Senator Daniel McCay proposes the following substitute bill:

1	PUBLIC SURVEILLANCE PROHIBITION AMENDMENTS
2	2024 GENERAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Daniel McCay
5	House Sponsor: Ryan D. Wilcox
6 7	LONG TITLE
8	General Description:
9	This bill prohibits a governmental entity from obtaining certain types of surveillance
0	information.
1	Highlighted Provisions:
2	This bill:
3	 defines and modifies terms;
1	 prohibits a governmental entity from obtaining certain types of surveillance
5	information without a warrant;
5	 provides exceptions; and
7	 makes technical and conforming changes.
8	Money Appropriated in this Bill:
9	None
0	Other Special Clauses:
1	None
2	Utah Code Sections Affected:
3	AMENDS:
4	77-23d-102, as last amended by Laws of Utah 2023, Chapter 16
5	77-23e-102, as enacted by Laws of Utah 2021, Chapter 200

1st Sub. (Green) S.B. 231

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CHAPTER 23d. SURVEILLANCE PRIVACY 77-23d-102. Definitions. As used in this chapter: (1) "Airport" means the same as that term is defined in Section 72-10-102. (2) "Authorized property" means: (a) a building or part of a building owned or leased by a law enforcement agency or a recorrectional facility: (b) critical infrastructure if owned or operated by a government entity; (c) an elementary or secondary public or charter school; (d) a courthouse; or (e) an airport. (3) "Biometric surveillance information" means the analysis of surveillance information using biometric software to identify an individual's identity or location using the individual's physical attributes or manner. (4) "Critical infrastructure" means the same as that term is defined in Section 76-6-106.3. (5) (a) "Government entity" means the state, a county, a municipality, a higher education institution, a special district, a special service district, <u>charter school</u> , or any other political subdivision of the state or an administrative subunit of [any] a political subdivision[; uncluding].
 Be it enacted by the Legislature of the state of Utah: Section 1. Section 77-23d-102 is amended to read: CHAPTER 23d. SURVEILLANCE PRIVACY 77-23d-102. Definitions. As used in this chapter: (1) "Airport" means the same as that term is defined in Section 72-10-102. (2) "Authorized property" means: (a) a building or part of a building owned or leased by a law enforcement agency or a correctional facility; (b) critical infrastructure if owned or operated by a government entity; (c) an elementary or secondary public or charter school; (d) a courthouse; or (e) an airport. (f) "Biometric software to identify an individual's identity or location using the individual's physical attributes or manner. (4) "Critical infrastructure" means the same as that term is defined in Section 76-6-106.3. (5) (a) "Government entity" means the state, a county, a municipality, a higher education institution, a special district, a special service district, charter school, or any other political subdivision of the state or an administrative subunit of [arry] a political subdivision[; including].
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(b) "Government entity" includes 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)] (6) "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

02-16-24 4:02 PM

57	within a closed structure.
57a	Ŝ→ [Ŝ→ [Ŝ→ (7) "Public safety threat" means a documented reasonable articulable suspicion of a
57a1	<u>threat</u>
57b	to commit a violent act by a specific individual towards a person, a group of people, or a place.
57c	←Ŝ]
57d	(7) "Public safety threat" means a documented reaasonable articulable suspicion of a threat to
57e	<u>commit a violent felony by a specific individual towards a person, a group of people, or a place.</u>
57f	←Ŝ]
57g	(7) "Public safety threat" means a documented reasonable articulable suspicion of:
57h	<u>(a) a threat to commit a violent felony by a specific individual towards a person, a group of</u>
57i	<u>people, or a place; or</u>
57j	(b) a threat by a specific individual to commit an offense under Section 76-5-107, Threat of
57k	<u>violence.</u> ←Ŝ
58	$\hat{S} \rightarrow [\underline{(7)}] (\underline{8}) \leftarrow \hat{S}$ "Surveillance information" means future, current, or historical information
59	produced by the digital monitoring of an area that can be used to create biometric surveillance
60	information.
61	$[(3)]$ $\hat{S} \rightarrow [(8)] (9) \leftarrow \hat{S}$ "Target" means a person or a structure upon which a government
61a	entity
62	intentionally collects or attempts to collect information using an imaging surveillance device.
62a	Ŝ→ <u>(10)</u> "Violent felony" means the same as that term is defined in Section 76-3-203.5. ←Ŝ
63	Section 2. Section 77-23d-106 is enacted to read:
64	77-23d-106. Biometric surveillance information.
65	(1) Except as provided in Subsection (2), a government entity may not obtain biometric
66	surveillance information without:
67	(a) a search warrant; and
68	(b) an existing written policy that:
69	(i) concerns the government entity's use, management, and auditing of biometric
70	surveillance information; and
71	(ii) is posted and publicly available on:
72	(A) the government entity's website; or
73	(B) the Utah Public Notice Website created in Section 63A-16-601, if the government
74	entity does not have a website.
75	(2) A government entity may obtain biometric surveillance information without a
76	search warrant:
77	(a) on authorized property; Ŝ→ [<u>or</u>] ←Ŝ
78	(b) in accordance with a judicially recognized exception to warrant requirements $\hat{S} \rightarrow [:]$;
78a	orSenate 3rd Reading Amendments2-27-2024 lp/jrSenate 2nd Reading Amendments2-26-2024 lp/jr- 3 -Senate Committee Amendments2-20-2024 lp/jr

1st Sub. (Green) S.B. 231

78b	<u>(c) a public safety threat.</u> ←Ŝ
79	Section 3. Section 77-23e-102 is amended to read:
80	77-23e-102. Definitions.
81	As used in this chapter:
82	(1) "Department" means the Department of Public Safety, created in Section 53-1-103.
83	(2) "Facial biometric data" means data derived from a measurement, pattern, contour,

02-16-24 4:02 PM

- 84 or other characteristic of an individual's face, either directly or from an image.
- 85 (3) (a) "Facial recognition comparison" means the process of comparing an image or
- 86 facial biometric data to an image database.
- 87 (b) "Facial recognition comparison" does not include biometric surveillance

1st Sub. (Green) S.B. 231

88	information as that term is defined in Section 77-23d-102.
89	(4) (a) "Facial recognition system" means a computer system that, for the purpose of
90	attempting to determine the identity of an unknown individual, uses an algorithm to compare
91	biometric data of the face of the unknown individual to facial biometric data of known
92	individuals.
93	(b) "Facial recognition system" does not include:
94	(i) a system described in Subsection (4)(a) that is available for use, free of charge, by
95	the general public; or
96	(ii) a system a consumer uses for the consumer's private purposes.
97	(5) (a) "Government entity" means:
98	(i) an executive department agency of the state;
99	(ii) the office of:
100	(A) the governor;
101	(B) the lieutenant governor;
102	(C) the state auditor;
103	(D) the attorney general; or
104	(E) the state treasurer;
105	(iii) the Board of Pardons and Parole;
106	(iv) the Board of Examiners;
107	(v) the National Guard;
108	(vi) the Career Service Review Office;
109	(vii) the State Board of Education;
110	(viii) the Utah Board of Higher Education;
111	(ix) the State Archives;
112	(x) the Office of the Legislative Auditor General;
113	(xi) the Office of Legislative Fiscal Analyst;
114	(xii) the Office of Legislative Research and General Counsel;
115	(xiii) the Legislature;
116	(xiv) a legislative committee of the Legislature;
117	(xv) a court, the Judicial Council, the Administrative Office of the Courts, and similar
118	administrative units in the judicial branch;

02-16-24 4:02 PM

119	(xvi) a state institution of higher education as that term is defined in Section
120	53B-3-102;
121	(xvii) an entity within the system of public education that receives funding from the
122	state; or
123	(xviii) a political subdivision of the state as that term is defined in Section 63G-7-102
124	(b) "Government entity" includes:
125	(i) every office, agency, board, bureau, committee, department, advisory board, or
126	commission of an entity described in Subsection (5)(a) that is funded or established by the
127	government to carry out the public's business; or
128	(ii) an individual acting as an agent of a government entity or acting on behalf of an
129	entity described in this Subsection (5).
130	(6) (a) "Image database" means a database maintained by a government entity that
131	contains images the government entity captures of an individual while the individual interacts
132	with the government entity.
133	(b) "Image database" does not include publicly available information.
134	(7) "Law enforcement agency" means a public entity that exists primarily to prevent,
135	detect, or prosecute crime or enforce criminal statutes or ordinances.
136	(8) "Trained employee" means an individual who is trained to make a facial
137	recognition comparison and identification and who has completed implicit bias training.
138	Section 4. Effective date.
139	This bill takes effect on May 1, 2024.