

HOUSE BILL 1578

I3, P1

0lr3714
CF SB 476

By: **Delegate J. Lewis**

Introduced and read first time: February 12, 2020

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Facial Recognition Privacy Protection Act**

3 FOR the purpose of establishing certain requirements and certain prohibited actions
4 relating to the provision of facial recognition services by certain persons under
5 certain circumstances; requiring certain persons to provide certain notice whenever
6 a facial recognition service is deployed in a certain premises and, except under
7 certain circumstances, obtain certain consent from an individual before enrolling an
8 image of a facial template of the individual in a facial recognition service; requiring
9 certain users of facial recognition services to ensure that certain decisions are subject
10 to a certain review; requiring certain users of facial recognition services to perform
11 certain testing of the services and provide certain training to certain individuals;
12 prohibiting certain persons from knowingly disclosing certain data except under
13 certain circumstances; establishing certain rights and authorizing certain
14 individuals to exercise those rights in a certain manner; requiring certain persons to
15 comply with certain requests; requiring certain persons to assist certain persons in
16 responding to certain requests; requiring certain persons to provide to certain
17 individuals, within a certain time period and in a certain manner, certain
18 information about certain action or inaction taken on certain requests under certain
19 circumstances; authorizing certain persons to request certain information from
20 certain individuals for a certain purpose; granting certain authority to the Office of
21 the Attorney General to enforce certain provisions of this Act; establishing that
22 certain violators of certain provisions of this Act may be subject to an injunction and
23 certain penalties; requiring certain governmental units to produce and update
24 certain reports at certain intervals through a certain process; requiring certain
25 governmental units to communicate certain information to the public by certain
26 deadlines, post certain reports on certain websites, and submit certain reports to the
27 Department of Information Technology; prohibiting certain governmental units from
28 using facial recognition services under certain circumstances and for certain
29 purposes; prohibiting certain governmental units from applying a facial recognition
30 service to an individual on certain bases; requiring certain governmental units to
31 disclose the use of facial recognition services to certain individuals in a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



manner under certain circumstances; requiring certain governmental units to maintain certain records; requiring certain judges to report certain information to the Court of Appeals on or before a certain date each year; declaring certain findings of the General Assembly; defining certain terms; providing for the effect and construction of this Act; and generally relating to facial recognition services.

BY adding to

Article – Commercial Law

Section 14–4201 through 14–4207 to be under the new subtitle “Subtitle 42. Facial Recognition Services”

Annotated Code of Maryland

(2013 Replacement Volume and 2019 Supplement)

BY adding to

Article – State Government

Section 10–1701 through 10–1709 to be under the new subtitle “Subtitle 17. Facial Recognition Services”

Annotated Code of Maryland

(2014 Replacement Volume and 2019 Supplement)

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

Article – Commercial Law

SUBTITLE 42. FACIAL RECOGNITION SERVICES.

14–4201.

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

(B) (1) “CONSENT” MEANS A CLEAR AFFIRMATIVE ACT SIGNIFYING A FREELY GIVEN, SPECIFIC, INFORMED, AND UNAMBIGUOUS INDICATION OF AN INDIVIDUAL’S AGREEMENT TO THE PROCESSING OF PERSONAL DATA RELATING TO THE INDIVIDUAL.

(2) “CONSENT” INCLUDES AN ACT SIGNIFIED THROUGH THE USE OF A WRITTEN STATEMENT, WHETHER OR NOT THE STATEMENT IS PROVIDED THROUGH ELECTRONIC MEANS.

(C) (1) “CONTROLLER” MEANS A PERSON THAT, ALONE OR JOINTLY WITH OTHERS, DETERMINES THE PURPOSE AND MEANS OF THE PROCESSING OF PERSONAL DATA.

1 **(2) “CONTROLLER” DOES NOT INCLUDE A UNIT.**

2 **(D) (1) “ENROLL” MEANS THE PROCESS BY WHICH A FACIAL**
3 **RECOGNITION SERVICE CREATES A FACIAL TEMPLATE FROM ONE OR MORE IMAGES**
4 **OF AN INDIVIDUAL AND ADDS THE FACIAL TEMPLATE TO A GALLERY USED BY THE**
5 **FACIAL RECOGNITION SERVICE FOR RECOGNITION OR PERSISTENT TRACKING OF**
6 **INDIVIDUALS.**

7 **(2) “ENROLL” INCLUDES THE ACT OF ADDING AN EXISTING FACIAL**
8 **TEMPLATE DIRECTLY INTO A GALLERY USED BY A FACIAL RECOGNITION SERVICE.**

9 **(E) “FACIAL RECOGNITION SERVICE” MEANS TECHNOLOGY THAT**
10 **ANALYZES FACIAL FEATURES AND IS USED FOR RECOGNITION OR PERSISTENT**
11 **TRACKING OF INDIVIDUALS IN STILL OR VIDEO IMAGES.**

12 **(F) “FACIAL TEMPLATE” MEANS THE MACHINE-INTERPRETABLE PATTERN**
13 **OF FACIAL FEATURES THAT IS EXTRACTED FROM ONE OR MORE IMAGES OF AN**
14 **INDIVIDUAL BY A FACIAL RECOGNITION SERVICE.**

15 **(G) “IDENTIFIED OR IDENTIFIABLE INDIVIDUAL” MEANS AN INDIVIDUAL**
16 **WHO CAN BE READILY IDENTIFIED, DIRECTLY OR INDIRECTLY, IN PARTICULAR BY**
17 **REFERENCE TO AN IDENTIFIER, INCLUDING A NAME, AN IDENTIFICATION NUMBER,**
18 **SPECIFIC GEOLOCATION DATA, OR AN ONLINE IDENTIFIER.**

19 **(H) “MEANINGFUL HUMAN REVIEW” MEANS REVIEW OR OVERSIGHT BY ONE**
20 **OR MORE INDIVIDUALS WHO:**

21 **(1) ARE TRAINED IN ACCORDANCE WITH § 14-4204 OF THIS**
22 **SUBTITLE; AND**

23 **(2) HAVE THE AUTHORITY TO ALTER THE DECISION UNDER REVIEW.**

24 **(I) “PERSISTENT TRACKING” MEANS THE USE OF A FACIAL RECOGNITION**
25 **SERVICE BY A CONTROLLER TO TRACK THE MOVEMENTS OF AN INDIVIDUAL:**

26 **(1) WITHOUT USING THE FACIAL RECOGNITION SERVICE FOR**
27 **RECOGNITION OF THAT INDIVIDUAL; AND**

28 **(2) ON A PERSISTENT BASIS THAT BEGINS AS SOON AS THE**
29 **CONTROLLER:**

30 **(I) MAINTAINS THE FACIAL TEMPLATE OR UNIQUE IDENTIFIER**
31 **THAT ALLOWS THE TRACKING FOR MORE THAN 48 HOURS AFTER THE TEMPLATE OR**

1 IDENTIFIER IS FIRST CREATED; OR

2 (II) LINKS THE DATA CREATED BY THE FACIAL RECOGNITION
3 SERVICE TO ANY OTHER DATA, INCLUDING PURCHASE OR PAYMENT DATA, IN A
4 MANNER THAT RESULTS IN THE INDIVIDUAL WHO HAS BEEN TRACKED BEING
5 IDENTIFIED OR IDENTIFIABLE.

6 (J) (1) "PERSONAL DATA" MEANS ANY INFORMATION THAT IS LINKED OR
7 REASONABLY LINKABLE TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL.

8 (2) "PERSONAL DATA" DOES NOT INCLUDE DE-IDENTIFIED DATA OR
9 PUBLICLY AVAILABLE INFORMATION THAT IS LAWFULLY MADE AVAILABLE FROM
10 FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS.

11 (K) "PROCESS" MEANS ANY COLLECTION, USE, STORAGE, DISCLOSURE,
12 ANALYSIS, DELETION, OR MODIFICATION OF PERSONAL DATA.

13 (L) (1) "PROCESSOR" MEANS A PERSON THAT PROCESSES PERSONAL
14 DATA ON BEHALF OF A CONTROLLER.

15 (2) "PROCESSOR" DOES NOT INCLUDE A UNIT.

16 (M) "RECOGNITION" MEANS THE USE OF A FACIAL RECOGNITION SERVICE
17 BY A CONTROLLER TO PREDICT WHETHER AN UNKNOWN INDIVIDUAL MATCHES ANY
18 INDIVIDUAL OR A SPECIFIC INDIVIDUAL WHO HAS BEEN ENROLLED IN A GALLERY
19 USED BY THE FACIAL RECOGNITION SERVICE.

20 (N) "SECURITY OR SAFETY PURPOSE" MEANS PHYSICAL SECURITY, SAFETY,
21 FRAUD PREVENTION, OR ASSET PROTECTION.

22 (O) "UNIT" HAS THE MEANING STATED IN § 10-1301 OF THE STATE
23 GOVERNMENT ARTICLE.

24 14-4202.

25 THIS SUBTITLE APPLIES ONLY TO LEGAL ENTITIES THAT CONDUCT BUSINESS
26 IN THE STATE OR PRODUCE PRODUCTS OR SERVICES THAT ARE TARGETED TO
27 RESIDENTS OF THE STATE.

28 14-4203.

29 THE GENERAL ASSEMBLY FINDS THAT:

1 (1) THE USE OF FACIAL RECOGNITION SERVICES BY THE PRIVATE
2 SECTOR CAN PRESENT RISKS TO PRIVACY, DEMOCRATIC FREEDOMS, AND CIVIL
3 LIBERTIES THAT SHOULD BE CONSIDERED AND ADDRESSED;

4 (2) FACIAL RECOGNITION TECHNOLOGY CAN BE USED IN A VARIETY
5 OF BENEFICIAL WAYS, INCLUDING FOR IMPROVING SECURITY, PROVIDING
6 INDIVIDUALS WITH EFFICIENT IDENTIFICATION EXPERIENCES, LOCATING MISSING
7 OR INCAPACITATED INDIVIDUALS, IDENTIFYING VICTIMS OF CRIME, AND KEEPING
8 THE PUBLIC SAFE; AND

9 (3) IT IS NECESSARY TO ESTABLISH SAFEGUARDS THAT WILL ALLOW
10 INDUSTRY TO USE FACIAL RECOGNITION SERVICES IN WAYS THAT BENEFIT SOCIETY
11 WHILE PROHIBITING USES THAT THREATEN THE PRIVACY, DEMOCRATIC FREEDOMS,
12 AND CIVIL LIBERTIES OF INDIVIDUALS IN THE STATE.

13 14-4204.

14 (A) (1) (I) EACH PROCESSOR THAT PROVIDES A FACIAL RECOGNITION
15 SERVICE SHALL MAKE AVAILABLE AN APPLICATION PROGRAMMING INTERFACE OR
16 OTHER TECHNICAL CAPABILITY, CHOSEN BY THE PROCESSOR, TO ENABLE A
17 CONTROLLER OR THIRD PARTY TO CONDUCT LEGITIMATE, INDEPENDENT, AND
18 REASONABLE TESTS OF THE FACIAL RECOGNITION SERVICE FOR ACCURACY AND
19 UNFAIR PERFORMANCE DIFFERENCES ACROSS DISTINCT SUBPOPULATIONS.

20 (II) FOR THE PURPOSES OF SUBPARAGRAPH (I) OF THIS
21 PARAGRAPH, SUBPOPULATIONS MAY BE DEFINED BY RACE, SKIN TONE, ETHNICITY,
22 GENDER, AGE, DISABILITY STATUS, OR OTHER PROTECTED CHARACTERISTIC THAT
23 IS OBJECTIVELY DETERMINABLE OR SELF-IDENTIFIED BY THE INDIVIDUALS
24 PORTRAYED IN THE TESTING DATASET.

25 (2) A PROCESSOR SHALL DEVELOP AND IMPLEMENT A PLAN TO
26 MITIGATE ANY IDENTIFIED MATERIAL UNFAIR PERFORMANCE DIFFERENCES
27 REGARDING A FACIAL RECOGNITION SERVICE PROVIDED BY THE PROCESSOR IF:

28 (I) THE DIFFERENCE WAS IDENTIFIED AS A RESULT OF
29 INDEPENDENT TESTING;

30 (II) THE RESULTS OF THE INDEPENDENT TESTING WERE
31 DISCLOSED DIRECTLY TO THE PROCESSOR; AND

32 (III) THE PROCESSOR DETERMINES, BY ACTING REASONABLY,
33 THAT THE METHODOLOGY AND RESULT OF THE INDEPENDENT TESTING ARE VALID.

1 **(3) THIS SUBSECTION DOES NOT PREVENT A PROCESSOR FROM**
2 **PROHIBITING THE USE OF THE FACIAL RECOGNITION SERVICE OF THE PROCESSOR**
3 **BY A COMPETITOR FOR COMPETITIVE PURPOSES.**

4 **(B) EACH PROCESSOR THAT PROVIDES A FACIAL RECOGNITION SERVICE**
5 **SHALL PROVIDE DOCUMENTATION TO AN INDEPENDENT TESTER THAT INCLUDES**
6 **GENERAL INFORMATION THAT:**

7 **(1) EXPLAINS THE CAPABILITIES AND LIMITATIONS OF THE FACIAL**
8 **RECOGNITION SERVICE IN PLAIN LANGUAGE; AND**

9 **(2) ENABLES TESTING OF THE FACIAL RECOGNITION SERVICE IN**
10 **ACCORDANCE WITH THIS SECTION.**

11 **(C) IN THE CONTRACT UNDER WHICH A CONTROLLER IS AUTHORIZED TO**
12 **USE THE FACIAL RECOGNITION SERVICE PROVIDED BY A PROCESSOR, THE**
13 **PROCESSOR SHALL PROHIBIT THE USE OF THE FACIAL RECOGNITION SERVICE BY**
14 **THE CONTROLLER TO UNLAWFULLY DISCRIMINATE UNDER FEDERAL OR STATE LAW**
15 **AGAINST INDIVIDUALS OR GROUPS OF INDIVIDUALS.**

16 **(D) A CONTROLLER SHALL PROVIDE A CONSPICUOUS AND CONTEXTUALLY**
17 **APPROPRIATE NOTICE WHENEVER A FACIAL RECOGNITION SERVICE IS DEPLOYED**
18 **IN A PHYSICAL PREMISES OPEN TO THE PUBLIC THAT, AT A MINIMUM, INCLUDES:**

19 **(1) THE PURPOSE FOR WHICH THE FACIAL RECOGNITION SERVICE IS**
20 **DEPLOYED; AND**

21 **(2) INFORMATION ABOUT HOW AN INDIVIDUAL CAN OBTAIN**
22 **ADDITIONAL INFORMATION ABOUT THE FACIAL RECOGNITION SERVICE, INCLUDING**
23 **A LINK TO ANY APPLICABLE ONLINE NOTICE, TERMS, OR POLICY THAT PROVIDES**
24 **INFORMATION ABOUT HOW AN INDIVIDUAL CAN EXERCISE ANY RIGHTS THAT THE**
25 **INDIVIDUAL HAS WITH RESPECT TO THE FACIAL RECOGNITION SERVICE.**

26 **(E) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, A**
27 **CONTROLLER SHALL OBTAIN CONSENT FROM AN INDIVIDUAL BEFORE ENROLLING**
28 **AN IMAGE OR A FACIAL TEMPLATE OF THE INDIVIDUAL IN A FACIAL RECOGNITION**
29 **SERVICE USED IN A PHYSICAL PREMISES OPEN TO THE PUBLIC.**

30 **(F) A CONTROLLER MAY ENROLL AN IMAGE OR A FACIAL TEMPLATE OF AN**
31 **INDIVIDUAL IN A FACIAL RECOGNITION SERVICE FOR A SECURITY OR SAFETY**
32 **PURPOSE WITHOUT FIRST OBTAINING CONSENT FROM THE INDIVIDUAL IF:**

33 **(1) THE CONTROLLER HOLDS A REASONABLE SUSPICION, BASED ON**

1 A SPECIFIC INCIDENT, THAT THE INDIVIDUAL HAS ENGAGED IN CRIMINAL ACTIVITY,
2 INCLUDING SHOPLIFTING, FRAUD, STALKING, OR DOMESTIC VIOLENCE;

3 (2) ANY DATABASE USED BY THE FACIAL RECOGNITION SERVICE FOR
4 RECOGNITION, VERIFICATION, OR PERSISTENT TRACKING OF INDIVIDUALS FOR A
5 SECURITY OR SAFETY PURPOSE IS USED SOLELY FOR THAT PURPOSE AND IS
6 MAINTAINED SEPARATELY FROM ANY OTHER DATABASES MAINTAINED BY THE
7 CONTROLLER;

8 (3) THE CONTROLLER REVIEWS ANY DATABASE DESCRIBED IN ITEM
9 (2) OF THIS SUBSECTION AT LEAST EVERY 6 MONTHS TO REMOVE FACIAL
10 TEMPLATES OF INDIVIDUALS WITH RESPECT TO WHOM THE CONTROLLER NO
11 LONGER HOLDS A REASONABLE SUSPICION THAT THE INDIVIDUAL HAS ENGAGED IN
12 CRIMINAL ACTIVITY, OR THAT ARE MORE THAN 3 YEARS OLD; AND

13 (4) THE CONTROLLER ESTABLISHES AN INTERNAL PROCESS
14 WHEREBY AN INDIVIDUAL MAY CORRECT OR CHALLENGE THE DECISION TO ENROLL
15 THE IMAGE OF THE INDIVIDUAL IN THE FACIAL RECOGNITION SERVICE FOR A
16 SECURITY OR SAFETY PURPOSE.

17 (G) (1) EACH CONTROLLER THAT USES A FACIAL RECOGNITION SERVICE
18 TO MAKE DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS
19 CONCERNING INDIVIDUALS SHALL ENSURE THAT THE DECISIONS ARE SUBJECT TO
20 MEANINGFUL HUMAN REVIEW.

21 (2) FOR THE PURPOSE OF PARAGRAPH (1) OF THIS SUBSECTION,
22 DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS
23 CONCERNING INDIVIDUALS INCLUDE THE DENIAL OF CONSEQUENTIAL SERVICES OR
24 SUPPORT, INCLUDING FINANCIAL AND LENDING SERVICES, HOUSING, INSURANCE,
25 EDUCATION ENROLLMENT, CRIMINAL JUSTICE, EMPLOYMENT OPPORTUNITIES,
26 HEALTH CARE SERVICES, AND ACCESS TO FOOD, WATER, AND OTHER BASIC
27 NECESSITIES.

28 (H) (1) BEFORE DEPLOYING A FACIAL RECOGNITION SERVICE IN THE
29 CONTEXT IN WHICH IT WILL BE USED, A CONTROLLER SHALL TEST THE FACIAL
30 RECOGNITION SERVICE IN OPERATIONAL CONDITIONS.

31 (2) EACH CONTROLLER SHALL TAKE COMMERCIALLY REASONABLE
32 STEPS TO ENSURE BEST-QUALITY RESULTS IN OPERATIONAL CONDITIONS BY
33 FOLLOWING ALL REASONABLE GUIDANCE PROVIDED BY THE DEVELOPER OF THE
34 FACIAL RECOGNITION SERVICE.

35 (I) (1) EACH CONTROLLER USING A FACIAL RECOGNITION SERVICE

1 SHALL CONDUCT PERIODIC TRAINING OF ALL INDIVIDUALS WHO OPERATE THE
2 FACIAL RECOGNITION SERVICE OR WHO PROCESS PERSONAL DATA OBTAINED FROM
3 THE USE OF THE FACIAL RECOGNITION SERVICE.

4 (2) THE TRAINING REQUIRED UNDER THIS SUBSECTION SHALL
5 INCLUDE COVERAGE OF:

6 (I) THE CAPABILITIES AND LIMITATIONS OF THE FACIAL
7 RECOGNITION SERVICE;

8 (II) PROCEDURES TO INTERPRET AND ACT ON THE OUTPUT OF
9 THE FACIAL RECOGNITION SERVICE; AND

10 (III) TO THE EXTENT APPLICABLE TO THE DEPLOYMENT
11 CONTEXT, THE MEANINGFUL HUMAN REVIEW REQUIREMENT FOR DECISIONS THAT
12 PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS.

13 (J) A CONTROLLER MAY NOT KNOWINGLY DISCLOSE PERSONAL DATA
14 OBTAINED FROM A FACIAL RECOGNITION SERVICE TO A LAW ENFORCEMENT
15 AGENCY UNLESS THE DISCLOSURE IS:

16 (1) MADE ACCORDING TO THE CONSENT OF THE INDIVIDUAL TO
17 WHOM THE PERSONAL DATA RELATES;

18 (2) REQUIRED BY FEDERAL, STATE, OR LOCAL LAW IN RESPONSE TO
19 A COURT ORDER, COURT-ORDERED WARRANT, SUBPOENA OR SUMMONS ISSUED BY
20 A JUDICIAL OFFICER, OR GRAND JURY SUBPOENA;

21 (3) MADE BASED ON A GOOD FAITH BELIEF BY THE CONTROLLER
22 THAT THE DISCLOSURE IS NECESSARY TO PREVENT OR RESPOND TO AN EMERGENCY
23 INVOLVING DANGER OF DEATH OR SERIOUS PHYSICAL INJURY TO ANY INDIVIDUAL;
24 OR

25 (4) MADE TO THE NATIONAL CENTER FOR MISSING AND EXPLOITED
26 CHILDREN IN CONNECTION WITH A REPORT SUBMITTED UNDER 18 U.S.C. § 2258A.

27 14-4205.

28 (A) (1) AN INDIVIDUAL MAY EXERCISE THE RIGHTS ESTABLISHED UNDER
29 THIS SECTION BY SUBMITTING A REQUEST, AT ANY TIME, TO A CONTROLLER
30 SPECIFYING WHICH RIGHTS THE INDIVIDUAL WISHES TO EXERCISE.

31 (2) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBTITLE, A

1 CONTROLLER SHALL COMPLY WITH A REQUEST SUBMITTED UNDER PARAGRAPH (1)
2 OF THIS SUBSECTION.

3 (3) A PROCESSOR SHALL ASSIST A CONTROLLER BY APPROPRIATE
4 TECHNICAL AND ORGANIZATIONAL MEASURES, TO THE EXTENT PRACTICABLE, FOR
5 THE FULFILLMENT OF THE CONTROLLER'S OBLIGATION TO RESPOND TO AN
6 INDIVIDUAL'S REQUEST TO EXERCISE THE INDIVIDUAL'S RIGHTS UNDER THIS
7 SECTION.

8 (B) AN INDIVIDUAL HAS THE RIGHT TO CONFIRM WHETHER OR NOT A
9 CONTROLLER HAS ENROLLED AN IMAGE OR A FACIAL TEMPLATE OF THE
10 INDIVIDUAL IN A FACIAL RECOGNITION SERVICE USED IN A PHYSICAL PREMISES
11 OPEN TO THE PUBLIC.

12 (C) AN INDIVIDUAL HAS THE RIGHT TO CORRECT OR CHALLENGE A
13 DECISION TO ENROLL AN IMAGE OR A FACIAL TEMPLATE OF THE INDIVIDUAL IN A
14 FACIAL RECOGNITION SERVICE USED FOR A SECURITY OR SAFETY PURPOSE IN A
15 PHYSICAL PREMISES OPEN TO THE PUBLIC.

16 (D) AN INDIVIDUAL HAS THE RIGHT TO HAVE AN IMAGE OR A FACIAL
17 TEMPLATE OF THE INDIVIDUAL THAT HAS BEEN ENROLLED IN A FACIAL
18 RECOGNITION SERVICE USED IN A PHYSICAL PREMISES OPEN TO THE PUBLIC
19 REMOVED UNLESS:

20 (1) THE IMAGE OR FACIAL TEMPLATE IS USED FOR A SECURITY OR
21 SAFETY PURPOSE; AND

22 (2) THE CONTROLLER HAS MET THE CONDITIONS LISTED UNDER §
23 14-4204(F) OF THIS SUBTITLE.

24 (E) AN INDIVIDUAL HAS THE RIGHT TO WITHDRAW CONSENT TO ENROLL AN
25 IMAGE OR A FACIAL TEMPLATE OF THE INDIVIDUAL IN A FACIAL RECOGNITION
26 SERVICE USED IN A PHYSICAL PREMISE OPEN TO THE PUBLIC.

27 (F) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,
28 WITHIN 30 DAYS AFTER RECEIVING A REQUEST MADE UNDER SUBSECTION (A)(1) OF
29 THIS SECTION AND WITHOUT UNDUE DELAY, A CONTROLLER SHALL INFORM THE
30 INDIVIDUAL OF ANY ACTION TAKEN ON THE REQUEST.

31 (II) THE 30-DAY PERIOD ESTABLISHED UNDER SUBPARAGRAPH
32 (I) OF THIS PARAGRAPH MAY BE EXTENDED BY AN ADDITIONAL 60 DAYS IF THE
33 COMPLEXITY AND NUMBER OF THE REQUESTS MAKE THE EXTENSION REASONABLY
34 NECESSARY.

1 (III) THE CONTROLLER SHALL INFORM THE INDIVIDUAL MAKING
2 THE REQUEST OF:

3 1. ANY EXTENSION NEEDED BY THE CONTROLLER
4 UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH WITHIN 30 DAYS AFTER RECEIPT
5 OF THE REQUEST; AND

6 2. THE REASONS THAT MAKE THE EXTENSION
7 NECESSARY.

8 (2) IF A CONTROLLER DOES NOT TAKE ACTION ON A REQUEST MADE
9 UNDER SUBSECTION (A)(1) OF THIS SECTION, WITHIN 30 DAYS AFTER THE RECEIPT
10 OF THE REQUEST AND WITHOUT UNDUE DELAY, THE CONTROLLER SHALL INFORM
11 THE INDIVIDUAL OF THE REASONS FOR NOT TAKING ACTION.

12 (3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
13 PARAGRAPH, A CONTROLLER MAY NOT CHARGE AN INDIVIDUAL FOR ANY
14 INFORMATION PROVIDED UNDER THIS SECTION.

15 (II) IF REQUESTS FROM AN INDIVIDUAL UNDER SUBSECTION
16 (A)(1) OF THIS SECTION ARE MANIFESTLY UNFOUNDED OR EXCESSIVE, IN
17 PARTICULAR BECAUSE OF THE REPETITIVE CHARACTER OF THE REQUESTS, THE
18 CONTROLLER MAY EITHER:

19 1. CHARGE A REASONABLE FEE TO COVER THE
20 ADMINISTRATIVE COSTS OF COMPLYING WITH THE REQUEST; OR

21 2. REFUSE TO ACT ON THE REQUEST.

22 (III) THE CONTROLLER BEARS THE BURDEN OF
23 DEMONSTRATING THE MANIFESTLY UNFOUNDED OR EXCESSIVE CHARACTER OF
24 THE REQUEST.

25 (4) (I) A CONTROLLER IS NOT REQUIRED TO COMPLY WITH A
26 REQUEST MADE UNDER SUBSECTION (A)(1) OF THIS SECTION IF THE CONTROLLER
27 IS UNABLE TO DETERMINE, USING COMMERCIALY REASONABLE EFFORTS, THAT
28 THE REQUEST IS BEING MADE BY THE INDIVIDUAL WHO IS ENTITLED TO EXERCISE
29 THE RIGHTS UNDER THIS SECTION.

30 (II) IF A CONTROLLER IS UNABLE TO MAKE THE
31 DETERMINATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE
32 CONTROLLER MAY REQUEST THAT THE INDIVIDUAL MAKING THE REQUEST PROVIDE

1 ADDITIONAL INFORMATION REASONABLY NECESSARY TO DETERMINE THAT THE
2 INDIVIDUAL IS ENTITLED TO EXERCISE THE RIGHTS UNDER THIS SECTION.

3 14-4206.

4 THE OBLIGATIONS IMPOSED ON CONTROLLERS AND PROCESSORS UNDER
5 THIS SUBTITLE DO NOT RESTRICT THE ABILITY OF A CONTROLLER OR PROCESSOR
6 TO:

7 (1) COMPLY WITH FEDERAL, STATE, OR LOCAL LAWS AND
8 REGULATIONS;

9 (2) COMPLY WITH A CIVIL, CRIMINAL, OR REGULATORY INQUIRY,
10 INVESTIGATION, SUBPOENA, OR SUMMONS BY FEDERAL, STATE, LOCAL, OR OTHER
11 GOVERNMENTAL AUTHORITIES; AND

12 (3) INVESTIGATE, ESTABLISH, EXERCISE, PREPARE FOR, OR DEFEND
13 LEGAL CLAIMS.

14 14-4207.

15 (A) THE OFFICE OF THE ATTORNEY GENERAL HAS EXCLUSIVE AUTHORITY
16 TO ENFORCE THIS SUBTITLE BY BRINGING AN ACTION IN THE NAME OF THE STATE,
17 OR AS PARENS PATRIAE ON BEHALF OF INDIVIDUALS RESIDING IN THE STATE, TO
18 ENFORCE THIS SUBTITLE.

19 (B) A CONTROLLER OR PROCESSOR THAT VIOLATES THIS SUBTITLE MAY BE
20 SUBJECT TO AN INJUNCTION AND LIABLE FOR A CIVIL PENALTY OF:

21 (1) FOR EACH UNINTENTIONAL VIOLATION, NOT MORE THAN \$2,500;
22 AND

23 (2) FOR EACH INTENTIONAL VIOLATION, \$7,500.

24 Article – State Government

25 SUBTITLE 17. FACIAL RECOGNITION SERVICES.

26 10-1701.

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

(B) "ACCOUNTABILITY REPORT" MEANS A REPORT PRODUCED IN ACCORDANCE WITH § 10-1703 OF THIS SUBTITLE.

(C) (1) "ENROLL" MEANS THE PROCESS BY WHICH A FACIAL RECOGNITION SERVICE CREATES A FACIAL TEMPLATE FROM ONE OR MORE IMAGES OF AN INDIVIDUAL AND ADDS THE FACIAL TEMPLATE TO A GALLERY USED BY THE FACIAL RECOGNITION SERVICE FOR RECOGNITION OR PERSISTENT TRACKING OF INDIVIDUALS.

(2) "ENROLL" INCLUDES THE ACT OF ADDING AN EXISTING FACIAL TEMPLATE DIRECTLY INTO A GALLERY USED BY A FACIAL RECOGNITION SERVICE.

(D) "FACIAL RECOGNITION SERVICE" MEANS TECHNOLOGY THAT ANALYZES FACIAL FEATURES AND IS USED FOR RECOGNITION OR PERSISTENT TRACKING OF INDIVIDUALS IN STILL OR VIDEO IMAGES.

(E) "FACIAL TEMPLATE" MEANS THE MACHINE-INTERPRETABLE PATTERN OF FACIAL FEATURES THAT IS EXTRACTED FROM ONE OR MORE IMAGES OF AN INDIVIDUAL BY A FACIAL RECOGNITION SERVICE.

(F) "IDENTIFIED OR IDENTIFIABLE INDIVIDUAL" MEANS AN INDIVIDUAL WHO CAN BE READILY IDENTIFIED, DIRECTLY OR INDIRECTLY, IN PARTICULAR BY REFERENCE TO AN IDENTIFIER, INCLUDING A NAME, AN IDENTIFICATION NUMBER, SPECIFIC GEOLOCATION DATA, OR AN ONLINE IDENTIFIER.

(G) "MEANINGFUL HUMAN REVIEW" MEANS REVIEW OR OVERSIGHT BY ONE OR MORE INDIVIDUALS WHO:

(1) ARE TRAINED IN ACCORDANCE WITH § 10-1707 OF THIS SUBTITLE; AND

(2) HAVE THE AUTHORITY TO ALTER THE DECISION UNDER REVIEW.

(H) (1) "ONGOING SURVEILLANCE" MEANS TRACKING THE PHYSICAL MOVEMENTS OF A SPECIFIED INDIVIDUAL THROUGH ONE OR MORE PUBLIC PLACES OVER TIME, WHETHER IN REAL TIME OR THROUGH THE APPLICATION OF A FACIAL RECOGNITION SERVICE TO HISTORICAL RECORDS.

(2) "ONGOING SURVEILLANCE" DOES NOT INCLUDE A SINGLE RECOGNITION OR ATTEMPTED RECOGNITION OF AN INDIVIDUAL IF NO ATTEMPT IS MADE TO SUBSEQUENTLY TRACK THE INDIVIDUAL'S MOVEMENTS OVER TIME AFTER THE INDIVIDUAL HAS BEEN RECOGNIZED.

1 **(I) “PERSISTENT TRACKING” MEANS THE USE OF A FACIAL RECOGNITION**
2 **SERVICE BY A UNIT TO TRACK THE MOVEMENTS OF AN INDIVIDUAL:**

3 **(1) WITHOUT USING THE FACIAL RECOGNITION SERVICE FOR**
4 **RECOGNITION OF THAT INDIVIDUAL; AND**

5 **(2) ON A PERSISTENT BASIS THAT BEGINS AS SOON AS THE UNIT:**

6 **(I) MAINTAINS THE FACIAL TEMPLATE OR UNIQUE IDENTIFIER**
7 **THAT ALLOWS THE TRACKING FOR MORE THAN 48 HOURS AFTER THE TEMPLATE OR**
8 **IDENTIFIER IS FIRST CREATED; OR**

9 **(II) LINKS THE DATA CREATED BY THE FACIAL RECOGNITION**
10 **SERVICE TO ANY OTHER DATA, INCLUDING PURCHASE OR PAYMENT DATA, IN A**
11 **MANNER THAT RESULTS IN THE INDIVIDUAL WHO HAS BEEN TRACKED BEING**
12 **IDENTIFIED OR IDENTIFIABLE.**

13 **(J) (1) “PERSONAL DATA” MEANS ANY INFORMATION THAT IS LINKED OR**
14 **REASONABLY LINKABLE TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL.**

15 **(2) “PERSONAL DATA” DOES NOT INCLUDE DE-IDENTIFIED DATA OR**
16 **PUBLICLY AVAILABLE INFORMATION THAT IS LAWFULLY MADE AVAILABLE FROM**
17 **FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS.**

18 **(K) “PROCESS” MEANS ANY COLLECTION, USE, STORAGE, DISCLOSURE,**
19 **ANALYSIS, DELETION, OR MODIFICATION OF PERSONAL DATA.**

20 **(L) “RECOGNITION” MEANS THE USE OF A FACIAL RECOGNITION SERVICE**
21 **BY A UNIT TO PREDICT WHETHER AN UNKNOWN INDIVIDUAL MATCHES ANY**
22 **INDIVIDUAL OR A SPECIFIC INDIVIDUAL WHO HAS BEEN ENROLLED IN A GALLERY**
23 **USED BY THE FACIAL RECOGNITION SERVICE.**

24 **(M) “SERIOUS CRIMINAL OFFENSE” MEANS:**

25 **(1) A SERIOUS OFFENSE AS DEFINED IN § 16-101 OF THE CRIMINAL**
26 **PROCEDURE ARTICLE; OR**

27 **(2) AN OFFENSE ENUMERATED UNDER 18 U.S.C. § 2516.**

28 **(N) “UNIT” HAS THE MEANING STATED IN § 10-1301 OF THIS TITLE.**

29 **10-1702.**

THE GENERAL ASSEMBLY FINDS THAT:

(1) THE USE OF FACIAL RECOGNITION SERVICES BY UNITS OF STATE AND LOCAL GOVERNMENT CAN PRESENT RISKS TO PRIVACY, DEMOCRATIC FREEDOMS, AND CIVIL LIBERTIES THAT SHOULD BE CONSIDERED AND ADDRESSED;

(2) FACIAL RECOGNITION TECHNOLOGY CAN BE USED IN A VARIETY OF BENEFICIAL WAYS, INCLUDING FOR IMPROVING SECURITY, PROVIDING INDIVIDUALS WITH EFFICIENT IDENTIFICATION EXPERIENCES, LOCATING MISSING OR INCAPACITATED INDIVIDUALS, IDENTIFYING VICTIMS OF CRIME, AND KEEPING THE PUBLIC SAFE; AND

(3) IT IS NECESSARY TO ESTABLISH SAFEGUARDS THAT WILL ALLOW GOVERNMENT TO USE FACIAL RECOGNITION SERVICES IN WAYS THAT BENEFIT SOCIETY WHILE PROHIBITING USES THAT THREATEN THE PRIVACY, DEMOCRATIC FREEDOMS, AND CIVIL LIBERTIES OF INDIVIDUALS IN THE STATE.

10-1703.

(A) (1) EACH UNIT USING OR INTENDING TO DEVELOP, PROCURE, OR USE A FACIAL RECOGNITION SERVICE SHALL PRODUCE AN ACCOUNTABILITY REPORT FOR THE FACIAL RECOGNITION SERVICE.

(2) EACH UNIT SHALL:

(I) CLEARLY COMMUNICATE THE ACCOUNTABILITY REPORT TO THE PUBLIC:

1. AT LEAST 90 DAYS BEFORE THE UNIT PUTS THE FACIAL RECOGNITION SERVICE INTO OPERATIONAL USE; OR

2. FOR A FACIAL RECOGNITION SERVICE IN USE ON OCTOBER 1, 2020, ON OR BEFORE JANUARY 1, 2021;

(II) POST THE ACCOUNTABILITY REPORT ON THE PUBLIC WEBSITE OF THE UNIT; AND

(III) SUBMIT THE ACCOUNTABILITY REPORT TO THE DEPARTMENT OF INFORMATION TECHNOLOGY.

(3) THE DEPARTMENT OF INFORMATION TECHNOLOGY SHALL POST EACH SUBMITTED ACCOUNTABILITY REPORT ON ITS PUBLIC WEBSITE.

1 **(B) EACH ACCOUNTABILITY REPORT SHALL INCLUDE, AT A MINIMUM, IN**
2 **CLEAR AND UNDERSTANDABLE LANGUAGE, THE FOLLOWING INFORMATION:**

3 **(1) (I) THE NAME, VENDOR, AND VERSION OF THE FACIAL**
4 **RECOGNITION SERVICE; AND**

5 **(II) A DESCRIPTION OF THE GENERAL CAPABILITIES AND**
6 **LIMITATIONS OF THE FACIAL RECOGNITION SERVICE, INCLUDING REASONABLY**
7 **FORESEEABLE CAPABILITIES OUTSIDE THE SCOPE OF THE PROPOSED USE OF THE**
8 **UNIT;**

9 **(2) (I) THE TYPE OR TYPES OF DATA INPUTS THAT THE FACIAL**
10 **RECOGNITION SERVICE USES WHEN IT IS DEPLOYED;**

11 **(II) HOW THE DATA THAT THE FACIAL RECOGNITION SERVICE**
12 **USES IS GENERATED, COLLECTED, AND PROCESSED; AND**

13 **(III) THE TYPE OR TYPES OF DATA THE FACIAL RECOGNITION**
14 **SERVICE IS REASONABLY LIKELY TO GENERATE;**

15 **(3) A DESCRIPTION OF THE PURPOSE AND PROPOSED USE OF THE**
16 **FACIAL RECOGNITION SERVICE, INCLUDING:**

17 **(I) WHAT DECISIONS DATA FROM THE FACIAL RECOGNITION**
18 **SERVICE WILL BE USED TO MAKE OR SUPPORT;**

19 **(II) WHETHER DATA FROM THE FACIAL RECOGNITION SERVICE**
20 **WILL BE USED TO SUPPORT A DECISION OR AS THE SOLE BASIS FOR MAKING A**
21 **DECISION; AND**

22 **(III) THE INTENDED BENEFITS OF THE USE OF THE FACIAL**
23 **RECOGNITION SERVICE, INCLUDING ANY DATA OR RESEARCH DEMONSTRATING THE**
24 **INTENDED BENEFITS;**

25 **(4) A USE AND DATA MANAGEMENT POLICY, INCLUDING PROTOCOLS**
26 **FOR:**

27 **(I) HOW AND WHEN THE FACIAL RECOGNITION SERVICE WILL**
28 **BE DEPLOYED OR USED AND BY WHOM, INCLUDING:**

29 **1. THE FACTORS THAT WILL BE USED TO DETERMINE**
30 **WHERE, WHEN, AND HOW THE FACIAL RECOGNITION SERVICE IS DEPLOYED, AND**
31 **OTHER RELEVANT INFORMATION, INCLUDING WHETHER THE FACIAL RECOGNITION**

SERVICE WILL BE OPERATED CONTINUOUSLY OR USED ONLY UNDER SPECIFIC CIRCUMSTANCES; AND

2. IF THE FACIAL RECOGNITION SERVICE WILL BE OPERATED OR USED BY ANOTHER ENTITY ON THE UNIT'S BEHALF, A DESCRIPTION OF THE OTHER ENTITY'S ACCESS TO THE FACIAL RECOGNITION SERVICE AND ANY APPLICABLE PROTOCOLS;

(II) ANY MEASURES TAKEN TO MINIMIZE INADVERTENT COLLECTION OF ADDITIONAL DATA BEYOND THE AMOUNT NECESSARY FOR THE SPECIFIC PURPOSE FOR WHICH THE FACIAL RECOGNITION SERVICE WILL BE USED;

(III) DATA INTEGRITY AND RETENTION POLICIES APPLICABLE TO THE DATA COLLECTED USING THE FACIAL RECOGNITION SERVICE, INCLUDING:

1. HOW THE UNIT WILL MAINTAIN AND UPDATE RECORDS USED IN CONNECTION WITH THE FACIAL RECOGNITION SERVICE;

2. HOW LONG THE UNIT WILL KEEP THE DATA; AND

3. THE PROCESS THAT WILL BE USED TO DELETE THE DATA;

(IV) ANY ADDITIONAL RULES THAT WILL GOVERN THE USE OF THE FACIAL RECOGNITION SERVICE AND WHAT PROCESSES WILL BE REQUIRED BEFORE EACH USE OF THE FACIAL RECOGNITION SERVICE;

(V) 1. DATA SECURITY MEASURES APPLICABLE TO THE FACIAL RECOGNITION SERVICE, INCLUDING MEASURES FOR THE SECURE STORAGE AND ACCESS OF DATA COLLECTED USING THE FACIAL RECOGNITION SERVICE;

2. WHETHER THE UNIT INTENDS TO SHARE ACCESS TO THE FACIAL RECOGNITION SERVICE OR THE DATA FROM THE FACIAL RECOGNITION SERVICE WITH ANY OTHER ENTITY AND, IF SO, THE REASON FOR SHARING ACCESS; AND

3. THE RULES AND PROCEDURES BY WHICH A UNIT SHARING DATA WITH ANY OTHER ENTITY WILL ENSURE THAT THE OTHER ENTITY COMPLIES WITH THE UNIT'S USE AND DATA MANAGEMENT POLICY AS PART OF THE DATA SHARING AGREEMENT; AND

(VI) THE UNIT'S TRAINING PROCEDURES, INCLUDING:

1 1. PROCEDURES IMPLEMENTED IN ACCORDANCE WITH §
2 10-1707 OF THIS SUBTITLE; AND

3 2. HOW THE UNIT WILL ENSURE THAT ALL PERSONNEL
4 WHO OPERATE THE FACIAL RECOGNITION SERVICE OR ACCESS ITS DATA ARE
5 KNOWLEDGEABLE ABOUT AND ABLE TO ENSURE COMPLIANCE WITH THE USE AND
6 DATA MANAGEMENT POLICY BEFORE USE OF THE FACIAL RECOGNITION SERVICE;

7 (5) THE UNIT'S TESTING PROCEDURES, INCLUDING THE UNIT'S
8 PROCESSES FOR PERIODICALLY UNDERTAKING OPERATIONAL TESTS OF THE
9 FACIAL RECOGNITION SERVICE IN ACCORDANCE WITH § 10-1706 OF THIS SUBTITLE;

10 (6) A DESCRIPTION OF ANY POTENTIAL IMPACTS OF THE FACIAL
11 RECOGNITION SERVICE ON CIVIL RIGHTS AND LIBERTIES, INCLUDING:

12 (i) POTENTIAL IMPACTS ON PRIVACY AND POTENTIAL
13 DISPARATE IMPACTS ON MARGINALIZED COMMUNITIES; AND

14 (ii) THE SPECIFIC STEPS THE UNIT WILL TAKE TO MITIGATE THE
15 POTENTIAL IMPACTS AND PREVENT UNAUTHORIZED USE OF THE FACIAL
16 RECOGNITION SERVICE; AND

17 (7) THE UNIT'S PROCEDURES FOR RECEIVING FEEDBACK, INCLUDING
18 THE METHODS USED FOR RECEIVING FEEDBACK FROM INDIVIDUALS AFFECTED BY
19 THE USE OF THE FACIAL RECOGNITION SERVICE AND FROM THE COMMUNITY AT
20 LARGE, AS WELL AS THE PROCEDURES FOR RESPONDING TO THE FEEDBACK.

21 (c) BEFORE FINALIZING AND IMPLEMENTING THE ACCOUNTABILITY
22 REPORT, THE UNIT SHALL CONSIDER ISSUES RAISED BY THE PUBLIC THROUGH:

23 (1) A PUBLIC REVIEW AND COMMENT PERIOD; AND

24 (2) COMMUNITY CONSULTATION MEETINGS DURING THE PUBLIC
25 REVIEW PERIOD.

26 (d) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, EACH UNIT
27 SHALL UPDATE THE UNIT'S ACCOUNTABILITY REPORT EVERY 2 YEARS.

28 (2) EACH UPDATE SHALL BE SUBJECT TO THE PUBLIC COMMENT AND
29 COMMUNITY CONSULTATION MEETINGS REQUIREMENTS DESCRIBED IN
30 SUBSECTION (C) OF THIS SECTION.

31 (e) A UNIT SEEKING TO USE A FACIAL RECOGNITION SERVICE FOR A

PURPOSE NOT DISCLOSED IN THE UNIT'S MOST RECENT ACCOUNTABILITY REPORT SHALL FIRST SEEK PUBLIC COMMENT AND COMMUNITY CONSULTATION ON THE PROPOSED NEW USE AND ADOPT AN UPDATED ACCOUNTABILITY REPORT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

10-1704.

(A) EACH UNIT USING A FACIAL RECOGNITION SERVICE SHALL PREPARE AND PUBLISH AN ANNUAL REPORT THAT DISCLOSES:

(1) THE EXTENT OF THE UNIT'S USE OF THE FACIAL RECOGNITION SERVICE;

(2) AN ASSESSMENT OF COMPLIANCE WITH THE TERMS OF THE UNIT'S ACCOUNTABILITY REPORT;

(3) ANY KNOWN OR REASONABLY SUSPECTED VIOLATIONS OF THE UNIT'S ACCOUNTABILITY REPORT, INCLUDING COMPLAINTS ALLEGING VIOLATIONS; AND

(4) ANY REVISIONS TO THE UNIT'S ACCOUNTABILITY REPORT RECOMMENDED BY THE UNIT FOR THE NEXT UPDATE OF THE REPORT.

(B) EACH UNIT SHALL SUBMIT THE ANNUAL REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION TO THE DEPARTMENT OF INFORMATION TECHNOLOGY.

(C) EACH UNIT SHALL HOLD A COMMUNITY MEETING TO REVIEW AND DISCUSS THE ANNUAL REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION WITHIN 60 DAYS BEFORE THE REPORT IS SUBMITTED UNDER SUBSECTION (B) OF THIS SECTION.

10-1705.

(A) EACH UNIT THAT USES A FACIAL RECOGNITION SERVICE TO MAKE DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS SHALL ENSURE THAT THE DECISIONS ARE SUBJECT TO MEANINGFUL HUMAN REVIEW.

(B) FOR THE PURPOSE OF SUBSECTION (A) OF THIS SECTION, DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS INCLUDE DENIAL OF CONSEQUENTIAL SERVICES OR SUPPORT, INCLUDING FINANCIAL AND LENDING SERVICES, HOUSING, INSURANCE, EDUCATION

1 ENROLLMENT, CRIMINAL JUSTICE, EMPLOYMENT OPPORTUNITIES, HEALTH CARE
2 SERVICES, AND ACCESS TO FOOD, WATER, AND OTHER BASIC NECESSITIES.

3 10-1706.

4 (A) BEFORE A UNIT DEPLOYS A FACIAL RECOGNITION SERVICE IN THE
5 CONTEXT IN WHICH IT WILL BE USED AND SUBJECT TO SUBSECTION (B) OF THIS
6 SECTION, THE UNIT SHALL TEST THE FACIAL RECOGNITION SERVICE IN
7 OPERATIONAL CONDITIONS.

8 (B) THE UNIT SHALL TAKE REASONABLE STEPS TO:

9 (1) ENSURE BEST-QUALITY RESULTS IN OPERATIONAL CONDITIONS
10 BY FOLLOWING ALL REASONABLE GUIDANCE PROVIDED BY THE DEVELOPER OF THE
11 FACIAL RECOGNITION SERVICE; AND

12 (2) MITIGATE ANY MATERIAL UNFAIR PERFORMANCE DIFFERENCES
13 ACROSS SUBPOPULATIONS.

14 10-1707.

15 (A) EACH UNIT THAT USES A FACIAL RECOGNITION SERVICE SHALL
16 CONDUCT PERIODIC TRAINING OF ALL INDIVIDUALS WHO OPERATE THE FACIAL
17 RECOGNITION SERVICE OR WHO PROCESS PERSONAL DATA OBTAINED FROM THE
18 USE OF THE FACIAL RECOGNITION SERVICE.

19 (B) THE TRAINING REQUIRED UNDER THIS SECTION SHALL INCLUDE
20 COVERAGE OF:

21 (1) THE CAPABILITIES AND LIMITATIONS OF THE FACIAL
22 RECOGNITION SERVICE;

23 (2) PROCEDURES TO INTERPRET AND ACT ON THE OUTPUT OF THE
24 FACIAL RECOGNITION SERVICE; AND

25 (3) TO THE EXTENT APPLICABLE TO THE DEPLOYMENT CONTEXT, THE
26 MEANINGFUL HUMAN REVIEW REQUIREMENT FOR DECISIONS THAT PRODUCE
27 LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS.

28 10-1708.

29 (A) A UNIT MAY NOT USE A FACIAL RECOGNITION SERVICE TO ENGAGE IN
30 ONGOING SURVEILLANCE UNLESS:

(1) THE USE IS IN SUPPORT OF LAW ENFORCEMENT ACTIVITIES;

**(2) THE USE MAY PROVIDE EVIDENCE OF A SERIOUS CRIMINAL
OFFENSE; AND**

**(3) (I) A SEARCH WARRANT HAS BEEN OBTAINED TO AUTHORIZE
THE USE OF THE FACIAL RECOGNITION SERVICE FOR ONGOING SURVEILLANCE; OR**

**(II) IF THE UNIT REASONABLY DETERMINES THAT ONGOING
SURVEILLANCE IS NECESSARY TO PREVENT OR RESPOND TO AN EMERGENCY
INVOLVING IMMINENT DANGER OR RISK OF DEATH OR SERIOUS PHYSICAL INJURY
TO AN INDIVIDUAL, WRITTEN APPROVAL IS OBTAINED FROM THE HEAD OF THE UNIT,
OR THE HEAD'S DESIGNEE, BEFORE USING THE FACIAL RECOGNITION SERVICE AND
A SEARCH WARRANT IS SUBSEQUENTLY OBTAINED WITHIN 48 HOURS AFTER THE
ONGOING SURVEILLANCE BEGINS.**

**(B) (1) A UNIT MAY NOT APPLY A FACIAL RECOGNITION SERVICE TO ANY
INDIVIDUAL BASED ON THE INDIVIDUAL'S RELIGIOUS, POLITICAL, OR SOCIAL VIEWS
OR ACTIVITIES, PARTICIPATION IN A PARTICULAR NONCRIMINAL ORGANIZATION OR
LAWFUL EVENT, OR ACTUAL OR PERCEIVED RACE, ETHNICITY, CITIZENSHIP, PLACE
OF ORIGIN, AGE, DISABILITY, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION,
OR OTHER CHARACTERISTIC PROTECTED BY LAW.**

**(2) THE PROHIBITION ESTABLISHED UNDER PARAGRAPH (1) OF THIS
SUBSECTION DOES NOT PROHIBIT A UNIT FROM APPLYING A FACIAL RECOGNITION
SERVICE TO AN INDIVIDUAL WHO HAPPENS TO POSSESS ONE OR MORE OF THE
CHARACTERISTICS DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION IF AN
OFFICER OF THE UNIT HOLDS A REASONABLE SUSPICION THAT THE INDIVIDUAL HAS
COMMITTED, IS COMMITTING, OR IS ABOUT TO COMMIT A SERIOUS CRIMINAL
OFFENSE.**

**(C) A UNIT MAY NOT USE A FACIAL RECOGNITION SERVICE TO CREATE A
RECORD DESCRIBING ANY INDIVIDUAL'S EXERCISE OF RIGHTS GUARANTEED BY THE
FIRST AMENDMENT OF THE U.S. CONSTITUTION OR BY THE MARYLAND
DECLARATION OF RIGHTS UNLESS:**

**(1) THE USE IS SPECIFICALLY AUTHORIZED BY APPLICABLE LAW AND
RELATES TO AND IS WITHIN THE SCOPE OF AN AUTHORIZED LAW ENFORCEMENT
ACTIVITY; AND**

**(2) THERE IS REASONABLE SUSPICION TO BELIEVE THE INDIVIDUAL
HAS COMMITTED, IS COMMITTING, OR IS ABOUT TO COMMIT A SERIOUS CRIMINAL**

1 OFFENSE.

2 10-1709.

3 (A) IF A UNIT IS USING A FACIAL RECOGNITION SERVICE ON A CRIMINAL
4 DEFENDANT, THE UNIT SHALL DISCLOSE THE USE TO THE CRIMINAL DEFENDANT IN
5 A TIMELY MANNER BEFORE TRIAL.

6 (B) EACH UNIT USING A FACIAL RECOGNITION SERVICE SHALL MAINTAIN
7 RECORDS OF ITS USE OF THE FACIAL RECOGNITION SERVICE THAT ARE SUFFICIENT
8 TO FACILITATE PUBLIC REPORTING AND AUDITING OF COMPLIANCE WITH THE
9 APPLICABLE ACCOUNTABILITY REPORT.

10 (C) ON OR BEFORE JANUARY 31 EACH YEAR, EACH JUDGE WHO HAS ISSUED
11 A WARRANT FOR ONGOING SURVEILLANCE USING A FACIAL RECOGNITION SERVICE
12 OR AN EXTENSION OF A WARRANT FOR ONGOING SURVEILLANCE USING A FACIAL
13 RECOGNITION SERVICE THAT EXPIRED DURING THE IMMEDIATELY PRECEDING
14 CALENDAR YEAR, OR WHO HAS DENIED APPROVAL OF A REQUEST FOR A WARRANT
15 FOR ONGOING SURVEILLANCE USING A FACIAL RECOGNITION SERVICE DURING THE
16 IMMEDIATELY PRECEDING CALENDAR YEAR, SHALL REPORT TO THE COURT OF
17 APPEALS:

18 (1) THAT THE WARRANT OR EXTENSION WAS APPLIED FOR;

19 (2) THAT THE WARRANT OR EXTENSION WAS GRANTED AS APPLIED
20 FOR, WAS MODIFIED, OR WAS DENIED;

21 (3) IF THE WARRANT WAS GRANTED, THE PERIOD FOR WHICH THE
22 ONGOING SURVEILLANCE WAS AUTHORIZED BY THE WARRANT AND THE NUMBER
23 AND DURATION OF ANY EXTENSIONS OF THE WARRANT;

24 (4) THE IDENTITY OF THE INVESTIGATIVE OR LAW ENFORCEMENT
25 OFFICER AND UNIT MAKING THE APPLICATION AND THE INDIVIDUAL AUTHORIZING
26 THE APPLICATION; AND

27 (5) THE NATURE OF THE PUBLIC SPACES WHERE THE ONGOING
28 SURVEILLANCE WAS CONDUCTED.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act supersedes and
30 preempts laws, ordinances, regulations, or the equivalent adopted by a political subdivision
31 regarding the development, use, or deployment of facial recognition services.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2020.

