

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 583

(Senator Sydnor)

Judicial Proceedings

**Public Safety - Law Enforcement Agencies - Acquisition and Use of Surveillance
Technology**

This bill prohibits the use of surveillance technology by a law enforcement agency, except as provided under the bill. The bill establishes the Privacy Technology Board, staffed by and within the Department of Public Safety and Correctional Services (DPSCS), and establishes the membership, terms, and duties of the board. Each law enforcement agency must obtain authorization from the board before accepting funds for, acquiring, using, or entering into agreements relating to surveillance technology. Before seeking authorization from the board, each law enforcement agency must submit a surveillance impact report to the board for each surveillance technology to be used by the agency. By March 1, 2024, and each March 1 thereafter, each law enforcement agency must report to the board, as a public record, on the operation of each surveillance technology used by the law enforcement agency in the previous calendar year. The bill also establishes enforcement provisions.

Fiscal Summary

State Effect: Potential increase in State expenditures (multiple fund types) and potential significant operational impact for some State law enforcement agencies, as discussed below. State revenues may also be affected, as discussed below.

Local Effect: Potential increase in local government expenditures and potential significant operational impact for some local law enforcement agencies, as discussed below. Local revenues may also be affected, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary:

Privacy Technology Board: The board must (1) authorize the purchase, use, or continued use of surveillance technology by law enforcement agencies; (2) authorize the use of existing surveillance technology or the information that the surveillance technology provides for a purpose, in a manner, or in a location not previously authorized by the board; (3) hold quarterly meetings with the head of each law enforcement agency within the State to review required proposed surveillance impact reports submitted by the law enforcement agency; (4) receive public input about proposed surveillance technologies; (5) review required annual reports by law enforcement agencies on the operation of surveillance technology used for the previous calendar year; and (6) make required annual reports and surveillance impact reports publicly available.

A board member may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations.

Law Enforcement Agencies: Each law enforcement agency must obtain authorization from the board before (1) accepting State funds, federal funds, or any other donations for surveillance technology; (2) acquiring new surveillance technology; (3) using new surveillance technology; (4) using existing surveillance technology or the information that the surveillance technology provides for a purpose, in a manner, or in a location not previously authorized by the board; and (5) entering into a continuing agreement or written agreement with a nongovernmental entity to acquire, share, or otherwise use surveillance technology or the information that the surveillance technology provides. However, a law enforcement agency may temporarily acquire or use surveillance technology and the data from the technology in a manner not expressly allowed by the board if (1) an exigent circumstance exists and requires the use or (2) a large-scale event occurs. If surveillance technology is acquired or used pursuant to an exigent circumstance or a large-scale event, as specified, the law enforcement agency must:

- use the surveillance technology solely to respond to the exigent circumstance or large-scale event;
- cease using the surveillance technology when the exigent circumstance or large-scale event ends;
- keep and maintain only data related to the exigent circumstance and dispose of any data that is not relevant to an ongoing investigation; and
- following the end of an exigent circumstance or large-scale event, report the acquisition or use of the surveillance technology to the board.

Before seeking authorization from the board, each law enforcement agency must submit a surveillance impact report to the board for each surveillance technology to be used by the agency. Among other required items, a surveillance impact report must include (1) a description of the surveillance technology and its proposed use; (2) whether the technology has been used or deployed in a manner that is discriminatory, viewpoint-biased, or algorithm-biased; (3) any specific technical or procedural measures that will be implemented to safeguard the public from possible discriminatory surveillance; (4) the steps that will be taken to ensure that adequate security measures are used to safeguard the data from unauthorized access; and (5) a summary of alternative methods considered before deciding to use the proposed surveillance technology.

The annual report on the operation of each surveillance technology used by the law enforcement agency in the previous calendar year must include several specified items, including (1) a description of how each surveillance technology was used by the agency; (2) how often data acquired through the use of the surveillance technology was shared with an outside entity; (3) a summary of community complaints or concerns about each surveillance technology; and (4) any data breach or unauthorized access to the data collected by each surveillance technology and any action taken in response.

Enforcement: A violation of the bill’s provisions constitutes an injury, and a person may institute proceedings for injunctive relief or declaratory relief to enforce the bill’s provisions. A person who has been subjected to a surveillance technology, or who has had personal information obtained, retained, accessed, shared, or used in violation of the bill’s provisions, may institute proceedings against the law enforcement agency and is entitled to recover actual damages of \$100 per day for each day of the violation. In any action brought to enforce the bill’s provisions, a court may award reasonable attorney’s fees to a prevailing plaintiff.

Definitions: “Exigent circumstances” means the good faith belief by a law enforcement agency that there is a danger of, or an imminent threat of the destruction of evidence regarding, death of or serious bodily injury to any person.

“Large-scale event” means an event that attracts 10,000 or more people and provides a reasonable basis to anticipate that exigent circumstances may occur.

“Surveillance technology” means any software or electronic device system primarily intended to collect, retain, analyze, process, or share information in the form of audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. “Surveillance technology” includes software designed to monitor social media services or forecast criminal activity or criminality.

Current Law: The Maryland Image Repository System (MIRS) is facial recognition software within DPSCS that allows law enforcement to compare images of unidentified individuals to images from Motor Vehicle Administration (MVA) 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.

Chapter 18 of the 2021 special session requires, notwithstanding any other provision of the Public Information Act (PIA), an officer, employee, agent, or contractor of the State or a political subdivision to deny inspection of a part of a public record that contains personal information or a photograph of an individual by any federal agency seeking access for the purpose of enforcing federal immigration law unless provided with a valid warrant. In addition, an officer, employee, agent, or contractor of the State or a political subdivision must deny inspection using a facial recognition search of a digital photographic image or actual stored data of a digital photographic image by any federal agency seeking access for the purposes of enforcing federal immigration law unless provided with a valid warrant.

“Facial recognition,” as defined under Chapter 18, means a biometric software application that identifies or verifies a person by comparing and analyzing patterns based on a person’s facial contours.

By June 1, 2023, and annually thereafter, MVA, the Department of State Police (DSP), and DPSCS must submit a report to the General Assembly on PIA requests from federal agencies seeking access to personal information, a photograph of an individual, or a facial recognition search for the purpose of federal immigration enforcement, whether the request was initiated through a State or local law enforcement agency. The report must include specified information relating to the number of requests received, the number of facial recognition searches completed, and the number of individuals whose personal information or photograph was provided to a federal agency.

In 2021, Baltimore City passed an ordinance prohibiting a person from obtaining, retaining, accessing, or using in Baltimore City (1) any face surveillance system or (2) any information obtained from a face surveillance system. The ordinance does not apply to the use of MIRS. “Person” is defined broadly to include individuals, legal entities, and the Baltimore City government, among others (although public sector entities are excluded from the penalties provision). A “face surveillance system” means any computer software or application that performs “face surveillance,” defined as an automated or semi-automated process that assists in identifying or verifying an individual based on the physical characteristics of an individual’s face.

State Fiscal Effect: The bill may result in an increase in State expenditures (multiple fund types) – and a potential decrease in State revenues – for some State agencies with law enforcement units to the extent the bill results in the need for additional overtime or staff or the loss of funding that agencies might otherwise be able to obtain. In addition, the bill results in potentially significant operational impacts for several State agencies with law enforcement units. For example:

- DSP advises that it often seeks grants for the purchase of new technology and having to wait for board approval or denial may result in the loss of funds to the agency.
- The Natural Resources Police (NRP) within the Department of Natural Resources advises that, absent approval by the board, the agency may be restricted in its use of technology in places and times that a patrol officer cannot be present to observe criminal activity. As a result, NRP anticipates an increase in costs for overtime and/or additional staff. NRP further reports that the requirement to make information publicly available regarding surveillance may reveal times, places, and techniques that could assist violators in evading law enforcement efforts.
- The Alcohol and Tobacco Commission (ATC) similarly advises that the bill has an operational impact on its ability to conduct investigations related to the transportation and sale of alcohol and tobacco. ATC advises that costs may increase if additional time is needed to conduct an investigation while waiting for approval from the board or if the use of certain technology is denied and more staff must be hired in order to complete investigations.

DPSCS, the Department of Juvenile Services, the Department of General Services, and the Maryland Department of Transportation advise that they can implement the bill with existing budget resources.

The Administrative Office of the Courts does not anticipate a significant fiscal or operational impact on the trial courts as a result of the bill.

Any expense reimbursements for board members are assumed to be minimal and absorbable within existing budgeted resources.

Local Fiscal Effect: Similar to State law enforcement agencies, the bill may result in an increase in local expenditures – and a potential decrease in local revenues – for some local law enforcement agencies to the extent the bill results in the need for additional overtime or staff, an increase in insurance premiums, or the loss of funding that agencies might otherwise be able to obtain. However, local government expenditures for some law enforcement agencies may decrease if technology is not approved as a result of the bill, as

they would no longer incur costs to purchase it. In addition, local law enforcement agencies likely experience significant operational impacts.

For example, Charles County advises that if claims against the county increase as a result of the bill, insurance premiums for the county increase. The City of Laurel reports that the bill has a negative impact on the city's law enforcement agency's ability to conduct investigations.

The Maryland Association of Counties advises that the bill creates a potential fiscal and operational burden for law enforcement agencies. The Maryland Municipal League advises that the bill may result in a decrease in expenses for municipalities if technology is not approved for use by the board and cannot be purchased.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Charles and Garrett counties; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Alcohol and Tobacco Commission; Comptroller's Office; Judiciary (Administrative Office of the Courts); Baltimore City Community College; University System of Maryland; Morgan State University; Department of General Services; Department of Housing and Community Development; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2023
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