MARYLAND OFFICE OF THE PUBLIC DEFENDER- FORENSICS DIVISION
TESTIMONY IN SUPPORT OF SENATE BILL587 WITH AMENDMENTS

The Office of the Public Defender supports Senate Bill 587 with amendments.

The use of facial recognition programs by the government raises all sorts of privacy concerns as this is yet another technology that allows us to be more easily surveilled. This is even more concerning when the accuracy and efficacy of the facial recognition programs used to identify individuals is uncertain.

Senator Sydnor deserves a lot of credit for taking this difficult subject head on, and this bill is an important first step in creating guard rails. However, because this area of technology is in its nascency, the many of the standards, guidelines and proficiency assessments to ensure its proper use, simply have not been developed. These considerations are reflected in our proposed amendments, which have been given to the bill's sponsor.

Facial recognition searches are very similar in operation to fingerprint searches. An image is captured, it is prepared to be searched in the database, and the algorithm selects a list of the top candidates. Those candidates are reviewed by the machine operator, who determines if one of the candidates is a match.

As one can see, there are several variables that can affect the search:

(1) the quality of the initial image;

(2) how that image is prepared to be entered into the database; (i.e. lightened, darkened, rotated, etc.), which presumably is addressed by training of the individual operator;

(3) the quality of the algorithm that selects the prospective candidates.;

(4) the ability of the operator to select the proper match (assuming it is there) from the list of candidates.

As shown, the facial recognition algorithm is only one component of the analysis. The training of the individual operators is also very important as is the quality of the initial image. Currently, standards for each of these areas are still being developed. Until proficiency standards are set for

the algorithms used, and the humans who operate the machines, we have to be very circumspect in the use of this technology.

To address these concerns, we have suggested the following amendments.

First, we propose limiting the use of this technology to developing investigative leads, and not to allow its use for probable cause purposes or as evidence in court. As previously stated, the standards are not in place to ensure its reliable use.

Second, that a board be set up to review the use of Facial Recognition technology and make policy recommendations as the contours of this technology area come more into focus.

Third, that in addition to the use of the technology in an investigation being disclosed to criminal defendants, the original facial image collected, the image as uploaded, and the candidate list of any search during the investigation should be disclosed as well.

Ideally, the use of this technology would be put on hold until these issues were ironed out. However, since that is not possible, this bill could be a good first step to providing guard rails to the use of this technology.