

SENATE BILL 836

E4, E2

0lr0366

By: **Senator Lee**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Maryland Image Repository System – Access**

3 FOR the purpose of requiring an agency that accesses the Maryland Image Repository
4 System to produce and maintain a document with certain information; requiring an
5 agency that uses the system to make available certain documents to the Department
6 of Public Safety and Correctional Services on request under certain circumstances;
7 requiring the Department to conduct audits of agencies using the system to ensure
8 usage conforms with certain requirements; requiring a federal agency to enter into
9 a certain agreement with the Department to receive authorized access to the system;
10 authorizing a federal agency to access the system without an agreement under
11 certain circumstances; limiting certain information that may be shared with a
12 federal agency when using the system; requiring the Department to report certain
13 information to the General Assembly on or before a certain date each year; defining
14 certain terms; and generally relating to the Maryland Image Repository System.

15 BY adding to

16 Article – Correctional Services

17 Section 2–301 through 2–304 to be under the new subtitle “Subtitle 3. Maryland
18 Image Repository System”

19 Annotated Code of Maryland

20 (2017 Replacement Volume and 2019 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Correctional Services**

24 **SUBTITLE 3. MARYLAND IMAGE REPOSITORY SYSTEM.**

25 **2–301.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "EXIGENT CIRCUMSTANCES" MEANS AN EMERGENCY OR OTHER JUDICIALLY RECOGNIZED EXCEPTION TO CONSTITUTIONAL WARRANT REQUIREMENTS.

(C) "MARYLAND IMAGE REPOSITORY SYSTEM" MEANS THE FACIAL RECOGNITION SOFTWARE WITHIN THE DEPARTMENT THAT ALLOWS LAW ENFORCEMENT TO COMPARE IMAGES OF UNIDENTIFIED INDIVIDUALS TO PHOTOGRAPHS OR DIGITAL IMAGES:

(1) COMPILED BY THE MOTOR VEHICLE ADMINISTRATION; AND

(2) TAKEN DURING THE ARREST OR DETENTION OF AN INDIVIDUAL FOR A CRIMINAL OR TRAFFIC CHARGE.

2-302.

(A) IN THIS SECTION, "AGENCY" MEANS A UNIT OR AGENCY OF LOCAL, STATE, OR FEDERAL GOVERNMENT.

(B) (1) AT THE TIME AN AGENCY UPLOADS AN IMAGE OF AN UNIDENTIFIED INDIVIDUAL TO THE MARYLAND IMAGE REPOSITORY SYSTEM OR AS SOON AS REASONABLY PRACTICABLE IN THE EVENT OF EXIGENT CIRCUMSTANCES, THE AGENCY SHALL PRODUCE AND MAINTAIN FOR A PERIOD OF NOT LESS THAN 3 YEARS A DOCUMENT THAT IS IN WRITING, SIGNED, DATED, AND SWORN TO BY THE APPLICANT AND ACCOMPANIED BY AN AFFIDAVIT THAT:

(i) 1. SETS FORTH THE BASIS FOR PROBABLE CAUSE TO BELIEVE THAT A CRIME HAS BEEN OR IS BEING COMMITTED BY THE UNIDENTIFIED INDIVIDUAL; AND

2. CONTAINS FACTS WITHIN THE PERSONAL KNOWLEDGE OF THE AFFIANT THAT THERE IS PROBABLE CAUSE TO BELIEVE A CRIME HAS BEEN COMMITTED OR IS BEING COMMITTED; OR

(ii) CONTAINS FACTS WITHIN THE PERSONAL KNOWLEDGE OF THE AFFIANT THAT THE UNIDENTIFIED INDIVIDUAL:

1. HAS BEEN REPORTED MISSING;

1 2. IS DECEASED, INCAPACITATED, OR REASONABLY
2 EXPECTED TO BE THE VICTIM OF A CRIME AND, IN GOOD FAITH, CANNOT BE
3 IDENTIFIED THROUGH OTHER MEANS; OR

4 3. IS, ACCORDING TO THE MOTOR VEHICLE
5 ADMINISTRATION, THE SUBJECT OF AN INVESTIGATION OF IDENTITY FRAUD UNDER
6 § 8-301 OF THE CRIMINAL LAW ARTICLE.

7 (2) ON REQUEST OF THE DEPARTMENT FOR THE PURPOSE OF
8 CONDUCTING AN AUDIT, EACH AGENCY SHALL MAKE AVAILABLE THE DOCUMENTS
9 PRODUCED AND MAINTAINED IN ACCORDANCE WITH THIS SUBSECTION.

10 (c) THE DEPARTMENT SHALL CONDUCT AUDITS OF AGENCIES THAT
11 ACCESS THE MARYLAND IMAGE REPOSITORY SYSTEM TO ENSURE CONFORMANCE
12 WITH:

13 (1) THIS SECTION; AND

14 (2) ANY AGREEMENT ENTERED INTO IN ACCORDANCE WITH § 2-303
15 OF THIS SUBTITLE.
16 2-303.

17 (a) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT
18 SHALL REQUIRE EACH FEDERAL AGENCY AUTHORIZED TO ACCESS THE MARYLAND
19 IMAGE REPOSITORY SYSTEM TO ENTER INTO AN AGREEMENT THAT PROVIDES:

20 (1) ACCESS TO THE MARYLAND IMAGE REPOSITORY SYSTEM ONLY
21 TO INVESTIGATE OR IDENTIFY:

22 (i) A SUSPECT OF A PENDING CRIMINAL MATTER INVOLVING A
23 CRIME OF VIOLENCE AS DESCRIBED IN § 14-101(A) OF THE CRIMINAL LAW
24 ARTICLE;

25 (ii) AN INDIVIDUAL WHO HAS BEEN REPORTED MISSING,
26 INCLUDING THE SUBJECT OF AN AMBER ALERT OR SILVER ALERT;

27 (iii) AN INDIVIDUAL WHO IS DECEASED, INCAPACITATED, OR
28 REASONABLY SUSPECTED TO BE THE VICTIM OF A CRIME, WHOM THE OFFICER
29 DETERMINES, IN GOOD FAITH, CANNOT BE IDENTIFIED THROUGH OTHER MEANS;

30 (iv) AN INDIVIDUAL WHO HAS BEEN LAWFULLY ARRESTED,
31 DURING THE PROCESS OF BOOKING THAT INDIVIDUAL, AFTER AN ARREST, OR

DURING THAT INDIVIDUAL'S CUSTODIAL DETENTION; OR

(V) AT THE REQUEST OF THE MOTOR VEHICLE ADMINISTRATION, AN INDIVIDUAL INVOLVED IN AN INVESTIGATION OF IDENTITY FRAUD UNDER § 8-301 OF THE CRIMINAL LAW ARTICLE THROUGH DEDUPLICATION ANALYSIS.

(2) THAT THE NUMBER OF CANDIDATES PRODUCED BY A SEARCH OF THE MARYLAND IMAGE REPOSITORY SYSTEM MAY NOT EXCEED THE FIVE MOST LIKELY MATCHES; AND

(3) THAT THE SEARCH RESULTS MADE AVAILABLE TO THE FEDERAL AGENCY SHALL BE LIMITED TO:

(I) THE IMAGE OF EACH MATCHING CANDIDATE;

(II) THE NAME OF EACH CANDIDATE; AND

(III) THE RECORDED PHYSICAL CHARACTERISTICS OF EACH CANDIDATE.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A FEDERAL AGENCY MAY BE AUTHORIZED TO ACCESS THE MARYLAND IMAGE REPOSITORY SYSTEM WITHOUT ENTERING INTO AN AGREEMENT IF EXIGENT CIRCUMSTANCES EXIST.

2-304.

ON OR BEFORE DECEMBER 1 EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON:

(1) EACH INSTANCE IN WHICH AN AGENCY ACCESSED THE MARYLAND IMAGE REPOSITORY SYSTEM FOR EXIGENT CIRCUMSTANCES;

(2) AUDITS PERFORMED UNDER § 2-302 OF THIS SUBTITLE; AND

(3) EACH VIOLATION OF THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.