounted on drones. It gets rid of that question and I think it is appropriate.

Rep. Rick Becker: We are debating the amendment, the current language in the bill removes essentially all weapons, because lethal is already prohibited. This language would prohibit less lethal and nonlethal. The amendment is to strike the added language and strike the word lethal which then leaves prohibition of all weapons. Amended or not amended does the same thing. The question is which is better verbiage if you are going to have this bill. The second question is whether you think this whole concept is appropriate or not.

Rep. Satrom: Does this allow us or not to drop tear gas or smoke bombs?

Chairman K. Koppelman: I don't think we know. The problem is if you say they cannot be armed with any weapon we need to be careful what we say. If you say a drone cannot be armed with any weapon; what is a weapon definition? If we pass the amendment and pass the bill I am not sure we are clarifying things.

Rep. McWilliams: Maybe we should add a list of things.

Rep. Paur: I am going to resist the motion. Then it reverts to the original language. I will support that. I don't know if The Century Code defines weapons. It defines dangerous weapons. So I think this would allow use of CS gas.

Rep. Satrom: Is there any way we can get clarification from Legislative council?

Chairman K. Koppelman: We could certainly hold it over if that is what the committee wishes.

Representative Simons: I was looking up the word lethal which is significant to cause of death, fatal, deadly, murderous, homicide, killing.

Chairman K. Koppelman: If a term is not defined in code differently then it reverts to the commonly understood definition of the term and you have just read that. I think current law is pretty good the way it is. I supported Rep. Becker's bill when we passed it last session. If the amendment fails and the bill falls we would be left with current law. 17:29

Rep. Roers Jones: Law enforcement has different definitions of what is less than lethal force. I don't see that they are currently defined in code. I think I will oppose the amendment.

Chairman K. Koppelman: Does the committee wish to have some time to look at this. We will take a voice vote on the amendment to remove the new language and the word "lethal" from statute.

Voice vote taken: Motion fails.

Chairman K. Koppelman: We have the unamended HB 1231. before us what are the committees wishes?

Rep. Roers Jones: I move a Do Not Pass on HB 1231.

Rep. McWilliams: seconded.

Chairman K. Koppelman: Any discussion?

Rep. Rick Becker: I would like to clarify some points. In regard to the concern to the UAS industry this should not affect that. The primary concern was that it would not interfere with the counter drone technologies that are being developed unless weapon included nets it would not. It is precisely for freedom of speech is why we want to look at prohibiting some of these things like tear gas and bean bags. We don't want people disconnected and remote. The law enforcement opposition includes only 6 sheriffs out of the 53 we have. We will never want to tie the hands of law enforcement. Discussed clarification on the drone issue. End 22:52

Rep. Satrom: In our code a dangerous weapon does not include aerosol containing CS gas or any other irritating agent.

Representative Simons: I know a man with high security clearance that was in the Iraqi War. Very highly decorated and fluent in Arabic. He was in charge of drones. He blew up a whole wedding party thinking someone was there. He has never been the same. Being somewhere and pushing a button is very different than being on the ground. If we had armed drones what could have we done but instead we had armed officers that didn't fire upon anyone during the DAPL protest.

Chairman K. Koppelman: I don't think the character of law enforcement is changed by what technology or weapon they use.

Rep. McWilliams: I do agree we have some drone issues. We are not talking about military drones here.

Chairman K. Koppelman: I have struggled with the bill and the issue and I support law enforcement and civil liberties. What troubles me about the bill is many of us stand up for the second amendment. We believe the right to bear arms should not be taken away. Here we have legislation that is aimed at the piece of technology and not the action. If law enforcement misbehaves whether they punch someone or if they use a drone, I think we muddy the water by going further down that road.

Representative Simons: Discussed use of drones. 28:10-29:25

Roll call vote taken on Do Not Pass on HB 1231. Yes 8 No 6 Absent 0. Motion carried.

Rep. Roers Jones: Will carry the bill.

Hearing closed.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1231**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Strike the underlined language on line 7 and strike the word "lethal"

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Jones Seconded By Rep. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote: Motion failed.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1231**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Roers Jones Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo		X
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker		X			
Rep. Terry Jones	X				
Rep. Magrum		X			
Rep. McWilliams	X				
Rep. B. Paulson		X			
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter	X				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Roers Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1231: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1231 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1231

Grand Forks area law enforcement officials want to make one thing clear: They have no intention of weaponizing unmanned aircraft in the near future, despite some saying it's legal to under state law.

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P.1

North Dakota's **new statute** governing law enforcement use of unmanned aircraft bans attaching lethal weapons to the devices but leaves out language concerning less-than lethal weapons, such as Tasers or pepper spray dispensers.

"State law is so wide open that you can, but we're not going to," Grand Forks County Sheriff Bob Rost said. "And we wouldn't even think of it."

The ban is a small portion of the law, which focuses on law officers getting warrants before conducting surveillance with the devices, but its existence has made headlines across the globe this past week.

Law enforcement agencies technically could outfit a unmanned aircraft with a nonlethal weapon, and so could departments in 43 other states.

A Herald analysis of state legislation spanning 2013 to 2015 found only seven states outright prohibit some form of weaponized unmanned aircraft.

North Dakota bans lethal weapons, while Maine, Nevada, North Carolina, Oregon, Virginia and Wisconsin don't make a distinction between lethal and less-than lethal weapons.

Before North Dakota's law came about, Rost said the department has a policy against the use of weapons on unmanned aircraft that was set up in 2012, when it partnered with UND's **Unmanned Aircraft Systems Research and Compliance Committee** to start research into potential uses of the technology for law enforcement.

"We wanted to make sure that, in being able to utilize these aircraft, we follow a procedure," he added. "We wanted to make sure any missions we fly were first screened by the compliance committee to ensure we're doing everything properly."

Cause and effect

North Dakota's law went into effect Aug. 1, but Rost and Grand Forks Police Chief Mark Nelson don't foresee an immediate impact on their operations. They say none of the five scenarios during which they could launch aircraft are situations that require a warrant as defined by criminal statutes.

"Right now, I'd be hard pressed to find a legitimate need to weaponize," Nelson said.

The law is a product of a **House Bill 1328**, of which Rep. Rick Becker, R-Bismarck, was a primary sponsor. The bill introduced this year in the North Dakota Legislature was Becker's **second attempt** to regulate law enforcement use of unmanned aircraft. The first bill was killed in 2013.

The provision that bans outfitting the devices with lethal weapons was a compromise between proponents and a law enforcement lobbyist, Becker said. "The bill, even amended, still accomplishes a tremendous amount," he said. "Requiring search warrants for law enforcement to do surveillance, I think, is a huge, huge win for civil liberties and prohibiting lethal weapons is a good first step."

Becker confirmed he has plans to introduce legislation to ban the remaining nonlethal weapons when the Legislature meets again in 2017. He added he is aware of the Grand Forks County Sheriff's Department's policy.

"The point of wanting it to become law is because of departmental policies change," Becker said. "We can't rely on each city and each county's department policy, we just need a simple law the way it was originally introduced."

The lobbyist, Bruce Burkett, suggested changes on behalf of the North Dakota Peace Officers Association. The association's president, Michael Reitan, police

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chief of West Fargo, elaborated on the amendment during an interview with National Public Radio this week.

"Well, talking to law enforcement agencies that have SWAT teams, they felt that there needed to be an ability to deliver nonlethal munitions into certain situations -- a barricaded subject -- and the possibility of allowing the use of pepper spray to be deployed from a drone," he said.

Following its adoption, North Dakota's law puts it among 16 other states that have statutes regulating law enforcement's use of unmanned aircraft.

"This was an area that needed improvement," Becker said of North Dakota lacking regulation. "North Dakota is on the forefront of drone technology, research and education, and with this law, we can also be on the forefront of protecting civil liberties when it comes to UAS."

A majority of the 17 states have laws that define requirements and exceptions for obtaining a warrant for unmanned device use and create rules for the use of storage of evidence gained from these aircraft.

The laws vary from state to state. For example, in North Dakota, officers must procure a warrant for surveillance, while Virginia requires agencies to obtain a warrant for any use of an unmanned aircraft.

Limited effect

While the lethal weapons ban will remain on North Dakota's books until at least the next legislative session, it presently only affects Grand Forks County law enforcement.

The Sheriff's Department is the only law enforcement agency in the state so far with clearance to operate unmanned aircraft. It and the Grand Forks Police Department operate a UAS unit consisting of two police representatives, two sheriff representatives and two UND pilots.

The agencies' use of the devices began in 2012 as a research project under the purview of the UND Unmanned Aircraft Systems Research and Compliance Committee.

The committee approved five mission sets for which the agencies are allowed to use their devices: crime and traffic scene analysis, disaster scene management, missing person searches and major event traffic monitoring.

"Even if we were to weaponize, where would it fit in with the five approved mission sets that we have?" Nelson said.

The research project has since ended, but Rost and Nelson say their agencies are still adhering to standards set by the committee.

"We were at a crossroads to say, 'Is there really oversight needed on this from the research committee?' Nelson said. "And procedurally, the answer is 'no,' but we've elected to ... take that extra step, and if there's something outside of the five approved mission sets, we're going to run it through the committee and ensure there is transparency."

Nelson and two sheriff's deputies, BJ Maxson and Al Frazier, continue to serve on the compliance committee with representatives from UND, the city of Grand Forks and the Grand Forks community.

The UAS unit has flown 16 missions since its inception and regularly conducts training flights. Currently, the Sheriff's Department has authorization to fly its three unmanned aircraft in 17 counties concentrated in the northeastern corner of North Dakota. Its UAS unit also has assisted law enforcement in Minnesota, Rost said, specifically flying over the scene of a house explosion in rural Bemidji.

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The New American

THAT FREEDOM SHALL NOT PERISH

HOME U.S. NEWS WORLD NEWS ECONOMY SCITECH CULTURE OP-ED REVIEWS

Monday, 31 August 2015 North Dakota Authorizes Police to Use Weaponized Drones

Written by Joe Wolverton, II, J.D.
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Police in North Dakota may now legally deploy drones equipped with Tasers and tear gas.

In ironic betrayal of a bill's original intent, HB 1328 authorizes law enforcement to weaponize drones and use them against citizens, provided that the weapons are "less than lethal."

The measure, originally drafted by state representative Rick Becker, called for tight regulation on the use of the unmanned aerial vehicles by police and for protection from their misuse against citizens and the Constitution.

