

SB0250S02 compared with SB0250

~~{deleted text}~~ shows text that was in SB0250 but was deleted in SB0250S02.

inserted text shows text that was not in SB0250 but was inserted into SB0250S02.

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Senator Daniel McCay proposes the following substitute bill:

PUBLIC SURVEILLANCE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions ~~{of the Utah Code of Criminal Procedure}~~related to government surveillance.

Highlighted Provisions:

This bill:

▶ defines terms;~~{and~~

~~▶ prohibits a governmental entity from implementing technologies to create a public network of surveillance footage or to contract with}~~

▶ allows a law enforcement agency to use license plate reading technology gathered by a private entity ~~{to gather surveillance footage}~~ 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;

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- ▶ 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:

AMENDS:

~~{77-23d-102}~~41-6a-2002, as last amended by Laws of Utah 2020, Chapter 365

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

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

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

41-6a-2006, as enacted by Laws of Utah ~~{2015}~~2013, Chapter 447

~~{ENACTS:~~

~~}~~ ~~{77-23d-201}~~72-1-212, as enacted by Laws of Utah ~~{Code Annotated 1953}~~2015,
Chapter 267

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

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

41-6a-2002. Definitions.

As used in this [section] chapter:

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

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

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automatic license plate reader system.

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

(i) executive department agencies of the state;

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

(iii) the Board of Pardons and Parole;

(iv) the Board of Examiners;

(v) the National Guard;

(vi) the Career Service Review Office;

(vii) the State Board of Education;

(viii) the Utah Board of Higher Education;

(ix) the State Archives;

(x) the Office of the Legislative Auditor General;

(xi) the Office of the Legislative Fiscal Analyst;

(xii) the Office of Legislative Research and General Counsel;

(xiii) the Legislature;

(xiv) legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(xv) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;

(xvi) any state-funded institution of higher education or public education; ~~or~~

(xvii) any political subdivision of the state~~[-]; or~~

(xviii) a law enforcement agency.

(b) "Governmental entity" includes:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsections (3)(a)(i) through ~~[(xvii)]~~ (xviii) that is funded or established by the government to carry out the public's business; or

(ii) a person acting as an agent of a governmental entity or acting on behalf of a governmental entity.

(4) "Nongovernmental entity" means a person that is not a governmental entity.

~~[(4)]~~ (5) "Secured area" means an area, enclosed by clear boundaries, to which access

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is limited and not open to the public and entry is only obtainable through specific access-control points.

Section 2. Section 41-6a-2003 is amended to read:

41-6a-2003. Automatic license plate reader systems -- Restrictions.

(1) Except as provided in Subsection (2), a governmental entity may not use an automatic license plate reader system.

(2) ~~Am~~ Subject to Subsection (3), an automatic license plate reader system may be used:

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

(i) as part of an active criminal investigation;

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

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

(iv) to locate a stolen vehicle;

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

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

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

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

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

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

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

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

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

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

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

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(ii) the purpose of using the automatic license plate reader system is to improve supply chain efficiency or the efficiency of the movement of goods by analyzing and researching data related to commercial vehicle traffic; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) except as provided in Subsection (3), may not be preserved for more than nine months by a governmental entity except pursuant to:

(i) a preservation request under Section 41-6a-2005;

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

(2) (a) A governmental entity that is authorized to use an automatic license plate reader system under this part may not sell captured plate data for any purpose.

(b) A governmental entity that is authorized to use an automatic license plate reader system under this part may not share or use captured plate [date] data for a purpose not authorized under Subsection 41-6a-2003(2).

(c) Notwithstanding the provisions of this section, a governmental entity may preserve and disclose aggregate captured plate data for planning and statistical purposes if the information identifying a specific license plate is not preserved or disclosed.

(3) Plate data collected in accordance with Section 72-6-118 may be preserved so long as necessary to collect the payment of a toll or penalty imposed in accordance with Section 72-6-118 and the nine-month preservation limitation described in Subsection (1)(c) shall not apply.

(4) (a) Except as provided in Subsections (1)(c)(i) through (1)(c)(iii), a governmental entity shall destroy as soon as reasonably possible, in an unrecoverable manner, plate data obtained pursuant to this chapter that is not specifically necessary to achieve the authorized objectives under Subsection 41-6a-2003(2)

(b) Subsection (4)(a) applies to data a governmental entity obtains:

(i) from a nongovernmental entity pursuant to a warrant; or

(ii) from an automatic license plate reader system owned or operated by a governmental entity.

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

41-6a-2005. Preservation request.

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

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

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

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

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

- (a) the date that an application for an order under Subsection (2) is denied and any appeal exhausted;
- (b) the end of 14 days, if the person or governmental entity does not otherwise preserve the captured plate data; or
- (c) the end of the period described in Subsection 41-6a-2004(1)(c).

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

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

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

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

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

~~}]~~

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

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

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

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

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

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

41-6a-2006. Penalties.

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

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

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

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

(1) As used in this section:

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

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

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

(ii) to a law enforcement agency to install an automatic license plate reader on a state

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highway for the purpose of capturing license plate data of vehicles traveling on a state highway, regardless of whether the device is installed on property owned by the department or the law enforcement agency.

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

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

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

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

(c) require a person to submit an application designated by the department before the department issues a special use permit;

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

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

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

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

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

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

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

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

(b) a special use permit issued to a law enforcement agency to install a device as part of

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an automatic license plate reader system authorized by Section 41-6a-2003.

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

(a) traveler safety and mobility;

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

(c) emergency access;

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

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

(f) past performance of an applicant's adherence to special use permit requirements~~};~~

~~(6)}~~ [.]; and

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

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

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

~~{Section 1. Section 77-23d-102 is amended to read:~~

~~CHAPTER 23d. SURVEILLANCE PRIVACY~~

~~77-23d-102. Definitions:~~

~~As used in this chapter:~~

~~(1) (a) "Authorized public property" means property on which a government building is located.~~

~~(b) "Authorized public property" does not include public streets or public sidewalks.~~

~~(2) (a) "Government entity" means the state, a county, a municipality, a higher education institution, a local district, a special service district, or any other political subdivision of the state or an administrative subunit of any political subdivision[, including].~~

~~(b) Government entity includes}~~ (8) For a device installed in accordance with Section 41-6a-2003, the installation, maintenance, data collection, and removal are the responsibility of the law enforcement agency that obtains the special use permit.

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(9) (a) The department shall preserve a record of special use permits issued to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

~~— [(2)] (3) "Imaging surveillance device" means a device that uses radar, sonar, infrared, or other remote sensing or detection technology used by the individual operating the device to obtain information, not otherwise directly observable, about individuals, items, or activities within a closed structure.~~

~~— (4) "Private surveillance footage" means video, audio, or other real-time monitoring that is:~~

~~— (a) created or generated by a non-government entity; and~~

~~— (b) used to facilitate tracking an individual's location or actions over time.~~

~~— (5) "Public surveillance footage network" means video, audio, or other real-time monitoring that is:~~

~~— (a) created or generated by one or more government owned or leased cameras; and~~

~~— (b) used to facilitate tracking an individual's location or actions over time when that individual is not located on authorized public property.~~

~~— [(3)] (6) "Target" means [a person] an individual or a structure upon which a government entity intentionally collects or attempts to collect information using an imaging surveillance device.~~

~~— Section 2. Section 77-23d-201 is enacted to read:~~

Part 2. No Government Surveillance Footage

~~— **77-23d-201. Prohibition on gathering government surveillance footage.**~~

~~— A government entity may not:~~

~~— (1) create, operate, or use a public surveillance footage network; or~~

~~— (2) contract with a private person to obtain, use, or copy private surveillance footage. agency, including the stated purpose for each permit.~~

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