

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO FACIAL RECOGNITION
5 TECHNOLOGY; PROHIBITING THE USE OF FACIAL RECOGNITION TECHNOLOGY BY A STATE OR
6 LOCAL GOVERNMENT AGENCY; PROVIDING EXCEPTIONS; REQUIRING A REPORT; PROVIDING FOR
7 FEES; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

10
11 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], unless the context clearly
12 indicates otherwise, the following definitions apply:

13 (1) "Continuous facial surveillance" means the generalized monitoring of public places or third-
14 party image sets using facial recognition technology for facial identification to match faces with a prepopulated
15 list of face images. The term includes but is not limited to scanning stored video footage to identify faces in the
16 stored data, real-time scanning of video surveillance to identify faces passing by the cameras, and passively
17 monitoring video footage using facial recognition technology for general surveillance purposes without a
18 particularized suspicion concerning a specific target.

19 (2) "Facial biometric data" means data derived from a measurement, pattern, contour, or other
20 characteristic of an individual's face, either directly or from an image.

21 (3) (a) "Facial identification" means a computer system that, for the purpose of attempting to
22 determine the identity of an unknown individual, uses an algorithm to compare the facial biometric data of an
23 unknown individual derived from a photograph, video, or image to a database of photographs or images and
24 associated facial biometric data in order to identify potential matches.

25 (b) The term does not include:

26 (i) a system used specifically to protect against unauthorized access to a particular location or an
27 electronic device; or

28 (ii) a system a consumer uses for the consumer's private purposes.

1 (4) "Facial recognition service" or "facial recognition technology" means the use of facial
2 identification or facial verification.

3 (5) "Facial verification" means the automated process of comparing an image or facial biometric
4 data of a known individual to an image database or to government documentation containing an image of the
5 known individual to identify a potential match in pursuit of the individual's identity.

6 (6) "Law enforcement agency" means:

7 (a) an agency or officer of the state of Montana or of a political subdivision authorized by the laws
8 of this state to conduct investigations or to make arrests; and

9 (b) an attorney, including the attorney general, authorized by the laws of this state to prosecute or
10 to participate in the prosecution of a person who is arrested or who may be subject to a civil action related to or
11 concerning an arrest.

12 (7) "Motor vehicle division" means the division within the department of justice authorized to issue
13 driver's licenses.

14 (8) "Public building" means any building that the state or any political subdivision of the state
15 maintains for the use of the public.

16 (9) "Public employee" means a person employed by a state or local government agency.

17 (10) "Public official" means a person elected or appointed to a public office that is part of a state or
18 local government agency.

19 (11) "Public roads and highways of this state" has the meaning provided in 15-70-401.

20 (12) "State or local government agency" means a state, county, or municipal government, a
21 department, agency, or subdivision of a state, county, or municipal government, or any other entity identified in
22 law as a public instrumentality, including a law enforcement agency. The term does not include a school district.

23 (13) "Vendor" has the meaning provided in 18-4-123.

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25 NEW SECTION. **Section 2. Prohibition on continuous facial surveillance - prohibition on facial**
26 **recognition technology.** (1) A state or local government agency, public employee, or public official may not
27 obtain, retain, possess, access, request, contract for, or use continuous facial surveillance.

28 (2) The use of facial recognition technology by a state or local government agency, public

1 employee, or public official for facial verification, including any resulting data, may not be used to aid or assist in
2 any type of continuous facial surveillance.

3 (3) Except as provided in [section 3], a state or local government agency, public employee, or
4 public official may not:

5 (a) obtain, retain, possess, access, request, or use facial recognition technology or information
6 derived from a search using facial recognition technology;

7 (b) enter into an agreement with a third-party vendor for any purpose listed in subsection (3)(a); or

8 (c) install or equip a continuous facial surveillance monitoring camera on public buildings or on
9 public roads and highways of this state, except as provided in 46-5-117.

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11 NEW SECTION. Section 3. Exceptions. (1) [Section 2] does not apply to:

12 (a) a state or local government agency that uses facial verification in association with a federal
13 agency to verify the identity of individuals presenting themselves for travel at an airport or other port;

14 (b) the department of corrections;

15 (c) the motor vehicle division; or

16 (d) a court imposing a condition under 46-9-108(1)(i) for alcohol monitoring.

17 (2) (a) If alcohol monitoring using a facial recognition breathalyzer unit is imposed on a defendant
18 pursuant to 46-9-108(1)(i), the court shall report the use of the facial recognition technology to the department
19 of corrections.

20 (b) By September 1 of each year, in accordance with 5-11-210, the department of corrections shall
21 submit a report to the legislature containing the following information, based on data from the previous calendar
22 year:

23 (i) the number of defendants using facial recognition technology for alcohol monitoring; and

24 (ii) the type and jurisdiction of the courts imposing the technology on defendants.

25 (c) If information is requested from a court in preparing a report under this subsection (2), the court
26 may charge reasonable fees commensurate with the costs for producing the information.

27

28 NEW SECTION. Section 4. Penalty. (1) A violation of [sections 1 through 4] constitutes an injury and

1 a person may institute proceedings for injunctive relief, declaratory relief, or a writ of mandate in a court of
2 competent jurisdiction to enforce [sections 1 through 4].

3 (2) A person who has been subjected to facial recognition technology in violation of [sections 1
4 through 4] or about whom information has been obtained, retained, accessed, or used in violation of [sections 1
5 through 4] may institute proceedings in a court of competent jurisdiction.

6 (3) A public employee or public official who, in the performance of the employee's or the official's
7 official duties, violates [sections 1 through 4] may be subject to disciplinary action, including but not limited to
8 retraining, suspension, or termination, subject to the requirements of due process and of any applicable
9 collective bargaining agreement.

10 (4) A prevailing party may recover for each violation:

11 (a) against an entity that negligently violates a provision of [section 2], \$5,000 or actual damages,
12 whichever is greater;

13 (b) against an entity that intentionally or recklessly violates a provision of [section 2], \$10,000 or
14 actual damages, whichever is greater;

15 (c) reasonable attorney fees and costs, including expert witness fees and other litigation
16 expenses; and

17 (d) other relief, including an injunction, as the court may consider appropriate.

18 (5) Nothing in this section limits the rights under state or federal law of a person injured or
19 aggrieved by a violation of [sections 1 through 4].

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21 **NEW SECTION. Section 5. Transition.** A state or local government agency who has an enforced
22 contract with a third-party vendor for facial recognition services as of [the effective date of this act] shall
23 terminate the contract by January 1, 2024.

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25 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are
26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
27 the part remains in effect in all valid applications that are severable from the invalid applications.

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1 NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 4] are intended to be
2 codified as a new chapter in Title 44, and the provisions of Title 44 apply to [sections 1 through 4].

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

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