

Senator Ronald M. Winterton proposes the following substitute bill:

CRIMINAL PRIVACY VIOLATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronald M. Winterton

House Sponsor: Scott H. Chew

LONG TITLE

General Description:

This bill amends provisions related to criminal privacy violation to include the capture of 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 privacy violation to include the capture of 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;

and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **76-9-402**, as last amended by Laws of Utah 2017, Chapter 364



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

32 Section 1. Section **76-9-402** is amended to read:

33 **76-9-402. Privacy violation.**

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

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

40 (2) (a) A property owner has an expectation of privacy regarding characteristics, data,
41 or information pertaining to the owner's property that:

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

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

45 ~~[(1)]~~ (3) A person is guilty of privacy violation if, except as authorized by law, the
46 person:

47 (a) trespasses on property with intent to subject anyone to eavesdropping or other
48 surveillance in a private place;

49 (b) installs, or uses after unauthorized installation in a private place, without the
50 consent of the person or persons entitled to privacy in the private place, any device for
51 observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events in
52 the private place; ~~[or]~~

53 (c) installs or uses outside of a private place a device for observing, photographing,
54 hearing, recording, amplifying, or broadcasting sounds or events originating in the private place
55 which would not ordinarily be audible, visible, or comprehensible outside the private place,
56 without the consent of the person or persons entitled to privacy in the private place~~[-];~~ or

57 (d) uses advanced technological instrumentality to detect, observe, measure, map, or
58 otherwise capture information or data about the property or characteristics of the property of
59 another for which the property owner has an expectation of privacy as described in Subsection
60 (2).

61 ~~[(2)]~~ (4) A person is not guilty of a violation of this section if:

62 (a) the device used is an unmanned aircraft;

63 (b) the person is operating the unmanned aircraft for legitimate commercial or
64 educational purposes in a manner consistent with applicable Federal Aviation Administration
65 rules, exemptions, or other authorizations; and

66 (c) any conduct described in Subsection ~~[(1)]~~ (3) that occurs via the unmanned aircraft
67 is solely incidental to the lawful commercial or educational use of the unmanned aircraft.

68 (5) For a person who commits a violation of Subsection (3), a court may order the
69 person to remove and destroy any data collected by the person in the commission of the
70 violation of Subsection (3).

71 ~~[(3)]~~ (6) Privacy violation is a class B misdemeanor.

72 (7) (a) This section does not apply to lawful practices of:

73 (i) a law enforcement agency; or

74 (ii) another government entity.

75 (b) Subsection (3)(d) does not apply to a land surveyor if:

76 (i) the land surveyor is performing a survey service in good faith pursuant to a bona
77 fide contract; and

78 (ii) for any data pertaining to property not owned by a party to the contract described in
79 Subsection (7)(b)(i) that is captured incidentally by the land surveyor, the land surveyor:

80 (A) does not share, publish, sell, or distribute any incidentally captured data pertaining
81 to property that is not relevant to the contract described in Subsection (7)(b)(i); and

82 (B) immediately deletes or destroys any data pertaining to property that is not relevant
83 to the contract described in Subsection (7)(b)(i).