DIGEST

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HB 611 Original   2021 Regular Session   Jordan

Abstract: Prohibits the use of facial recognition data in law enforcement investigations and evidentiary proceedings and provides exceptions to the prohibition.

Proposed law provides for definitions.

Proposed law provides that a law enforcement officer shall not use or request targeted facial recognition in addition to an arrest photo database unless both of the following have occurred:

(1)   The law enforcement officer has probable cause to believe that the individual the officer seeks to identify has committed, is committing, or is about to commit a felony.

(2)   The officer has documented probable cause before or immediately after the use or request.

Proposed law provides that a law enforcement officer shall apply for and obtain a court order before using or requesting targeted facial recognition.

Proposed law provides that both of the following circumstances shall be present for a determination of probable cause:

(1)   A felony has been, is being, or will be committed by the individual sought to be identified.

(2)   The use of facial recognition will lead to evidence of the felony being investigated or the apprehension of an individual against whom an arrest warrant has been issued previously.

Proposed law provides for the procedures that law enforcement officers shall follow in order to obtain an application for a court order.

Proposed law provides that a law enforcement officer using or requesting targeted or continuous facial recognition shall apply for an order approving the use within 24 hours after the use occurs or initiates.

Proposed law provides that the use of target or continuous facial recognition shall terminate immediately and all information obtained from the search shall be destroyed if the order is denied or the application is not made within 24 hours.

Proposed law provides that a law enforcement officer may use or request targeted or continuous

facial recognition only for legitimate law enforcement purposes that include any of the following:

(1)   Exigent circumstances.

(2)   The identification or location of an individual who is deceased, incapacitated, or reasonably suspected to be the victim of a crime, whom the officer determines, in good faith, cannot be identified through other means.

(3)   The location of an individual who has been reported missing, including the subject of an Amber or Silver Alert.

(4)   The identification of an individual who has been lawfully arrested, either during the process of booking that individual after an arrest or during that individual's custodial detention.

Proposed law provides that a law enforcement officer who knowingly uses or requests targeted or continuous facial recognition for a purpose other than a legitimate law enforcement purpose is subject to dismissal, a fine of not more than $10,000, or both.

Proposed law provides that an individual arrested as a result of an investigation generated through the use or request of targeted or continuous facial recognition shall be notified of that use or request and be delivered notice within 48 hours of the individual's arrest.

Proposed law provides that the court, on a specified finding of good cause, may seal the application, affidavit, and previously issued orders and delay the required notification for a period of 30 calendar days, or for an additional period not to exceed 90 days.

Proposed law subjects any application, affidavit, court order, or document relating to continuous or targeted facial recognition to the discovery provisions of the Code of Civil Procedure and the Code of Criminal Procedure.

Proposed law provides for the adoption of an audit process by the La. State Police Fusion Center and any law enforcement agency using targeted or continuous facial recognition to ensure that facial recognition is used only for legitimate law enforcement purposes.

Proposed law provides for the submission of a report to the La. House Committee on Administration of Criminal Justice no later than March 1st of each year by the La. Department of Public Safety and Corrections, the La. State Analytical and Fusion Exchange, and any other law enforcement agencies that use targeted or continuous facial recognition. Provides that the report shall contain all of the following information based on data from the previous calendar year:

(1)   The number of searches run.

(2)   The number of arrests and convictions that resulted from the searches.

(3)   The offenses that the searches were used to investigate.

(4)   The number of motions to suppress made with respect to the searches.

(5)   The number of searches run for targeted or continuous facial recognition in exigent circumstances.

(6)   Summary statistics on the race, ethnicity, age, and gender of the individuals whose faces were searched using targeted facial recognition in conjunction with an arrest photo database or a state identification photo database.

(7)   A list of audits that were completed by the La. State Analytical and Fusion Exchange or a law enforcement agency and a summary of the audit results.

(8)   The number of uses or requests of targeted facial recognition in conjunction with the arrest database.

Proposed law excludes the results of searches and evidence derived from targeted or continuous facial recognition from being received into evidence in a trial, hearing, or any other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or any other authority of the state if the use of facial recognition was prohibited or the law enforcement officer did not obtain an order for the use or request of facial recognition.

Proposed law requires controllers to employ meaningful human review before making final decisions when using facial recognition for profiling where those final decisions produce legal or other significant effects concerning individuals.

Proposed law requires processors providing facial recognition services to prohibit controllers from unlawfully using the services to discriminate against individuals in violation of federal or state law.

Proposed law provides for civil relief for individuals subjected to targeted or continuous facial recognition and further provides for a prescriptive period of three years for a claimant to bring a civil action commencing on the date on which the claimant first had a reasonable opportunity to discover the violation.

(Adds R.S. 15:599)