

**Representative Scott H. Chew** 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

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**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 ground penetrating 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



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **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) A property owner has an expectation of privacy regarding characteristics, data,  
35 or information pertaining to the owner's property that:

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

37 (ii) requires ground penetrating technology to detect, observe, measure, map, or  
38 otherwise capture information or data about the property or characteristics of the property.

39 ~~(1)~~ (2) A person is guilty of privacy violation if, except as authorized by law, the  
40 person:

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

43 (b) installs, or uses after unauthorized installation in a private place, without the  
44 consent of the person or persons entitled to privacy in the private place, any device for  
45 observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events in  
46 the private place; ~~or~~

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

51 (d) uses ground penetrating technology, without the consent of the property owner, to  
52 detect, observe, measure, map, or otherwise capture information or data about the property or  
53 characteristics of the property of another for which the property owner has an expectation of  
54 privacy as described in Subsection (1).

55 ~~(2)~~ (3) A person is not guilty of a violation of this section if:  
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57 (a) the device used is an unmanned aircraft;

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

61 (c) any conduct described in Subsection [~~(1)~~] (2) that occurs via the unmanned aircraft  
62 is solely incidental to the lawful commercial or educational use of the unmanned aircraft.

63 (4) For a person who commits a violation of Subsection (2), a court may order the  
64 person to remove and destroy any data collected by the person in the commission of the  
65 violation of Subsection (2).

66 [~~(3)~~] (5) Privacy violation is a class B misdemeanor.

67 (6) (a) This section does not apply to lawful practices of:

68 (i) a law enforcement agency; or

69 (ii) another government entity.

70 (b) Subsection (2)(d) does not apply to a land surveyor if:

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

73 (ii) for any data pertaining to property not owned by a party to the contract described in  
74 Subsection (6)(b)(i) that is captured incidentally by the land surveyor, the land surveyor:

75 (A) does not share, publish, sell, or distribute any incidentally captured data pertaining  
76 to property that is not relevant to the contract described in Subsection (6)(b)(i); and

77 (B) upon completion of the contract, deletes or destroys any data pertaining to property  
78 that is not the subject of the contract.