

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO FACIAL
5 RECOGNITION TECHNOLOGY; REQUIRING LOCAL AND STATE GOVERNMENT AGENCIES TO PROVIDE
6 NOTICE OF THE USE OF FACIAL RECOGNITION TECHNOLOGY; PROVIDING RESTRICTIONS FOR THE
7 USE OF FACIAL RECOGNITION TECHNOLOGY; PROVIDING EXEMPTIONS; PROVIDING DEFINITIONS;
8 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 6], unless the context clearly
13 indicates otherwise, the following definitions apply:

14 (1) "Enroll", "enrolled", or "enrolling" means the process by which a facial recognition service creates
15 a facial template from one or more images of an individual and adds the facial template to a gallery used by the
16 facial recognition service for identification or persistent tracking of individuals. The term also includes the act of
17 adding an existing facial template directly to a gallery used by a facial recognition service.

18 (2) (a) "Facial recognition service" means technology that analyzes facial features and is used by a
19 state or local government agency for the identification, verification, or persistent tracking of individuals in still or
20 video images.

21 (b) The term does not include:

22 (i) the analysis of facial features to grant or deny access to an electronic device; or

23 (ii) the use of an automated or semiautomated process for the purpose of redacting a recording for
24 release or disclosure outside the law enforcement agency to protect the privacy of a subject depicted in the
25 recording, if the process does not generate or result in the retention of any biometric data or surveillance
26 information.

27 (3) "Facial template" means the machine-interpretable pattern of facial features that is extracted from
28 one or more images of an individual by a facial recognition service.

1 (4) "Identification" means the use of a facial recognition service by a state or local government agency
2 to determine whether an unknown individual matches an individual whose identity is known to the state or local
3 government agency and who has been enrolled by reference to that identity in a gallery used by the facial
4 recognition service.

5 (5) "Meaningful human review" means review or oversight by one or more individuals who are familiar
6 with the capabilities and limitations of the facial recognition service and who have the authority to alter the
7 decision under review.

8 (6) (a) "Ongoing surveillance" means the use of a facial recognition service to track the physical
9 movements of a specified individual through one or more public places over time, whether in real time or
10 through application of a facial recognition service to historical records.

11 (b) The term does not include a single recognition or attempted recognition of an individual if no
12 attempt is made to subsequently track that individual's movement over time after they have been recognized.

13 (7) "Persistent tracking" means the use of a facial recognition service by a state or local government
14 agency to track the movements of an individual on a persistent basis without identification or verification of that
15 individual. This method of tracking becomes persistent as soon as:

16 (a) the facial template that permits the tracking is maintained for more than 48 hours after first
17 enrolling that template; or

18 (b) data created by the facial recognition service is linked to any other data in which the individual
19 who has been tracked is identified or identifiable.

20 (8) "Recognition" means the use of a facial recognition service by a state or local government agency
21 to determine whether an unknown individual matches:

22 (a) an individual who has been enrolled in a gallery used by the facial recognition service; or

23 (b) a specific individual who has been enrolled in a gallery used by the facial recognition service.

24 (9) "Verification" means the use of a facial recognition service by a state or local government agency
25 to determine whether an individual is a specific individual whose identity is known to the state or local
26 government agency and who has been enrolled by reference to that identity in a gallery used by the facial
27 recognition service.

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1 NEW SECTION. Section 2. Prohibitions. (1) A state or local government agency may only use a
2 facial recognition service for investigation of:

- 3 (a) a missing or endangered person;
- 4 (b) violent felonies; and
- 5 (c) a person in the vicinity of a recent violent felony who may be connected to that crime.

6 (2) A state or local government agency may not use a facial recognition service to engage in ongoing
7 surveillance, conduct real-time or near real-time identification, or start persistent tracking unless:

- 8 (a) a warrant is obtained authorizing the use of a facial recognition service for those purposes;
- 9 (b) exigent circumstances exist; or
- 10 (c) a court order is obtained authorizing the use of a facial recognition service for the sole purpose of
11 locating or identifying a missing person or identifying a deceased person. A court may issue an ex parte order
12 under this subsection (2)(c) if a law enforcement officer certifies and the court finds that the information likely to
13 be obtained is relevant to locating or identifying a missing person or identifying a deceased person.

14 (3) A state or local law enforcement agency may not use a facial recognition service to identify an
15 individual based on a sketch or other manually produced image.

16 (4) A state or local law enforcement agency may not substantively manipulate an image for use in a
17 facial recognition service in a manner not consistent with the facial recognition service provider's intended use
18 and training.

19 (5) A state or local government agency may not apply a facial recognition service to an individual
20 based solely on their religious, political, or social views or activities, participation in a particular noncriminal
21 organization or lawful event, or actual or perceived race, ethnicity, age, disability, gender, sexual orientation, or
22 other characteristics protected by law.

23 (6) A state or local government agency may not use a facial recognition service to create a record
24 describing an individual's exercise of rights guaranteed by the first amendment of the United States constitution.
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26 NEW SECTION. Section 3. Meaningful human review requirement. A state or local government
27 agency using a facial recognition service to make decisions that produce legal effects concerning individuals
28 shall ensure that those decisions are subject to meaningful human review.

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2 NEW SECTION. Section 4. Criminal case and warrant requirements. A state or local government
3 agency shall disclose their use of a facial recognition service on a criminal defendant in a timely manner prior to
4 trial.

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6 NEW SECTION. Section 5. Public notice requirements. (1) A state or local government agency
7 seeking to use a facial recognition service for investigation purposes shall notify the public 30 days prior to
8 initiating the use of a facial recognition service.

- 9 (2) The public notice must include the following:
- 10 (a) the name of the facial recognition service vendor;
 - 11 (b) the specific purpose and proposed use of the facial recognition service and its intended benefits;
 - 12 (c) the locations in which the technology is, or will be, deployed;
 - 13 (d) a statement from the vendor disclosing the facial recognition service's rate of false matches and
14 accuracy rates;
 - 15 (e) a statement from the vendor disclosing any complaints or reports of bias regarding the service;
 - 16 and
 - 17 (f) methods for individuals who are legally impacted by the technology to contact the agency.

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19 NEW SECTION. Section 6. Exemptions. (1) This chapter does not apply to a state or local
20 government agency that:

- 21 (a) is mandated to use a specific facial recognition service pursuant to a federal regulation or order or
22 that is undertaken through partnership with a federal agency to fulfill a congressional mandate; or
- 23 (b) uses a facial recognition service in association with a federal agency to verify the identity of
24 individuals presenting themselves for travel at an airport or seaport.

25 (2) A state or local government agency shall provide public notice for the use of a facial recognition
26 service pursuant to [section 5].

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28 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 6] are intended to be

1 codified as an integral part of Title 46, chapter 5, and the provisions of Title 46, chapter 5, apply to [sections 1
2 through 6].

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4 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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