



**U.S. Department of Justice**

Office of Legislative Affairs

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

Dear Madam Speaker:

On behalf of the Administration, I am pleased to present for the consideration of the Congress a legislative proposal that would fill a gap in authorities to prosecute malicious and dangerous uses of unmanned aircraft (“drones”).

The potential of drones to revolutionize commerce, military operations, and law enforcement is accompanied by dangers to public safety and to the national security resulting from the misuse of drones. So far, legislative efforts to address the emerging threat through appropriate statutory penal provisions have been fragmentary and inadequate. For example, the use of a weaponized drone in a fatal attack would violate Public Law 115-254 § 363, with a \$25,000 civil penalty being the maximum sanction. Drone intrusions by terrorists and spies upon national defense airspace to surveil potential targets or obtain intelligence are merely misdemeanors under 49 U.S.C. § 46307.

The legislation that we propose would result in a comprehensive title 18 offense provision addressing the major threats from misuse of drones. The major elements of this legislative proposal are —

- **Weaponization:** Prohibits equipping drones with weapons, possessing or operating drones that are so equipped, or using drones directly to cause serious harm to persons or property. (Proposed new 18 U.S.C. § 40B(a)).
- **Impairment of Identification/Lighting:** Prohibits using unregistered drones in furtherance of felonious criminal activities, tampering with drone identification numbers, disabling or failing to effect required drone identification transmission or signaling, or not having required drone anti-collision lighting. (Proposed new 18 U.S.C. § 40B(b)).
- **Interference with Protected Activities:** Prohibits using drones to interfere with or disrupt the operation of aircraft, airports, vessels, or vehicles, or law enforcement, emergency response, or military operations or activities. (Proposed new 18 U.S.C. § 40B(c)).

- **Intrusion on Protected Spaces:** Prohibits operating drones in federally restricted airspace with knowledge of illegality. (Proposed new 18 U.S.C. § 40B(d)).
- **Transportation of Contraband:** Prohibits using drones to transport contraband or to introduce prohibited objects into federal prisons. (Proposed new 18 U.S.C. § 40B(e)).
- **Penalties:** Authorizes baseline penalties of up to 5 or 10 years of imprisonment, with increase for resulting injury to persons or property, or death. (Proposed new 18 U.S.C. § 40B(f)).
- **Inchoate Offenses, Jurisdiction, Exceptions, Definitions:** Provides liability for threats, attempts, and conspiracies; grounds of federal jurisdiction; exceptions for activities authorized by governmental entities or owners of affected property; and definitions. Jurisdictional predicates include interstate commerce nexus, use of communications spectrum subject to Federal Communications Commission jurisdiction, aircraft or airspace use subject to Federal Aviation Administration jurisdiction, and commission of the prohibited acts abroad against United States property, personnel, or entities. (Proposed new 18 U.S.C. §§ 40B(g), (h), (i), and (j)).
- **Terrorism and Electronic Surveillance Predicates:** Conforming amendments add the drone weaponization subsection of the proposed offense to the predicate offense list in 18 U.S.C. § 2332b(g)(5)(B) (terrorism) and add the proposed offense to the predicate offense lists in 18 U.S.C. §§ 982(a)(6)(A) (forfeiture) and 2516(1) (wire/oral communications interception).

We have enclosed legislative language and a detailed analysis of the proposal.

Thank you for the opportunity to present this proposal. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that submission of this letter is in accord with the program of the President.

Sincerely,

PETER HYUN

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HYUN  
Date: 2022.01.24 12:37:47  
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Peter S. Hyun  
Acting Assistant Attorney General

Enclosures

cc: The Honorable Kevin McCarthy, Minority Leader  
U.S. House of Representatives

The Honorable Nancy Pelosi  
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IDENTICAL LETTER SENT TO THE HONORABLE KAMALA D. HARRIS, PRESIDENT  
OF THE UNITED STATES SENATE, WITH A COPY TO THE HONORABLE MITCH  
McCONNELL, MINORITY LEADER, UNITED STATES SENATE.

## A BILL

To prevent the misuse of drones, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE

This Act may be cited as the “Crime-Free and Secure Skies Act of 2022”.

### SEC. 2. DRONE OFFENSE.

Title 18, United States Code, is amended –

(1) by inserting after section 40A the following:

#### “§ 40B. Misuse of unmanned aircraft.

“(a) WEAPONIZATION. – Whoever knowingly –

“(1) equips or arms an unmanned aircraft with a firearm, explosive, dangerous weapon, restricted electromagnetic weapon, or weapon of mass destruction;

“(2) possesses, receives, transfers, operates, or produces an unmanned aircraft that is equipped or armed with a firearm, explosive, dangerous weapon, restricted electromagnetic weapon, or weapon of mass destruction;

“(3) discharges or deploys a firearm, explosive, dangerous weapon, restricted electromagnetic weapon, or weapon of mass destruction using an unmanned aircraft; or

“(4) uses an unmanned aircraft to cause serious bodily injury to a person or damage exceeding \$1,000 to property,

shall be punished as provided in subsection (f).

“(b) IMPAIRMENT OF IDENTIFICATION OR LIGHTING. –

“(1) Whoever knowingly uses an unmanned aircraft in furtherance of the commission of a felony, where Federal law requires that the aircraft be registered but it is not registered, shall be punished as provided in subsection (f).

“(2) Whoever, in violation of Federal law, knowingly –

“(A) removes, obliterates, tampers with, or alters the identification number of an unmanned aircraft;

“(B) disables or fails to effect any required identification transmission or signaling of an unmanned aircraft; or

“(C) disables or obscures any required anti-collision lighting of an unmanned aircraft or fails to have or illuminate such lighting as required,

shall be punished as provided in subsection (f).

“(c) INTERFERENCE WITH PROTECTED ACTIVITIES. – Whoever operates an unmanned aircraft and thereby knowingly or recklessly interferes with or disrupts –

“(1) the operation of an aircraft, airport, vessel, or vehicle; or

“(2) a law enforcement, emergency response (including wildfire suppression), or military operation or activity of the Federal Government or of a State, tribal, or local government,

shall be punished as provided in subsection (f).

“(d) INTRUSION ON PROTECTED SPACES. – Whoever, knowing that his conduct is unlawful –

“(1) operates an unmanned aircraft in any airspace, or causes the take-off or landing of an unmanned aircraft in any place, in violation of Federal law; or

“(2) operates an unmanned aircraft across a border of the United States or its territories or possessions without complying with the requirements of Federal law,

including but not limited to all applicable rules, regulations, and orders of the Federal Aviation Administration and the Department of Homeland Security, shall be punished as provided in subsection (f).

“(e) TRANSPORTATION OF CONTRABAND. – Whoever knowingly uses an unmanned aircraft to –

“(1) transport contraband; or

“(2) introduce a prohibited object into a prison,

shall be punished as provided in subsection (f).

“(f) PENALTIES. – Whoever commits an offense under this section shall be punished –

“(1) for an offense under subsection (b) or (d), by imprisonment for not more than 5 years;

“(2) for an offense under subsection (a), (c), or (e), by imprisonment for not more than 10 years;

“(3) for an offense under any subsection, if injury results to a person or damage to property, by imprisonment for not more than 20 years; and

“(4) for an offense under any subsection, if death results, by death or by imprisonment for any term of years or for life.

“(g) INCHOATE OFFENSES. – Whoever threatens, attempts, or conspires to commit an offense under this section shall be subject to the same punishment as for a completed offense.

“(h) JURISDICTION. – There is Federal jurisdiction over an offense under this section if

—  
“(1) the offense –

“(A) is an offense under subsection (b), (d), or (e);

“(B) involves an unmanned aircraft, firearm, explosive, dangerous weapon, restricted electromagnetic weapon, weapon of mass destruction, or ammunition that has moved at any time in interstate or foreign commerce;

“(C) occurs in or affects interstate or foreign commerce;

“(D) involves the movement of any person or thing in, or use of any means or instrumentality of, interstate or foreign commerce;

“(E) involves any use of the electromagnetic spectrum that is subject to the jurisdiction of the Federal Communications Commission or the National Telecommunications and Information Administration or any aircraft or airspace use that is subject to the jurisdiction of the Federal Aviation Administration;

“(F) is committed, whether within or outside of the United States, against

—  
“(i) the United States or any department, agency, property, activity, or personnel of the United States; or

“(ii) an aircraft in the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);

“(G) is committed outside of the United States against any United States national, United States corporation or legal entity, aircraft registered under United States law, or vessel of the United States or vessel subject to the jurisdiction of the United States (as defined in section 70502 of title 46); or

“(H) is committed in the special maritime and territorial jurisdiction of the United States; or

“(2) in the case of a threat, attempt, or conspiracy, any of the circumstances described in paragraph (1) exists or would have existed had the offense been carried out.

“(i) EXCEPTIONS. – There is no liability –

“(1) under any subsection of this section, for conduct by or under the authority of, authorized by, or pursuant to a contract with, the United States or a State, tribal, or local government, or any department or agency of the United States or a State, tribal, or local government; or

“(2) under subsection (a)(4), for conduct consisting of damage to property, if engaged in by or with the authorization or consent of the owner of the property, including in any consensual competition in which unmanned aircraft are deployed against each other.

“(j) DEFINITIONS. – As used in this section –

“(1) ‘aircraft’ means, notwithstanding section 31(a)(1), any device, craft, vehicle, or contrivance that is invented, used, or designed to navigate, fly, or travel in the air, or that is used or intended to be used for flight in the air;

“(2) ‘airport’ has the meaning provided in section 40102(a)(9) of title 49;

“(3) ‘contraband’ has the meaning provided in section 80302 of title 49;

“(4) ‘dangerous weapon’ has the meaning provided in section 930 of this title;

“(5) ‘explosive’ means any thing within the scope of the definition of ‘explosive materials’ in section 841 of this title;

“(6) ‘Federal law’ means any form of Federal law, including any Federal statute, rule, regulation, or order;

“(7) ‘felony’ means an offense punishable by imprisonment for more than one year under a law of the United States or of a State, tribal, or local government;

“(8) ‘firearm’ has the meaning provided in section 921 of this title;

“(9) ‘personnel of the United States’ means any Federal officer, employee, or contractor, or any person assisting such an officer, employee, or contractor in the performance of duties;

“(10) ‘prohibited object’ and ‘prison’ have the meaning provided in section 1791 of this title;

“(11) ‘restricted electromagnetic weapon’ means any type of device, instrument, technology, or contrivance that –

“(A) can generate or emit electromagnetic radiation or fields that are capable of jamming, disrupting, degrading, damaging, or interfering with the operation of any technological or electronic asset, system, network, or infrastructure, or any component or sub-component thereof; and

“(B) is classified as a restricted electromagnetic weapon by the Attorney General, in consultation with the Secretary of Defense;

“(12) ‘serious bodily injury’ has the meaning provided in section 1365 of this title;

“(13) ‘United States corporation or legal entity’ means any corporation or other entity organized under the laws of the United States or any State;

“(14) ‘unmanned aircraft’ means any aircraft that is operated or designed to be operated –

“(A) without a person in or on the aircraft; or

“(B) without the possibility of direct human intervention from within or on the aircraft;

“(15) ‘vessel’ means any craft or contrivance used, capable of being used, or designed to be used for transportation in, on, or through water; and



“(16) ‘weapon of mass destruction’ has the meaning provided in section 2332a of this title.”;

(2) in the chapter analysis for chapter 2, by inserting after the item relating to section 40A the following:

“40B. Misuse of unmanned aircraft.”;

(3) in section 982(a)(6)(A), by inserting “40B,” before “555”;

(4) in section 2332b(g)(5)(B), by inserting “40B(a) (relating to weaponization of unmanned aircraft),” before “81”; and

(5) in section 2516(1)(c), by inserting “section 40B (relating to misuse of unmanned aircraft),” before “section 43”.

## **THE PROPOSED CRIME-FREE AND SECURE SKIES ACT OF 2022**

The potential of unmanned aircraft (“drones”) to revolutionize commerce, military operations, and law enforcement is accompanied by dangers to public safety and the national security resulting from misuse of drones. While existing federal law includes some criminal provisions relating to misuse of drones, those existing provisions are fragmentary in nature and lack adequate sanctions to restrain and deter the most serious drone-related crimes.

The proposed Crime-Free and Secure Skies Act of 2022 will remedy this shortfall by enacting a comprehensive criminal provision, with adequate penalties and grounds of federal jurisdiction, to address the most serious and dangerous misuses of drones. The offense will be a new § 40B in title 18 of the United States Code.

The remainder of this statement explains the provisions, precedents, and rationale of the new offense:

### **SUBSECTION (a) – WEAPONIZATION**

Subsection (a) of the offense provision addresses the use of drones as weapons. Currently, § 363 of Public Law 115-254 provides that “a person may not operate an unmanned aircraft . . . that is equipped or armed with a dangerous weapon” and states that persons violating the prohibition are liable “for a civil penalty of not more than \$25,000 for each violation.” The existing provision does not reach all of the ways in which drones may be used as weapons and the authorization of civil monetary penalties falls short in relation to what may be lethal criminal conduct.

Subsection (a) creates a more adequate weaponized-drone offense. Paragraphs (1)-(3) cover situations involving drones equipped or armed with firearms, explosives, dangerous weapons, restricted electromagnetic weapons, or weapons of mass destruction, or in which drones are used to discharge or deploy such weapons. Most of the covered classes of weaponry are defined in subsection (j)(4), (5), (8), and (16) by cross-reference to existing definitions of those terms in 18 U.S.C. 841(c), 921(3), 930(g)(2), and 2332a(c)(2). In addition, the list includes restricted electromagnetic weapons, as defined in subsection (j)(11), reflecting the emerging threat that weapons of this nature pose to infrastructure and other systems. Paragraph (4) reaches situations in which the drone itself is used as a weapon, such as by crashing a drone into an airplane, ship, building, vehicle, or person.

### **SUBSECTION (b) – IMPAIRMENT OF IDENTIFICATION OR LIGHTING**

Effective identification and tracking of drones is critical to preventing their criminal misuse. Subsection (b) of the new offense reaches conduct that directly defeats identification and tracking measures required by federal law or violates those requirements in furtherance of criminal activity.

Paragraph (1) of subsection (b) reaches the use of unregistered drones for criminal purposes. Currently, 49 U.S.C. 46306(b)(5)(A), (6)(A), (c) provides criminal penalties for knowingly and willfully operating unregistered aircraft, with an enhanced penalty for cases involving felony controlled substance violations. Paragraph (1) provides similar treatment for cases involving the use of unregistered drones in committing other crimes at the felony level.

Paragraph (2)(A) of subsection (b) covers removing, obliterating, tampering with, or altering a drone's identification number. It may be compared to 18 U.S.C. 511(a)(1), which prohibits removing, obliterating, tampering with, or altering a vehicle identification number.

Paragraph (2)(B) of subsection (b) reaches failure to effectuate required identification transmission or signaling. This will support enforcement of a Federal Aviation Administration regulation requiring remote identification of drones.

Paragraph (2)(C) of subsection (b) reaches impairment of required anti-collision lighting. FAA regulations generally require anti-collision lighting visible for at least three statute miles that has a flash rate sufficient to avoid a collision when small unmanned aircraft are operated during twilight or at night. Subjecting violations of this requirement to criminal sanctions under paragraph (2)(C) is warranted by the resulting safety hazards. In addition, obscuring of lighting may be used to facilitate the surreptitious illicit use of drones, as indicated by the discovery near the southern border of small drones with anti-collision lighting covered with electrical tape, and the taping of lights on drones used to surreptitiously introduce contraband into a federal correctional facility.

## **SUBSECTION (c) – INTERFERENCE WITH PROTECTED ACTIVITIES**

18 U.S.C. 39B(a), (c)(1) prohibits knowingly or recklessly interfering with or disrupting the operation of occupied aircraft by means of unmanned aircraft operation in certain circumstances, with baseline misdemeanor penalties. 18 U.S.C. 40A(a) prohibits knowingly or recklessly interfering with wildfire suppression or related law enforcement or emergency response efforts by means of unmanned aircraft operation, with penalties of up to two years of imprisonment. 49 U.S.C. 46320 prohibits knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort by means of unmanned aircraft operation, subject to a civil penalty of not more than \$20,000.

The growing danger to governmental operations and other critical activities from the malicious or reckless use of drones warrants a more comprehensive response, with meaningful criminal penalties available on a more consistent basis – including for interference with law enforcement and emergency response efforts generally, not only those associated with wildfire suppression, and for interference with military operations as well.

Subsection (c) of the new offense provides such a response, prohibiting the knowing or reckless use of drones to interfere with or disrupt governmental law enforcement, emergency response, or military operations or activities. In addition, the subsection reaches knowing or

reckless interference or disruption with respect to the operation of aircraft, airports, vessels, or vehicles, whether governmental or non-governmental. The protection for aircraft and airports, which are extraordinarily vulnerable to drone attack and interference, builds on existing provisions in 18 U.S.C. 39B. The inclusion of vessels is warranted by the exposure of U.S. shipping to drone attacks, particularly in the international context. The protection of other vehicles – which include land vehicles and spacecraft – is warranted because of the grave danger to life and property that can result from drone interference with their operation.

#### **SUBSECTION (d) – INTRUSION ON PROTECTED SPACES**

49 U.S.C. 40103(b) broadly empowers the Federal Aviation Administration (FAA) to regulate the use of the navigable airspace of the United States. 49 U.S.C. 46307 provides misdemeanor penalties for knowingly or willfully violating national defense airspace, a concept given scope and definition by FAA regulations and orders. Related regulatory provisions include 14 CFR 99.7, 14 CFR 91.137, 14 CFR 93.333, and 14 CFR 107.47, among others.

Pursuant to 14 CFR 99.7, the FAA has restricted drone flights at over 1,500 locations (including airspace over military installations, energy facilities, certain national parks, and Federal Bureau of Prisons institutions) to address national security interests at these locations. Drone operations are also subject to established FAA flight restrictions near large stadiums during major sporting events and within the Washington, D.C., Special Flight Rules Area. In addition to FAA airspace regulation and flight rules, the take-off and landing of drones may be restricted by the rules and policies of other federal agencies, such as the Department of the Interior’s prohibitions of the take-off or landing of drones on certain public lands.

As in other areas of drone regulation, the existing criminal provisions relating to drone intrusion on protected spaces are fragmentary and inconsistent with regard to penalties and other matters. As noted above, 49 U.S.C. 46307 provides misdemeanor penalties for knowingly or willfully violating national defense airspace. 18 U.S.C. 39B(b) prohibits knowingly operating an unmanned aircraft within a “runway exclusion zone” as defined. 18 U.S.C. 1752(a)(5) prohibits knowingly and willfully operating an unmanned aircraft system within or above restricted buildings or grounds related to protection of the President. The latter provisions carry varying penalties depending on the seriousness of resulting harm.

Subsection (d)(1) of the new offense provides a uniform criminal prohibition of unlawful operation, or take-off or landing, of unmanned aircraft where disallowed by federal law. Subsection (d)(2) addresses specifically the illicit cross-border operation of unmanned aircraft, where the federal law requirements for such activity are not complied with. Both for paragraphs (1) and (2), “federal law” means any form of federal law, including any federal statute, rule, regulation, or order, as provided in subsection (j)(6). Thus, for example, subsection (d) prohibits any drone operation in violation of FAA airspace restrictions, and any cross-border operation of drones involving non-compliance with applicable FAA or DHS rules.

Consistent with the sometimes higher penalties authorized in the new offense, liability under subsection (d) is limited to cases in which the offender knows that his conduct is unlawful. Such knowledge may be provable, for example, based on the posting of signs in restricted areas stating that the operation of drones therein is prohibited, or because the offender is a repeat violator and has previously been warned about the illegality of his drone use, or where the offender has disabled features of the drone that otherwise prevent its operation in restricted areas (such as manufacturer-installed geofencing software). The knowledge of illegality required under subsection (d) is knowledge by the offender that his conduct is unlawful, not knowledge that his conduct is prohibited by federal law or by particular federal statutes or rules. Cf. *United States v. Whaley*, 577 F.3d 254, 261-62 (5th Cir. 2009) (where criminal liability requires knowledge of legal duty, defendant need not have been aware that the duty was imposed by federal law).

### **SUBSECTION (e) – TRANSPORTATION OF CONTRABAND**

49 U.S.C. 80302-80303 prohibits the transportation of illegal drugs and other specified types of contraband by aircraft, enforceable by forfeiture of the aircraft. 18 U.S.C. 1791 prohibits provision to, and possession by, inmates in federal prisons of contraband (“prohibited objects”) in several categories, with varying penalties depending on the nature of the contraband.

Subsection (e) of the new offense provides adequate and consistent criminal penalties for the use of drones to transport contraband as defined in 49 U.S.C. 80302, and for the use of drones to introduce contraband into federal prisons as defined in the 18 U.S.C. 1791 offense.

### **SUBSECTION (f) – PENALTIES**

Subsection (f) provides the penalties for the misuse-of-drones offense. The baseline penalty is up to 5 or 10 years of imprisonment, depending on which subsection of the offense provision is violated, which increases to up to 20 years of imprisonment in cases involving resulting harm to persons or property. If death results, the authorized penalty is death or imprisonment for any term of years or for life.

The penalty of up to five years of imprisonment for violations of subsections (b) and (d) parallels the penalty authorization for such existing offenses as 18 U.S.C. 511(a)(1) (tampering with vehicle identification numbers) and 49 U.S.C. 46306(c) (use of unregistered aircraft in controlled substance violations). Other aspects of the penalty levels and structure are similar to many existing offenses relating to such matters as firearms, explosives, interference with aircraft operations, and interference with government operations. See, e.g., 18 U.S.C. 32(a)-(b), 39B(c)(2), 111(b), 844(a)(1)-(2), 924(a)(2), (l)-(n), 1361-1362; 49 U.S.C. 46503-46505.

### **SUBSECTION (g) – INCHOATE OFFENSES**

Subsection (g) covers attempts and conspiracies to commit the substantive offenses defined in the section and provides that they are subject to the same penalties. In the absence of

an attempt and conspiracy provision, for example, an unsuccessful attempt to fly an airplane-size drone into an occupied building or a crowd at a public event might not be an offense under this section, and conspiracies to commit crimes under the section, however serious, would be subject to the five-year maximum penalty of the general conspiracy provision (18 U.S.C. 371). Subsection (g) ensures that attempts and conspiracies to commit the substantive offenses under the section will themselves be offenses and subject to appropriate penalties. Similar inchoate-offense language currently appears in innumerable federal offenses. See, e.g., 18 U.S.C. 32(a)(8), (b)(4), 2332g(c); 49 U.S.C. 46502(a)(2), 46504. Subsection (g) also reaches threats, so that, for example, the threatened use of a weaponized drone would be covered. Cf., e.g., 18 U.S.C. 2332a(a) (offense of using, threatening, or attempting or conspiring to use weapon of mass destruction).

## **SUBSECTION (h) – JURISDICTION**

Subsection (h) provides appropriate grounds of federal prosecutorial jurisdiction for the new drones offense.

Paragraph (1)(A) provides that there is jurisdiction without further conditions over offenses under subsection (b), relating to impairment of identification, over offenses under subsection (d), relating to intrusion on protected spaces, and over offenses under subsection (e), relating to transportation of contraband. Since subsections (b) and (d) only reach cases involving conduct that is independently prohibited under other provisions of federal law, there is no need for additional jurisdictional predicates under the new criminal provision. Likewise, there is no need for additional jurisdictional predicates in relation to subsection (e), because its scope is limited to transportation of contraband prohibited under other federal laws and introduction of contraband into federal prisons.

Paragraph (1)(B)-(D) adopts common jurisdictional predicates involving a nexus to interstate or foreign commerce, for which there are many models in existing statutes. See, e.g., 18 U.S.C. 249(a)(2)(B), 922(g), (j)-(k), (n), 924(l), 2332g(b)(1), 2512(1)(b).

Paragraph (1)(E) provides federal jurisdiction when the offense involves a use of the electromagnetic spectrum subject to the jurisdiction of the Federal Communications Commission or the National Telecommunications and Information Administration or aircraft or airspace use subject to the jurisdiction of the Federal Aviation Administration. Since drone operation is generally subject to FAA jurisdiction and controlled through signals subject to FCC or NTIA jurisdiction, this will regularly support federal jurisdiction over offenses under the new provision involving the operation of drones.

Paragraph (1)(F)-(G) provides federal jurisdiction over (i) offenses committed against the federal government or its personnel, property, or activities or against aircraft in the special aircraft jurisdiction of the United States, “whether within or outside of the United States,” and (ii) offenses committed outside of the United States against United States nationals, corporations

or legal entities, aircraft, or vessels. This is similar to existing provisions, e.g., 18 U.S.C. 2332a(a)(1), (3), 2332i(b)(2)(B), (3), (e)(12)-(14); 49 U.S.C. 46501(2), 46502(a), 46504, 46506.

Paragraph (1)(H) adopts a common basis of federal jurisdiction, commission in the “special maritime and territorial jurisdiction of the United States,” which is defined in 18 U.S.C. 7.

### **SUBSECTION (i) – EXCEPTIONS**

Subsection (i)(1) excludes from the scope of the new offense conduct by, or authorized by, governmental entities. An exception of this nature is needed because, for example, there are legitimate uses of weaponized drones in military and law enforcement operations. The exception is similar to exceptions appearing in some existing drone provisions, see 18 U.S.C. 40A(b); 49 U.S.C. 46320(b), and other provisions restricting dangerous items, see 18 U.S.C. 922(o)(2)(A) (transfer or possession of machine guns), 2332g(a)(3) (production, transfer, possession, or use of anti-aircraft missiles). Subsection (i)(1) affects only exposure to liability under the new 18 U.S.C. 40B offense and does not limit the regulation of governmental uses of drones under other provisions of law.

Subsection (i)(2) precludes liability under subsection (a)(4) for conduct consisting of damage to property engaged in by, or with the authorization or consent of, the owner of the property, which is consistent with the general understanding that offenses against property do not constrain actions taken with the consent of the owner. Hence, for example, the use of “battle drones” in consensual aerial competitions does not conflict with subsection (a)(4)’s prohibition of using drones to cause damage to property.

### **SUBSECTION (j) – DEFINITIONS**

Subsection (j) provides definitions for the section. The definition of “aircraft” in paragraph (1) is based on existing definitions appearing in 18 U.S.C. 31(a)(1), 2311; 49 U.S.C. 40102(a)(6); 14 CFR 1.1. The definition of “unmanned aircraft” in paragraph (14) reflects the common meaning of the term in subparagraph (A) and incorporates an existing definition under 49 U.S.C. 44801(11) in subparagraph (B). The definition of “vessel” in paragraph (15) is based on existing definitions in 33 U.S.C. 1502(19) and 49 U.S.C. 80301(3).

### **INCLUSION AS TERRORISM AND WIRETAP PREDICATE OFFENSE**

Finally, subsection (a) of proposed 18 U.S.C. 40B, relating to drone weaponization, will be included in the 18 U.S.C. 2332b(g)(5)(B) list of terrorism-related offenses. The effects include making that a predicate offense for material support to terrorists under 18 U.S.C. 2339A and a “racketeering activity” for purposes of RICO under 18 U.S.C. 1961(1)(G), an extended statute of limitations under 18 U.S.C. 3286, and a presumption in favor of pretrial detention under 18 U.S.C. 3142(e)(3)(C), (f)(1)(A). Also, the § 40B offense will be added to the list of forfeiture predicate offenses under 18 U.S.C. 982(a)(6)(A), and to the list of wiretap predicate

offenses (for wire and oral communications) under 18 U.S.C. 2516(1); it is automatically included as a predicate offense for interception of electronic communications under 18 U.S.C. 2516(3) because the latter provision covers all felonies.





**U.S. Department of Justice**

Office of Legislative Affairs

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

The Honorable Kamala D. Harris  
President  
United States Senate  
Washington, DC 20510

Dear Madam President:

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The potential of drones to revolutionize commerce, military operations, and law enforcement is accompanied by dangers to public safety and to the national security resulting from the misuse of drones. So far, legislative efforts to address the emerging threat through appropriate statutory penal provisions have been fragmentary and inadequate. For example, the use of a weaponized drone in a fatal attack would violate Public Law 115-254 § 363, with a \$25,000 civil penalty being the maximum sanction. Drone intrusions by terrorists and spies upon national defense airspace to surveille potential targets or obtain intelligence are merely misdemeanors under 49 U.S.C. § 46307.

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- **Interference with Protected Activities:** Prohibits using drones to interfere with or disrupt the operation of aircraft, airports, vessels, or vehicles, or law enforcement, emergency response, or military operations or activities. (Proposed new 18 U.S.C. § 40B(c)).

- **Intrusion on Protected Spaces:** Prohibits operating drones in federally restricted airspace with knowledge of illegality. (Proposed new 18 U.S.C. § 40B(d)).
- **Transportation of Contraband:** Prohibits using drones to transport contraband or to introduce prohibited objects into federal prisons. (Proposed new 18 U.S.C. § 40B(e)).
- **Penalties:** Authorizes baseline penalties of up to 5 or 10 years of imprisonment, with increase for resulting injury to persons or property, or death. (Proposed new 18 U.S.C. § 40B(f)).
- **Inchoate Offenses, Jurisdiction, Exceptions, Definitions:** Provides liability for threats, attempts, and conspiracies; grounds of federal jurisdiction; exceptions for activities authorized by governmental entities or owners of affected property; and definitions. Jurisdictional predicates include interstate commerce nexus, use of communications spectrum subject to Federal Communications Commission jurisdiction, aircraft or airspace use subject to Federal Aviation Administration jurisdiction, and commission of the prohibited acts abroad against United States property, personnel, or entities. (Proposed new 18 U.S.C. §§ 40B(g), (h), (i), and (j)).
- **Terrorism and Electronic Surveillance Predicates:** Conforming amendments add the drone weaponization subsection of the proposed offense to the predicate offense list in 18 U.S.C. § 2332b(g)(5)(B) (terrorism) and add the proposed offense to the predicate offense lists in 18 U.S.C. §§ 982(a)(6)(A) (forfeiture) and 2516(1) (wire/oral communications interception).

We have enclosed legislative language and a detailed analysis of the proposal.

Thank you for the opportunity to present this proposal. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that submission of this letter is in accord with the program of the President.

Sincerely,

PETER HYUN

Digitally signed by PETER HYUN  
Date: 2022.01.24 12:36:50  
-05'00'

Peter S. Hyun  
Acting Assistant Attorney General

Enclosures

cc: The Honorable Mitch McConnell, Minority Leader  
United States Senate

The Honorable Kamala D. Harris  
Page Three

IDENTICAL LETTER SENT TO THE HONORABLE NANCY PELOSI, SPEAKER OF THE  
U.S. HOUSE OF REPRESENTATIVES, WITH A COPY TO THE HONORABLE KEVIN  
McCARTHY, MINORITY LEADER, U.S. HOUSE OF REPRESENTATIVES.

## A BILL

To prevent the misuse of drones, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE

This Act may be cited as the “Crime-Free and Secure Skies Act of 2022”.

### SEC. 2. DRONE OFFENSE.

Title 18, United States Code, is amended –

(1) by inserting after section 40A the following:

#### “§ 40B. Misuse of unmanned aircraft.

“(a) WEAPONIZATION. – Whoever knowingly –

“(1) equips or arms an unmanned aircraft with a firearm, explosive, dangerous weapon, restricted electromagnetic weapon, or weapon of mass destruction;

“(2) possesses, receives, transfers, operates, or produces an unmanned aircraft that is equipped or armed with a firearm, explosive, dangerous weapon, restricted electromagnetic weapon, or weapon of mass destruction;

“(3) discharges or deploys a firearm, explosive, dangerous weapon, restricted electromagnetic weapon, or weapon of mass destruction using an unmanned aircraft; or

“(4) uses an unmanned aircraft to cause serious bodily injury to a person or damage exceeding \$1,000 to property,

shall be punished as provided in subsection (f).

“(b) IMPAIRMENT OF IDENTIFICATION OR LIGHTING. –

“(1) Whoever knowingly uses an unmanned aircraft in furtherance of the commission of a felony, where Federal law requires that the aircraft be registered but it is not registered, shall be punished as provided in subsection (f).

“(2) Whoever, in violation of Federal law, knowingly –

“(A) removes, obliterates, tampers with, or alters the identification number of an unmanned aircraft;

“(B) disables or fails to effect any required identification transmission or signaling of an unmanned aircraft; or

“(C) disables or obscures any required anti-collision lighting of an unmanned aircraft or fails to have or illuminate such lighting as required,

shall be punished as provided in subsection (f).

“(c) INTERFERENCE WITH PROTECTED ACTIVITIES. – Whoever operates an unmanned aircraft and thereby knowingly or recklessly interferes with or disrupts –

“(1) the operation of an aircraft, airport, vessel, or vehicle; or

“(2) a law enforcement, emergency response (including wildfire suppression), or military operation or activity of the Federal Government or of a State, tribal, or local government,

shall be punished as provided in subsection (f).

“(d) INTRUSION ON PROTECTED SPACES. – Whoever, knowing that his conduct is unlawful –

“(1) operates an unmanned aircraft in any airspace, or causes the take-off or landing of an unmanned aircraft in any place, in violation of Federal law; or

“(2) operates an unmanned aircraft across a border of the United States or its territories or possessions without complying with the requirements of Federal law,

including but not limited to all applicable rules, regulations, and orders of the Federal Aviation Administration and the Department of Homeland Security, shall be punished as provided in subsection (f).

“(e) TRANSPORTATION OF CONTRABAND. – Whoever knowingly uses an unmanned aircraft to –

“(1) transport contraband; or

“(2) introduce a prohibited object into a prison,

shall be punished as provided in subsection (f).

“(f) PENALTIES. – Whoever commits an offense under this section shall be punished –

“(1) for an offense under subsection (b) or (d), by imprisonment for not more than 5 years;

“(2) for an offense under subsection (a), (c), or (e), by imprisonment for not more than 10 years;

“(3) for an offense under any subsection, if injury results to a person or damage to property, by imprisonment for not more than 20 years; and

“(4) for an offense under any subsection, if death results, by death or by imprisonment for any term of years or for life.

“(g) INCHOATE OFFENSES. – Whoever threatens, attempts, or conspires to commit an offense under this section shall be subject to the same punishment as for a completed offense.

“(h) JURISDICTION. – There is Federal jurisdiction over an offense under this section if

—  
“(1) the offense –

“(A) is an offense under subsection (b), (d), or (e);

“(B) involves an unmanned aircraft, firearm, explosive, dangerous weapon, restricted electromagnetic weapon, weapon of mass destruction, or ammunition that has moved at any time in interstate or foreign commerce;

“(C) occurs in or affects interstate or foreign commerce;

“(D) involves the movement of any person or thing in, or use of any means or instrumentality of, interstate or foreign commerce;

“(E) involves any use of the electromagnetic spectrum that is subject to the jurisdiction of the Federal Communications Commission or the National Telecommunications and Information Administration or any aircraft or airspace use that is subject to the jurisdiction of the Federal Aviation Administration;

“(F) is committed, whether within or outside of the United States, against

—  
“(i) the United States or any department, agency, property, activity, or personnel of the United States; or

“(ii) an aircraft in the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);

“(G) is committed outside of the United States against any United States national, United States corporation or legal entity, aircraft registered under United States law, or vessel of the United States or vessel subject to the jurisdiction of the United States (as defined in section 70502 of title 46); or

“(H) is committed in the special maritime and territorial jurisdiction of the United States; or

“(2) in the case of a threat, attempt, or conspiracy, any of the circumstances described in paragraph (1) exists or would have existed had the offense been carried out.

“(i) EXCEPTIONS. – There is no liability –

“(1) under any subsection of this section, for conduct by or under the authority of, authorized by, or pursuant to a contract with, the United States or a State, tribal, or local government, or any department or agency of the United States or a State, tribal, or local government; or

“(2) under subsection (a)(4), for conduct consisting of damage to property, if engaged in by or with the authorization or consent of the owner of the property, including in any consensual competition in which unmanned aircraft are deployed against each other.

“(j) DEFINITIONS. – As used in this section –

“(1) ‘aircraft’ means, notwithstanding section 31(a)(1), any device, craft, vehicle, or contrivance that is invented, used, or designed to navigate, fly, or travel in the air, or that is used or intended to be used for flight in the air;

“(2) ‘airport’ has the meaning provided in section 40102(a)(9) of title 49;

“(3) ‘contraband’ has the meaning provided in section 80302 of title 49;

“(4) ‘dangerous weapon’ has the meaning provided in section 930 of this title;

“(5) ‘explosive’ means any thing within the scope of the definition of ‘explosive materials’ in section 841 of this title;

“(6) ‘Federal law’ means any form of Federal law, including any Federal statute, rule, regulation, or order;

“(7) ‘felony’ means an offense punishable by imprisonment for more than one year under a law of the United States or of a State, tribal, or local government;

“(8) ‘firearm’ has the meaning provided in section 921 of this title;

“(9) ‘personnel of the United States’ means any Federal officer, employee, or contractor, or any person assisting such an officer, employee, or contractor in the performance of duties;

“(10) ‘prohibited object’ and ‘prison’ have the meaning provided in section 1791 of this title;

“(11) ‘restricted electromagnetic weapon’ means any type of device, instrument, technology, or contrivance that –

“(A) can generate or emit electromagnetic radiation or fields that are capable of jamming, disrupting, degrading, damaging, or interfering with the operation of any technological or electronic asset, system, network, or infrastructure, or any component or sub-component thereof; and

“(B) is classified as a restricted electromagnetic weapon by the Attorney General, in consultation with the Secretary of Defense;

“(12) ‘serious bodily injury’ has the meaning provided in section 1365 of this title;

“(13) ‘United States corporation or legal entity’ means any corporation or other entity organized under the laws of the United States or any State;

“(14) ‘unmanned aircraft’ means any aircraft that is operated or designed to be operated –

“(A) without a person in or on the aircraft; or

“(B) without the possibility of direct human intervention from within or on the aircraft;

“(15) ‘vessel’ means any craft or contrivance used, capable of being used, or designed to be used for transportation in, on, or through water; and



“(16) ‘weapon of mass destruction’ has the meaning provided in section 2332a of this title.”;

(2) in the chapter analysis for chapter 2, by inserting after the item relating to section 40A the following:

“40B. Misuse of unmanned aircraft.”;

(3) in section 982(a)(6)(A), by inserting “40B,” before “555”;

(4) in section 2332b(g)(5)(B), by inserting “40B(a) (relating to weaponization of unmanned aircraft),” before “81”; and

(5) in section 2516(1)(c), by inserting “section 40B (relating to misuse of unmanned aircraft),” before “section 43”.

## **THE PROPOSED CRIME-FREE AND SECURE SKIES ACT OF 2022**

The potential of unmanned aircraft (“drones”) to revolutionize commerce, military operations, and law enforcement is accompanied by dangers to public safety and the national security resulting from misuse of drones. While existing federal law includes some criminal provisions relating to misuse of drones, those existing provisions are fragmentary in nature and lack adequate sanctions to restrain and deter the most serious drone-related crimes.

The proposed Crime-Free and Secure Skies Act of 2022 will remedy this shortfall by enacting a comprehensive criminal provision, with adequate penalties and grounds of federal jurisdiction, to address the most serious and dangerous misuses of drones. The offense will be a new § 40B in title 18 of the United States Code.

The remainder of this statement explains the provisions, precedents, and rationale of the new offense:

### **SUBSECTION (a) – WEAPONIZATION**

Subsection (a) of the offense provision addresses the use of drones as weapons. Currently, § 363 of Public Law 115-254 provides that “a person may not operate an unmanned aircraft . . . that is equipped or armed with a dangerous weapon” and states that persons violating the prohibition are liable “for a civil penalty of not more than \$25,000 for each violation.” The existing provision does not reach all of the ways in which drones may be used as weapons and the authorization of civil monetary penalties falls short in relation to what may be lethal criminal conduct.

Subsection (a) creates a more adequate weaponized-drone offense. Paragraphs (1)-(3) cover situations involving drones equipped or armed with firearms, explosives, dangerous weapons, restricted electromagnetic weapons, or weapons of mass destruction, or in which drones are used to discharge or deploy such weapons. Most of the covered classes of weaponry are defined in subsection (j)(4), (5), (8), and (16) by cross-reference to existing definitions of those terms in 18 U.S.C. 841(c), 921(3), 930(g)(2), and 2332a(c)(2). In addition, the list includes restricted electromagnetic weapons, as defined in subsection (j)(11), reflecting the emerging threat that weapons of this nature pose to infrastructure and other systems. Paragraph (4) reaches situations in which the drone itself is used as a weapon, such as by crashing a drone into an airplane, ship, building, vehicle, or person.

### **SUBSECTION (b) – IMPAIRMENT OF IDENTIFICATION OR LIGHTING**

Effective identification and tracking of drones is critical to preventing their criminal misuse. Subsection (b) of the new offense reaches conduct that directly defeats identification and tracking measures required by federal law or violates those requirements in furtherance of criminal activity.

Paragraph (1) of subsection (b) reaches the use of unregistered drones for criminal purposes. Currently, 49 U.S.C. 46306(b)(5)(A), (6)(A), (c) provides criminal penalties for knowingly and willfully operating unregistered aircraft, with an enhanced penalty for cases involving felony controlled substance violations. Paragraph (1) provides similar treatment for cases involving the use of unregistered drones in committing other crimes at the felony level.

Paragraph (2)(A) of subsection (b) covers removing, obliterating, tampering with, or altering a drone's identification number. It may be compared to 18 U.S.C. 511(a)(1), which prohibits removing, obliterating, tampering with, or altering a vehicle identification number.

Paragraph (2)(B) of subsection (b) reaches failure to effectuate required identification transmission or signaling. This will support enforcement of a Federal Aviation Administration regulation requiring remote identification of drones.

Paragraph (2)(C) of subsection (b) reaches impairment of required anti-collision lighting. FAA regulations generally require anti-collision lighting visible for at least three statute miles that has a flash rate sufficient to avoid a collision when small unmanned aircraft are operated during twilight or at night. Subjecting violations of this requirement to criminal sanctions under paragraph (2)(C) is warranted by the resulting safety hazards. In addition, obscuring of lighting may be used to facilitate the surreptitious illicit use of drones, as indicated by the discovery near the southern border of small drones with anti-collision lighting covered with electrical tape, and the taping of lights on drones used to surreptitiously introduce contraband into a federal correctional facility.

## **SUBSECTION (c) – INTERFERENCE WITH PROTECTED ACTIVITIES**

18 U.S.C. 39B(a), (c)(1) prohibits knowingly or recklessly interfering with or disrupting the operation of occupied aircraft by means of unmanned aircraft operation in certain circumstances, with baseline misdemeanor penalties. 18 U.S.C. 40A(a) prohibits knowingly or recklessly interfering with wildfire suppression or related law enforcement or emergency response efforts by means of unmanned aircraft operation, with penalties of up to two years of imprisonment. 49 U.S.C. 46320 prohibits knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort by means of unmanned aircraft operation, subject to a civil penalty of not more than \$20,000.

The growing danger to governmental operations and other critical activities from the malicious or reckless use of drones warrants a more comprehensive response, with meaningful criminal penalties available on a more consistent basis – including for interference with law enforcement and emergency response efforts generally, not only those associated with wildfire suppression, and for interference with military operations as well.

Subsection (c) of the new offense provides such a response, prohibiting the knowing or reckless use of drones to interfere with or disrupt governmental law enforcement, emergency response, or military operations or activities. In addition, the subsection reaches knowing or

reckless interference or disruption with respect to the operation of aircraft, airports, vessels, or vehicles, whether governmental or non-governmental. The protection for aircraft and airports, which are extraordinarily vulnerable to drone attack and interference, builds on existing provisions in 18 U.S.C. 39B. The inclusion of vessels is warranted by the exposure of U.S. shipping to drone attacks, particularly in the international context. The protection of other vehicles – which include land vehicles and spacecraft – is warranted because of the grave danger to life and property that can result from drone interference with their operation.

#### **SUBSECTION (d) – INTRUSION ON PROTECTED SPACES**

49 U.S.C. 40103(b) broadly empowers the Federal Aviation Administration (FAA) to regulate the use of the navigable airspace of the United States. 49 U.S.C. 46307 provides misdemeanor penalties for knowingly or willfully violating national defense airspace, a concept given scope and definition by FAA regulations and orders. Related regulatory provisions include 14 CFR 99.7, 14 CFR 91.137, 14 CFR 93.333, and 14 CFR 107.47, among others.

Pursuant to 14 CFR 99.7, the FAA has restricted drone flights at over 1,500 locations (including airspace over military installations, energy facilities, certain national parks, and Federal Bureau of Prisons institutions) to address national security interests at these locations. Drone operations are also subject to established FAA flight restrictions near large stadiums during major sporting events and within the Washington, D.C., Special Flight Rules Area. In addition to FAA airspace regulation and flight rules, the take-off and landing of drones may be restricted by the rules and policies of other federal agencies, such as the Department of the Interior’s prohibitions of the take-off or landing of drones on certain public lands.

As in other areas of drone regulation, the existing criminal provisions relating to drone intrusion on protected spaces are fragmentary and inconsistent with regard to penalties and other matters. As noted above, 49 U.S.C. 46307 provides misdemeanor penalties for knowingly or willfully violating national defense airspace. 18 U.S.C. 39B(b) prohibits knowingly operating an unmanned aircraft within a “runway exclusion zone” as defined. 18 U.S.C. 1752(a)(5) prohibits knowingly and willfully operating an unmanned aircraft system within or above restricted buildings or grounds related to protection of the President. The latter provisions carry varying penalties depending on the seriousness of resulting harm.

Subsection (d)(1) of the new offense provides a uniform criminal prohibition of unlawful operation, or take-off or landing, of unmanned aircraft where disallowed by federal law. Subsection (d)(2) addresses specifically the illicit cross-border operation of unmanned aircraft, where the federal law requirements for such activity are not complied with. Both for paragraphs (1) and (2), “federal law” means any form of federal law, including any federal statute, rule, regulation, or order, as provided in subsection (j)(6). Thus, for example, subsection (d) prohibits any drone operation in violation of FAA airspace restrictions, and any cross-border operation of drones involving non-compliance with applicable FAA or DHS rules.

Consistent with the sometimes higher penalties authorized in the new offense, liability under subsection (d) is limited to cases in which the offender knows that his conduct is unlawful. Such knowledge may be provable, for example, based on the posting of signs in restricted areas stating that the operation of drones therein is prohibited, or because the offender is a repeat violator and has previously been warned about the illegality of his drone use, or where the offender has disabled features of the drone that otherwise prevent its operation in restricted areas (such as manufacturer-installed geofencing software). The knowledge of illegality required under subsection (d) is knowledge by the offender that his conduct is unlawful, not knowledge that his conduct is prohibited by federal law or by particular federal statutes or rules. Cf. *United States v. Whaley*, 577 F.3d 254, 261-62 (5th Cir. 2009) (where criminal liability requires knowledge of legal duty, defendant need not have been aware that the duty was imposed by federal law).

#### **SUBSECTION (e) – TRANSPORTATION OF CONTRABAND**

49 U.S.C. 80302-80303 prohibits the transportation of illegal drugs and other specified types of contraband by aircraft, enforceable by forfeiture of the aircraft. 18 U.S.C. 1791 prohibits provision to, and possession by, inmates in federal prisons of contraband (“prohibited objects”) in several categories, with varying penalties depending on the nature of the contraband.

Subsection (e) of the new offense provides adequate and consistent criminal penalties for the use of drones to transport contraband as defined in 49 U.S.C. 80302, and for the use of drones to introduce contraband into federal prisons as defined in the 18 U.S.C. 1791 offense.

#### **SUBSECTION (f) – PENALTIES**

Subsection (f) provides the penalties for the misuse-of-drones offense. The baseline penalty is up to 5 or 10 years of imprisonment, depending on which subsection of the offense provision is violated, which increases to up to 20 years of imprisonment in cases involving resulting harm to persons or property. If death results, the authorized penalty is death or imprisonment for any term of years or for life.

The penalty of up to five years of imprisonment for violations of subsections (b) and (d) parallels the penalty authorization for such existing offenses as 18 U.S.C. 511(a)(1) (tampering with vehicle identification numbers) and 49 U.S.C. 46306(c) (use of unregistered aircraft in controlled substance violations). Other aspects of the penalty levels and structure are similar to many existing offenses relating to such matters as firearms, explosives, interference with aircraft operations, and interference with government operations. See, e.g., 18 U.S.C. 32(a)-(b), 39B(c)(2), 111(b), 844(a)(1)-(2), 924(a)(2), (l)-(n), 1361-1362; 49 U.S.C. 46503-46505.

#### **SUBSECTION (g) – INCHOATE OFFENSES**

Subsection (g) covers attempts and conspiracies to commit the substantive offenses defined in the section and provides that they are subject to the same penalties. In the absence of

an attempt and conspiracy provision, for example, an unsuccessful attempt to fly an airplane-size drone into an occupied building or a crowd at a public event might not be an offense under this section, and conspiracies to commit crimes under the section, however serious, would be subject to the five-year maximum penalty of the general conspiracy provision (18 U.S.C. 371). Subsection (g) ensures that attempts and conspiracies to commit the substantive offenses under the section will themselves be offenses and subject to appropriate penalties. Similar inchoate-offense language currently appears in innumerable federal offenses. See, e.g., 18 U.S.C. 32(a)(8), (b)(4), 2332g(c); 49 U.S.C. 46502(a)(2), 46504. Subsection (g) also reaches threats, so that, for example, the threatened use of a weaponized drone would be covered. Cf., e.g., 18 U.S.C. 2332a(a) (offense of using, threatening, or attempting or conspiring to use weapon of mass destruction).

## **SUBSECTION (h) – JURISDICTION**

Subsection (h) provides appropriate grounds of federal prosecutorial jurisdiction for the new drones offense.

Paragraph (1)(A) provides that there is jurisdiction without further conditions over offenses under subsection (b), relating to impairment of identification, over offenses under subsection (d), relating to intrusion on protected spaces, and over offenses under subsection (e), relating to transportation of contraband. Since subsections (b) and (d) only reach cases involving conduct that is independently prohibited under other provisions of federal law, there is no need for additional jurisdictional predicates under the new criminal provision. Likewise, there is no need for additional jurisdictional predicates in relation to subsection (e), because its scope is limited to transportation of contraband prohibited under other federal laws and introduction of contraband into federal prisons.

Paragraph (1)(B)-(D) adopts common jurisdictional predicates involving a nexus to interstate or foreign commerce, for which there are many models in existing statutes. See, e.g., 18 U.S.C. 249(a)(2)(B), 922(g), (j)-(k), (n), 924(l), 2332g(b)(1), 2512(1)(b).

Paragraph (1)(E) provides federal jurisdiction when the offense involves a use of the electromagnetic spectrum subject to the jurisdiction of the Federal Communications Commission or the National Telecommunications and Information Administration or aircraft or airspace use subject to the jurisdiction of the Federal Aviation Administration. Since drone operation is generally subject to FAA jurisdiction and controlled through signals subject to FCC or NTIA jurisdiction, this will regularly support federal jurisdiction over offenses under the new provision involving the operation of drones.

Paragraph (1)(F)-(G) provides federal jurisdiction over (i) offenses committed against the federal government or its personnel, property, or activities or against aircraft in the special aircraft jurisdiction of the United States, “whether within or outside of the United States,” and (ii) offenses committed outside of the United States against United States nationals, corporations

or legal entities, aircraft, or vessels. This is similar to existing provisions, e.g., 18 U.S.C. 2332a(a)(1), (3), 2332i(b)(2)(B), (3), (e)(12)-(14); 49 U.S.C. 46501(2), 46502(a), 46504, 46506.

Paragraph (1)(H) adopts a common basis of federal jurisdiction, commission in the “special maritime and territorial jurisdiction of the United States,” which is defined in 18 U.S.C. 7.

### **SUBSECTION (i) – EXCEPTIONS**

Subsection (i)(1) excludes from the scope of the new offense conduct by, or authorized by, governmental entities. An exception of this nature is needed because, for example, there are legitimate uses of weaponized drones in military and law enforcement operations. The exception is similar to exceptions appearing in some existing drone provisions, see 18 U.S.C. 40A(b); 49 U.S.C. 46320(b), and other provisions restricting dangerous items, see 18 U.S.C. 922(o)(2)(A) (transfer or possession of machine guns), 2332g(a)(3) (production, transfer, possession, or use of anti-aircraft missiles). Subsection (i)(1) affects only exposure to liability under the new 18 U.S.C. 40B offense and does not limit the regulation of governmental uses of drones under other provisions of law.

Subsection (i)(2) precludes liability under subsection (a)(4) for conduct consisting of damage to property engaged in by, or with the authorization or consent of, the owner of the property, which is consistent with the general understanding that offenses against property do not constrain actions taken with the consent of the owner. Hence, for example, the use of “battle drones” in consensual aerial competitions does not conflict with subsection (a)(4)’s prohibition of using drones to cause damage to property.

### **SUBSECTION (j) – DEFINITIONS**

Subsection (j) provides definitions for the section. The definition of “aircraft” in paragraph (1) is based on existing definitions appearing in 18 U.S.C. 31(a)(1), 2311; 49 U.S.C. 40102(a)(6); 14 CFR 1.1. The definition of “unmanned aircraft” in paragraph (14) reflects the common meaning of the term in subparagraph (A) and incorporates an existing definition under 49 U.S.C. 44801(11) in subparagraph (B). The definition of “vessel” in paragraph (15) is based on existing definitions in 33 U.S.C. 1502(19) and 49 U.S.C. 80301(3).

### **INCLUSION AS TERRORISM AND WIRETAP PREDICATE OFFENSE**

Finally, subsection (a) of proposed 18 U.S.C. 40B, relating to drone weaponization, will be included in the 18 U.S.C. 2332b(g)(5)(B) list of terrorism-related offenses. The effects include making that a predicate offense for material support to terrorists under 18 U.S.C. 2339A and a “racketeering activity” for purposes of RICO under 18 U.S.C. 1961(1)(G), an extended statute of limitations under 18 U.S.C. 3286, and a presumption in favor of pretrial detention under 18 U.S.C. 3142(e)(3)(C), (f)(1)(A). Also, the § 40B offense will be added to the list of forfeiture predicate offenses under 18 U.S.C. 982(a)(6)(A), and to the list of wiretap predicate

offenses (for wire and oral communications) under 18 U.S.C. 2516(1); it is automatically included as a predicate offense for interception of electronic communications under 18 U.S.C. 2516(3) because the latter provision covers all felonies.