



PAUL DeWOLFE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: SB0762 - Criminal Procedure - Facial Recognition Technology - Requirements, Procedures, and Prohibitions

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendments

DATE: 3/9/2022

Thank you Mr. Chairman, good afternoon. My name is Andrew Northrup and I am an attorney in the Forensics Division of the OPD. The Maryland Office of the Public Defender's position on this bill is Favorable with amendments.

We want to thank Senator Sydnor and vice-chair Moon for their persistence and determination in grappling with this issue. This bill is an important first step in regulating the use of Facial Recognition Technology, which is currently unregulated and being used in casework. The restriction of its use to the most serious crimes, the need of additional independent evidence to establish probable cause, and the transparency requirements will help to foster a more measured and responsible use of the technology.

However, after discussing the bill with other I am concerned about the ways that certain provisions may be interpreted. To that end, we have offered and tendered amendments to add clarity and foster transparency.

First, it is imperative that a defendant is provided the results and supporting data whenever this technology is used. This bill states that the state shall disclose 'in accordance with the Maryland Rules regarding discovery.' In order to make clear that Facial Recognition Technology is addressed by these rules, it is our suggestion that a sentence be added to the end of the definition of Facial Recognition Technology clarifying that Facial Recognition Technology is considered electronic surveillance or pretrial identification for purposes of the rule.

Second, there appears to be agreement among all parties that the results generated from this technology should be used as an investigative lead and not introduced at trial under any circumstances. While there is language to this effect at the end of Section 2-503, it is our position that similar language should be added to the end of Section 2-502.

In addition to posting the name and version of the Facial Recognition Software approved for use, DPSCS, should also post any developmental and internal validation studies conducted on that software so that communities can fully evaluate and understand the technology.

It is important to recognize that this technology is new, and the standards for its use are still being developed. As our understanding in this area of science grows and standards are implemented, this legislation will almost certainly need to be revisited to incorporate these developments.

Nevertheless, this bill is an important first step to regulate this area of technology with a high potential of misuse. We have tendered amendments that we believe address the concerns that we have set forth above.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on the bill with the proposed amendments.

**Submitted By: Maryland Office of the Public Defender, Government Relations Division.
Authored By: Andrew Northrup, Forensics Division, (312) 804-9343,
andrew.northrup@maryland.gov.**