

1                                   **SEARCH AND SEIZURE AMENDMENTS**

2                                   2015 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Mark B. Madsen**

5                                   House Sponsor: John Knotwell

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7   **LONG TITLE**

8   **General Description:**

9           This bill enacts provisions relating to the use of an imaging surveillance device by a  
10 government entity.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines terms;
- 14           ▶ describes the circumstances under which a government entity is required to obtain a  
15 warrant in order to use an imaging surveillance device;
- 16           ▶ describes exceptions to the requirement to obtain a warrant;
- 17           ▶ imposes notification requirements relating to the use of an imaging surveillance  
18 device; and
- 19           ▶ addresses data use and retention.

20 **Money Appropriated in this Bill:**

21           None

22 **Other Special Clauses:**

23           None

24 **Utah Code Sections Affected:**

25 ENACTS:

26           **77-23d-101**, Utah Code Annotated 1953

27           **77-23d-102**, Utah Code Annotated 1953



28 77-23d-103, Utah Code Annotated 1953  
 29 77-23d-104, Utah Code Annotated 1953  
 30 77-23d-105, Utah Code Annotated 1953

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32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **77-23d-101** is enacted to read:

34 **CHAPTER 23d. IMAGING SURVEILLANCE PRIVACY**

35 **77-23d-101. Title.**

36 This chapter is known as "Imaging Surveillance Privacy."

37 Section 2. Section **77-23d-102** is enacted to read:

38 **77-23d-102. Definitions.**

39 As used in this chapter:

40 (1) "Government entity" means the state, a county, a municipality, a higher education  
 41 institution, a local district, a special service district, or any other political subdivision of the  
 42 state or an administrative subunit of any political subdivision, including a law enforcement  
 43 entity or any other investigative entity, agency, department, division, bureau, board, or  
 44 commission, or an individual acting or purporting to act for or on behalf of a state or local  
 45 agency.

46 (2) "Imaging surveillance device" means a device that uses radar, sonar, infrared, or  
 47 other remote sensing or detection technology ~~that enables~~ used by the individual  
 47a operating the device to  
 48 obtain information, not otherwise directly observable, about individuals, items, or activities  
 49 within a closed structure.

50 (3) "Target" means a person or a structure upon which a government entity  
 51 intentionally collects or attempts to collect information using an imaging surveillance device.

52 Section 3. Section **77-23d-103** is enacted to read:

53 **77-23d-103. Use of imaging surveillance device -- Warrant required -- Exceptions.**

54 (1) Except as provided in Subsection (2), a government entity may not operate an  
 55 imaging surveillance device without a search ~~or arrest~~ warrant issued upon probable  
 55a cause.

56 (2) A government entity may operate an imaging surveillance device without a search  
 57 ~~or arrest~~ warrant:

58 (a) for testing equipment or training if the testing or training:

- 59 (i) is not conducted as part of an investigation or law enforcement activity; and  
 60 (ii) is conducted with the knowledge and consent of:  
 61 (A) each individual who is imaged; and  
 62 (B) ~~H→~~ [each] ~~an~~ ~~←H~~ owner of ~~H→~~ [the] ~~each~~ ~~←H~~ property that is imaged;  
 63 (b) in exigent circumstances; or  
 64 (c) in fresh pursuit of a person suspected of committing a felony.

65 ~~H→~~ ~~[(3) A government entity may not operate an imaging surveillance device when~~  
 66 ~~executing a search ~~S→~~ [or arrest] ~~←S~~ warrant unless the application for the warrant:~~  
 67 ~~—— (a) indicates that the government entity intends to use an imaging surveillance device;~~  
 68 ~~—— (b) describes the capabilities of the imaging surveillance device; and~~  
 69 ~~—— (c) describes the measures that the government entity will take to avoid the technology~~  
 70 ~~being used in a manner that is beyond the scope of the warrant.] ~~←H~~~~

71 Section 4. Section 77-23d-104 is enacted to read:

72 **77-23d-104. Notification required -- Delayed notification.**

73 (1) Except as provided in Subsection (2), a government entity that executes a search ~~S→~~ [or  
 74 arrest] ~~←S~~ warrant that authorizes the use of an imaging surveillance device shall, within 14 days  
 75 after the day on which the warrant is executed, provide notice to the individual who owns,  
 76 resides in, or rents the structure specified in the warrant that states:  
 77 (a) that a warrant was applied for and granted;  
 78 (b) the type of warrant issued;  
 79 (c) the period of time during which the collection of data from the structure was  
 80 authorized;

81 (d) the offense specified in the application for the warrant;  
 82 (e) the identity of the government entity that filed the application; and  
 83 (f) the ~~S→~~ [identity of the judge who] name of the court that ~~←S~~ issued the warrant.

84 (2) A government entity seeking a warrant described in Subsection 77-23d-103(1) may  
 85 submit a request, and the court may grant permission, to delay the notification described in  
 86 Subsection (1) for a period not to exceed 30 days, if the court determines that there is probable  
 87 cause to believe that the notification may:

- 88 (a) endanger the life or physical safety of an individual;  
 89 (b) cause an individual to flee from prosecution;

- 90 (c) lead to the destruction of or tampering with evidence;
- 91 (d) result in the intimidation of a potential witness; or
- 92 (e) otherwise seriously jeopardize an investigation or unduly delay a trial.
- 93 (3) When a delay of notification is granted under Subsection (2), and upon application
- 94 by the government entity, the court may grant additional extensions of up to 30 days each.
- 95 (4) Upon expiration of the period of delayed notification granted under Subsection (2)
- 96 or (3), the government entity shall serve upon or deliver by first-class mail to the individual
- 97 who owns, resides in, or rents the structure specified in the warrant a copy of the warrant
- 98 together with a notice that:
  - 99 (a) states with reasonable specificity the nature of the law enforcement inquiry; and
  - 100 (b) contains:
    - 101 (i) the information described in Subsections (1)(a) through (f);
    - 102 (ii) a statement that notification of the search was delayed;
    - 103 (iii) the name of the court that authorized the delay of notification; and
    - 104 (iv) a reference to the provision of this chapter that allowed the delay of notification.
  - 105 (5) A government entity is not required to notify the owner of a structure if the owner
  - 106 is located outside of the United States.

107 Section 5. Section **77-23d-105** is enacted to read:

108 **77-23d-105. Data use and retention.**

109 (1) Except as provided in Subsection (2), a government entity:

- 110 (a) may not use, copy, or disclose data collected using an imaging surveillance device
- 111 on an individual or structure that is not a target; and
- 112 (b) shall ensure that data described in Subsection (1)(a) is destroyed as soon as
- 113 reasonably possible after the government entity collects or receives the data.

114 (2) A government entity is not required to comply with Subsection (1) if:

115 (a) deleting the data would also require the deletion of data that:

- 116 (i) relates to the target of the operation; and
- 117 (ii) is requisite for the success of the operation;
- 118 (b) the government entity receives the data:

119 (i) through a court order that:

120 (A) requires a person to release the data to the government entity; or

- 121           (B) prohibits the destruction of the data; or  
122           (ii) from a person who is a nongovernment actor;  
123           (c) (i) the data was collected inadvertently; and  
124           (ii) the data appears to pertain to the commission of a crime; or  
125           (d) (i) the government entity reasonably determines that the data pertains to an  
126 emergency situation; and  
127           (ii) using or disclosing the data would assist in remedying the emergency.
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**Legislative Review Note**  
**as of 2-10-15 9:42 AM**

**Office of Legislative Research and General Counsel**