



### F31 Drone Laws: The Imminent Quandry

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**Learning Overview:** After attending this presentation, attendees will understand: (1) the early stages of development of the civil and criminal law of Unmanned Aerial Vehicles (UAVs); (2) the conflicts between federal and local laws; and (3) how privacy implications are substantial.

**Impact on the Forensic Science Community:** This presentation will impact the forensic science community by providing an awareness of the issues that are developing from the proliferation of drones.

The civil and criminal law of UAVs is in an early stage of development. Federal and local laws often conflict. Privacy implications are substantial. The Federal Administration (FAA) has adopted the term Unmanned Aircraft (UA) for aircraft systems without a flight crew on board, but they are more popularly known as UAS, or simply drones. UAS are approaching ubiquity in America's skies and, as is typical of technological innovation and diffusion, the law lags behind. The FAA currently permits drones under 55 pounds to be operated for two distinct purposes—recreational or commercial—each of which must follow a different set of rules that periodically change. Also, it is against federal law for anyone, including local law enforcement, to shoot down or disable any manned or unmanned aircraft. Can the FAA enforce their UAS laws, or do they have to rely on local law enforcement? The FAA has been attempting to assert itself as the sole regulator of the airspace—*field preemption*, but state laws and local ordinances proliferate in the face of unenforced federal preemption. States press their historic police powers, reserved to them by the United States Constitution, as well as primary land use, zoning, privacy, and trespass jurisdiction of launch/landing sites. Most of the federal regulations involve air safety, and most local laws involve privacy, but the proposed and enacted local laws vary widely. An example state law is 18 Pa.C.S. § 3505, which criminalizes the use of drones to: (1) conduct surveillance upon people in a private place; (2) operate so as to place another in reasonable fear of bodily harm; or (c) deliver, provide, transmit, or furnish contraband to convicts in prison or inmates in a mental hospital. Outside of breaking the aviation rules themselves, drones are primarily used in ways that may invade our privacy.

Beyond the small toy drones, most UAS are equipped with cameras. The United States Supreme Court has already ruled in *California v. Ciraolo* and *Florida v. Riley* that there is no reasonable expectation of privacy from the air.<sup>1,2</sup> Even if aerial observation was considered a privacy infringement, would merely racing over the property with a camera at 20mph be a violation? A recent criminal case from northwest Pennsylvania (among the first in the country) illustrates the current problematic state of affairs. This case involves the attempted prosecution of a recreational drone operator for allegedly disturbing dogs at a K-9 training kennel. The drone log was used by the defense to challenge the assertions of the local authorities. In 2017, the FAA launched the UAS Integration Pilot Program (IPP), a collaboration of local, state, and federal government agencies and private-sector vendors and operators. The intent is to promote cooperative oversight of the national airspace. Progress has been encouraging, but is universal agreement and adoption even possible? Furthermore, consider the American National Standards Institute's Roadmap for UAS, an ongoing collaboration that has identified 60 "gaps" in UAS oversight that must be remedied through new regulations issued by dozens of federal agencies. Even the FAA will soon add another layer of complexity when drones are widely approved to fly beyond the operator's visual line of sight. Ambiguities, preemption conflict, and the inherent intrusive nature of drones will almost certainly provoke a flood of unwarranted cases in the months and years ahead.

**Reference(s):**

- <sup>1.</sup> *California v. Ciraolo*, 476 U.S. 207 (1986).
- <sup>2.</sup> *Florida v. Riley*, 488 U.S. 445 (1989).

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#### UAVs, Drones, Privacy Law