



Maryland Chiefs of Police Association Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William Smith, Jr., Chair and
Members of the Judicial Proceedings Committee

FROM: Chief of Staff David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: March 10, 2022

RE: **SB 762 – Criminal Procedure - Facial Recognition Technology -
Requirements, Procedures, and Prohibitions**

POSITION: **OPPOSE**

Since July 2021, the Maryland Sheriffs' Association (MSA) and the Maryland Chiefs of Police Association (MCPA) were pleased to participate with other stakeholders in a facial recognition working group formed by Senator Sydnor and Delegate Moon, at their request. Although there has been some productive dialogue over the last six months, the group has been unable to reach a consensus regarding a mutually agreeable bill. This has resulted in the production of a bill which restricts law enforcement's legitimate use of the technology, and we feel it is imperative that changes be made to SB 762. If changes are not made to this bill, public safety and crime victims could be adversely affected. Therefore, the MSA and the MCPA **OPPOSE SB 762** in its current form.

Maryland law enforcement has successfully used facial recognition technology for many years. We recognize that there are misunderstandings surrounding facial recognition technology and its uses. There are many false narratives fueled by Hollywood portrayals which vastly misrepresent how law enforcement agencies legitimately use facial recognition. For example, facial recognition in Maryland is not used as ongoing government surveillance and it's not connected real time to live CCTV, Drone, Aviation or Body Worn Camera video. In reality, the facial recognition is primarily used in criminal investigations following an incident and under a process that requires a great deal of manual, human analysis, and an image of a sufficient quality to make a possible match.

The MCPA and MSA support the intention of the bill to establish safeguards for government use of the technology and we agree there should be use restrictions to ensure there is no intrusion on constitutionally protected activities. The successful use of facial recognition technology in Maryland has aided in the identification of people whose images have been recorded

on-camera committing robberies, burglaries, car jacking's, assaults, rapes, sexual assaults, shootings, homicides, kidnappings, hate crimes, human trafficking, sexual exploitation, threats of mass violence and other serious crimes. The technology has also been used to identify missing persons, deceased persons, incapacitated persons who can't identify themselves and to mitigate an imminent threat to health or public safety (e.g., to thwart an active terrorism scheme or plot).

The MCPA and MSA do not support the proposed amendments to this bill requiring the technology used by Maryland law enforcement to be made available to any third party for testing. The majority of facial recognition systems in use for law enforcement applications have algorithms which have been evaluated by the National Institute of Standards and Technology (NIST) for matching efficiency and accuracy, which includes an evaluation of the accuracy of the algorithm across demographics. Algorithms utilized for these systems are periodically updated as necessary based on subsequent NIST evaluations. The NIST Facial Recognition Vendor Test Program, located here in Gaithersburg, MD is already the world standard for independent, scientific evaluation of the technology.

Facial recognition is not an absolute science. It is not quantifiable like DNA, so while any potential match results will greatly contribute to the investigation, it will provide a tentative investigative lead only. When used in combination with human analysis and additional investigation, we have seen facial recognition technology is a proven valuable tool in solving crimes and increasing public safety.

We do not support SB 762 mandating the use of a single facial recognition technology, which would limit photo sources to certain images which will have a clear and immediate negative impact on public safety. Due to the complexity of investigating crimes such as human trafficking and child sexual exploitation, there are some law enforcement agencies in the state using more than one facial recognition system, searching databases beyond driver's license, identification cards and booking photos. People who engage in this and other criminal activity often travel from out of state to commit crimes. Limiting use to a single facial recognition technology would prevent law enforcement from leveraging other legally obtained photos such as photos from other states and open-source photos which could assist with the identification of human trafficking/sexual exploitation victims, and individuals traveling from far outside the area to commit crime, as we saw with the unrest at the U.S. Capitol on January 6 last year.

We support ensuring that facial recognition alone does not constitute probable cause. However, it may generate investigative leads through a combination of biometric comparisons and human analysis. Investigators have to do the work, not the technology. The technology is used when there is already an investigation underway. We support that an arrest should not be made until the assigned investigator establishes, with other corroborating evidence, that the person identified by the photo match is the perpetrator in an alleged crime.

Facial recognition is a valuable time saving tool. Under traditional methods, law enforcement sought to identify an unknown person of interest during an investigation by manually looking through hundreds of mugshots with victims, canvassing areas with photos or searching a database using limited information. When time was crucial, the Anne Arundel County Police developed a tentative identification of the Capital Gazette shooter by using facial recognition technology to generate a lead. He was successfully identified, and later charged and convicted based on other evidence. Let us not forget, when the need arose to expeditiously make tentative

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identification of persons involved in the unrest at the U.S. Capitol, the technology generated many investigative leads which when corroborated by additional investigative information led to the arrests and convictions of individuals who attacked our democracy.

The MCPA and MSA fully support strict guardrails and audit protocols to mitigate the risk of impartial and biased law enforcement and misuse of the technology, without eroding current investigative capabilities that have proven their worth. For example, we support the development of a model statewide use policy and ensuring relevant training in the use of the technology, as well as providing complete transparency through public reporting by agencies using the technology.

However, as currently drafted, SB 762 contains several provisions that would unacceptably impact public safety in Maryland as well as hamper effective implementation of the requirements. We are unable to support the bill without key revisions. With the changes, SB 762 would be the strongest measure in the country for regulating the use of facial recognition technology used by law enforcement agencies, while addressing public concerns and preserving proven capabilities.

We applaud Senator Sydnor for his willingness to listen to participants in the facial recognition working group and we remain open to further discussion. However, SB 762 as it stands limits the use of the technology, prevents human trafficking and juvenile victims from being identified and restricts law enforcement's ability to effectively investigate cases.

For aforementioned reasons, the MCPA and MSA **OPPOSE SB 762** and urge an **UNFAVORABLE** Committee report.

MARYLAND SUCCESS STORIES

(Shared by Maryland law enforcement agencies utilizing facial recognition technology)

VICTIM IDENTIFICATION

- Following police response to a **shooting/robbery in Prince George's County, Maryland**, and the victim could not be identified and remained in critical condition. Therefore, notification to his family had not been made. Images obtained from the victim's cell phone screen were queried and a lead was developed. Using other known images of the candidate, it was learned the candidate had a birth mark on his temple this information was shared with investigating officers who confirmed that the birthmark was present. The investigators were then able to contact the victim's family, and they responded to the hospital. While the victim ultimately succumbed to his injuries, quick work by investigators aided by facial recognition technology enabled the family to make it to the hospital before he passed.

RESPONDING TO HEALTH EMERGENCIES

- Local law enforcement responded to a **health emergency involving an individual at the College Park Airport**, with no shirt, shoes or mask, stating that they wanted to "fly to outer space/the stars" but the subject left the area before units arrived. An officer was able to locate the subject after subsequent calls from concerned citizens nearby; however, they had no identification and could not communicate coherently. An image was taken of the subject and queried, producing a potential matching female identity. At first, officers on the scene believed it was not a match because the individual was male. Upon further investigations the lead proved correct, as the transgender man's identity was confirmed by his father, who had been contacted in another state. The man had reportedly not been the same since taking LSD the previous week. He was reunited with a family member and then taken to a local hospital for evaluation.
- **An unknown person in Annapolis, MD was posting plans to commit suicide on open sources.** Reports were made to the police by concerned persons who saw this post. Due to what was written, police believed a suicide was eminent and attempted to identify this person using a still image from open sources. This image was used with facial recognition technology and generated a lead through a driver's license photo. Through further investigation, the suicidal person was identified and the police and a crisis team were sent to the person's address. Police were able to locate the suicidal person and they were provided with assistance.

SOLVING SEX CRIMES

- In 2016 in **Glen Burnie, MD** a police officer with the Metropolitan Police Department in Washington, DC created a social media account where he exchanged approximately 53,000 messages with thousands of other users. **The officer used his account to send messages to other users, including minors, offering to pay them to engage in specific sex acts with him and to negotiate over the prices he would pay for sex.** He exchanged approximately 200 texts and messages with a 14-year-old girl. In the messages, he offered to pay the victim to engage in sex acts with him. In 2017, he exchanged approximately 54 messages with a 15-year-old girl. In the messages, he also offered to pay the second victim to engage in sex acts with him. In both exchanges, he discussed the sex acts they would engage in, and where they would meet. Both victims were

students in the ninth grade at the time of the offenses. On January 9, 2017, in the back seat of his vehicle, he pointed a handgun at the second victim and demanded that she give him the money he had just paid her. After the victim reported this to police, facial recognition and images from social media were used to develop a lead in determining his identity. Through further investigation, the officer was identified, and he was federally indicted on charges of sex trafficking of minors and enticement of minors to engage in prostitution, involving sexual contact with two minor girls. He ultimately plead guilty in this case and his employment as a police officer was terminated.

- **In 2021, an unknown subject went to the front door of a residence and began sexually stimulating himself in front of a security camera.** The use of facial recognition by Montgomery County Police Department provided an investigative lead – a person that had conducted the same behavior in front of a 72-year-old female neighbor two years prior. Upon further investigation, the case resulted in a confession by the suspect and criminal charges related to the indecent exposure.
- **In 2021, an unconscious subject was reported in Montgomery County.** Responding officers found a disoriented pregnant female subject who was unable to recall anything from the past two days. Eventually, the female victim was able to recall potentially being drugged, and later, an unknown suspect forcing oral and vaginal sex. Facial recognition was used to generate a lead from a photo of the suspect available from security cameras nearby. This case is still ongoing as of this writing, so no further information can be provided.

SOLVING VIOLENT CRIME

- **Local law enforcement investigated a violent assault on public transportation in Baltimore.** Images of the suspect and the incident were obtained through security camera footage from the coach. Information was disseminated to law enforcement partners seeking assistance with the case. A comparison was made with a law enforcement database, and an investigative lead was developed and provided to the investigating agency. Upon further investigation it led to the arrest of the assailant who was identified by the victim.
- **In Annapolis, MD the “Capitol Gazette Killer” Jarrod Ramos** was angered by a story the *Capital Gazette* ran about him in 2011 and brought a lawsuit against the paper for defamation, which a judge later dismissed. In 2018, **Ramos entered the newspaper’s headquarters in Annapolis, Maryland with a shotgun and killed five employees, leaving two others critically injured.** Anne Arundel County Police faced a perfect storm of problems when they took the suspected gunman into custody: the man had no identification, he wouldn’t speak to investigators, and a fingerprint database was not immediately returning any matches. Detectives obtained an image of Ramos and used facial recognition which generated a lead in the case. Through further investigation, detectives were able to positively identify Ramos and search warrants were conducted at this residence. He plead guilty in the case and was sentenced to five consecutive life sentences.
- **In 2015, two suspects armed with guns walked into a Towson liquor store and announced a robbery,** taking aim at a 68-year-old clerk. The clerk, fearing for his life, pulled out a gun and shot one of the people robbing the store, who was later pronounced dead at the scene. The second person involved in the robbery got away. The police then went to work to identify the second suspect. Through social media, detectives were able to find an image of a person of interest who was a friend of the other person involved in the robbery. The police entered this photograph into facial recognition which returned a tentative lead. Through further investigation the second person involved in the

armed commercial robbery was positively identified. He was successfully prosecuted and convicted of attempted robbery. He was sentenced to twenty years in jail.

- **In 2020, a Facebook user claimed on open-source media he was ready to attack and kill law enforcement (“tyrants”) for “Liberty or Valhalla.”** The same Facebook user also commented online on a Montgomery County Police press release and implied utilizing hydrofluoric acid containers above entry points to injure law enforcement. The subject later went on Facebook Live and announced his intent to livestream the execution of a law enforcement officer in Texas. Facial recognition was used by Montgomery County Police to quickly generate a lead from open-source photos. Through additional investigation, investigators were able to identify this individual and located him in Texas. After a lengthy pursuit, he was arrested and charged with Terrorist Threats against an Officer, Evading Detention with a Vehicle, and Unlawfully Carrying a Weapon.

FIGHTING ORGANIZED CRIME AND GANG VIOLENCE

- **Local law enforcement in Maryland requested assistance with a firearms trafficking investigation, providing an image of a suspect.** The image was run against a law enforcement database and a potential lead was developed. Upon further investigation, detectives positively identified the suspect and executed a search warrant that resulted in the seizure of drugs, guns and ammunition.
- **A retailer reached out to law enforcement with information about an organized theft crew that had been targeting stores throughout Virginia, D.C. and Maryland.** An image provided showed a male with unique tattoos on his neck and left hand. Facial recognition was used to generate a lead in the case. Upon further investigation, the individual was subsequently identified and charged.
- **Throughout 2019 and 2020, local law enforcement conducted a homicide/gang investigation involving a violent group responsible for multiple homicides, drug distribution, kidnapping, and robbery in Anne Arundel County.** Digital images of persons of interest were obtained and with the assistance of facial recognition, law enforcement was able to generate leads regarding three individuals involved. Through further investigation, individuals were positively identified and probable cause was established to obtain a wiretap warrant. Though subsequent monitoring of communications, law enforcement was able to prevent at least three shootings, as well as interrupt a kidnapping. As a result of the investigation over a dozen people were indicted and successfully prosecuted, multiple firearms were recovered including an assault rifle, drugs and a significant amount of U.S. currency were also seized.

PREVENTING IDENTITY THEFT

- A string of **fraudulent vehicle purchases in Montgomery County, Maryland**, were carried out using information obtained via identity theft, harming both the identity victims and dealerships that lost property. The suspects had created false identification documents used to purchase the vehicles, combining their own image with the personally identifiable information of a victim. These images were queried, leads were developed, and identities were confirmed through additional investigation and five arrests were made. Some of the suspects were arrested when they arrived to pick up a vehicle, since by that time they had already provided their false identification with their true image.

SOLVING FIREARMS TRAFICKING

- **Local law enforcement in Maryland requested assistance with a firearms trafficking investigation in Prince George’s County**, providing an image of a suspect. The image was run against a law enforcement database and a potential lead was developed. Upon further investigation, detectives positively identified the suspect and executed a search warrant that resulted in the seizure of drugs, guns and ammunition.

SOLVING BURGLARIES

- **In Crownsville, MD officers responded to a residential burglary captured on a home security camera**. Using facial image from the video, officers queried a law enforcement database using facial recognition which provided a lead in the case. Upon further investigation, the person in the video was positively identified. He was charged and convicted of the burglary and other charges.

SOLVING DAMAGE TO MULTIPLE POLICE VEHICLES

- Maryland National Capital Park Police had a cruiser tampered with and images from nearby security cameras were obtained. Investigators searched Prince George’s County Police data and found similar cases. A good facial image of the person of interest was obtained from security camera footage, and use of facial recognition generated a lead. Upon further investigation, the suspect was subsequently identified by investigators and charged. The suspect was connected to over 20 cases in five jurisdictions: Prince George’s County Police, Park Police, Montgomery County Police, Charles County Sheriffs and Metropolitan (DC) Police.

ADDITIONAL NOTE - TOOLS TO ANALYZE OPEN-SOURCE INFORMATION ARE CRITICAL TO PREVENTING MASS VIOLENCE AND DOMESTIC TERRORISM

EL Paso, TX Walmart Shooting – A 21-year-old man was arrested at the scene of a shooting in El Paso, near the US-Mexico border. He is believed to have posted an online document calling the attack a response to "the Hispanic invasion of Texas". The El Paso gunman opened fire on a crowded Walmart with an assault-style rifle and surrendered after being confronted by police officers outside the store. Twenty-six people were injured in the shooting.

Parkland, FL School Shooting: On social media, Nikolas Cruz expressed his desire to perpetrate violence. Before he committed one of the worst mass shootings in US history at a Parkland, Florida, high school, Cruz wrote threatening social media posts. He made racist comments and said he would shoot people with his AR-15, singling out police and “anti-fascist protesters” as deserving of his vengeance. He stated his aspiration to become a “professional school shooter.” Prior to the school shooting, Cruz posted an online video talking about his plans.

Attack on Tree of Life Congregation in Pittsburgh, PA: Eleven people were killed and six others including four police officers were injured when a gunman opened fire during a baby-naming ceremony at the Tree of Life Congregation, a Synagogue in Pittsburgh. The shooter, Robert Bowers surrendered to the police. Bowers was linked to an account on social media that shared anti-Semitic messages. Before the killing in three short sentences, Bowers social media post revealed volumes about his hateful worldview and his motivation to kill.

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Planning Political Violence: Cesar Sayoc, was arrested in connection with 13 explosive devices sent to prominent Democrats and he used sites like Twitter to share ultra-right-wing conspiracy theories about many of the people he targeted. That includes George Soros, a prominent Jewish philanthropist. The first device discovered was located at Soros' home.

Violent Racism: In 2014 Elliot Rodger a 22-year-old who killed seven in Isla Vista, California, uploaded a sprawling YouTube manifesto filled with hatred of young women and interracial couples. In this video, he discussed a day of retribution before committing the attacks. His parents found the open-source post but it was too late.