

**Senator Ronald M. Winterton** proposes the following substitute bill:

**CRIMINAL TRESPASS AND PRIVACY AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ronald M. Winterton**

House Sponsor: \_\_\_\_\_

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**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;
- ▶ provides an exemption for certain law enforcement and government practices; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

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



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

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

33 **76-6-206. Criminal trespass.**

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

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

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

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

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

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

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

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

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

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

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

55 (a) the ~~[person]~~ actor enters or remains unlawfully on or causes an unmanned aircraft  
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57 to enter 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] actor's or unmanned aircraft's presence will  
62 cause fear for the safety of another;

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

66 (i) personal communication to the [person] actor by the owner or someone with  
67 apparent 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 actor uses advanced technological instrumentality, regardless of the actor'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 actor 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 [(c)] (d) the [person] actor enters a condominium unit in violation of Subsection  
80 57-8-7(8).

81 (3) This section does not apply to lawful practices of:

82 (a) a law enforcement agency; or

83 (b) another government entity.

84 [(3)] (4) (a) [A] Except as provided in Subsection (4)(b), a violation of Subsection  
85 (2)(a) [or (b)], (b), or (c) is a class B misdemeanor [unless the violation is committed in a  
86 dwelling, in which event the violation is a class A misdemeanor].

87 (b) If a violation of Subsections (2)(a), (b), or (c) is committed in a dwelling, the

88 violation is a class A misdemeanor.

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

90 [~~(4)~~] (5) It is a defense to prosecution under this section that:

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

92 (b) the [~~actor~~] defendant complied with all lawful conditions imposed on access to or  
93 remaining on the property.

94 (6) For a person who commits a violation of Subsection (2), a court may order the  
95 person to remove and destroy any data collected by the person in the commission of the  
96 violation of Subsection (2).

97 [~~(5)~~] (7) In addition to an order for restitution under Section 77-38b-205, [~~a person~~] an  
98 actor who commits a violation of Subsection (2) may also be liable for:

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

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

102 [~~(6)~~] (8) Civil damages under Subsection [~~(5)~~] (7) may be collected in a separate action  
103 by the property owner or the owner's assignee.