

2021 Regular Session

HOUSE BILL NO. 611

BY REPRESENTATIVE JORDAN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EVIDENCE: Prohibits the use of facial recognition data under certain circumstances

1 AN ACT

2 To enact R.S. 15:599, relative to facial recognition data; to provide for definitions; to
3 provide for prohibited use of facial recognition; to provide for applications
4 authorizing use of facial recognition; to provide for exceptions; to provide for notice;
5 to provide for discovery; to provide for audits; to provide for reporting requirements;
6 to provide for evidentiary limitations; to provide relative to profiling; to require
7 human review of facial recognition data; to prohibit the use of facial recognition data
8 under certain circumstances; to provide for penalties; to provide for prescription; and
9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 15:599 is hereby enacted to read as follows:

12 §599. Use of facial recognition; prohibitions; definitions

13 A. For purposes of this Chapter, the following terms shall have the following
14 meanings:

15 (1) "Appropriate relief" means preliminary and other equitable or declaratory
16 relief, actual damages, punitive damages, reasonable attorney fees, and other
17 litigation costs reasonably incurred. It is a complete defense against any civil or
18 criminal action brought under this Section if the defendant relies in good faith on a
19 court warrant, court order, a grand jury subpoena, a legislative authorization, or a
20 statutory authorization.

1 (2) "Arrest photo database" means a government or private database
2 populated primarily by booking or arrest photographs or photographs of individuals
3 encountered by law enforcement officers.

4 (3) "Continuous facial recognition" means the use of facial recognition on
5 groups of individuals as part of a criminal investigation or general surveillance,
6 including the use of facial recognition to continuously identify individuals whose
7 images are captured or recorded by a surveillance camera.

8 (4) "Controller" means a natural person or legal person which, alone or
9 jointly with others, determines the purposes and means of the processing of personal
10 data.

11 (5) "Legitimate law enforcement purpose" means the investigation,
12 detection, or analysis of a crime or of the operation of terrorists, or searches or alerts
13 for a missing or endangered person.

14 (6) "Processor" means a natural or legal person which processes personal
15 data on behalf of the controller.

16 (7) "State identification photo database" means a government or private
17 database populated primarily by photographs from drivers' licenses or identification
18 documents made or issued by or under the authority of the state.

19 (8) "Targeted facial recognition" means the use of facial recognition to
20 identify or attempt to identify a specific individual as part of a specific criminal
21 investigation.

22 B.(1) A law enforcement officer shall not use or request targeted facial
23 recognition in conjunction with an arrest photo database unless both of the following
24 have occurred:

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

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

1 (2) A law enforcement officer shall not use or request targeted facial
2 recognition in conjunction with a state identification photo database or any other
3 facial recognition database without first applying for a court order.

4 C.(1) Upon application by law enforcement, a court may issue an order
5 relating to targeted facial recognition in conjunction with a state identification photo
6 database or any other facial recognition database after a determination has been made
7 that there is probable cause to believe that both of the following circumstances are
8 present:

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

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

14 (2) An application for an order shall be in writing, signed and sworn by the
15 applicant, and accompanied by an affidavit that sets forth the basis for probable
16 cause and contains facts within the personal knowledge of the affiant. The order
17 shall contain specified information relating to the suspect, the database searched, the
18 applicant, and the search time period.

19 (3) If a law enforcement officer uses or requests targeted or continuous facial
20 recognition in conjunction with a state identification photo database or any other
21 facial recognition database, the officer shall apply for an order approving the use
22 within twenty-four hours after the use occurs or initiates. If the order is denied or the
23 application is not made within twenty-four hours, the use shall terminate
24 immediately and all information obtained as a result of the search shall be destroyed.

25 D.(1) A law enforcement officer may use or request targeted or continuous
26 facial recognition only for a legitimate law enforcement purpose. A law enforcement
27 officer may explicitly use or request targeted or continuous facial recognition for any
28 of the following purposes:

29 (a) Exigent circumstances.

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

4 (c) The location of an individual who has been reported missing, including
5 the subject of an Amber or Silver Alert pursuant to R.S. 40:2521 and R.S. 40:2530.3.

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

9 (2) A law enforcement officer who knowingly uses or requests targeted or
10 continuous facial recognition for a purpose other than a legitimate law enforcement
11 purpose is subject to dismissal, a fine of not more than ten thousand dollars, or both.

12 E.(1) An individual arrested as a result of an investigative lead generated
13 through the use or request of targeted or continuous facial recognition shall be
14 notified of that use or request. The notice shall be delivered within forty-eight hours
15 of the individual's arrest, state the general nature of the law enforcement inquiry, and
16 provide the individual with specified information. A copy of the order shall also be
17 provided to the individual.

18 (2) The court, on a specified finding of good cause, may order that the
19 application, affidavit, and previously issued orders be sealed and that the required
20 notification be delayed for a period of thirty calendar days, or for an additional
21 period not to exceed ninety days.

22 F. Discovery of an application, affidavit, or court order relating to
23 continuous or targeted facial recognition and any documents related to the use or
24 request of continuous or targeted facial recognition, if any, are subject to the Code
25 of Civil Procedure and the Code of Criminal Procedure.

26 G. The Louisiana State Police Fusion Center and any law enforcement
27 agency using targeted or continuous facial recognition shall adopt an audit process
28 to ensure that facial recognition is used only for legitimate law enforcement

1 purposes, including audits of uses or requests made by law enforcement agencies or
2 individual law enforcement officers.

3 H. No later than March 1 of each year, the Louisiana Department of Public
4 Safety and Corrections, in conjunction with the Louisiana State Analytical and
5 Fusion Exchange and law enforcement agencies that use targeted or continuous
6 facial recognition, shall submit a report to the Louisiana House Committee on
7 Administration of Criminal Justice containing all the following information based
8 on data from the previous calendar year:

9 (a) The number of searches run.

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

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

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

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

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

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

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

22 I. Except for uses authorized by Subsection D of this Section, when targeted
23 or continuous facial recognition is used or requested, results from those searches and
24 evidence derived from the targeted or continuous facial recognition may not be
25 received into evidence in a trial, hearing, or any other proceeding in or before a
26 court, grand jury, department, officer, agency, regulatory body, legislative
27 committee, or any other authority of the state if the use of facial recognition violated
28 this Section or the law enforcement officer was required to subsequently obtain an

1 order for the use or request of targeted or continuous facial recognition, but did not
2 subsequently obtain such an order.

3 J.(1) Controllers using facial recognition for profiling shall employ
4 meaningful human review prior to making final decisions based on such profiling
5 where such final decisions produce legal effects concerning individuals or similarly
6 significant effects concerning individuals.

7 (2) Processors that provide facial recognition services shall prohibit the use
8 of such facial recognition services by controllers to unlawfully discriminate under
9 federal or state law against individuals or groups of individuals.

10 K. An individual who is subject to identification or attempted identification
11 through targeted or continuous facial recognition in violation of this Section, or who
12 does not receive the required notice, may recover appropriate relief in a civil action
13 from the law enforcement agency that employs the officer. A civil action may not be
14 commenced later than three years after the date on which the claimant first had a
15 reasonable opportunity to discover the violation.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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)