

Montana Department of Justice
Division of Criminal Investigation
Montana Analysis & Technical Information Center



LEGISLATIVE REPORT
FACIAL RECOGNITION FOR GOVERNMENT USE ACT

PREPARED FOR THE ECONOMIC AFFAIRS AND
LAW AND JUSTICE INTERIM COMMITTEES

August 2023

The Montana Analysis and Technical Information Center (MATIC) prepared this yearly report in compliance with Section 11 of the Facial Recognition for Government Use Act. Senate Bill 397 was passed by the 68th Legislature and signed by Governor Gianforte on June 29, 2023.

Montana Analysis and Technical Information Center Usage Report

The MATIC is housed within the Montana Division of Criminal Investigation in Helena. The MATIC received two requests for assistance regarding facial recognition in support of criminal case requests between July 2022 through June 2023.

(1) Granite County Sheriff's Office in Montana requested facial recognition assistance on June 23, 2023, for a burglary case. MATIC does not have this capability and referred Granite County to the Rocky Mountain Information Network in Arizona. No arrests have been made.

(2) Rhode Island Fusion Center sent a request nationwide on June 29, 2023, for facial recognition assistance in a stolen identity/imposter case. MATIC responded to Rhode Island indicating the center does not have this capability.

Montana Law Enforcement Usage Report

No Montana law enforcement agencies reported use of facial recognition technology to MATIC in the last year.

In August 2023, the Montana Division of Criminal Investigation distributed an overview of the Facial Recognition for Government Use Act to Montana law enforcement. The letter provides guidance and auditing requirement information (see pages 2-4).

DIVISION OF CRIMINAL INVESTIGATION
DEPARTMENT OF JUSTICE
STATE OF MONTANA

Austin Knudsen
Attorney General



PO Box 201417
2225 Eleventh Avenue
Helena, MT 59620-1417
(406) 444-3874
FAX: (406) 444-2759

NOTIFICATION TO ALL MONTANA LAW ENFORCEMENT AGENCIES
Re: Overview Of The New Facial Recognition For Government Use Act

July 31, 2023

Dear Public Safety Executives,

Montana's new Facial Recognition for Government Use Act (the Act) was approved by the 68th legislature and signed into law on June 29, 2023. This act offers guidelines to state and local government agencies regarding the use of facial verification technology (FRT). It allows agencies to engage third-party services for facial verification on their behalf. The act also grants agencies the authority to employ facial recognition technology in the investigation of serious criminal offenses.

Continuous Facial Surveillance Prohibited

There are prohibitions for government use related to facial recognition technology outlined in the new statute. The use of continuous facial surveillance is prohibited, which is defined as the monitoring of public places or third-party image sets using facial recognition technology for facial identification to match faces with a prepopulated list of face images.

Permitted Use of Facial Recognition Technology by Montana Law Enforcement

Law enforcement agencies are permitted to use FRT for criminal investigations involving serious criminal offenses, as defined in the Act, and for locating, or identifying missing, endangered, or deceased persons. A search warrant, issued upon probable cause, is required to obtain or use FRT in the investigation of designated serious crimes, or to aid in the location or identity of missing, endangered, or deceased persons.

An exception to the Warrant requirement is when there is an emergency posing an imminent threat to a person. In emergency cases, the law enforcement agency must obtain a warrant within 24 hours of conducting the search. This exception is based upon exigency.

The utilization of facial recognition technology is limited to facial biometric data that has been obtained after informing individuals about the possible use of their data with facial recognition technology and obtaining their prior written consent. Additionally, the Act emphasizes the

significance of meaningful human review in the utilization of facial recognition technology to ensure accurate and responsible decision-making processes.

As of July 2023, Montana lacks any law enforcement-accessible databases where individuals have provided written consent for the retention of their facial biometric data.

Notice Requirement

The ACT contains specific notice requirements which require notification to an individual when an image has been captured and may be used in conjunction with FRT. Third party vendors are subject to strict notification and retention requirements.

Policy Requirement

Subject to the preceding limitations, agencies may use FRT, provided they have a use and privacy policy in place. The policy must specify the purpose, length of data retention, and notice requirements for individuals. Third-party vendors working with these agencies must also adhere to similar policies.

Audit Requirement

There are auditing and reporting requirements to ensure FRT is used for legitimate law enforcement purposes. Both law enforcement agencies and vendors are obligated to submit annual reports. These reports must include details related to facial recognition searches.

Law enforcement agencies that utilize facial recognition technology must submit their reports to the Montana Analysis & Technical Information Center (MATIC) by *June 30th of each year*, based on data from the previous calendar year. DCI has created an online form for agencies to easily submit their information. The online form is located at <https://forms.office.com/g/fTtvHSH3YA> and collects the required information outlined in MCA:

1. Number of facial recognition searches conducted
2. Types of offenses investigated
3. Number of arrests resulting from the searches
4. Number of convictions resulting from the searches

The Montana Department of Justice (MT DOJ) is also required to submit a report to the Economic Affairs Interim Committee and the Law and Justice Interim Committee by *September 1st of each year*. This report must contain the following information based on data from the previous calendar year:

1. The facial recognition data submitted to DOJ by law enforcement agencies
2. Names of the law enforcement agencies or entities requesting facial recognition services
3. Total number of searches conducted using facial recognition technology
4. Types of offenses investigated
5. Number of arrests resulting from the searches
6. Number of convictions resulting from the searches

Penalties

The ACT authorizes legal action in the case of violations of the ACT. Money damages, costs, injunctive relief, and attorney fees may be awarded against public employees and entities for each violation of the ACT.

DCI encourages you to review the complete legislation for a comprehensive understanding of its provisions and implications at <https://leg.mt.gov/bills/2023/billhtml/SB0397.htm>. If you have any questions, please contact DCI Bureau Chief Anne Dormady at 406-444-9759 or MATIC Supervisory Agent Bryan Gortmaker at 406-444-1317.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan Lockerby", with a long horizontal flourish extending to the right.

Bryan Lockerby, Administrator
Montana Division of Criminal Investigation