



Written by [Joe Wolverton, II, J.D.](#) on December 31, 2015

Tennessee, South Carolina Could “Green Light” Weaponized Police Drones

If a pair of bills are passed by lawmakers in South Carolina and Tennessee, law-enforcement agencies in those states could get a green light for weaponizing drones.

The Tennessee measure — HB 1456 — is sponsored by state Representative David Byrd; the similar South Carolina bill — HB 4425 — was prefiled by state Representative Wendell Gilliard.

Both bills outlaw the equipping of privately owned unmanned aerial vehicles with weapons, but an omission in both bills leaves a loophole for drones deployed by police to be armed with deadly (and non-lethal) weapons.

While it is unlikely that either representative would approve of the use of armed drones in any unwarranted search, seizure, or apprehension of a suspect without affording the alleged lawbreaker the full panoply of due process rights guaranteed by the U.S. and state constitutions, law enforcement might interpret the explicit exemption of the police from the bills to mean they are tacitly being told to deploy weaponized drones.

Sadly, there is precedent for such a scenario: As of August 2015, police in North Dakota may legally deploy drones equipped with Tasers and tear gas.

In an ironic betrayal of a bill’s original intent, the recently enacted North Dakota law authorizes police to weaponize drones and use them against citizens, provided that the weapons are “less than lethal.”

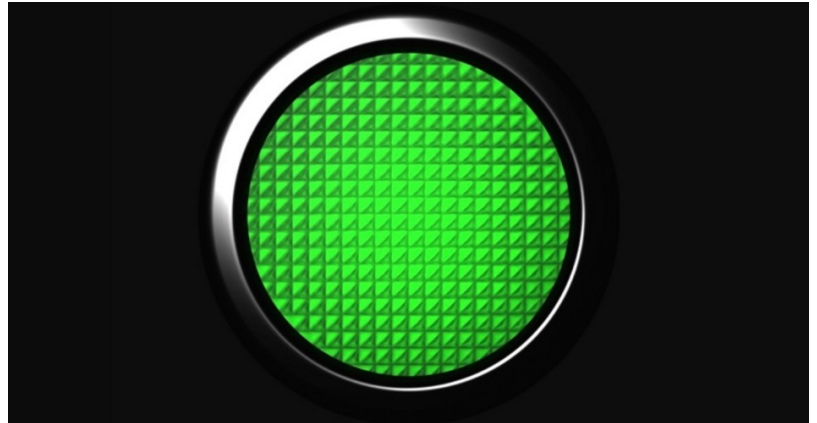
The measure, originally drafted by state representative Rick Becker, called for tight regulation on the use of the unmanned aerial vehicles by police and for protection from their misuse against citizens and the Constitution.

In 2012, Becker, a plastic surgeon then serving his first term as a legislator, proposed a bill to the North Dakota state legislature looking to limit the use of drones by law enforcement, including a provision that completely banned the weaponizing of the devices.

Despite the legislative restrictions he sought to impose on the use of the drones, Becker explained that he wasn’t trying to offend police, but to defend the Constitution.

“It’s a new technology that has really amazing capabilities and can be used in excellent ways for our communities. I don’t want to say that drones can’t be used,” Becker said. “But with the new technology there are also issues, primarily privacy issues, which can come into play.”

That was how the bill was written, but that wasn’t the bill that was ultimately presented to and passed by state lawmakers.





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Bruce Burkett, a lobbyist employed by the North Dakota Peace Officer's Association, was given the go-ahead by Republican legislative leaders to add an amendment onto Becker's bill that limited the restriction to "less than lethal" weapons. (The congressional "drone lobby" is equally as powerful and funded by the vehicles' manufacturers, as well).

Burkett's betrayal of the bill's original intent resulted in North Dakota becoming the first state to grant such expansive power to police.

Should the bills being proposed in Tennessee and South Carolina be signed into law, those states would be added to that less-than-laudable list.

Really, the restriction of weapons to the "non-lethal" variety would not necessarily protect citizens from becoming casualties of the drones, however.

It's not as if non-lethal weapons have never been lethal.

On a database of people killed by police maintained by *The Guardian* newspaper, 39 people have been killed by Tasers.

In North Dakota, Becker predicted an even more sinister future for the flying weapons.

"When you're not on the ground, and you're making decisions, you're sort of separate," Becker said in March 2015, describing such detachment as "depersonalized."

With the rise of the drones comes the rise of several critical constitutional considerations of their potential uses. One of the most crucial of those inquiries concerns the application of the Fourth Amendment's prohibition against "unlawful searches and seizures" and the requirement that warrants be supported by affidavits "particularly describing the place to be searched, and the persons or things to be seized."

In point of fact, a warrant becomes unnecessary when the search is being conducted using a drone. The target of the hunt will likely be unaware that he is being tracked and thus government (at any level) can keep a close eye on those considered threats to national (or local) security without having to permit the eye of the court to look over their shoulder.

The potential weaponization of police drones is a serious development — one that combines both constitutional issues of due process and the Fourth Amendment's search and seizure limitations.

In 2011, Glenn Greenwald, of *The Guardian*, predicted the shift in the use of drones from surveilling suspects to shooting them, writing, "Many dismiss this concern insisting that when it comes to surveillance drones are no different than police helicopters. Some of these same people dismiss concerns over weaponized drones arguing that there's no difference between allowing the police to Taser you or shoot you themselves and using a drone to do the dirty work. History teaches, however, that creeping police state powers are entrenched one step at a time."

In the new year, the bills before the Tennessee and South Carolina legislatures — and the similar act already signed into law in North Dakota — bring up a couple of important questions: First, what level of weaponization is permissible for the police? Next, does local law enforcement need the type of weaponry used by the military, whose mission is ostensibly very different from that of law enforcement?

That's not to say there is no place for a police-administered drone program. As I've written in [an earlier article](#),

Drones aren't bad per se. There are many lawful possible uses of drones, including wildfire control,



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tracking suspected criminals for whom a qualifying warrant has been issued, tracking of stolen vehicles, etc. It is the unconstitutional use of drones that is objectionable and that Americans must be vigilant against, lest we legislatively repeal the Fourth Amendment and the protections it affords against tyranny.

Although they are no true friend of constitutional liberty, the American Civil Liberties Union (ACLU) accurately summarized the potential pitfalls of weaponized drones being deployed by law enforcement.

“Drones make it too easy to use force,” the ACLU wrote in an article criticizing the North Dakota statute. These types of bills “open the door to increasing weaponization,” and “increase the militarization of police,” the statement concluded.

Bills such as those to be debated in 2016 by state lawmakers in South Carolina and Tennessee need to be revised so as to explicitly prevent the police from becoming the “standing army” of the sort our forefathers and those who inspired them believed to be [“inconsistent with liberty.”](#)

The people and their elected representatives must ensure that due process doesn’t become the first casualty of weaponized police drones.



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