Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 857   (Senator Sydnor)

Finance

Facial Recognition Services - Moratorium

This emergency bill generally prohibits the use of facial recognition services (or any information derived from facial recognition services) in the State. The bill defines "facial recognition service as" technology that analyzes facial features and is used for recognition or persistent tracking of individuals in still or video images. The Office of the Attorney General has exclusive authority to enforce the bill by bringing an action in the name of the State, or as *parens patriae* on behalf of persons residing in the State. A violator may be subject to an injunction and be liable for a civil penalty of up to $2,500 for each unintentional violation or $7,500 for each intentional violation. The bill also declares various findings of the General Assembly related to facial recognition services. **The bill abrogates after one year.**

Fiscal Summary

State Effect: State law enforcement operations may be significantly affected, as discussed below. Potential minimal increase in general fund revenues as a result of violations.

Local Effect: Local law enforcement operations may be significantly affected, as discussed below. Revenues are likely not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: According to news reports, local law enforcement agencies have used facial recognition software to varying degrees in recent years. For example, the Maryland Image Repository System (MIRS) is facial recognition software within the

Department of Public Safety and Correctional Services that allows law enforcement to compare images of unidentified individuals to images from Motor Vehicle Administration records, inmate case records, and mugshots. People in public places are never scanned by MIRS. MIRS only gives a probable list of potential suspects to be followed up on by law enforcement, not a positive identification. Currently, local law enforcement agencies in the State are responsible for establishing a policy regarding the use of MIRS and decide when, where, and how it is used. The Anne Arundel County Police Department (AAPD) used MIRS to identify the suspected gunman at the *Capital Gazette* shooting that killed five people. AAPD used MIRS because the fingerprint identification system was operating slowly and the suspect did not have identification and refused to communicate with officers. The suspect's image was contained in MIRS because of a prior charge and conviction. The Baltimore City Police Department also reportedly used facial recognition software to identify individuals during the protests after the death of Freddie Gray.

The use of facial recognition in law enforcement investigations is also attracting national attention. In October 2019, California became the third state to ban biometric surveillance technology, including facial recognition software, in body cameras. The law, which went into effect on January 1, 2020, and remains in effect for three years, also prohibits running previously obtained body camera footage through biometric surveillance technology.

Critics of the use of facial recognition technology point out that, although law enforcement has had access to facial recognition tools for many years, it has generally relied on images from government databases, rather than private entities. However, as the technology has improved, private companies have been able to offer products that use facial recognition technology for virtually any database of images.

State/Local Fiscal Effect: State and local law enforcement operations may be significantly impacted by the bill, as it places a moratorium on the use of facial recognition services for one year. As noted above, both State and local law enforcement agencies utilize facial recognition technologies for the identification and/or tracking of suspects, to identify missing persons, and to identify certain deceased individuals.

In addition, the Maryland Department of Transportation (MDOT) advises that, although not yet implemented, MDOT has coordinated with U.S. Customs and Border Protection on a potential biometric entry/exit system at the Baltimore/Washington International Thurgood Marshall Airport to meet the requirements for pre-clearance of passengers in the international terminal under the Intelligence Reform and Terrorism Prevention Act. Presumably, this would have to be delayed for one year or possibly would not be implemented under the bill.

The bill's penalty provisions may result in an increase in general fund revenues; however, the number of violations that may occur during the one-year moratorium established by the bill is indeterminable.

Small Business Effect: Any small businesses in the State whose business activities involve facial recognition services may be significantly impacted under the bill, which prohibits the use of such technologies for a one-year period. However, the number of small businesses in the State that may be affected cannot be determined.

Additional Comments: The bill does not apply to the Legislative and Judicial branches of State government.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Information Technology; Maryland Association of Counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; *The Washington Post*; *The Baltimore Sun*; *The New York Times*; Department of Legislative Services

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