

HOUSE BILL 223

E4
HB 1046/22 – JUD

3lr0697
CF SB 192

By: **Delegates Moon and Love**

Introduced and read first time: January 23, 2023

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Facial Recognition Technology – Requirements,**
3 **Procedures, and Prohibitions**

4 FOR the purpose of establishing requirements, procedures, and prohibitions relating to the
5 use of facial recognition technology by a law enforcement agency under certain
6 circumstances; and generally relating to facial recognition technology.

7 BY adding to

8 Article – Criminal Procedure

9 Section 2–501 through 2–510 to be under the new subtitle “Subtitle 5. Facial
10 Recognition Technology”

11 Annotated Code of Maryland

12 (2018 Replacement Volume and 2022 Supplement)

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

15 **Article – Criminal Procedure**

16 **SUBTITLE 5. FACIAL RECOGNITION TECHNOLOGY.**

17 **2–501.**

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

20 **(B) (1) “FACIAL RECOGNITION TECHNOLOGY” MEANS A COMPUTER**
21 **PROGRAM, SERVICE, OR OTHER TECHNOLOGY THAT ANALYZES FACIAL FEATURES**
22 **AND IS USED BY OR AT THE DIRECTION OF A LAW ENFORCEMENT AGENCY FOR THE**
23 **IDENTIFICATION, VERIFICATION, OR PERSISTENT TRACKING OF INDIVIDUALS IN**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 STILL OR VIDEO IMAGES FOR USE IN CRIMINAL INVESTIGATIONS.

2 (2) "FACIAL RECOGNITION TECHNOLOGY" DOES NOT INCLUDE
3 TECHNOLOGY:

4 (I) USED ONLY FOR THE ANALYSIS OF FACIAL FEATURES TO
5 GRANT OR DENY ACCESS TO AN ELECTRONIC DEVICE; OR

6 (II) THAT USES AN AUTOMATED OR SEMIAUTOMATED PROCESS
7 ONLY FOR THE PURPOSE OF REDACTING A RECORDING OR AN IMAGE FOR RELEASE
8 OR DISCLOSURE OUTSIDE A LAW ENFORCEMENT AGENCY TO PROTECT THE PRIVACY
9 OF A SUBJECT DEPICTED IN THE RECORDING OR IMAGE IF THE PROCESS DOES NOT
10 GENERATE OR RESULT IN THE RETENTION OF ANY BIOMETRIC DATA OR
11 SURVEILLANCE INFORMATION.

12 (C) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 2-101
13 OF THE PUBLIC SAFETY ARTICLE.

14 2-502.

15 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, RESULTS
16 GENERATED BY FACIAL RECOGNITION TECHNOLOGY MAY NOT BE INTRODUCED IN A
17 CRIMINAL PROCEEDING OR IN A DELINQUENCY PROCEEDING UNDER TITLE 3,
18 SUBTITLE 8A OF THE COURTS ARTICLE.

19 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, RESULTS
20 GENERATED BY FACIAL RECOGNITION TECHNOLOGY MAY BE CONSIDERED OR
21 INTRODUCED AS EVIDENCE IN CONNECTION WITH A CRIMINAL PROCEEDING ONLY
22 FOR THE PURPOSE OF ESTABLISHING PROBABLE CAUSE OR POSITIVE
23 IDENTIFICATION:

24 (I) IN CONNECTION WITH THE ISSUANCE OF A WARRANT; OR

25 (II) AT A PRELIMINARY HEARING.

26 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,
27 RESULTS GENERATED BY FACIAL RECOGNITION TECHNOLOGY MAY NOT SERVE AS
28 THE SOLE BASIS TO ESTABLISH PROBABLE CAUSE OR THE POSITIVE
29 IDENTIFICATION OF AN INDIVIDUAL IN A CRIMINAL INVESTIGATION OR
30 PROCEEDING.

31 (II) PROBABLE CAUSE OR POSITIVE IDENTIFICATION MAY BE
32 ESTABLISHED USING FACIAL RECOGNITION TECHNOLOGY ONLY IF THE RESULTS

1 ARE SUPPORTED BY ADDITIONAL, INDEPENDENTLY OBTAINED EVIDENCE
2 ESTABLISHING PROBABLE CAUSE OR A POSITIVE IDENTIFICATION.

3 **2-503.**

4 (A) (1) A POLICE OFFICER OR OTHER EMPLOYEE OR AGENT OF A LAW
5 ENFORCEMENT AGENCY MAY NOT, IN THE FURTHERANCE OF A CRIMINAL
6 INVESTIGATION:

7 (I) USE FACIAL RECOGNITION TECHNOLOGY TO INVESTIGATE A
8 CRIME OTHER THAN THE COMMISSION OF OR THE ATTEMPT TO COMMIT:

9 1. A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF
10 THE CRIMINAL LAW ARTICLE;

11 2. A HUMAN TRAFFICKING OFFENSE UNDER TITLE 3,
12 SUBTITLE 11 OF THE CRIMINAL LAW ARTICLE; OR

13 3. A CRIMINAL ACT INVOLVING CIRCUMSTANCES
14 PRESENTING A SUBSTANTIAL AND ONGOING THREAT TO PUBLIC SAFETY OR
15 NATIONAL SECURITY;

16 (II) ANALYZE AN IMAGE OR A RECORDING OF AN INDIVIDUAL:

17 1. ENGAGED IN ACTIVITY PROTECTED UNDER THE
18 UNITED STATES CONSTITUTION, THE MARYLAND CONSTITUTION, OR THE
19 MARYLAND DECLARATION OF RIGHTS, UNLESS THERE IS REASONABLE SUSPICION
20 TO BELIEVE THAT THE INDIVIDUAL HAS COMMITTED, IS IN THE PROCESS OF
21 COMMITTING, OR IS ABOUT TO COMMIT A CRIME;

22 2. SUSPECTED OF BEING A JUVENILE WHO IS
23 INELIGIBLE TO BE CHARGED WITH A CRIMINAL ACT UNDER § 3-8A-03 OF THE
24 COURTS ARTICLE; OR

25 3. WHO IS NOT INTENDED TO BE IDENTIFIED;

26 (III) USE FACIAL RECOGNITION TECHNOLOGY TO ANALYZE A
27 SKETCH OR MANUALLY PRODUCED IMAGE;

28 (IV) DISCLOSE TO A WITNESS IN THE CRIMINAL INVESTIGATION,
29 PRIOR TO THE WITNESS PARTICIPATING IN A LIVE IDENTIFICATION OR PHOTO
30 ARRAY IDENTIFICATION, THAT A PARTICULAR SUSPECT OR IMAGE OF A SUSPECT
31 WAS IDENTIFIED USING FACIAL RECOGNITION TECHNOLOGY; OR

(V) USE FACIAL RECOGNITION TECHNOLOGY FOR THE PURPOSE OF LIVE OR REAL-TIME IDENTIFICATION OF AN IMAGE OR A RECORDING.

(2) AN IMAGE BEING EVALUATED USING FACIAL RECOGNITION TECHNOLOGY MAY BE COMPARED ONLY TO IMAGES CONTAINED IN:

(I) THE DATABASE OF IMAGES OF DRIVER'S LICENSE AND IDENTIFICATION CARD PHOTOS MAINTAINED BY THE MOTOR VEHICLE ADMINISTRATION OR THE DEPARTMENT OF MOTOR VEHICLES OF ANOTHER STATE; OR

(II) A DATABASE OF MUGSHOT PHOTOS MAINTAINED BY A LOCAL, STATE, OR FEDERAL LAW ENFORCEMENT AGENCY OR A LAW ENFORCEMENT AGENCY OF ANOTHER COUNTRY.

(3) BEFORE BEING USED FOR ANY PURPOSE IN RELATION TO A CRIMINAL INVESTIGATION, A RESULT GENERATED BY FACIAL RECOGNITION TECHNOLOGY SHALL BE INDEPENDENTLY VERIFIED BY AN INDIVIDUAL WHO HAS COMPLETED TRAINING AND REQUIRED PROFICIENCY TESTING IN ACCORDANCE WITH § 2-505 OF THIS SUBTITLE.

(B) A POLICE OFFICER OR OTHER EMPLOYEE OR AGENT OF A LAW ENFORCEMENT AGENCY MAY NOT USE FACIAL RECOGNITION TECHNOLOGY TO IDENTIFY AN INDIVIDUAL SOLELY BASED ON:

(1) THE POLICE OFFICER'S, EMPLOYEE'S, OR AGENT'S PERSONAL INTEREST NOT RELATED TO LEGITIMATE DUTIES OR OBJECTIVES OF THE LAW ENFORCEMENT AGENCY;

(2) THE INDIVIDUAL'S POLITICAL OR SOCIAL BELIEFS OR ACTIVITIES;

(3) THE INDIVIDUAL'S PARTICIPATION IN LAWFUL ACTIVITIES; OR

(4) THE INDIVIDUAL'S RACE, COLOR, RELIGIOUS BELIEFS, SEXUAL ORIENTATION, GENDER, DISABILITY, NATIONAL ORIGIN, OR STATUS AS BEING HOMELESS.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A RESULT GENERATED BY FACIAL RECOGNITION TECHNOLOGY IN VIOLATION OF THIS SECTION AND ALL OTHER EVIDENCE SUBSEQUENTLY DERIVED FROM THE RESULT MAY NOT BE INTRODUCED BY THE STATE FOR ANY PURPOSE IN A CRIMINAL COURT PROCEEDING

OR IN A JUVENILE COURT PROCEEDING UNDER TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.

(2) EVIDENCE DERIVED FROM A RESULT GENERATED IN VIOLATION OF SUBSECTION (A)(1) OF THIS SECTION MAY BE INTRODUCED FOR A PURPOSE DESCRIBED IN § 2-502 OF THIS SUBTITLE IF THE COURT FINDS THAT THE EVIDENCE WOULD OTHERWISE BE SUBJECT TO A LEGALLY VALID EXCEPTION TO THE EXCLUSIONARY RULE.

(3) THIS SUBSECTION MAY NOT BE CONSTRUED TO ALLOW THE USE OF A RESULT GENERATED USING FACIAL RECOGNITION TECHNOLOGY TO BE INTRODUCED AS EVIDENCE IN A CRIMINAL TRIAL OR IN AN ADJUDICATORY HEARING HELD UNDER § 3-8A-18 OF THE COURTS ARTICLE.

2-504.

THE STATE SHALL DISCLOSE, IN ACCORDANCE WITH THE MARYLAND RULES REGARDING DISCOVERY, WHETHER FACIAL RECOGNITION TECHNOLOGY HAS BEEN USED IN AN INVESTIGATION RELEVANT TO A CRIMINAL COURT PROCEEDING OR JUVENILE COURT PROCEEDING UNDER TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE AND ALL RESULTS GENERATED FROM THE USE OF THE FACIAL RECOGNITION TECHNOLOGY.

2-505.

(A) A LAW ENFORCEMENT AGENCY THAT USES OR CONTRACTS FOR THE USE OF FACIAL RECOGNITION TECHNOLOGY SHALL DESIGNATE AN EMPLOYEE OF THE LAW ENFORCEMENT AGENCY TO BE RESPONSIBLE FOR OVERSEEING AND ADMINISTERING THE USE OF FACIAL RECOGNITION TECHNOLOGY IN COMPLIANCE WITH THIS SUBTITLE AS WELL AS APPLICABLE LOCAL LAWS, REGULATIONS, AND POLICIES.

(B) (1) ON OR BEFORE OCTOBER 1 EACH YEAR, A LAW ENFORCEMENT AGENCY THAT USES OR CONTRACTS FOR THE USE OF FACIAL RECOGNITION TECHNOLOGY SHALL COMPLETE AN AUDIT TO DETERMINE COMPLIANCE WITH THIS SUBTITLE AS WELL AS APPLICABLE LOCAL LAWS, REGULATIONS, AND POLICIES.

(2) THE RESULTS OF THE AUDIT CONDUCTED UNDER THIS SUBSECTION, INCLUDING ANY RECORDS, DATA, PAPERS, OR MATERIALS EVALUATED AS PART OF THE AUDIT, SHALL BE:

(I) MAINTAINED BY THE LAW ENFORCEMENT AGENCY FOR AT LEAST 3 YEARS AFTER COMPLETION OF THE AUDIT, AFTER WHICH THE LAW

1 ENFORCEMENT AGENCY MAY DESTROY ALL AUDIT MATERIALS; AND

2 (II) UNLESS ALL AUDIT MATERIALS HAVE BEEN DESTROYED IN
3 ACCORDANCE WITH ITEM (I) OF THIS PARAGRAPH, DISCLOSED IF REQUESTED BY:

4 1. THE ATTORNEY GENERAL;

5 2. THE PUBLIC DEFENDER;

6 3. A STATE'S ATTORNEY;

7 4. A UNITED STATES ATTORNEY; OR

8 5. A DESIGNEE OF AN INDIVIDUAL DESCRIBED IN ITEMS
9 1 THROUGH 4 OF THIS ITEM.

10 (C) A POLICE OFFICER OR OTHER EMPLOYEE OR AGENT OF A LAW
11 ENFORCEMENT AGENCY AUTHORIZED TO USE FACIAL RECOGNITION TECHNOLOGY
12 IN THE COURSE OF CRIMINAL INVESTIGATIONS SHALL ANNUALLY COMPLETE
13 TRAINING AND PROFICIENCY TESTING ADMINISTERED BY THE DEPARTMENT OF
14 PUBLIC SAFETY AND CORRECTIONAL SERVICES UNDER § 2-506 OF THIS SUBTITLE.

15 2-506.

16 (A) THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES,
17 IN CONSULTATION WITH ANY OTHER RELEVANT STATE AGENCY, SHALL:

18 (1) ADOPT AND PUBLISH A MODEL STATEWIDE POLICY REGARDING
19 THE USE OF FACIAL RECOGNITION TECHNOLOGY;

20 (2) DEVELOP AND ADMINISTER A TRAINING PROGRAM AND
21 PROFICIENCY TESTING REGARDING THE USE OF FACIAL RECOGNITION
22 TECHNOLOGY IN THE COURSE OF CRIMINAL INVESTIGATIONS, INCLUDING TRAINING
23 AND TESTING ON CULTURAL DIVERSITY AND IMPLICIT BIAS;

24 (3) REVIEW AND APPROVE A SINGLE FACIAL RECOGNITION
25 TECHNOLOGY FOR USE BY LAW ENFORCEMENT AGENCIES IN THE STATE; AND

26 (4) PUBLISH ON ITS PUBLIC WEBSITE:

27 (I) THE NAME, VERSION, AND VENDOR OF THE FACIAL
28 RECOGNITION TECHNOLOGY CURRENTLY APPROVED FOR USE UNDER ITEM (3) OF
29 THIS SUBSECTION; AND

(II) THE NAMES, VERSIONS, AND VENDORS OF ALL FACIAL RECOGNITION TECHNOLOGIES THAT THE DEPARTMENT HAS PREVIOUSLY APPROVED FOR USE UNDER ITEM (3) OF THIS SUBSECTION.

(B) A LAW ENFORCEMENT AGENCY MAY NOT USE OR CONTRACT FOR THE USE OF FACIAL RECOGNITION TECHNOLOGY FOR USE IN CRIMINAL INVESTIGATIONS UNLESS:

(1) THE USE IS IN ACCORDANCE WITH THE MODEL STATEWIDE POLICY REGARDING THE USE OF FACIAL RECOGNITION TECHNOLOGY ADOPTED AND PUBLISHED UNDER SUBSECTION (A) OF THIS SECTION; AND

(2) THE FACIAL RECOGNITION TECHNOLOGY IS CURRENTLY APPROVED FOR USE BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES UNDER SUBSECTION (A) OF THIS SECTION.

2-507.

THIS SUBTITLE MAY NOT BE CONSTRUED TO RESTRICT THE USE OF FACIAL RECOGNITION TECHNOLOGY FOR THE PURPOSE OF:

(1) IDENTIFYING A MISSING OR DECEASED PERSON OR A PERSON WHO IS INCAPACITATED AND UNABLE TO OTHERWISE PROVIDE THE PERSON'S OWN IDENTITY;

(2) REDACTING A RECORDING OR AN IMAGE FOR RELEASE OR DISCLOSURE TO PROTECT THE PRIVACY OF AN INDIVIDUAL DEPICTED IN A RECORDING OR AN IMAGE;

(3) FORENSIC ANALYSIS OF ELECTRONIC MEDIA SEIZED BY LAW ENFORCEMENT IN RELATION TO A SPECIFIC INVESTIGATION IF THE PERSON IDENTIFIED IN THE ELECTRONIC MEDIA IS NOT THE SUBJECT OF CRIMINAL CHARGES RESULTING FROM THE FORENSIC ANALYSIS;

(4) ENHANCING SECURITY SYSTEMS FOR PREVENTING UNAUTHORIZED ACCESS TO INFORMATION, GOODS, MATERIALS, AREAS, OR OTHER PROPERTIES UNDER THE CUSTODY OR CARE OF A LAW ENFORCEMENT AGENCY; OR

(5) CONDUCTING OTHERWISE LEGITIMATE ACTIVITY UNRELATED TO A CRIMINAL INVESTIGATION.

2-508.

(A) A LAW ENFORCEMENT AGENCY THAT USES FACIAL RECOGNITION TECHNOLOGY SHALL ADOPT AND MAINTAIN A USE AND DATA MANAGEMENT POLICY.

(B) A LAW ENFORCEMENT AGENCY THAT DEVELOPS A POLICY UNDER SUBSECTION (A) OF THIS SECTION SHALL POST A COPY OF THE POLICY ON THE AGENCY'S PUBLIC WEBSITE.

2-509.

A PERSON MAY BRING A CIVIL ACTION AGAINST A LAW ENFORCEMENT AGENCY TO COMPEL COMPLIANCE WITH THIS SUBTITLE.

2-510.

(A) ON OR BEFORE FEBRUARY 1 EACH YEAR, A LAW ENFORCEMENT AGENCY USING OR CONTRACTING FOR THE USE OF FACIAL RECOGNITION TECHNOLOGY SHALL PREPARE AND PUBLISH AN ANNUAL REPORT THAT DISCLOSES INFORMATION FOR THE PRIOR CALENDAR YEAR, INCLUDING:

(1) THE TOTAL NUMBER OF FACIAL RECOGNITION SEARCHES PERFORMED BY THE LAW ENFORCEMENT AGENCY AND THE TYPE OF CRIME OR INCIDENT ASSOCIATED WITH EACH USE;

(2) THE TOTAL NUMBER OF POSSIBLE MATCHES RETURNED;

(3) ANY DATA BREACHES OR UNAUTHORIZED USES OF FACIAL RECOGNITION TECHNOLOGY UNDER THE LAW ENFORCEMENT AGENCY'S CONTROL;

(4) THE EXTENT OF THE USE OF THE FACIAL RECOGNITION TECHNOLOGY;

(5) A DESCRIPTION OF THE PURPOSE OF THE FACIAL RECOGNITION TECHNOLOGY, INCLUDING:

(I) WHETHER RESULTS FROM THE FACIAL RECOGNITION TECHNOLOGY WERE USED TO SUPPORT A DECISION OR AS THE SOLE BASIS FOR MAKING A DECISION; AND

(II) THE INTENDED BENEFITS OF THE USE OF THE FACIAL RECOGNITION TECHNOLOGY, INCLUDING ANY DATA OR RESEARCH DEMONSTRATING THE INTENDED BENEFITS;

1 **(6) A DESCRIPTION OF THE GENERAL CAPABILITIES AND**
2 **LIMITATIONS OF THE FACIAL RECOGNITION TECHNOLOGY, INCLUDING**
3 **REASONABLY FORESEEABLE CAPABILITIES OUTSIDE THE SCOPE OF THE CURRENT**
4 **USE OF THE FACIAL RECOGNITION TECHNOLOGY;**

5 **(7) THE TYPE OF DATA INPUTS THAT THE FACIAL RECOGNITION**
6 **TECHNOLOGY USED;**

7 **(8) THE TYPE OF RESULTS THAT THE FACIAL RECOGNITION**
8 **TECHNOLOGY GENERATED; AND**

9 **(9) ANY KNOWN OR REASONABLY SUSPECTED VIOLATIONS OF THE**
10 **MODEL STATEWIDE POLICY OR USE AND DATA MANAGEMENT POLICY, INCLUDING**
11 **COMPLAINTS ALLEGING VIOLATIONS.**

12 **(B) ON OR BEFORE MAY 1 EACH YEAR, A LAW ENFORCEMENT AGENCY**
13 **REQUIRED TO PREPARE A REPORT UNDER SUBSECTION (A) OF THIS SECTION SHALL**
14 **SUBMIT THE REPORT TO THE GOVERNOR’S OFFICE OF CRIME PREVENTION,**
15 **YOUTH, AND VICTIM SERVICES.**

16 **(C) ON OR BEFORE OCTOBER 1 EACH YEAR, THE GOVERNOR’S OFFICE OF**
17 **CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL SUBMIT TO THE**
18 **GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT**
19 **ARTICLE, THE GENERAL ASSEMBLY A REPORT CONSISTING OF THE INFORMATION**
20 **REPORTED BY LAW ENFORCEMENT AGENCIES UNDER SUBSECTION (B) OF THIS**
21 **SECTION, DISAGGREGATED BY AGENCY.**

22 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
23 **October 1, 2023.**