



State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: February 7, 2023

BILL NUMBER: House Bill 223 **Position:** Oppose

BILL TITLE: Criminal Procedure – Facial Recognition Technology – Requirements, Procedures, and Prohibitions

REVIEW AND ANALYSIS:

This legislation seeks to establish requirements, procedures and prohibitions for the use of facial recognition technology (FRT) by a law enforcement agency. The legislation further seeks to define FRT and require certain training and testing proficiency.

The Department of State Police (DSP) was part of a workgroup with the sponsor looking into the use of FRT. The workgroup discussed a number of issues including how FRT is deployed today. One goal of the DSP was to keep any legislation on the use of FRT simple and provide guidelines that would allow the technology to be used as an investigative tool, limiting its use in court, providing a model policy, and preventing misuse. While some of our recommendations made it into the legislation, the bill in its current form causes concern.

Section 2-503 prohibits the use of FRT to identify a person suspected of being a juvenile who is ineligible to be charged with a criminal act. This restriction eliminates the possibility of identifying certain juveniles involved in serious crimes. With serious juvenile crime prevalent in many locations we should not be limiting a public safety investigative tool which could provide the identity of a suspect. Striking this restriction ensures Maryland Law enforcement can continue to leverage tools essential to crime solving, human trafficking and child sexual exploitation investigations.

This section also limits the FRT queries to the Maryland Motor Vehicle Administration or other state DMV images and mug shots maintained by local, state or federal law enforcement agencies. As previously mentioned, juveniles are involved in a host of crimes. Many are not in the mug shot databases nor do they have driver's licenses. The limitation prohibits the technology from accessing this state or other state's sex offender websites, the Maryland and National Center for Missing and Exploited Persons images, wanted posters or other images posted by law enforcement or families. Striking these limitations will allow law enforcement investigators to use FRT to possibly identify individuals with no prior criminal history, do not have an ID card or driver's license, non-MD residents or minors, who are suspects or unidentified victims.

Section 2-506 requires the Department of Public Safety and Correctional Services (DPSCS) to develop a model policy, administer a training program and provide proficiency testing regarding the use of FRT. Some of the agreements DSP thought were reached in the workgroup are training should be specific to the vendor and the technology used, proficiency testing would not be required because the results are inadmissible in court, and the DSP would be responsible for the model policy. In concert with this, DSP supported the results generated by the FRT to be reviewed by an independent person.

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Although there are a number of other problems with Senate Bill 762, one of the most important restrictions that should be struck is the requirement that the DPSCS review and approve a single FRT for use by law enforcement agencies. This restricts over 150 police agencies to one technology regardless of the system's limitations or the local department's needs. It eliminates local control and places the burden on DPSCS to review and approve a single technology.

What is most interesting about the restrictions posed by the legislation is, today, law enforcement can take a photo and send it to news outlets, post it on any platform using the internet, or circulate it to a targeted area to try and identify an individual(s) suspected of a crime, or try to identify an unidentified person or victim, as part of a legitimate investigation, to get human input into the identity of the person. But, if law enforcement tries to use FRT as a tool, somehow, we have violated someone's rights.

There are a number of additional amendments DSP would like to see made to this legislation. DSP will continue to work with the sponsor to develop additional amendments to the legislation.

For these reasons, the Department of State Police urges the Committee to give House Bill 223, as written, an unfavorable report.