

February 13, 2024

The Honorable Luke Clippinger Chair Judiciary Committee Maryland House of Delegates Annapolis, MD 21401

Re: Written Testimony of SIA in Support of HB 338, Regarding Law Enforcement Use of Facial Recognition Technology

Dear Chair Clippinger, Vice-Chair Bartlett and Members of the House Judiciary Committee:

On behalf of the Security Industry Association (SIA) I am writing to express our support for HB 338 in its current form. SIA is a nonprofit trade association in Silver Spring, MD that represents more than 1,400 companies providing a broad range of security products and services in the U.S and throughout Maryland. Our members include the leading providers of facial recognition software tools available to U.S. law enforcement.

Ensuring Responsible, Effective and Non-Discriminatory Use

If enacted, we believe HB 338/SB 182 would be the strongest measure in the country for regulating the use of facial recognition technology by state and local law enforcement agencies, in a way that both addresses public concerns and preserves proven capabilities. We commend the sponsors for their openness to working with stakeholders with subject matter expertise across law enforcement, industry and civil society in drafting the measure, as an accurate understanding of the technology and its place within existing investigative procedures is essential to policymaking in this area.

There is growing consensus among law enforcement professionals on the necessity of facial recognition as an available tool in investigations, as well as appropriate procedures surrounding its use. For well over a decade, Maryland communities have benefitted from effective use of these tools by agencies throughout the state to quickly develop leads in criminal investigations, solve cold cases and help citizens in need. There are many specific successes documented by Maryland law enforcement agencies using the technology demonstrating the clear benefit to public safety. The technology has also been an indispensable tool in fighting child sexual exploitation and human trafficking in Maryland. There are several organizations that provide the technology as part of investigator tools for searching online information to help make identifications in these cases. For example, the Thorn organization's Spotlight tool is credited with helping rescue more than 17,000 children from trafficking.

¹ https://www.securityindustry.org/2020/07/16/facial-recognition-success-stories-showcase-positive-use-cases-of-the-technology/

² https://www.thorn.org/spotlight/

At the same time, some public concerns have surfaced over whether the photo-matching technology is accurate, and how it might be used in the absence of uniform rules. Many advanced technologies offer both tremendous benefits and the potential for misuse, and we support policies ensuring facial recognition is only used for appropriate purposes consistent with SIA's *Principles for the Responsible and Effective Use of Facial Recognition Technology*. Applicable to law enforcement, we believe establishing key foundational safeguards in statute, combined with more thorough requirements in agency procedural rules, is the most effective legislative approach to building greater public trust, while allowing agencies to harness advances in technology and procedures over time.

Consensus on Core Rules

At its core, the bill would do just that, by establishing a statewide policy that is the same across state, county and city law enforcement agencies, subject to key requirements and limitations. This will bolster confidence that Maryland law enforcement agencies are leveraging facial recognition software in a lawful, effective, accurate and non-discriminatory manner that benefits our residents and communities. This includes:

- Establishing a statewide standard for state and local agency policies on authorized use of the technology.
- Prohibiting use of facial recognition match results as the sole basis to make an arrest, establish probable cause or make a positive identification.
- Prohibiting use of the technology to identify individuals engaged in constitutionally protected activities, or based solely on their race, color, religious beliefs, sexual orientation, gender, disability, national origin and other classifications protected by law from discrimination.
- Ensuring potential match results from the software can never be used as evidence against a defendant.
- Requiring an agency program coordinator responsible for policy adherence and routine usage audits.
- Full public transparency, documentation and periodic centralized reporting on agency use of the technology.

Explained: How Law Enforcement Agencies Use Facial Recognition Technology

Facial recognition software is used daily across the U.S. to assist in identifying and capturing the most violent criminals in our country and bringing justice and closure for victims. Many investigators feel that this technology has become a game-changer for keeping our communities safe, pointing to instances where crimes would never have been solved or prevented without it. Use under appropriate policies and procedures has been endorsed by the nation's leading law enforcement professional associations.⁴

In U.S. law enforcement, the technology serves as a tool to assist investigators in generating leads regarding the identity of an unknown person of interest in an image (such as a potential witness, victim, suspect or associate) where needed in a specific ongoing case. This is a post-incident investigative tool to aid identification, not "surveillance," and in this application <u>facial recognition technology does not confirm an identity</u> or result in automated decisions. If a lead is developed, investigative techniques outside of facial comparison must be used to find and confirm information needed to positively identify a person, and if a suspect, establish probable cause to make an arrest or obtain a search warrant.

³ https://www.securityindustry.org/report/sia-principles-for-the-responsible-and-effective-use-of-facial-recognition-technology/

⁴ For example, see https://majorcitieschiefs.com/wp-content/uploads/2021/10/MCCA-FRT-in-Modern-Policing-Final.pdf.

It's critical to understand this investigatory use in context. Other non-technological methods are also routinely used to search for leads using the same type of photo (from a security camera or cell phone for example). Under traditional methods, police seek to identify a person of interest manually by looking through hundreds of mugshots with victims, canvassing areas with photos or searching a database using vague suspect descriptions or names that could easily be criminal aliases or fraudulent identities. Facial recognition technology automates and improves the first step of identifying potentially matching photos from a database.

Beyond simply improving an otherwise manual process, facial recognition also contributes to more accurate identification. As the importance of limiting human bias in police work as well as unnecessary interactions with citizens becomes increasingly clear, this software makes the process of generating and investigating leads faster and more accurate than relying only on human analysis alone. The National Institute of Science and Technology has found⁵ that forensic examiners performed best when supported by facial recognition technology and the most accurate performance resulted when these efforts are combined. Proper use of this technology is critical to protecting the innocent, as eyewitness identifications in criminal investigations are notoriously prone to error. According to the Innocence Project,⁶ mistaken eyewitness identifications have been the key factor in the vast majority of wrongful convictions in the U.S. later overturned.

Conclusion

We share the goal of ensuing responsible use of advanced technologies and support policies ensuring that facial recognition is used for appropriate purposes and in non-discriminatory ways. We urge the Committee to approve HB 338 and stand ready to provide any additional information or expertise needed as you consider these issues.

Respectfully,

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⁵ https://www.nist.gov/news-events/news/2018/05/nist-study-shows-face-recognition-experts-perform-better-ai-partner

⁶ https://innocenceproject.org/eyewitness-misidentification/