

Effective 5/12/2015

**Chapter 23d
Imaging Surveillance Privacy**

77-23d-101 Title.

This chapter is known as "Imaging Surveillance Privacy."

Enacted by Chapter 447, 2015 General Session

77-23d-102 Definitions.

As used in this chapter:

- (1) "Government entity" means the state, a county, a municipality, a higher education institution, a local district, a special service district, or any other political subdivision of the state or an administrative subunit of any political subdivision, including 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) "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 within a closed structure.
- (3) "Target" means a person or a structure upon which a government entity intentionally collects or attempts to collect information using an imaging surveillance device.

Enacted by Chapter 447, 2015 General Session

77-23d-103 Use of imaging surveillance device -- Warrant required -- Exceptions.

- (1) Except as provided in Subsection (2), a government entity may not operate an imaging surveillance device without a search warrant issued upon probable cause.
- (2) A government entity may operate an imaging surveillance device without a search warrant:
 - (a) for testing equipment or training if the testing or training:
 - (i) is not conducted as part of an investigation or law enforcement activity; and
 - (ii) is conducted with the knowledge and consent of:
 - (A) each individual who is imaged; and
 - (B) an owner of each property that is imaged;
 - (b) in exigent circumstances; or
 - (c) in fresh pursuit of a person suspected of committing a felony.

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77-23d-104 Notification required -- Delayed notification.

- (1) Except as provided in Subsection (2), a government entity that executes a search warrant that authorizes the use of an imaging surveillance device shall, within 14 days after the day on which the warrant is executed, provide notice to the individual who owns, resides in, or rents the structure specified in the warrant that states:
 - (a) that a warrant was applied for and granted;
 - (b) the type of warrant issued;
 - (c) the period of time during which the collection of data from the structure was authorized;

- (d) the offense specified in the application for the warrant;
 - (e) the identity of the government entity that filed the application; and
 - (f) the name of the court that issued the warrant.
- (2) A government entity seeking a warrant described in Subsection 77-23d-103(1) may submit a request, and the court may grant permission, to delay the notification described in Subsection (1) for a period not to exceed 30 days, if the court determines that there is probable cause to believe that the notification may:
- (a) endanger the life or physical safety of an individual;
 - (b) cause an individual to flee from prosecution;
 - (c) lead to the destruction of or tampering with evidence;
 - (d) result in the intimidation of a potential witness; or
 - (e) otherwise seriously jeopardize an investigation or unduly delay a trial.
- (3) When a delay of notification is granted under Subsection (2), and upon application by the government entity, the court may grant additional extensions of up to 30 days each.
- (4) Upon expiration of the period of delayed notification granted under Subsection (2) or (3), the government entity shall serve upon or deliver by first-class mail to the individual who owns, resides in, or rents the structure specified in the warrant a copy of the warrant together with a notice that:
- (a) states with reasonable specificity the nature of the law enforcement inquiry; and
 - (b) contains:
 - (i) the information described in Subsections (1)(a) through (f);
 - (ii) a statement that notification of the search was delayed;
 - (iii) the name of the court that authorized the delay of notification; and
 - (iv) a reference to the provision of this chapter that allowed the delay of notification.
- (5) A government entity is not required to notify the owner of a structure if the owner is located outside of the United States.

Enacted by Chapter 447, 2015 General Session

77-23d-105 Data use and retention.

- (1) Except as provided in Subsection (2), a government entity:
- (a) may not use, copy, or disclose data collected using an imaging surveillance device on an individual or structure that is not a target; and
 - (b) shall ensure that data described in Subsection (1)(a) is destroyed as soon as reasonably possible after the government entity collects or receives the data.
- (2) A government entity is not required to comply with Subsection (1) if:
- (a) deleting the data would also require the deletion of data that:
 - (i) relates to the target of the operation; and
 - (ii) is requisite for the success of the operation;
 - (b) the government entity receives the data:
 - (i) through a court order that:
 - (A) requires a person to release the data to the government entity; or
 - (B) prohibits the destruction of the data; or
 - (ii) from a person who is a nongovernment actor;
 - (c)
 - (i) the data was collected inadvertently; and
 - (ii) the data appears to pertain to the commission of a crime; or
 - (d)

- (i) the government entity reasonably determines that the data pertains to an emergency situation; and
- (ii) using or disclosing the data would assist in remedying the emergency.

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