

1 PUBLIC SURVEILLANCE PROHIBITION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: Ryan D. Wilcox



3 LONG TITLE

4 General Description:

5 This bill prohibits a governmental entity from obtaining certain types of surveillance
6 information.

7 Highlighted Provisions:

8 This bill:

- 9 ▶ defines and modifies terms;
- 10 ▶ prohibits a governmental entity from obtaining certain types of surveillance information
11 without a warrant;
- 12 ▶ provides exceptions; and
- 13 ▶ makes technical and conforming changes.

14 Money Appropriated in this Bill:

15 None

16 Other Special Clauses:

17 None

18 Utah Code Sections Affected:

19 AMENDS:

20 77-23d-102, as last amended by Laws of Utah 2023, Chapter 16

21 77-23e-102, as enacted by Laws of Utah 2021, Chapter 200

22 ENACTS:

23 77-23d-106, as Utah Code Annotated 1953



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

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

27 CHAPTER 23d. SURVEILLANCE PRIVACY

28 **77-23d-102 . Definitions.**

29 As used in this chapter:

30 (1) "Airport" means the same as that term is defined in Section 72-10-102.31 (2) "Authorized property" means:32 (a) a building or part of a building owned or leased by a law enforcement agency or a
33 correctional facility;34 (b) critical infrastructure if owned or operated by a government entity;35 (c) an elementary or secondary public or charter school;36 (d) a courthouse; or37 (e) an airport.38 (3) "Biometric surveillance information" means the analysis of surveillance information
39 using biometric software to identify an individual's identity or location using the
40 individual's physical attributes or manner.41 (4) "Critical infrastructure" means the same as that term is defined in Section 76-6-106.3.42 (5) (a) "Government entity" means the state, a county, a municipality, a higher education
43 institution, a special district, a special service district, charter school, or any other
44 political subdivision of the state or an administrative subunit of [any] a political
45 subdivision[~~, including~~].46 (b) "Government entity" includes a law enforcement entity or any other investigative
47 entity, agency, department, division, bureau, board, or commission, or an individual
48 acting or purporting to act for or on behalf of a state or local agency.49 [(2)] (6) "Imaging surveillance device" means a device that uses radar, sonar, infrared, or
50 other remote sensing or detection technology used by the individual operating the device
51 to obtain information, not otherwise directly observable, about individuals, items, or
52 activities within a closed structure.53 (7) "Public safety threat" means a documented reasonable articulable suspicion of:54 (a) a threat to commit a violent felony by a specific individual towards a person, a group
55 of people, or a place; or56 (b) a threat by a specific individual to commit an offense under Section 76-5-107, Threat
57 of violence.58 (8) "Surveillance information" means future, current, or historical information produced by
59 the digital monitoring of an area that can be used to create biometric surveillance
60 information.61 [(3)] (9) "Target" means a person or a structure upon which a government entity

62 intentionally collects or attempts to collect information using an imaging surveillance
63 device.

64 (10) "Violent felony" means the same as that term is defined in Section 76-3-203.5.

65 Section 2. Section **77-23d-106** is enacted to read:

66 **77-23d-106 . Biometric surveillance information.**

67 (1) Except as provided in Subsection (2), a government entity may not obtain biometric
68 surveillance information without:

69 (a) a search warrant; and

70 (b) an existing written policy that:

71 (i) concerns the government entity's use, management, and auditing of biometric
72 surveillance information; and

73 (ii) is posted and publicly available on:

74 (A) the government entity's website; or

75 (B) the Utah Public Notice Website created in Section 63A-16-601, if the
76 government entity does not have a website.

77 (2) A government entity may obtain biometric surveillance information without a search
78 warrant:

79 (a) on authorized property;

80 (b) in accordance with a judicially recognized exception to warrant requirements; or

81 (c) a public safety threat.

82 Section 3. Section **77-23e-102** is amended to read:

83 **77-23e-102 . Definitions.**

84 As used in this chapter:

85 (1) "Department" means the Department of Public Safety, created in Section 53-1-103.

86 (2) "Facial biometric data" means data derived from a measurement, pattern, contour, or
87 other characteristic of an individual's face, either directly or from an image.

88 (3) (a) "Facial recognition comparison" means the process of comparing an image or
89 facial biometric data to an image database.

90 (b) "Facial recognition comparison" does not include biometric surveillance information
91 as that term is defined in Section 77-23d-102.

92 (4) (a) "Facial recognition system" means a computer system that, for the purpose of
93 attempting to determine the identity of an unknown individual, uses an algorithm to
94 compare biometric data of the face of the unknown individual to facial biometric data
95 of known individuals.

- 96 (b) "Facial recognition system" does not include:
- 97 (i) a system described in Subsection (4)(a) that is available for use, free of charge, by
- 98 the general public; or
- 99 (ii) a system a consumer uses for the consumer's private purposes.
- 100 (5) (a) "Government entity" means:
- 101 (i) an executive department agency of the state;
- 102 (ii) the office of:
- 103 (A) the governor;
- 104 (B) the lieutenant governor;
- 105 (C) the state auditor;
- 106 (D) the attorney general; or
- 107 (E) the state treasurer;
- 108 (iii) the Board of Pardons and Parole;
- 109 (iv) the Board of Examiners;
- 110 (v) the National Guard;
- 111 (vi) the Career Service Review Office;
- 112 (vii) the State Board of Education;
- 113 (viii) the Utah Board of Higher Education;
- 114 (ix) the State Archives;
- 115 (x) the Office of the Legislative Auditor General;
- 116 (xi) the Office of Legislative Fiscal Analyst;
- 117 (xii) the Office of Legislative Research and General Counsel;
- 118 (xiii) the Legislature;
- 119 (xiv) a legislative committee of the Legislature;
- 120 (xv) a court, the Judicial Council, the Administrative Office of the Courts, and
- 121 similar administrative units in the judicial branch;
- 122 (xvi) a state institution of higher education as that term is defined in Section
- 123 53B-3-102;
- 124 (xvii) an entity within the system of public education that receives funding from the
- 125 state; or
- 126 (xviii) a political subdivision of the state as that term is defined in Section 63G-7-102.
- 127 (b) "Government entity" includes:
- 128 (i) every office, agency, board, bureau, committee, department, advisory board, or
- 129 commission of an entity described in Subsection (5)(a) that is funded or

130 established by the government to carry out the public's business; or
131 (ii) an individual acting as an agent of a government entity or acting on behalf of an
132 entity described in this Subsection (5).

133 (6) (a) "Image database" means a database maintained by a government entity that
134 contains images the government entity captures of an individual while the individual
135 interacts with the government entity.

136 (b) "Image database" does not include publicly available information.

137 (7) "Law enforcement agency" means a public entity that exists primarily to prevent, detect,
138 or prosecute crime or enforce criminal statutes or ordinances.

139 (8) "Trained employee" [-]means an individual who is trained to make a facial recognition
140 comparison and identification and who has completed implicit bias training.

141 Section 4. **Effective date.**

142 This bill takes effect on May 1, 2024.