

Senator Daniel McCay proposes the following substitute bill:

PUBLIC SURVEILLANCE PROHIBITION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



26 ENACTS:

27 [77-23d-106](#), Utah Code Annotated 1953

28

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

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

31 **CHAPTER 23d. SURVEILLANCE PRIVACY**

32 **77-23d-102. Definitions.**

33 As used in this chapter:

34 (1) "Airport" means the same as that term is defined in Section [72-10-102](#).

35 (2) "Authorized property" means:

36 (a) a building or part of a building owned or leased by a law enforcement agency or a
37 correctional facility;

38 (b) critical infrastructure if owned or operated by a government entity;

39 (c) an elementary or secondary public or charter school;

40 (d) a courthouse; or

41 (e) an airport.

42 (3) "Biometric surveillance information" means the analysis of surveillance
43 information using biometric software to identify an individual's identity or location using the
44 individual's physical attributes or manner.

45 (4) "Critical infrastructure" means the same as that term is defined in Section
46 [76-6-106.3](#).

47 (5) (a) "Government entity" means the state, a county, a municipality, a higher
48 education institution, a special district, a special service district, charter school, or any other
49 political subdivision of the state or an administrative subunit of [~~any~~] a political subdivision[;
50 including].

51 (b) "Government entity" includes a law enforcement entity or any other investigative
52 entity, agency, department, division, bureau, board, or commission, or an individual acting or
53 purporting to act for or on behalf of a state or local agency.

54 [(2)] (6) "Imaging surveillance device" means a device that uses radar, sonar, infrared,
55 or other remote sensing or detection technology used by the individual operating the device to
56 obtain information, not otherwise directly observable, about individuals, items, or activities

57 within a closed structure.

58 (7) "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)]~~ (8) "Target" means a person or a structure upon which a government entity
62 intentionally collects or attempts to collect information using an imaging surveillance device.

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; or

78 (b) in accordance with a judicially recognized exception to warrant requirements.

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,
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

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;

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.