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# Law Enforcement and Technology: Use of Unmanned Aircraft Systems

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## Law Enforcement and Technology: Use of Unmanned Aircraft Systems

Alongside growth in the use of unmanned aircraft systems (UAS), commonly referred to as *drones*, for both commercial and recreational purposes, law enforcement agencies' use of this technology has been increasing as well. Drones are one of many technologies that agencies are increasingly employing, and these devices are used for a variety of purposes from gathering intelligence and evidence to providing for remote communication and operational support.

There is no specific legislative framework that governs federal law enforcement use of drones. Generally, federal law does not direct or prohibit specific tools and technologies—such as UAS—used by federal law enforcement agencies to aid investigations. Rather, there are laws and policies broadly governing law enforcement investigations and intelligence gathering. Additionally, there are a number of policies directing the use of drones by federal agencies, including law enforcement, and pertinent guidance resources including the following:

- A 2015 presidential memorandum, *Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems*, placed certain requirements on executive departments and agencies—including law enforcement agencies—that use UAS. Its requirements include protecting privacy, civil rights, and civil liberties; ensuring accountability of agencies using UAS; and promoting transparency of UAS programs.
- The Department of Justice (DOJ) maintains the *Department of Justice Policy on the Use of Unmanned Aircraft Systems*, which guides the department's use of this technology. DOJ also has a UAS Working Group, which is a forum to discuss and coordinate UAS-related matters.
  - DOJ's UAS programs are not centralized at the department level; rather, they are managed by each agency employing a UAS program. DOJ notes that each of its five law enforcement components (Federal Bureau of Investigation; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Marshals Service; Bureau of Prisons) uses UAS in support of its law enforcement and national security missions.
- The Department of Homeland Security (DHS) does not have a department-wide policy on its agencies' use of UAS, though it has developed *Best Practices for Protecting Privacy, Civil Rights & Civil Liberties in Unmanned Aircraft Systems Programs* to support its component agencies' and law enforcement partners' use of the technology.
  - Like DOJ, DHS activities involving UAS are managed at the agency level. Both U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, Homeland Security Investigation use UAS in support of law enforcement activities.

Some observers have raised concerns that law enforcement use of drones could infringe upon individuals' privacy or could chill free speech—such as in situations where law enforcement may fly drones over First Amendment-protected activities. Others argue that drone use can greatly enhance public safety and national security—including using them as first responders. Policymakers may debate the tradeoffs as they conduct oversight or legislate on law enforcement use of UAS. For example, in conducting oversight of federal law enforcement use of UAS, key considerations policymakers may examine include the extent to which agencies adhere to the 2015 presidential memorandum on UAS or to their department- or agency-specific policy guidance. With respect to legislating on law enforcement use of UAS, while Congress can legislate directly on federal law enforcement agencies' use of the technology, policymakers may seek to influence the use of UAS at the state, local, and tribal law enforcement levels through means such as the provision or withholding of federal grant funding.

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Alongside growth in the use of unmanned aircraft systems (UAS), commonly referred to as *drones*, for both commercial and recreational purposes, law enforcement agencies' use of this technology has been increasing as well.<sup>1</sup> One estimate from 2020 indicates that more than 1,500 state and local public safety agencies (over 70% of which work in law enforcement) had acquired drones at that time—an increase of more than 500 agencies from the estimated number in 2018.<sup>2</sup> Drones are one of many technologies that agencies are increasingly employing, and these devices are used for a variety of purposes, from gathering intelligence and evidence to providing for remote communication and operational support.

The use of drones by law enforcement agencies raises questions across a range of topics. Some observers may question the scope and effectiveness of laws and policies governing law enforcement agencies' use of this technology. Others may examine how drone use may simultaneously enhance law enforcement agencies' work and potentially infringe upon individuals' privacy and civil liberties. Some concerns about drone use have manifested in state-level actions to prohibit or bound law enforcement agencies' use of UAS.<sup>3</sup>

This report focuses on the uses of UAS specifically for law enforcement purposes.<sup>4</sup> It provides an overview of federal law enforcement agencies' policies and use of this technology. It also discusses considerations for policymakers debating whether or how to affect federal, state, and local law enforcement agencies' use of UAS.

### Conceptualizing Unmanned Aircraft Systems<sup>5</sup>

An *unmanned aircraft* is defined in U.S. Code as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.<sup>6</sup> An unmanned aircraft system (UAS), or drone, generally refers to the entire drone system, including both the unmanned aircraft and ground control unit.<sup>7</sup> As such, an unmanned aircraft is generally considered a subpart of a UAS rather than a synonym because it only refers to the aircraft, not the entire system.

<sup>1</sup> Federal Aviation Administration (FAA) data on drones registered in the United States are available at <https://www.faa.gov/node/54496>. This report uses the terms *UAS* and *drone* interchangeably.

<sup>2</sup> Dan Gettinger, *Public Safety Drones, 3<sup>rd</sup> Edition*, Center for the Study of the Drone at Bard College, March 2020. For the purpose of this study, public safety agencies include law enforcement (police, sheriff's offices, campus police), emergency management, and fire and rescue entities.

<sup>3</sup> For instance, in June 2023 Illinois enacted HB3902, the Drones as First Responders Act, which, among other things, places restrictions on law enforcement agencies' retention of data gathered with drones and on equipping drones with facial recognition technology or weapons. For more information on state laws involving UAS, see National Conference of State Legislatures, *Current Unmanned Aircraft State Law Landscape*, March 27, 2023.

<sup>4</sup> A discussion of additional official uses of UAS, including those by the military, and efforts by law enforcement agencies to counter the unlawful use of UAS is beyond the scope of this report.

<sup>5</sup> For an overview of UAS, see CRS Report R44352, *Unmanned Aircraft Operations in Domestic Airspace: U.S. Policy Perspectives and the Regulatory Landscape*.

<sup>6</sup> 49 U.S.C. §44801(11).

<sup>7</sup> 49 U.S.C. §44801(12). See also Department of Justice (DOJ), Community Oriented Policing Services (COPS) and Police Executive Research Forum (PERF), *Drones: A Report on the Use of Drones by Public Safety Agencies—and a Wake-Up Call about the Threat of Malicious Drone Attacks*, 2020, <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-w0894-pub.pdf>. At times, other terms such as *small unmanned aircraft system* (sUAS) or *unmanned aerial vehicle* (UAV) have been used to refer to UAS.

## How UAS May Be Used by Federal Law Enforcement Agencies

Law enforcement agencies—including federal law enforcement—may use UAS for a variety of purposes.<sup>8</sup> For instance, they may use drones to gather intelligence prior to conducting an operation. This can reportedly help with identifying where a suspect may be hiding or with visualizing the layout of a building before officers enter. Drones can also be used to support an operation that is underway; for example, by live streaming an operation to monitor where a suspect exited a building or to illuminate where a suspect might have discarded evidence when officers cannot see all the possibilities from the ground. Drones can also be used to collect photo evidence in instances where access may be hindered or dangerous. They can aid in reconstructing certain scenes such as those involving traffic accidents, fires or explosives, or crime scenes where an aerial view can provide an additional perspective. Drones can serve as a force multiplier by helping officers search for suspects or missing persons, because UAS can survey more ground at a faster pace than officers.

Some observers note that drones can help enhance officer safety in a number of ways, such as by providing visuals on dangerous suspects or collecting evidence from hazardous crime scenes (e.g., those involving explosives). They can also provide for remote communication—such as with a hidden suspect or one who has taken hostages—and distance may provide a valuable safety buffer to officers, potential victims, and others nearby.

Generally, federal law does not direct or prohibit specific tools and technologies—such as UAS—used by law enforcement agencies to aid investigations. However, there are a number of policies that govern their use, as discussed below.

### Federal Aviation Administration (FAA) Policies on Law Enforcement Drone Use

The FAA offers law enforcement agencies two options for operating UAS under 55 pounds:

- Operating under the small UAS rule. This rule, also called the *Part 107* rule (named after 14 C.F.R. part 107) allows entities, including law enforcement agencies, to operate UAS at or below 400 feet above ground level in operations that have “visual line of sight” of the aircraft.<sup>9</sup>
- Receiving a certificate of authorization (COA) to function as a *public aircraft operator*.<sup>10</sup> Law enforcement agencies that receive the COA are able to self-certify drone pilots to carry out official law enforcement operations.

The FAA can also issue emergency authorizations to entities operating under the Part 107 rule or with a COA, allowing them to carry out specified law enforcement operations under certain conditions.<sup>11</sup> An emergency authorization can include a *tactical beyond visual line of sight* waiver; while drone operators are normally required to have a visual line of sight of the aircraft, the FAA can grant an authority for law enforcement officers to operate outside of these parameters in emergency situations.<sup>12</sup>

<sup>8</sup> The uses of drones discussed in this section are outlined in sources including Charles Werner, “11 Ways Police Departments Are Using Drones,” *Police1*, January 7, 2023; DOJ, COPS and PERF, *Drones: A Report on the Use of Drones by Public Safety Agencies—and a Wake-Up Call about the Threat of Malicious Drone Attacks*, 2020, <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-w0894-pub.pdf>; and DOJ, *Department of Justice Summary of Unmanned Aircraft Systems (UAS) Operations During Fiscal Year 2022*, December 1, 2022.

<sup>9</sup> 14 C.F.R. §107.

<sup>10</sup> 49 U.S.C. §§40102(a) and 40125.

<sup>11</sup> FAA, *Unmanned Aircraft Systems (UAS), Advanced Operations, Emergency Situations*, [https://www.faa.gov/uas/advanced\\_operations/emergency\\_situations](https://www.faa.gov/uas/advanced_operations/emergency_situations).

<sup>12</sup> FAA, *First Responder Tactical Beyond Visual Line of Sight (TBVLOS) 91.113 Waiver Guide*, [https://www.faa.gov/sites/faa.gov/files/uas/public\\_safety\\_gov/public\\_safety\\_toolkit/TBVLOS\\_Waiver\\_Final.pdf](https://www.faa.gov/sites/faa.gov/files/uas/public_safety_gov/public_safety_toolkit/TBVLOS_Waiver_Final.pdf).

## Presidential Memorandum on UAS

A 2015 presidential memorandum, *Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems* (hereinafter, “2015 presidential memorandum on UAS”), placed certain requirements on executive branch departments and agencies that use UAS. It notes that “as with information collected by the Federal Government using any technology, where UAS is the platform for collection, information must be collected, used, retained, and disseminated consistent with the Constitution, Federal law, and other applicable regulations and policies.”<sup>13</sup> While this directive is not *specific* to federal law enforcement, it *encompasses* federal law enforcement agencies using UAS. The directives in the memorandum include the following:<sup>14</sup>

- **Protecting privacy.** Before deploying new UAS technology, and every three years thereafter, agencies shall examine their policies and procedures with respect to the collection, use, retention, and dissemination of information obtained from UAS to ensure the protection of privacy, civil rights, and civil liberties.
- **Protecting civil rights and civil liberties.** Agencies shall ensure UAS activities are conducted in accordance with the Constitution, applicable laws, executive orders, and presidential directives, and that there are processes in place to address complaints with respect to privacy, civil rights, and civil liberties. Agencies shall ensure their data collection using UAS technology does not violate the First Amendment or antidiscrimination laws.
- **Ensuring accountability.** Agencies shall have UAS oversight policies and procedures consistent with agency policies and regulations. They shall have rules of conduct and training for individuals working on UAS programs and have policies for oversight of individuals with access to sensitive information collected with UAS. They shall also confirm that UAS data sharing policies conform to laws, policies, and regulations. Agencies shall ensure they have policies to authorize UAS use in response to support requests from federal, state, local, tribal, or territorial government operations. They shall also ensure that any recipients of grant funding to purchase or use UAS have policies to safeguard privacy, civil rights, and civil liberties.
- **Promoting transparency.** Without compromising law enforcement or national security, agencies shall provide public notice about the location of their authorized UAS operations; provide public information about their UAS operations and how they are safeguarding privacy, civil rights, and civil liberties; and provide an annual summary report of their UAS operations, including information on UAS mission types and assistance provided to other agencies or federal, state, local, tribal, or territorial governments.

## Selected Federal Law Enforcement Policies on Using UAS

Federal law enforcement agencies across a number of departments may rely on UAS technology to aid in carrying out their law enforcement duties. This section provides examples from the Department of Justice (DOJ) and Department of Homeland Security (DHS) of policies directing

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<sup>13</sup> The White House, *Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems*, presidential memorandum, February 15, 2015.

<sup>14</sup> *Ibid.*

law enforcement use of UAS. These examples highlight the scope of existing policies that guide law enforcement activities involving drones.

## Department of Justice (DOJ) Use of UAS

A number of DOJ's components (Federal Bureau of Investigation [FBI]; Drug Enforcement Administration [DEA]; Bureau of Alcohol, Tobacco, Firearms, and Explosives [ATF]; U.S. Marshals Service [USMS]; and Bureau of Prisons [BOP]) use UAS in support of its law enforcement and national security missions.<sup>15</sup> DOJ issued the *Department of Justice Policy on the Use of Unmanned Aircraft Systems*, which guides the department's use of this technology.<sup>16</sup> The policy requires DOJ components to adhere to certain requirements when using UAS, including the following:

- **Legal compliance.** DOJ use of UAS must comply with constitutional provisions and federal law and regulations, including antidiscrimination laws and policies.
- **Scope.** UAS may only be used in connection with “properly authorized investigations and activities,” which are defined by statutory authorities; rules and regulations; and Attorney General Guidelines, policies, and guidance.
- **Approval.** DOJ components must ensure UAS operations are approved at an “appropriate level,” based on particular operational and tactical needs of that component, and these approval levels must in turn be approved by the Deputy Attorney General.
- **Airspace access.** UAS operations must comply with FAA regulations, and DOJ components must work with the FAA to develop plans to provide necessary support for air traffic and airspace management.
- **Training.** The Deputy Attorney General is responsible for approving minimum UAS training standards, including relevant legal and policy requirements, and DOJ components may implement additional requirements tailored to their needs. DOJ employees operating UAS must be certified as having completed the training requirements.
- **Reporting.** The Deputy Attorney General is responsible for issuing requirements for department components to track and report information on UAS operations, including operations in which DOJ components are providing UAS support to other federal, state, local, tribal, or territorial agencies as well as operations in which DOJ components receive such support from other agencies. Annual minimum reporting requirements include descriptions of mission categories involving UAS, data on component support provided to or received from other agencies (and information on its purpose), and the privacy review conducted for the components' UAS activities.
- **Stakeholder engagement.** DOJ components may engage with stakeholders, including law enforcement and other community stakeholders, and in doing so must ensure the protection of law enforcement, national security, and other protected information.

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<sup>15</sup> DOJ, *Department of Justice Summary of Unmanned Aircraft Systems (UAS) Operations During Fiscal Year 2022*, December 1, 2022.

<sup>16</sup> DOJ, *Justice Manual, Title 9: Criminal, 9-95.100 Department of Justice Policy on the Use of Unmanned Aircraft Systems*, <https://www.justice.gov/jm/9-95000-unmanned-aircraft-systems-uas>. DOJ notes that this 2019 policy supersedes earlier guidance issued in 2015.

- **Privacy and civil liberties protections.** DOJ components are responsible for assessing potential intrusiveness and effects on privacy and civil liberties before determining whether or how to use cameras and other sensors associated with UAS. Privacy officials are responsible for making these assessments prior to their use. Components are also responsible for addressing privacy and civil liberties complaints.
- **Data retention.** Information collected using UAS that may contain personally identifiable information may not be retained for longer than 180 days unless it is necessary for an authorized purpose or is maintained in a system of records pursuant to the Privacy Act.<sup>17</sup> Any retained data must be protected in compliance with federal laws, regulations, and policies.
- **Procurement.** Any procurement of information technology associated with UAS constituent parts must comply with relevant laws, policies, and regulations. Additionally, department components providing grants to state, local, tribal, or territorial agencies to purchase or use UAS must verify that grant recipients have procedures in place to safeguard privacy and civil liberties and mitigate cybersecurity risks.
- **Implementation.** DOJ components seeking to use UAS must implement DOJ's standards and requirements with respect to the technology and must issue component-specific UAS policies consistent with the *Department of Justice Policy on the Use of Unmanned Aircraft Systems*.

This policy only applies to DOJ components and not other federal, state, local, tribal, or territorial law enforcement agencies that may be using drones. However, if DOJ components are working with other agencies on joint investigations or task forces, the DOJ components—and possibly by extension, their partners—would need to adhere to the DOJ policies.

### *UAS Working Group*

DOJ has a UAS Working Group,<sup>18</sup> which is a forum to discuss and coordinate UAS-related matters. It is chaired by the Office of Legal Policy (OLP). OLP consults with the working group on a number of activities, including advising the Deputy Attorney General on UAS training standards, UAS tracking and reporting requirements, and recommended changes or improvements to the department's UAS policy. In supporting DOJ's UAS policy, OLP also reviews DOJ components' proposals with respect to the *approval level* at which UAS operations are approved within a component as well as components' implementation of DOJ's UAS policy. Further, OLP supports DOJ annual reporting on UAS operations as well as reporting on UAS procurement and training. It also shares best practices on UAS use across the department and with law enforcement partners.

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<sup>17</sup> For more information, see U.S. General Services Administration, *Systems of Records – Privacy Act*, <https://www.gsa.gov/reference/gsa-privacy-program/systems-of-records-privacy-act>.

<sup>18</sup> This working group “includes representatives from the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshals Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Bureau of Prisons, the Office of the Deputy Attorney General, the Office of Legal Policy, the National Security Division, the Criminal Division, the Executive Office for United States Attorneys, the Office of Justice Programs, the Office of Community Oriented Policing, the Office of Privacy and Civil Liberties, the Office of the Chief Information Officer, and the Office of Legislative Affairs.” See DOJ, *Justice Manual, Title 9: Criminal, 9-95.100 Department of Justice Policy on the Use of Unmanned Aircraft Systems*, <https://www.justice.gov/jm/9-95000-unmanned-aircraft-systems-uas>.



## DOJ UAS Activities

DOJ's UAS programs are not centralized at the department level; rather, they are managed by each component employing a UAS program. For instance, the FBI's UAS program is managed by its Critical Incident Response Group, which is responsible for, among other things, managing the FBI's mobile and aviation surveillance programs (which encompasses its UAS program).<sup>19</sup>

DOJ publishes an annual report on its UAS activities that outlines how it complies with the requirements of the 2015 presidential memorandum on UAS.<sup>20</sup> In its most recent report, on FY2022 UAS activities, DOJ notes that five components (FBI, DEA, ATF, USMS, and BOP) use UAS to carry out their law enforcement and national security missions. Specifically, in FY2022 these agencies conducted 1,447 *UAS deployments*<sup>21</sup> for purposes including "fire and explosive scene investigation; pre-warrant surveillance; photography; officer safety; execution of search warrants; communications tower inspections; criminal investigations; counterterrorism; counterintelligence; counter weapons of mass destruction; fugitive apprehension; and judicial security."<sup>22</sup>

## Department of Homeland Security (DHS) Use of UAS

Like DOJ, DHS activities involving UAS are managed at the agency level rather than being centralized at the department level. DHS does not have a department-wide policy on law enforcement use of UAS, though it has developed best practices for protecting privacy, civil rights, and civil liberties in UAS programs.<sup>23</sup> These best practices were developed by the DHS Unmanned Aircraft Systems Privacy, Civil Rights and Civil Liberties Working Group to inform DHS and its federal, state, and local government partners and grantees about UAS program policies respecting privacy, civil rights, and civil liberties.<sup>24</sup> And, like other executive branch components, DHS is subject to the directives outlined in the 2015 presidential memorandum on UAS.

## DHS UAS Activities

U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) uses *Small Unmanned Aircraft Systems*, or small drones, among its suite of surveillance technologies to support its investigations.<sup>25</sup> DHS notes that it complies with FAA regulations that apply to commercial and recreational small UAS users. DHS further notes that any video recordings collected through the use of its small drones are to be used only for official purposes in compliance with Homeland Security Investigations Directive 19-01, and not in violation of the First Amendment or in a manner that targets individuals based on race, color, religion, sex, sexual

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<sup>19</sup> DOJ, FBI, *FY20204 President's Budget Request*, February 2023.

<sup>20</sup> Annual reports are available at <https://www.justice.gov/olp/unmanned-aircraft-systems>.

<sup>21</sup> DOJ notes that these deployments refer to the sending and/or tasking of a UAS and one or more operators in support of an official duty and that any given deployment might involve more than one UAS flight, often due to UAS battery life.

<sup>22</sup> DOJ, *Department of Justice Summary of Unmanned Aircraft Systems (UAS) Operations During Fiscal Year 2022*, December 1, 2022.

<sup>23</sup> DHS, *Best Practices for Protecting Privacy, Civil Rights & Civil Liberties in Unmanned Aircraft Systems Programs*, December 18, 2015. These best practices are consistent with the 2015 presidential memorandum on UAS.

<sup>24</sup> *Ibid.*

<sup>25</sup> Other surveillance technologies include body wires, location tracking technologies, cell-site simulators, license plate readers, and video surveillance technology. See DHS, *Privacy Impact Assessment for the Homeland Security Investigation (HSI) Surveillance Technologies*, January 24, 2022.

orientation, gender identity, or national origin.<sup>26</sup> Any use of video recordings collected by these small drones must also be approved by an HSI supervisor in coordination with ICE counsel.<sup>27</sup>

U.S. Customs and Border Protection (CBP) uses a variety of aircraft, including small and large UAS, for border surveillance and law enforcement purposes. CBP notes that they may be equipped with video, radar, and sensor technologies.<sup>28</sup> Specifically, when CBP uses UAS for law enforcement purposes, they support operations conducted by other DHS components such as ICE and other federal law enforcement agencies such as the FBI or DEA. In these cases, requests for UAS support are reviewed by “the respective [U.S. Border Patrol] sector Chief Patrol Agent responsible for the geographic area in which operations are to be conducted for authorization.”<sup>29</sup>

## **Policy Considerations Surrounding Law Enforcement Use of UAS**

There is no specific federal legislative framework that governs federal law enforcement use of drones. Rather, there are laws and policies broadly governing law enforcement investigations and intelligence gathering; and, there are laws and policies broadly governing drone operations. In addition, there are policies, but not laws, governing the *specific* use of drones by federal law enforcement.

Some observers argue that drone use can greatly enhance public safety and national security—including using them as first responders.<sup>30</sup> Others have raised concerns that law enforcement use of drones could infringe upon individuals’ privacy or could chill free speech—such as in situations where law enforcement flies drones over First Amendment-protected activities.<sup>31</sup> Policymakers may debate the tradeoffs. If Congress debates law enforcement use of specific technologies such as UAS, it may consider how any boundaries might apply. For example, while many tools and technologies used by law enforcement agencies to aid investigations have not been specifically permitted or prohibited by law, Congress has legislated on and conducted oversight of certain technologies that could affect individual privacy. With electronic surveillance, for instance, investigators must generally obtain a warrant to conduct wiretaps<sup>32</sup>; however, exceptions exist for emergency situations that may involve death or serious injury, threaten national security, or involve conspiracies of organized crime.<sup>33</sup> Policymakers may consider these issues as they conduct oversight or debate legislation on law enforcement use of drones.

### **Oversight of Law Enforcement Use of Drones**

Congress could consider oversight of federal law enforcement use of UAS through a variety of mechanisms, including hearings and directives to oversight entities such as the Government Accountability Office (GAO) or various department and agency Inspectors General. Among the

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<sup>26</sup> Homeland Security Investigations Directive 19-01, Use of Small Unmanned Aircraft Systems, issued April 3, 2019, outlines ICE HSI policies and procedures for the use and operation of UAS.

<sup>27</sup> DHS, *Privacy Impact Assessment for the Homeland Security Investigation (HSI) Surveillance Technologies*, January 24, 2022.

<sup>28</sup> DHS, *Privacy Impact Assessment Update for the Aircraft Systems*, April 6, 2018.

<sup>29</sup> *Ibid.* Similarly, state and local law enforcement may also request UAS support from CBP.

<sup>30</sup> Wayne Parham, “10 Tips for Starting a Drone as First Responder Program,” *Police Magazine*, March 17, 2023.

<sup>31</sup> Matthew Guariglia, *How are Police Using Drones?*, Electronic Frontier Foundation, January 6, 2022.

<sup>32</sup> 18 U.S.C. §2510, et seq. See also Department of Justice, Justice Manual, Title 9, 9.7000: Electronic Surveillance.

<sup>33</sup> 18 U.S.C. §2518.

issues that could receive attention, policymakers might opt to examine agency adherence to the 2015 presidential memorandum on UAS or to their department or agency-specific policy guidance, such as the *Department of Justice Policy on the Use of Unmanned Aircraft Systems*.<sup>34</sup>

Policymakers might also opt to explore how law enforcement use of drones intersects with other technologies, such as facial recognition technology (FRT). Questions have been raised about the extent to which drones may be able to support FRT systems onboard as well as which videos and images captured by UAS may be used in law enforcement agencies' FRT programs.<sup>35</sup> Some of the concerns raised about law enforcement use of drones, including privacy risks, have also been raised about law enforcement use of other technologies such as FRT.<sup>36</sup> Some jurisdictions have responded to these concerns by placing restrictions on drones being equipped with FRT.<sup>37</sup>

## Influencing Law Enforcement Use of Drones

Policymakers can legislate directly on federal law enforcement agencies' ability to utilize certain technologies such as drones, as well as specify under which circumstances federal law enforcement may use these tools. They can also direct federal departments and agencies to develop or rely on established guidelines surrounding the technologies, require them to use technology that meets specified standards, and conduct broad oversight of law enforcement agencies' use of UAS.

Congress can also influence state, local, and tribal law enforcement agencies' use of UAS technologies through the provision or withholding of grant funding. Programs such as the Edward Byrne Memorial Justice Assistance Grant (JAG) program<sup>38</sup> and the Community Oriented Policing Services (COPS) program<sup>39</sup> have been used to incentivize certain activities by state and local law enforcement and could similarly be leveraged to support or restrict agencies' use of UAS. Congress could also further specify when, and under what circumstances, grant programs may be used to support law enforcement use of UAS. However, even when supporting a drone program may be considered as generally falling under the umbrella of a statutorily allowable use of funds, federal agencies may *prohibit* the use of funds for UAS in some cases. For instance, DOJ's Bureau of Justice Assistance (BJA)—which administers the JAG program (a program which allows grant recipients to use funds for equipment and supplies, among other purpose areas)—notes that currently, “the use of BJA grant funds for unmanned aircraft systems (UAS), including

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<sup>34</sup> Some entities have conducted oversight at various points. For instance, DOJ's Office of the Inspector General (OIG) issued a 2015 *Audit of the Department of Justice's Use and Support of Unmanned Aircraft Systems*, available at <https://oig.justice.gov/reports/2015/a1511.pdf>. Since then, DOJ has developed the *Department of Justice Policy on the Use of Unmanned Aircraft Systems*, which provides for guidelines and record-keeping requirements that did not exist when the DOJ OIG issued its 2015 report.

<sup>35</sup> Drew Harwell, “FBI, Pentagon Helped Research Facial Recognition for Street Cameras, Drones,” *Washington Post*, March 7, 2023.

<sup>36</sup> A discussion of other technologies used by law enforcement is outside the scope of this report. For information on law enforcement use of FRT, see CRS Report R46586, *Federal Law Enforcement Use of Facial Recognition Technology*.

<sup>37</sup> For instance, in June 2023 Illinois enacted HB3902, the Drones as First Responders Act, which, among other things, places restrictions on law enforcement agencies equipping drones with FRT. It is permissible in certain situations involving a credible terrorist threat, imminent harm to life, or imminent escape of a suspect or destruction of evidence.

<sup>38</sup> For more information, see CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*.

<sup>39</sup> For more information, see CRS In Focus IF10922, *Community Oriented Policing Services (COPS) Program*.

unmanned aircraft vehicles (UAV), and all accompanying accessories to support UAS or UAV is unallowable.”<sup>40</sup>

In addition to providing grants for state and local law enforcement use of UAS, grantmaking entities have provided guidance to agencies implementing these programs. For instance, DOJ’s COPS Office, along with the Police Executive Research Forum and the UAS Working Group, developed a roadmap for state, local, tribal, and territorial law enforcement implementing an effective UAS program, as well as strategies for these agencies on community engagement and education on their UAS programs. Among other things, they recommend strategies for the planning, implementation, and operational phases to address concerns about privacy and the purpose and details of drone use.<sup>41</sup> Policymakers could consider the federal role in providing guidance to state and local entities, and whether any adjustments are warranted.

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<sup>40</sup> DOJ, BJA, *Funding & Awards*, <https://bja.ojp.gov/funding>.

<sup>41</sup> Community Oriented Policing Services and Police Executive Research Forum, *Community Engagement Strategies for State, Local, Tribal, and Territorial Law Enforcement Unmanned Aircraft System Programs*, 2022.