

PUBLIC SURVEILLANCE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies provisions related to government surveillance.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows a law enforcement agency to use license plate reading technology gathered by a private entity in certain circumstances;
- ▶ allows the Department of Transportation to issue a permit for the use of license plate reading technology on a state highway in certain circumstances;
- ▶ requires a law enforcement agency participating in a license plate reading technology program to publicly post policies related to license plate reading technology and special use permits the law enforcement agency has received;
- ▶ defines parameters for the collection and retention of information for investigative searches and for audit purposes gathered through license plate reading technology by a law enforcement agency; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

29 AMENDS:

30 **41-6a-2002**, as last amended by Laws of Utah 2020, Chapter 365

31 **41-6a-2003**, as last amended by Laws of Utah 2022, Chapter 82

32 **41-6a-2004**, as last amended by Laws of Utah 2018, Chapter 269

33 **41-6a-2005**, as last amended by Laws of Utah 2014, Chapter 276

34 **41-6a-2006**, as enacted by Laws of Utah 2013, Chapter 447

35 **72-1-212**, as enacted by Laws of Utah 2015, Chapter 267

36

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

38 Section 1. Section **41-6a-2002** is amended to read:

39 **41-6a-2002. Definitions.**

40 As used in this ~~[section]~~ chapter:

41 (1) "Automatic license plate reader system" means a system of one or more mobile or
42 fixed automated high-speed cameras used in combination with computer algorithms to convert
43 an image of a license plate into computer-readable data.

44 (2) "Captured plate data" means the global positioning system coordinates, date and
45 time, photograph, license plate number, and any other data captured by or derived from an
46 automatic license plate reader system.

47 (3) (a) "Governmental entity" means:

48 (i) executive department agencies of the state;

49 (ii) the offices of the governor, the lieutenant governor, the state auditor, the attorney
50 general, and the state treasurer;

51 (iii) the Board of Pardons and Parole;

52 (iv) the Board of Examiners;

53 (v) the National Guard;

54 (vi) the Career Service Review Office;

55 (vii) the State Board of Education;

- 56 (viii) the Utah Board of Higher Education;
- 57 (ix) the State Archives;
- 58 (x) the Office of the Legislative Auditor General;
- 59 (xi) the Office of the Legislative Fiscal Analyst;
- 60 (xii) the Office of Legislative Research and General Counsel;
- 61 (xiii) the Legislature;
- 62 (xiv) legislative committees, except any political party, group, caucus, or rules or
- 63 sifting committee of the Legislature;
- 64 (xv) courts, the Judicial Council, the Administrative Office of the Courts, and similar
- 65 administrative units in the judicial branch;
- 66 (xvi) any state-funded institution of higher education or public education; ~~or~~
- 67 (xvii) any political subdivision of the state~~[-];~~ or
- 68 (xviii) a law enforcement agency.
- 69 (b) "Governmental entity" includes:
- 70 (i) every office, agency, board, bureau, committee, department, advisory board, or
- 71 commission of an entity listed in Subsections (3)(a)(i) through [~~xvii~~] (xviii) that is funded or
- 72 established by the government to carry out the public's business; or
- 73 (ii) a person acting as an agent of a governmental entity or acting on behalf of a
- 74 governmental entity.
- 75 (4) "Nongovernmental entity" means a person that is not a governmental entity.
- 76 [~~4~~] (5) "Secured area" means an area, enclosed by clear boundaries, to which access
- 77 is limited and not open to the public and entry is only obtainable through specific
- 78 access-control points.
- 79 Section 2. Section **41-6a-2003** is amended to read:
- 80 **41-6a-2003. Automatic license plate reader systems -- Restrictions.**
- 81 (1) Except as provided in Subsection (2), a governmental entity may not use an
- 82 automatic license plate reader system.

83 (2) ~~[An]~~ Subject to Subsection (3), an automatic license plate reader system may be
84 used:

85 (a) by a law enforcement agency; ~~[for the purpose of protecting public safety,~~
86 ~~conducting criminal investigations, or ensuring compliance with local, state, and federal laws;]~~

87 (i) as part of an active criminal investigation;

88 (ii) to apprehend an individual with an outstanding warrant;

89 (iii) to locate a missing or endangered person; or

90 (iv) to locate a stolen vehicle;

91 (b) by a governmental parking enforcement entity for the purpose of enforcing state
92 and local parking laws;

93 (c) by a parking enforcement entity for regulating the use of a parking facility;

94 (d) for the purpose of controlling access to a secured area;

95 (e) for the purpose of collecting an electronic toll;

96 (f) for the purpose of enforcing motor carrier laws;

97 (g) by a public transit district for the purpose of assessing parking needs and
98 conducting a travel pattern analysis;

99 (h) by an institution of higher education within the state system of higher education as
100 described in Section 53B-1-102:

101 (i) for a purpose described in Subsections (2)(a) through (d); or

102 (ii) if the data collected is anonymized, for research and educational purposes; ~~[or]~~

103 (i) by the Utah Inland Port Authority, created in Section 11-58-201, or by a contractor
104 of the Utah Inland Port Authority with the approval of the board of the Utah Inland Port
105 Authority, if:

106 (i) the automatic license plate reader system is used only within a project area, as
107 defined in Section 11-58-102, of the Utah Inland Port Authority;

108 (ii) the purpose of using the automatic license plate reader system is to improve supply
109 chain efficiency or the efficiency of the movement of goods by analyzing and researching data

110 related to commercial vehicle traffic; and

111 (iii) specific license plate information is anonymized[-]; or

112 (j) by an international airport owned by a governmental entity for the purpose of
113 promoting efficient regulation and implementation of traffic control and direction, parking,
114 security, and other similar operational objectives on the airport campus.

115 (3) A law enforcement agency may not use an automatic license plate reader system
116 unless:

117 (a) the law enforcement agency has a written policy regarding the use, management,
118 and auditing of the automatic license plate reader system;

119 (b) for any stationary device installed with the purpose of capturing license plate data
120 of vehicles traveling on a state highway, the law enforcement agency obtains a special use
121 permit as described in Section 72-1-212 from the Department of Transportation before
122 installing the device; and

123 (c) the policy under Subsection (3)(a) and any special use permits granted in
124 accordance with Subsection (3)(b) are:

125 (i) posted and publicly available on the appropriate city, county, or state website; or

126 (ii) posted on the Utah Public Notice Website created in Section 63A-16-601 if the law
127 enforcement agency does not have access to a website under Subsection (3)(c)(i).

128 Section 3. Section **41-6a-2004** is amended to read:

129 **41-6a-2004. Captured plate data -- Preservation and disclosure.**

130 (1) Captured plate data obtained for the purposes described in Section **41-6a-2003**:

131 (a) in accordance with Section **63G-2-305**, is a protected record under Title 63G,
132 Chapter 2, Government Records Access and Management Act, if the captured plate data is
133 maintained by a governmental entity;

134 (b) may not be used or shared for any purpose other than the purposes described in
135 Section **41-6a-2003**;

136 (c) except as provided in Subsection (3), may not be preserved for more than nine

137 months by a governmental entity except pursuant to:

- 138 (i) a preservation request under Section 41-6a-2005;
- 139 (ii) a disclosure order under Subsection 41-6a-2005(2); or
- 140 (iii) a warrant issued under the Utah Rules of Criminal Procedure or an equivalent
- 141 federal warrant; and
- 142 (d) may only be disclosed:
 - 143 (i) in accordance with the disclosure requirements for a protected record under Section
 - 144 63G-2-202;
 - 145 (ii) pursuant to a disclosure order under Subsection 41-6a-2005(2); or
 - 146 (iii) pursuant to a warrant issued under the Utah Rules of Criminal Procedure or an
 - 147 equivalent federal warrant.

148 (2) (a) A governmental entity that is authorized to use an automatic license plate reader

149 system under this part may not sell captured plate data for any purpose.

150 (b) A governmental entity that is authorized to use an automatic license plate reader

151 system under this part may not share or use captured plate ~~[date]~~ data for a purpose not

152 authorized under Subsection 41-6a-2003(2).

153 (c) Notwithstanding the provisions of this section, a governmental entity may preserve

154 and disclose aggregate captured plate data for planning and statistical purposes if the

155 information identifying a specific license plate is not preserved or disclosed.

156 (3) Plate data collected in accordance with Section 72-6-118 may be preserved so long

157 as necessary to collect the payment of a toll or penalty imposed in accordance with Section

158 72-6-118 and the nine-month preservation limitation described in Subsection (1)(c) shall not

159 apply.

160 (4) (a) Except as provided in Subsections (1)(c)(i) through (1)(c)(iii), a governmental

161 entity shall destroy as soon as reasonably possible, in an unrecoverable manner, plate data

162 obtained pursuant to this chapter that is not specifically necessary to achieve the authorized

163 objectives under Subsection 41-6a-2003(2).

164 (b) Subsection (4)(a) applies to data a governmental entity obtains:
165 (i) from a nongovernmental entity pursuant to a warrant; or
166 (ii) from an automatic license plate reader system owned or operated by a
167 governmental entity.

168 Section 4. Section **41-6a-2005** is amended to read:

169 **41-6a-2005. Preservation request.**

170 (1) A person or governmental entity using an automatic license plate reader system
171 shall take all steps necessary to preserve captured plate data in its possession for 14 days after
172 the date the data is captured pending the issuance of a court order requiring the disclosure of
173 the captured plate data if a governmental entity or defendant in a criminal case requesting the
174 captured plate data submits a written statement to the person or governmental entity using an
175 automatic license plate reader system:

- 176 (a) requesting the person or governmental entity to preserve the captured plate data;
- 177 (b) identifying:
 - 178 (i) the camera or cameras for which captured plate data shall be preserved;
 - 179 (ii) the license plate for which captured plate data shall be preserved; or
 - 180 (iii) the dates and time frames for which captured plate data shall be preserved; and
- 181 (c) notifying the person or governmental entity maintaining the captured plate data that
182 the governmental entity or defendant in a criminal case is applying for a court order for
183 disclosure of the captured plate data.

184 (2) (a) A governmental entity or defendant in a criminal case may apply for a court
185 order for the disclosure of captured plate data possessed by a governmental entity.

186 (b) A court that is a court of competent jurisdiction shall issue a court order requiring
187 the disclosure of captured plate data if the governmental entity or defendant in a criminal case
188 offers specific and articulable facts showing that there are reasonable grounds to believe that
189 the captured plate data is relevant and material to an ongoing criminal or missing person
190 investigation.

191 (3) Captured plate data that is the subject of an application for a disclosure order under
192 Subsection (2) may be destroyed at the later of:

193 (a) the date that an application for an order under Subsection (2) is denied and any
194 appeal exhausted;

195 (b) the end of 14 days, if the person or governmental entity does not otherwise preserve
196 the captured plate data; or

197 (c) the end of the period described in Subsection 41-6a-2004(1)(c).

198 (4) Notwithstanding Subsection (2), a governmental entity may enter into a
199 memorandum of understanding with another governmental entity to share access to an
200 automatic license plate reader system or captured plate data otherwise authorized by this part.

201 ~~[(4)]~~ (5) A governmental entity may obtain, receive, or use ~~[privately held]~~ captured
202 plate data from a nongovernmental entity only:

203 (a) (i) pursuant to a warrant issued using the procedures described in the Utah Rules of
204 Criminal Procedure or an equivalent federal warrant; or

205 (ii) using the procedure described in Subsection (2); and

206 ~~[(b) if the private automatic license plate reader system retains captured plate data for~~
207 ~~30 days or fewer.]~~

208 (b) for the purposes authorized in Subsection 41-6a-2003(2).

209 (6) (a) A law enforcement agency shall preserve a record of:

210 (i) the number of times a search of captured license plate data is conducted by the
211 agency or the agency's employees or agents; and

212 (ii) the crime type and incident number associated with each search of captured license
213 plate data.

214 (b) A law enforcement agency shall preserve a record identified in Subsection (6)(a)
215 for at least five years.

216 Section 5. Section 41-6a-2006 is amended to read:

217 **41-6a-2006. Penalties.**

218 A person [~~who violates a provision under this part~~] who knowingly or intentionally
219 uses, obtains, or discloses captured license plate data in violation of this part is guilty of a class
220 B misdemeanor.

221 Section 6. Section **72-1-212** is amended to read:

222 **72-1-212. Special use permitting -- Rulemaking.**

223 [~~(1) For purposes of this section, "special use permit" means a permit issued for a~~
224 ~~special use or a special event that takes place on a highway.]~~

225 (1) As used in this section:

226 (a) "Law enforcement agency" means the same as that term is defined in Section
227 [53-3-102](#).

228 (b) "Special use permit" means a permit issued:

229 (i) for a special use or a special event that takes place on a highway; or

230 (ii) to a law enforcement agency to install an automatic license plate reader on a state
231 highway for the purpose of capturing license plate data of vehicles traveling on a state highway,
232 regardless of whether the device is installed on property owned by the department or the law
233 enforcement agency.

234 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
235 in consultation with representatives of the Utah League of Cities and Towns and the Utah
236 Association of Counties, the department shall make rules that are not inconsistent with this
237 chapter or the constitution and laws of this state or of the United States governing the issuance
238 of a special use permit to maintain public safety and serve the needs of the traveling public.

239 (3) The rules described in Subsection (2) may:

240 (a) establish the highways for which the highest number of special use permits are
241 issued;

242 (b) develop, in consultation with municipalities, a limit on the number of special use
243 permits that may be issued in any calendar year on a particular highway;

244 (c) require a person to submit an application designated by the department before the

245 department issues a special use permit;

246 (d) limit the number of special use permits issued on any one day for any specified
247 location based on a first-come, first-served basis for completed applications;

248 (e) establish criteria for evaluating completed applications, such as historic use,
249 potential economic benefit, or other relevant factors;

250 (f) specify conditions that are required to be met before a special use permit may be
251 issued;

252 (g) establish a penalty for failure to fulfill conditions required by the special use permit,
253 including suspension of the special use permit or suspension of a future special use permit;

254 (h) require an applicant to obtain insurance for certain special uses or special events; or

255 (i) provide other requirements to maintain public safety and serve the needs of the
256 traveling public.

257 (4) The limit on the number of special use permits described in Subsection (3)(b) may
258 not include:

259 (a) a special use permit issued for a municipality-sponsored special use or special event
260 on a highway within the jurisdiction of the municipality[-]; or

261 (b) a special use permit issued to a law enforcement agency to install a device as part of
262 an automatic license plate reader system authorized by Section [41-6a-2003](#).

263 (5) The rules described in Subsection (2) shall consider:

264 (a) traveler safety and mobility;

265 (b) the safety of special use or special event participants;

266 (c) emergency access;

267 (d) the mobility of residents close to the event or use;

268 (e) access and economic impact to businesses affected by changes to the normal
269 operation of highway traffic; [**and**]

270 (f) past performance of an applicant's adherence to special use permit requirements[-];

271 and

272 (g) whether a law enforcement agency applying for a special use permit has published a
273 policy online as required by Section 41-6a-2003.

274 (6) Notwithstanding any other provision of this chapter, the department may also
275 require a law enforcement agency applying for a special use permit described in this section to
276 obtain an encroachment permit.

277 [~~6~~] (7) The department shall adopt a fee schedule in accordance with Section
278 63J-1-504 that reflects the cost of services provided by the department associated with special
279 use permits and with special uses or special events that take place on a highway.

280 (8) For a device installed in accordance with Section 41-6a-2003, the installation,
281 maintenance, data collection, and removal are the responsibility of the law enforcement agency
282 that obtains the special use permit.

283 (9) (a) The department shall preserve a record of special use permits issued to a law
284 enforcement agency, including the stated purpose for each permit.

285 (b) The department shall preserve a record identified in Subsection (9)(a) for at least
286 five years.