HOUSE BILL 1046

By: **Delegate Moon**
Introduced and read first time: February 10, 2022
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 2021 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

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 ONLY
32   BE ESTABLISHED USING FACIAL RECOGNITION TECHNOLOGY IF THE RESULTS ARE

1 SUPPORTED BY ADDITIONAL, INDEPENDENTLY OBTAINED EVIDENCE ESTABLISHING
2 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 2–504.

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

19 2–505.

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

26 (B) (1) BEGINNING OCTOBER 1, 2023, AND EACH OCTOBER 1
27 THEREAFTER, A LAW ENFORCEMENT AGENCY THAT USES OR CONTRACTS FOR THE
28 USE OF FACIAL RECOGNITION TECHNOLOGY SHALL COMPLETE AN AUDIT TO
29 DETERMINE COMPLIANCE WITH THIS SUBTITLE AS WELL AS APPLICABLE LOCAL
30 LAWS, REGULATIONS, AND POLICIES.

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

34 (I) MAINTAINED BY THE LAW ENFORCEMENT AGENCY FOR AT

1   LEAST 3 YEARS AFTER COMPLETION OF THE AUDIT, AFTER WHICH THE LAW
2   ENFORCEMENT AGENCY MAY DESTROY ALL AUDIT MATERIALS; AND

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

6   1.   THE ATTORNEY GENERAL;

7   2.   THE PUBLIC DEFENDER;

8   3.   A STATE'S ATTORNEY;

9   4.   A UNITED STATES ATTORNEY; OR

10   5.   A DESIGNEE OF AN INDIVIDUAL DESCRIBED IN ITEMS
11   1 THROUGH 4 OF THIS ITEM.

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

17   2–506.

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

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

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

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

28   (4)   PUBLISH ON ITS PUBLIC WEBSITE:

29   (I)   THE NAME, VERSION, AND VENDOR OF THE FACIAL

1 RECOGNITION TECHNOLOGY CURRENTLY APPROVED FOR USE UNDER ITEM **(3)** OF
2 THIS SUBSECTION; AND

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

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

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

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

15 **2–507.**

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

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

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

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

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

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

1   **2–508.**

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

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

7   **2–509.**

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

10   **2–510.**

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

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

18   **(2)**   THE TOTAL NUMBER OF POSSIBLE MATCHES RETURNED;

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

21   **(4)**   THE EXTENT OF THE USE OF THE FACIAL RECOGNITION
22   TECHNOLOGY;

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

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

28   **(II)**   THE INTENDED BENEFITS OF THE USE OF THE FACIAL
29   RECOGNITION   TECHNOLOGY,   INCLUDING   ANY   DATA   OR   RESEARCH

1 **DEMONSTRATING THE INTENDED BENEFITS;**

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

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

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

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2022.