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POSITION ON PROPOSED LEGISLATION

BILL: SB192 Criminal Procedure - Facial Recognition Technology - Requirements, Procedures, and Prohibitions

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 02/07/2023

Thank you Mr. Chairman, Senator Sydnor and distinguished members of the committee for allowing us to weigh in on this bill. The Maryland Office of the Public Defender's position on this bill is Favorable..

Since this bill was introduced last year the need to regulate this technology has become more urgent. In December, I became aware of the first demonstrable misidentification by this technology, and I am afraid that this may be the tip of the iceberg.

It is important to recognize that this technology is new, and the standards for its use are still being developed. Protocols and procedures for using this technology in a reliable and accurate manner have yet to be fully developed.

The act of taking a still surveillance photograph and comparing it to a database of individuals requires a number of tasks for which the analyst is provided little or no guidance. As everyone knows, the quality of a surveillance video can vary greatly based upon a number of factors which may include:

1. Quality of the camera
2. Lighting
3. Distance of subject from the camera; and
4. Angle of the face in relation to the camera

Poor quality videos can lead to inaccurate candidate lists. Currently there are no standards as to what the quality of the video must be before it is suitable to be uploaded and searched by the algorithm.

While this discusses the input into the machine, there are two times when human beings make decisions that affect the analysis, and these are decisions that individuals are not qualified to make.

First, human beings decide how and when images are processed. If an image is a high-quality head on shot from a camera, very little processing may be needed. However, for lower quality photographs, the photographs may be lightened, darkened or be processed in more involved ways with tools like

Photoshop. There are currently no standards or guidelines as to how or the amount of processing that can be applied to an image before it is uploaded or as to how processing affects the candidate list generated by the algorithm. (As an aside, I can say that when conducting fingerprint searches, the way that a fingerprint image is processed before uploading to be searched by AFIS can change the candidate lists dramatically.)

The second time is when a person looks at the list of candidates to determine if any of them is the correct person. While this may seem counterintuitive, we are not as good at recognizing faces as we would like to believe. While we like to think that any layperson can look at an image and select the proper candidate, that the task is not so straightforward. Studies show that even people who are experienced and trained are far from perfect. There are currently no standards for training and the individuals making the decisions about facial recognition do not take proficiency tests to determine their ability to complete the test reliably and accurately.

The bottom line is that the technology currently is not, nor can it be used in an accurate and reliable manner for the reasons stated above.

Ideally this technology would not be used until it has been thoroughly validated and vetted. However, short of that, this bill is an important first step to regulate this area of technology with a high potential of misuse.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable with amendments report on Senate Bill 192.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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