

CRIMINAL TRESPASS AND PRIVACY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronald M. Winterton

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to criminal trespass to include a trespass to capture data, information, or characteristics of property for which the owner has an expectation of privacy.

Highlighted Provisions:

This bill:

▶ codifies an expectation of privacy for characteristics, data, or information about an owner's property that:

- is not immediately apparent through routine visual observation; and
- requires advanced technology to capture the information about the property;

▶ amends the offense of criminal trespass to include a trespass to capture data, information, or characteristics of property for which the owner has an expectation of privacy;

▶ allows a court to order the removal of any data captured during a criminal trespass; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-6-206**, as last amended by Laws of Utah 2022, Chapter 87



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

33 Section 1. Section **76-6-206** is amended to read:

34 **76-6-206. Criminal trespass.**

35 (1) (a) As used in this section:

36 (i) (A) "Advanced technological instrumentality" means a technological instrument that
37 is capable of detecting, observing, measuring, mapping, or otherwise capturing information or
38 data pertaining to natural or man-made characteristics or features of property that are below the
39 surface of the ground or not otherwise readily apparent through natural observation.

40 (B) "Advanced technological instrumentality" includes lidar technology.

41 [~~(a)~~] (ii) "Enter" means intrusion of the entire body or the entire unmanned aircraft.

42 [~~(b)~~] (iii) "Remain unlawfully," as that term relates to an unmanned aircraft, means
43 remaining on or over private property when:

44 [(i)] (A) the private property or any portion of the private property is not open to the
45 public; and

46 [(ii)] (B) the person operating the unmanned aircraft is not otherwise authorized to fly
47 the unmanned aircraft over the private property or any portion of the private property.

48 (b) A property owner has an expectation of privacy regarding characteristics, data, or
49 information pertaining to the owner's property that:

50 (i) is not immediately apparent through routine visual observation of the property; and

51 (ii) requires advanced technological instrumentality to detect, observe, measure, map,
52 or otherwise capture information or data about the property or characteristics of the property.

53 (2) A person is guilty of criminal trespass if, under circumstances not amounting to
54 burglary as defined in Section **76-6-202**, **76-6-203**, or **76-6-204** or a violation of Section
55 **76-10-2402** regarding commercial obstruction:

56 (a) the person enters or remains unlawfully on or causes an unmanned aircraft to enter
57 and remain unlawfully over property and:

58 (i) intends to cause annoyance or injury to any person or damage to any property,

59 including the use of graffiti as defined in Section [76-6-107](#);

60 (ii) intends to commit any crime, other than theft or a felony; or

61 (iii) is reckless as to whether the person's or unmanned aircraft's presence will cause
62 fear for the safety of another;

63 (b) knowing the person's or unmanned aircraft's entry or presence is unlawful, the
64 person enters or remains on or causes an unmanned aircraft to enter or remain unlawfully over
65 property to which notice against entering is given by:

66 (i) personal communication to the person by the owner or someone with apparent
67 authority to act for the owner;

68 (ii) fencing or other enclosure obviously designed to exclude intruders; or

69 (iii) posting of signs reasonably likely to come to the attention of intruders; ~~[or]~~

70 (c) the person uses advanced technological instrumentality, regardless of the person's
71 location, to detect, observe, measure, map, or otherwise capture information or data about the
72 property or characteristics of the property of another for which the owner has an expectation of
73 privacy as described in Subsection (1)(b), and to which notice against such an intrusion is
74 given by:

75 (i) personal communication to the person by the owner or someone with apparent
76 authority to act for the owner;

77 (ii) fencing or other enclosure obviously designed to exclude intruders; or

78 (iii) posting of signs reasonably likely to come to the attention of intruders; or

79 ~~[(e)]~~ (d) the person enters a condominium unit in violation of Subsection [57-8-7](#)(8).

80 (3) (a) A violation of Subsection (2)(a) ~~[or (b)]~~, (b), or (c) is a class B misdemeanor
81 unless the violation is committed in a dwelling, in which event the violation is a class A
82 misdemeanor.

83 (b) A violation of Subsection ~~[(2)(e)]~~ (2)(d) is an infraction.

84 (4) It is a defense to prosecution under this section that:

85 (a) the property was at the time open to the public; and

86 (b) the actor complied with all lawful conditions imposed on access to or remaining on
87 the property.

88 (5) For a person who commits a violation of Subsection (2), a court may order the
89 person to remove and destroy any data collected by the person in the commission of the

90 violation of Subsection (2).

91 [~~5~~] (6) In addition to an order for restitution under Section [77-38b-205](#), a person who
92 commits a violation of Subsection (2) may also be liable for:

93 (a) statutory damages in the amount of three times the value of damages resulting from
94 the violation of Subsection (2) or \$500, whichever is greater; and

95 (b) reasonable attorney fees not to exceed \$250, and court costs.

96 [~~6~~] (7) Civil damages under Subsection [~~5~~] (6) may be collected in a separate
97 action by the property owner or the owner's assignee.