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Judicial Proceedings Committee

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Joint Committee on
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 15, 2020

Senate Judicial Proceedings Committee
Senate Bill 46 – State's Attorney – Required Disclosure – Facial Recognition and DNA Analysis and Search

Senate Bill 46 is a very simple bill surrounding a very complicated subject. Facial recognition and DNA matching analysis are fancy new tools; these tools are not inherently dangerous, but when applied in combination with circumstantial evidence, they can create unintended consequences that undermine our system of due process. Technology is outpacing policymaking across the board, but because this new technology is used in our criminal justice system, our committee has a heightened responsibility to examine these tools and regulate their use.

This committee will consider additional legislation on facial recognition this session that will require complicated expert testimony to explain how use of this technology has grown in Maryland and why legislative or regulatory intervention is necessary. In short, it is too easy to use these tools as fishing expeditions rather than for the biometric matching purpose for which they should be utilized. You can't give a blind man sight and ask him not to look around. But we do. This bill is not about taking away that sight, rather it is a first step to ensuring that these new technologies can be questioned in courts for the biases they can induce.

The Department of Public Safety and Correctional Services runs the Maryland Image Repository System (MIRS). Several members of the General Assembly and staff were given a demonstration of the system, which includes mug shots and driver's license photos, as well the underlying non-biometric information such as addresses, names, and all of the information required to look into past similar criminal behavior, or proximity to a crime-scene. Certainly, a

keen detective would look into this circumstantial evidence, but that becomes problematic when the bio-metric match is occurring simultaneously.

There is a good reason this information is not admissible as evidence, but there remains a possibility that the use of the technology could cloud the determinations of investigators and narrow their suspects to people who they can more easily tie to the admissible evidence they have at hand. That is not bad policing, it is good policing, but we are just giving them the wrong tool for the job. Instead of an unregulated automated system that runs itself, these tools need oversight and accountability. SB 46 merely requires timely notice to criminal defendants that this technology was used in the relevant criminal investigation.

Good prosecutors have agreed that they would share all information that was relevant in an investigation to the defense counsel. The Maryland States Attorneys Association has communicated to me that they are ok with this provision as it applies to facial recognition programs. While we want to have a debate on the DNA provision, we will push only the facial recognition provision this session in this vehicle, but I encourage my colleagues to be prepared for a debate on that subject in the coming years if not months.

For these reasons, I request a favorable report, as amended, for SB 46.