CHARLES E. SYDNOR III, ESQ.
Legislative District 44
Baltimore County

———

DEPUTY MAJORITY WHIP

———

Judicial Proceedings Committee
Executive Nominations Committee

———

Joint Committees
Administrative, Executive, and
Legislative Review

Children, Youth, and Families

Senate Chair, Legislative Ethics

———

Chair
Baltimore County Senate Delegation

James Senate Office Building
11 Bladen Street, Room 216
Annapolis, Maryland 21401
410-841-3612 · 301-858-3612
800-492-7122 *Ext.* 3612
Charles.Sydnor@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony Regarding SB 182:
Criminal Procedure – Facial Recognition Technology –
Requirements, Procedures, and Prohibitions
Before the Judicial Proceedings Committee
February 7, 2024

Good afternoon, Chair Smith, members of the Judicial Proceedings Committee,

Today I offer Senate Bill 182 ("SB 182") in response to the growing, unregulated use of Facial Recognition Technology ("FRT") and reintroduces legislation which was voted out of this committee and this body unanimously; it unfortunately was unable to pass before on Sine Die. SB 182 establishes guidelines surrounding law enforcement's use of FRT, limits the databases law enforcement may use while utilizing FRT, and establishes training for law enforcement agencies (or officers) who employ FRT.

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 venders and utilized in private cell phones, computer access applications and other social media outlets (Facebook, Twitter, etc.). Today facial recognition systems are also utilized throughout the world 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 FRT; 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

---

[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).

matches rapidly.[2] In this ocean of data, what is there to stop law enforcement from exceeding their reach, invading an individual's privacy, and embarking on a fishing expedition? While facial recognition can and help enforce justice, we must balance safety concerns against the very real threat that law enforcement will cast a net whenever they need a catch. SB 182 sets forth standards that will provide some level of accountability and control when law enforcement casts the facial recognition net.

Undoubtedly there are benefits to using FRT: preventing and addressing unlawful entry at ports,[3] and monitoring high-security events, such as the Super Bowl,[4] to name a few. In the local 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, FRT has also been used maliciously. The LA Times reported, "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] Given Maryland's movement towards adoption of police body cameras, we must consider how FRT's 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]

Previously, this committee passed SB 587 establishing a Task Force on Facial Recognition Privacy Protection; however, the bill ultimately did not make its way through the legislative process. I reached out to everyone included in SB 587 and asked them to work with Delegate Moon and I on legislation for this session. Our workgroup consisted of 14-members which including members of law enforcement, the Department of Public Safety and Corrections, the Maryland States Attorney Association, the Office of the Public Defender, a trade group representative, a vendor, an academic researcher, and civil rights advocates. We met virtually to discuss issues connected with the use of FRT. Invited contributors ranged from ordinary citizens with concerns, and a researcher from Australia. For more than five months we met over 10 times—our objective, adopting a foundational set of statewide requirements for law enforcement agencies using FRT, and addressing key public concerns about the technology, while preserving the public safety benefits of the technology. These discussions resulted in SB 182. SB 182 sets guardrails for the law enforcement's usage of FRT systems. SB 182 provides that FRT can be used as an investigative tool,[9] and limits the types of crimes that can be investigated using FRT.[10]

---

[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.*

[5] *Id.* at 19.

[6] *Id.* at 20.

[7] Dahua facial recognition touts 'real-time Uighur warnings' - Los Angeles Times (latimes.com)

[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.

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 182 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 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 participants, SB 182 establishes training programs that will be developed and administered to provide for proficiency testing for law enforcement personnel who use FRT. Additionally, each agency must maintain appropriate records regarding the use of FRTs, and annually report FRT uses to the Governor's Office of Crime Prevention and Policy.

In conclusion, I recognize that facial recognition technology is a complex investigative tool whose value is growing as the practical applications expand. We must take a strong initial step towards developing and maintaining standards and guidance for the uses of this beneficial 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. These protections must evolve appropriately as FRT utilization evolves in its practical applications.

For these reasons I respectfully urge the Committee to vote in favor of SB 182.