JULY 2022

Economic Affairs Interim Committee
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DRAFT FINAL REPORT TO THE 68TH MONTANA LEGISLATURE

BEHIND THE MASK: HJ48 STUDY ON FACIAL RECOGNITION TECHNOLOGY

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This report is a summary of the work of the Economic Affairs Interim Committee, on House Joint Resolution 48 (2021). Members received additional information and public testimony on the subject. This report highlights key information and the processes followed by the Economic Affairs Interim Committee in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the Economic Affairs Interim Committee website: www.leg.mt.gov/eaic.

A full report, including links to the documents referenced in this print report, is available at the Economic Affairs Interim Committee website: www.leg.mt.gov/eaic

OVERVIEW

Facial recognition technology is a way of identifying or confirming an individual's identity through technology from photos, video, or real-time surveillance of the individual's face. Emerging technology for facial recognition is becoming more widespread in use, including data collection, and sharing. While the technology becomes more accurate as it advances, it can be used without the individual's knowledge, can still be prone to error, can be an invasion of privacy, and creates a risk of data theft. Other states and local governments have enacted protective measures and limitations on the use of facial recognition technology; however, no limitations currently exist in Montana.

Study Directives

The study resolution suggested the committee:

- Examine which agencies use facial recognition technology and for what purpose in the state;
- Study the uses of facial recognition technology in investigations and criminal actions in Montana;
- Study the security of facial recognition data collected by state agencies and how it is shared among local, state, and federal agencies; and
- Evaluate the protective measures and limitations on facial recognition technology implemented by other states.

The study ranked 14th out of 28 study resolutions in the post-session poll of legislators. The Legislative Council assigned HJ48 to the Economic Affairs Interim Committee (committee), the first of three assigned studies. The committee moved to devote roughly 10% of committee time to HJ48.

BACKGROUND & HISTORY

During the 2021 session, Representative Sullivan introduced House Bill 577 as an effort to establish a policy for the use of facial recognition technology by state agencies in Montana. The bill did not pass during session; however, the Legislature saw the need to study the issue further, leading to the HJ48 study.

After reviewing a background paper on facial recognition technology and discussing study topic ideas, committee members focused on the use of facial recognition technology by state agencies, including uses in investigations and criminal actions in Montana, and uses for unemployment insurance fraud, and the security of facial recognition data and data sharing among local, state, and federal agencies.

Facial recognition technology as we know it today is far more advanced than its original roots from the 1960's, but the idea of facial recognition goes back even further, to the 1850's when the Pinkerton National Detective Agency began photographing people it apprehended, and England introduced prison photography to assist with escapees and record-sharing.

As technology advanced, so did the ideas for applying the technology, and by the turn of the 20th century, a criminal database was well established, photographs were printed on reward posters, and ordinary people began taking photographs of themselves and others in public – sometimes without their subjects' consent.

In 1967, Woodrow W. Bledsoe, a pioneer in artificial intelligence, developed a system that classified photos of faces through a graphical computer device called a RAND tablet. While a rudimentary process 50 years ago, the technology advanced through the decades from 2-D to 3-D technology, and now involves complex algorithms, artificial intelligence, biometrics, neural networks, and machine learning to process, identify, and classify images with a high degree of accuracy.[1]

As the technology grows, so do the applications for use, in both the public and private sector:

Commercial	**Government**
Paying for services without cash	Airport security & traveler verification
Home security – Amazon Ring, Google Nest	Protecting identity theft & fraud
Unlocking mobile phones	Fighting human trafficking
Authorizing purchases & payments	Counterterrorism
Health care – protecting patients & staff with facial recognition for access to records & charts	Law enforcement investigations of violent crimes, credit card & identity theft, missing persons, bank robberies
Employers – track employee's time using facial recognition timeclocks	Investigations related to civil unrest, riots, and protests
Boarding an airplane without a boarding pass	Surveillance and area access at secure governmental sites

[1] https://leg.mt.gov/content/Committees/Interim/2021-2022/Economic%20Affairs/Studies/HJR-48/facial-recognition-technology.pdf

FACIAL VERIFICATION VS. FACIAL IDENTIFICATION[2]

Generally speaking, facial recognition systems can be used to accomplish two types of tasks: verification or identification. The underlying technologies are different and designed for different uses. The primary difference between facial verification and facial identification is the type of matching the technology uses: one-to-one matching, or one-to-many.

Facial Verification

Facial verification determines whether someone is who they declare themselves to be. For example, a user sets up a profile for an app or program, such as their smartphone or banking app, and as part of the setup, uploads a government-issued ID, takes a selfie, and provides other identifying credentials. Then the technology uses a **one-to-one** matching system so when the user logs onto the app, the software takes a selfie of the user, from which a biometric template is created and compared with the stored image of the person. A proper match, based on an accuracy score, confirms the user's digital identity, completes the secure authentication process in the background, and opens the app for the user.

Can the system verify that this person is who they say they are?

Facial verification is typically used for personal applications, such as unlocking a smartphone or apps, boarding an airplane, authorizing purchases and other payments, and for facial recognition employee timeclocks.

Facial Identification

Facial identification, on the other hand, uses **one-to-many** matching technology and is more prevalent for use by law enforcement, retailers, schools, casinos, and other large crowd events or centers where there is need for surveillance for safety reasons. Facial identification software compares an unknown face taken from a photo, video, or surveillance camera and compares it to known faces in a database. A "match" or "no match" determination is made, depending on if the facial signature of the individual matches one of the images stored in the database.

Can the system predict who this person may be?

[2] https://leg.mt.gov/content/Committees/Interim/2021-2022/Economic%20Affairs/Meetings/November%202021/Facial-verification-vs-facial-identification.pdf

Facial Verification Use in Montana

The EAIC heard testimony throughout the interim that three state agencies contract with third-party vendors for facial verification.

- Department of Corrections (DOC) – identity verification for remote alcohol monitoring
- Department of Labor & Industry (DLI) – identity verification for unemployment insurance
- Department of Justice (DOJ) – identity verification for drivers licenses

Uses in Investigations and Criminal Actions

The committee learned from the Division of Criminal Investigation (DCI) within the DOJ how facial recognition technology is used for criminal investigations. The DOJ houses the Montana Analysis and Technical Information Center (MATIC), or Montana Fusion Center, a multi-agency entity that involves the DCI, DOC, Department of Military Affairs, and Helena Police Department.

One of the MATIC's responsibilities is assisting participating agencies, many of which are interstate and federal agencies, with criminal investigations, primarily investigations involving dangerous drugs, fraud, organized crime, and terrorism. Requests by participating agencies may include the use of facial recognition technology, in which case, the MATIC has developed specific guidelines and procedures for its personnel.

The committee also heard from the Criminal Justice Information Network (CJIN), also within the DCI, which is the division that provides Montana's law enforcement community with access to state and national criminal justice information and facilitates confidential communication among participating agencies. Through CJIN, Montana's terminal agencies communicate with each other and access a variety of databases:

- Vehicle & Commercial Vehicle Registration
- Drivers' License, History, & Photos
- Criminal History Records
- Sex & Violent Offender Registry
- Correctional Data & Photos
- FWP Hunting & Fishing Licenses
- Concealed Weapon Permits
- Montana Wanted Persons

CJIN also maintains access to the International Justice & Public Safety Network, or Nlets, which provides for the exchange of criminal justice information between states.

The MATIC and CJIN do not use facial recognition technology. Certain databases, such as the drivers' license database, contain photographs, which may be specifically requested; however, the DOJ does not run facial recognition searches on behalf of participating agencies.

The MATIC received 13 facial recognition requests over the last five years in support of active criminal investigations by law enforcement. All of these requests were vetted and photographs were released to the participating agencies. Out of the 13 requests, only one was sent to another law enforcement agency who has the capability to run facial recognition technology for the investigating agency.

	Agency	Criminal Predicate
1	United States Marshals Service / WV Intelligence Fusion Center	Fugitive Investigation
2	United States Marshals Service / WV Intelligence Fusion Center	Fugitive Investigation
3	Division of Criminal Investigation	Narcotics / Fraud / Identity Theft
4	Federal Bureau of Investigation	Threat of Mass Violence
5	United States Marshals Service	Fugitive Investigation
6	Indiana State Police / IN Intelligence Fusion Center	Theft
7	Office of Investigations – Social Security Administration / NV Threat Analysis Center	Identity Theft / Social Security Fraud
8	United States Marshals Service / ID Fusion Center	Fugitive Investigation
9	United States Marshals Service / FL Fusion Center	Fugitive Investigation
10	United States Marshals Service	Fugitive Investigation
11	United States Marshals Service	Fugitive Investigation
12	United States Marshals Service	Fugitive Investigation
13	United States Marshals Service / FL Fusion Center	Fugitive Investigation

Clearview AI

In February 2022, Clearview AI spoke to the committee on the use of facial recognition technology for criminal investigations. Clearview AI is a third-party vendor that does not have any contracts with law enforcement agencies in Montana. The company demonstrated the technology the company employs to assist law enforcement in locating missing persons and investigating crimes. Clearview AI also provided comments regarding internal controls, its privacy policy, code of conduct, a company primer, and a case study for the committee to review and consider as it developed legislation.

Uses for Unemployment Insurance Fraud Prevention

The DLI contracted with a third-party vendor, ID.me in 2020, during the Covid-19 pandemic, following a surge in both unemployment insurance claims and fraudulent activity. ID.me was chosen because it was the sole available product that met the DLI's needs. The DLI gave a presentation on how they use ID.me for identity verification, and answered several follow-up questions from the committee on alternative options for workers and possible solutions for a new unemployment insurance solution with built-in fraud prevention software.

Security of Facial Recognition Data

The DOJ and ID.me explained their policies on data security. The DOJ provided a copy of its privacy policy for the MATIC, which is updated on a regular basis. ID.me's testimony detailed the company's privacy policies and adherence to federal guidelines, and focused on the benefits the company provides to combat fraud prevention for unemployment claims.

Stakeholder Feedback

The committee held a stakeholder panel to collect feedback on the possibility of a moratorium or prohibition of facial recognition technology use by state and local government agencies in Montana. Stakeholders included the Department of Administration, DOC, DOJ, DLI, Compliance Monitoring Systems, Montana Association of Chiefs of Police, Montana County Attorneys Association, Montana Police Protective Association, and Montana Sheriff & Peace Officers Association. Stakeholders answered questions the committee provided prior to the meeting, and answered follow-up questions from committee members.

Stakeholder Questions	Stakeholder Responses
Department of Corrections	DOC Response
Department of Justice	DOJ Response
Department of Labor & Industry	DLI Response

Stakeholders agreed that the current use of facial verification by the DOC, DOJ, and DLI is useful and the departments are hopeful they will be able to continue to work with the vendors providing the facial verification services in the future. Stakeholders agree that facial recognition technology is not currently being utilized to its full extent in law enforcement in Montana, and recognize the need for guidelines as the technology evolves.

Conclusions

Possible findings:

- The statute for the advisory committee for the MATIC currently requires one legislative member, either a senator or representative from the judiciary committee, appointed by the attorney general. The appointment process is outdated.
- *A restriction on the use of facial recognition technology by state and local government agencies is necessary in order to benefit society while simultaneously ensuring the civil liberties of Montana citizens.*
- *State and local government agencies should prohibit facial recognition technology, except for limited uses of facial verification through existing contracts, and limited use of facial recognition technology by law enforcement for investigation of serious crimes, to locate missing and endangered persons, and to identify deceased persons.*

Possible recommendations:

- *Amend statute to increase legislative representation on the advisory committee to two members; introduce term limits for legislative members; clarify reimbursement for advisory committee.*
- *Prohibit or restrict facial recognition technology use by state and local government agencies.*

Results

The committee voted to *introduce [two] committee bills:*

- *PD0002: An act revising the membership of the criminal intelligence information advisory council*
- *PD000X: An act . . .*

APPENDIX A:
ECONOMIC AFFAIRS INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Economic Affairs Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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APPENDIX B:
ACRONYM GUIDE

CJIN	Criminal Justice Information Network
DCI	Division of Criminal Investigation
DLI	Department of Labor and Industry
DOC	Department of Corrections
DOJ	Department of Justice
FWP	Fish, Wildlife & Parks
MATIC	Montana Analysis and Technical Information Center
Nlets	International Justice & Public Safety Network
UI	Unemployment Insurance