



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony Regarding SB 762:
Criminal Procedure – Facial Recognition Technology –
Requirements, Procedures, and Prohibitions
Before the Judicial Proceedings Committee
March 10, 2022**

Good afternoon Chairman Smith, members of the Judicial Proceedings Committee.

The development of Facial Recognition Technology (FRT) began in concept over 50 years ago as a method of computer application. As it evolved through many uses and applications, FRT is no longer an issue that can be fully classified as a new process. Facial Recognition is currently offered by a variety of vendors and utilized in private cell phones, computer access applications and other social media outlets (Facebook, Twitter, etc.) Facial recognition systems are also utilized throughout the world today by governments, law enforcement agencies and private companies according to the U. S. Government Office of Accountability. These commonly used systems represent additional access points for this technology; a technology that has gone without significant regulation.

By the time you read this sentence, 20,000 images will be uploaded to social media.¹ There is an ocean of pictures out there and facial recognition technology enables users to find face template matches rapidly.² In this ocean of data, what is there to stop law enforcement from going on a fishing expedition? While facial recognition can and will help enforce justice, we need to balance safety concerns against the very real threat that law enforcement will cast a net whenever they need a catch. SB 762 sets forth standards that will provide some level of accountability and control over when the facial recognition net is cast.

Undoubtedly there are benefits to use of facial recognition: preventing and addressing unlawful entry at ports,³ as well as monitoring high-security events, such as the Super Bowl.⁴ In the local

¹ Facial Recognition Technology: Federal Law Enforcement Agencies Should Have Better Awareness of Systems Used By Employees. www.gao.gov Retrieved September 5, 2021.

² Matthew Doktor, *Facial Recognition and the Fourth Amendment in the Wake of Carpenter v. United States*, 89 U. CIN. L. REV. 552, 552 (2021).

² Ari B. Rubin, *A Facial Challenge: Facial Recognition Technology and the Carpenter Doctrine*, 27 RICH. J.L. & TECH. 1, 6 (2021).

³ *Id.* at 14.

⁴ *Id.*

law enforcement context, police can use FRT to identify a suspect incident to arrest;⁵ or may use FRT to determine an unknown person's identity based on a photo of him or her at a crime scene.⁶

However, Facial Recognition Technology has also been used maliciously. It was reported in the LA Times "Facial recognition software developed by China-based Dahua, one of the world's largest manufacturers of video surveillance technology, purports to detect the race of individuals caught on camera and offers to alert police clients when it identifies members of the Turkic ethnic group Uighurs."⁷ And given this state's movement towards adoption of police body cameras, we have to consider how police using them can quickly and easily amass probe photos of protesters, thus creating a chilling effect. Anyone who attends a protest may be subject to inclusion in the perpetual FRT lineup.⁸

Last year this committee passed SB 587 to establish a Task Force on Facial Recognition Privacy Protection. That bill ultimately did not make its way thru the legislative process, but I reached out to everyone who we had included in that legislation and asked them to work with me and Delegate Moon on legislation for this session. Our workgroup consisted of 14-members which included of law enforcement, the Department of Public Safety and Corrections, the Maryland States Attorney Association, the Office of the Public Defender, trade group representative and a vendor, an academic researchers, and civil rights advocates. We met virtually to discuss issues connected with the use of facial recognition technology. Invited contributors consisted of everyone from ordinary citizens with concerns, and a researcher from Australia. For more than five months our workgroup met over 10 times with the objective of adopting a foundational set of statewide requirements for law enforcement agencies using FRT, and to address the key public concerns about the technology, while preserving the public safety benefits of the technology. Those discussions resulted in SB 762.

SB 762 sets guardrails for the usage of FRT systems by law enforcement. SB 762 provides that FRT can be used as an investigative tool,⁹ and limits the types of crimes that can be investigated using FRT.¹⁰ To limit falsely identifying someone, SB 762 also limits the databases that can be used by law enforcement agencies to those government databases which were disclosed during the workgroup meetings to motor vehicle identification images and mugshot photos maintained by local, state or federal law enforcement agencies.

For the greater part of the time our workgroup met, we worked under the assumption that the Department of Public Safety and Correctional Services had the only FRT system in use in Maryland. Therefore, SB 762 assigns it with the responsibility of contracting for and approving a single FRT vendor, for use by all state law enforcement agencies; review and testing of the

⁵ *Id.* at 19.

⁶ *Id.* at 20.

⁷ [Dahua facial recognition touts 'real-time Uighur warnings' - Los Angeles Times \(latimes.com\)](https://www.latimes.com/technology/story/2019-05-15/dahua-facial-recognition-touts-real-time-ugghur-warnings)

⁸ *Id.* at 16.

⁹ however, it cannot be utilized alone as the sole basis to establishment of probable cause in a court proceeding. Other evidence must be used to support probable cause.

¹⁰ This includes crimes of violence, human trafficking and criminal acts involving national security or safety threats.

application programming interface of the vendor; requires the vendor to enable testing of its software for accuracy and mitigation for any performance differences as they apply across various population groups.

As suggested by some of our participants, SB 762 establishes training programs that will be developed and administered in order to provide for proficiency testing for law enforcement personnel who uses FRT. Additionally, each agency must maintain appropriate records regarding its use of FRT, and will annually report its uses to the Governor's Office of Crime Prevention, Youth & Victims Services.

In conclusion, I recognize that facial recognition technology is a complex investigative tool whose value is growing as the practical applications expand. We need to take this strong initial step towards developing and maintaining standards and guidance for the uses of this useful and innovative technology. FRT offers real benefits to our communities and to the law enforcement agencies who utilize it. Transparency, accountability and civil protections against human bias characteristics need to be developed and maintained now and evolve appropriately as the utilization evolves in its practical applications. For these reasons I urge the Committee to vote in favor of SB 762.