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Economic Affairs Interim Committee

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DRAFT FINAL REPORT TO THE 68TH MONTANA
LEGISLATURE

[Text in Italics and highlighted indicates material added since the Committee's initial review of the draft report in August 2022]

BEHIND THE MASK: HJ 48 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: <https://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

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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, it can still be prone to error, it can be an invasion of privacy, and it 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 a legislative interim 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 the state;
- 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 postsession poll of legislators. The Legislative Council assigned HJ 48 to the Economic Affairs Interim Committee, the first of three assigned studies. The committee moved to devote roughly 10% of committee time to HJ 48.

Findings & Recommendations

After several hearings with stakeholders, the committee recognized the concern for unlimited use of facial recognition technology by state and local governments and law enforcement. Two pieces of draft legislation were considered to either restrict or prohibit the technology, however the committee did not reach a consensus on either bill proposal.

The statute for the advisory committee for the Montana Analysis and Technical Information Center (MATIC) currently requires one legislative member, either a senator or a representative from the judiciary committee, appointed by the attorney general. The appointment process is outdated. The committee voted to introduce a committee bill that amends the statute to increase legislative representation on the advisory committee to two members, introduces term limits for legislative members, and clarifies reimbursement for the advisory committee.

BACKGROUND

During the 2021 legislative session, Rep. Katie Sullivan, D-Missoula, introduced [House Bill 577](#) in 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 HJ 48 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, uses for unemployment insurance fraud, and the security of facial recognition data and data sharing among local, state, and federal agencies.

HISTORY OF FACIAL RECOGNITION TECHNOLOGY

Facial recognition technology as we know it today is far more advanced than its original roots from the 1960s, but the idea of facial recognition goes back even further, to the 1850s 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

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

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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 against 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

FACIAL VERIFICATION VS. FACIAL IDENTIFICATION²

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 matching.

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 on to 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

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

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.

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.

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

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?

Facial Verification Use in Montana

The committee 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 and Industry (DLI)—identity verification for unemployment insurance
- Department of Justice (DOJ)—identity verification for driver's 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 multiagency 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.

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

The CJIN also maintains access to the International Justice and 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 driver's 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 that 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

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	Agency	Criminal Predicate
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

In 2020, the DLI [contracted](#) with a third-party vendor, ID.me, 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 Sheriffs and 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 and 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.

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, and Parks
MATIC	Montana Analysis and Technical Information Center
Nlets	International Justice and Public Safety Network

APPENDIX C: DRAFT LEGISLATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MEMBERSHIP OF THE CRIMINAL INTELLIGENCE INFORMATION ADVISORY COUNCIL; PROVIDING FOR TERM LIMITS FOR LEGISLATIVE MEMBERS; CLARIFYING REIMBURSEMENT FOR ADVISORY COUNCIL MEMBERS; AMENDING SECTION 44-5-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 44-5-501, MCA, is amended to read:

"44-5-501. Creation of criminal intelligence information section – advisory council. (1)

The department of justice may create a criminal intelligence information section.

(2) ~~(a)~~ If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122.

~~(3) (a) The advisory council consists of seven members. Except as provided in subsections (3)(a)(v) and (3)(a)(vii), the members must be appointed by the attorney general. The members consist of:~~

~~(i) ~~one~~ consisting of one representative from the Montana chiefs of police association;~~

~~(ii) one representative from the Montana sheriffs and peace officers association;~~

~~(iii) one representative from the Montana county ~~attorneys~~ ~~attorneys'~~ association;~~

~~(iv) one member of the department of justice;~~

~~(v) a one member of ~~the judiciary committee of either the house of representatives or the senate~~ ~~the senate judiciary committee, appointed by the committee on committees;~~~~

~~(vi) one member of the house judiciary committee, appointed by the speaker of the house; and~~

~~(vii) a citizen at large.~~

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the department involved in

criminal intelligence or criminal investigation work.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(4) The two advisory council members who are also legislators shall serve terms of 4 years and may be reappointed. A term begins on April 1 of odd-numbered years and ends on March 31. The committee on committees or speaker of the house shall appoint a new legislative advisory council member on or before February 1 of the odd-numbered year that coincides with the expiration of the current legislative advisory council member's term. The terms of the legislative advisory council members must be staggered.

(e)(5) The department shall provide staff and support services for the advisory council. The advisory council is attached to the department of justice for administrative purposes only, and members are entitled to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503."

NEW SECTION. Section 2. {standard} **Effective date.** [This act] is effective on passage and approval.