

## 5 KEY CONSIDERATIONS FOR A LAW ENFORCEMENT DRONE POLICY

The use of unmanned aerial vehicles in public safety continues to grow. According to the Center for the Study of the Drone in an [April 2017 report](#), at least 347 state and local police, sheriff, fire and emergency units have acquired drones, most within the last year. Several factors are driving drone use, including decreased cost and increased availability, as well as the issuance of long-awaited FAA guidelines governing law enforcement drone use.

But drone use is also a thorny issue, bringing with it privacy and safety concerns. Law enforcement agencies must not only ensure their officers are properly trained, but also that they are complying with federal and state guidelines.

Having solid policy and procedure in place to guide law enforcement drone use is key to ensuring their legal, safe use. Here are five key policy areas to consider.

### Permitted Uses

It's not difficult to imagine the wide range of benefits drones can provide in public safety. According to a [report](#) by the National Conference of State Legislatures, law enforcement drone uses include:

- Evidence collection and surveillance
- Photographing traffic crash scenes
- Monitoring correctional facilities
- Tracking prison escapees
- Crowd control and monitoring dangerous situations

Other documented uses include assistance in serving warrants, assistance in emergencies and natural disasters, assessing an area/person before committing personnel to a search or entry, mapping outdoor crime scenes, locating stolen property, detecting explosive ordnance, and response to hostage incidents or armed/barricaded subject calls. In Minnesota, [one agency](#) has equipped its UAV with a system that can track people with Alzheimer's, autism or other related conditions. The individuals wear transmitters that are activated if they wander, and the drone can help quickly locate them.

### Prohibited Uses

But for all their potential, drones are also subject to scrutiny from privacy advocates and state legislatures, creating a growing list of prohibited uses that your agency's policy must address.

Prohibited uses vary greatly by state. Some areas to watch include:

- **Random surveillance and crowd control.** The National Conference of State Legislatures notes that at least [18 states have passed legislation](#) requiring law enforcement agencies to obtain a search warrant to use drones for surveillance or to conduct a search, absent exigent circumstances. Naturally, this [prohibits the use of drones](#) for crowd control or traffic monitoring.

- **Weaponization.** According to the National Conference of State Legislatures [report](#), three states—Maine, North Dakota and Virginia—prohibit law enforcement agencies from using weaponized drones. Even these restrictions sometimes leave room for interpretation. The North Dakota law specifically prohibits *lethal* weapons, which spurred a lot of discussion around whether it would be legal to equip drones with less-lethal weapons such as a TASER or tear gas.
- **Targeting a person based on individual characteristics.** A generally accepted best practice in law enforcement drone use is to prohibit their use to target a person based solely on individual characteristics, such as race, ethnicity, national origin, religion, disability, gender or sexual orientation. State laws may go even further in spelling out restrictions in this area.
- **Facial recognition.** Drones can be combined with the latest biometric matching technology. Whether state legislatures will be comfortable with that is another question. A [recent bill proposed in Massachusetts](#) would ban drones from using facial recognition and other biometric matching technology except to identify the subject of a warrant.
- **Nighttime use.** FAA guidelines only permit law enforcement drone use during daylight hours. Agencies can apply for a waiver, which brings additional requirements and restrictions.

### Importance of Preserving Privacy Rights

As with other technologies, addressing privacy concerns surrounding drones involves a balance of policy and engagement. Your policy should include a strong statement about the importance of preserving privacy rights. Absent a warrant or exigent circumstances, operators should adhere to FAA guidelines and avoid intentionally recording or transmitting images of any location where a person would have a reasonable expectation of privacy, such as a backyard.

Once your policy incorporates a strong privacy protection, you will be in a better place to engage advocacy groups concerned about the use of law enforcement drones. Pointing to specific examples of how your agency intends to use the drone and how drones have aided in search and rescue operations can also provide a positive focus to such conversations.

### Retention of Data

Similar to body-camera footage, data retention issues abound when it comes to drone use. Will all video from the drone be recorded and if so, where will it be retained and for how long? How will your agency deal with footage collected of those who are not the target of criminal investigations? Can your agency freely share or disclose information gathered by the drone with other governmental agencies?

Again, some states have issued specific laws. Illinois, for example, requires law enforcement agencies to destroy all information gathered by a drone within 30 days, except when there is “reasonable suspicion that the information contains evidence of criminal activity, or the information is relevant to an ongoing investigation or pending criminal trial” ([725 ILCS 167/20](#)).

Absent any state-specific requirements, it’s probably best to treat information and footage gathered by a drone as you would other records. If your agency has a strong records retention policy, it will probably cover you for records produced by drones as well.

### Responsibilities of the Drone Coordinator

So how do you ensure you’re covering all the complex considerations of using a drone in law enforcement? A best practice is to build the role of drone coordinator into your policy. In most agencies, the drone coordinator will likely not be a separate position, but formally designating someone to



coordinate your agency's drone use helps bring consistency to operations and provides a point of contact for questions or issues.

Following are just a few responsibilities the drone coordinator can take on:

- Ensuring that all operators complete required FAA and agency training
- Developing protocols for conducting criminal investigations involving a drone, including documentation of time spent monitoring a subject
- Implementing a system for public notification of drone deployment
- Recommending program enhancements, particularly regarding safety and information security
- Issuing reports regarding drone use

### **Take to the Skies**

When any powerful technology intersects with law enforcement, agencies are faced with a complex balancing act. On the one hand, drones represent a vast potential of new applications in public safety. On the other, agencies must ensure safe, constitutionally sound use. A clear, concise drone policy is essential in achieving this balance.

One final consideration: keeping your policy and procedures up to date. Drone laws and regulations are very much in flux, with new state legislation popping up frequently. If your agency has established or is considering establishing a drone program, you must ensure you have a way to stay current on changing federal and state regulations.

*[Lexipol's Law Enforcement Policy Manual and Daily Training Bulletin Service](#) provides essential policies that help reduce risk and keep officers safe, including a comprehensive drone operations policy. [Contact us today](#) for more information or to request a free demo.*