WEST virginia legislature

2023 regular session

Committee Substitute

for

House Bill 2189

By Delegates Horst, Crouse, Dillon, Thorne, Dean, Hardy, Bridges, Householder, Ridenour, Kimble and Phillips

[Originating in the Committee on the Judiciary; Reported on February 20, 2023]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-1A-12, and to amend said code by adding thereto a new section, designated §62-1A-13, all relating to searches and seizures on open fields; requiring a search warrant or other recognized exception for searches and seizures in open fields; providing a definition; providing for abolishing the common law open fields doctrine; prohibiting surveillance cameras on private property; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

Article 1A. SEARCH AND SEIZURE.

§62-1A-12. Open fields.

(a) Notwithstanding any provision of this code to the contrary, the open fields of any person in this state, where indicia would lead a reasonable person to conclude that the area is private or not generally open to the public or public view, are protected by the Fourth Amendment to the Constitution of the United States or Article III, Section 6 of the West Virginia Constitution and may not be searched without a valid search warrant or outside the judicial process, subject only to constitutionally established exceptions permitting warrantless searches of private property.

(b) For purposes of this section, “open fields” means the private property of a person beyond the land immediately surrounding and associated with a private dwelling and includes fenced land and wooded areas.

(c) The open fields doctrine, as it is known in the common law, is hereby abolished.

§62-1A-13. Prohibitions on surveillance cameras on private property.

Notwithstanding any provision of this code to the contrary, no law-enforcement officer shall place any surveillance camera or game camera on private land or open fields, as that term is defined in §62-1A-12 of this code, without first obtaining consent from the owner, lessee, or other person entitled to possession of the private land or a valid search warrant: *Provided*, That nothing in this subsection shall prohibit a law-enforcement officer from placing a camera in an area where the law-enforcement officer has a lawful right to be and facing a location on any land that is open to public view without first obtaining consent or a search warrant.