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Judicial Proceedings Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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Senate Judicial Proceedings Committee

Senate Bill 836 - Public Safety - Maryland Image Repository System - Access

The Maryland Image Repository System (MIRS) utilizes unreliable facial recognition technology with untraceable access and contains enough non-biometric information to construct a circumstantial case before any positive physical identification is completed. SB 836 offers sensible privacy thresholds that allow the use of facial recognition technology for approved and verifiable purposes. Automated access is convenient, but not appropriate for the sensitive nature of facial recognition algorithms coupled with every Marylander's driver's license information. If misuse can't be tracked, it can't be effectively deterred.

The root of the technical privacy protection is to take MIRS off of the system known as the "Dashboard." Otherwise, the DPSCS, where it is housed, will rightly signal that it is impossible to monitor the automatic access program as it is currently structured. There is no threshold qualification for accessing the MIRS system beyond access to the NICS system, and MIRS will populate 234 potential targets in a search, essentially enabling a fishing expedition with all of the underlying data attached to the search queries. In comparison, the FBI only releases a few potential targets per search, but it's accuracy is much higher than the MIRS program.

There is no proven or demonstrated benefit to have access to this information at the scene of a crime. The Capital Gazette shooter was identified with facial recognition, but only after-the-fact, so the benefit of that is not clear to me, although widely hyped. It is much more concerning that the technology was being used in the Baltimore protests and there is literally no enforcement mechanism to control its use. There is a box that is clicked on, and untraceable access is granted.

The MIRS program and the underlying data it contains from the MVA, as well as mug shots, does not serve the same purpose as the other databases within the Dashboard. Let's do what other states

do and manually approve access to this sensitive information, and when we provide it, let's confirm the image matches before we share information such as their address and even the names, which could reveal criminal histories or other prejudicial indicators. This info is irrelevant to the biometric match and therefore inappropriate. Don't blame curious investigators; provide privacy protections up front.

This bill has three parts and two overarching measures. Section 2-301 contains definitions, 2-302 is focused on access, and 2-303 is a requirement for an MOU with each federal agency authorized to access MIRS. The two main provisions, which are largely duplicated in 2-302 and 2-303 are to, 1) create standards and thresholds for use, and, 2) create a mechanism to audit the use and misuse of the facial recognition software. We also limit the underlying data that is shared with the user, so that an actual positive facial recognition is what is being done, instead of lining up other unrelated circumstantial evidence with everyone who pops up on the screen as potential targets. Instead of being out in the streets, we fear many are on their computers trying to find linkages when none exists, except that someone doesn't have an alibi and resembles a criminal. Moreover, we want to limit the use for actual criminal investigations, instead of allowing officers to stalk ex-girlfriends for instance.

The accessibility of MIRS on the Dashboard might even be inconsistent with the General Provisions Article Section 4-320(g) because those that re-disclose the personal information shall (i) keep a record for 5 years of the person to whom the information is re-disclosed and the purpose for which the information is to be used; and (ii) make the record available to the custodian on request. We have been told MIRS can't track who the data was shared with, in fact when we asked DPSCS to answer inquiries about who has accessed MIRS we were told there was only a few saved searches at all, out of hundreds and hundreds of ghost accessors. Don't we want to know who is accessing our facial recognition program with access to our licenses?

I decided it was necessary to introduce facial recognition legislation this session when I read about ICE accessing our databases and using the technology to locate our tier II driver's license holders, who some could deduce are undocumented residents. I was horrified that this data that was created as an incentive to have drivers obtain insurance, could be weaponized as a way to round up our fellow Marylanders for deportation. Senator Lam has another privacy bill that will be heard on Thursday that more directly focuses on ICE access to the MVA's data, however, SB 836 has the benefit of providing broad guardrails against the misuse of the developing technology of facial recognition across the board. Both vehicles complement each other.

I am preparing some amendments to slim the fiscal note by removing the Department's audit requirements. That role could be done more cheaply if housed under a different agency or perhaps simply a legislative audit. The now reduced cost of this legislation is also de minimis compared to the alternative, which is an irreversible loss of privacy and an encroaching surveillance state. If the utility of this technology isn't worth trying to find the right privacy balance, perhaps that speaks volumes and we should certainly consider Senator Sydnor's bill.

For these reasons, I respectfully request a favorable report on SB 836, as amended.