

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 First Reader

Senate Bill 836 (Senator Lee)  
 Judicial Proceedings

Public Safety - Maryland Image Repository System - Access

This bill requires (1) an “agency” that uploads an image of an unidentified individual to the Maryland Image Repository System (MIRS) to produce, maintain, and make available an affidavit, as specified; (2) the Department of Public Safety and Correctional Services (DPSCS) to require each federal agency authorized to access MIRS to enter into an agreement, as specified; (3) DPSCS to conduct audits of agencies that access MIRS to ensure compliance with the bill and specified agreements; and (4) DPSCS, by December 1 each year, to report to the General Assembly, as specified.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$638,700 in FY 2021; future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	638,700	448,700	458,600	473,600	489,100
Net Effect	(\$638,700)	(\$448,700)	(\$458,600)	(\$473,600)	(\$489,100)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Potential significant increase in local government expenditures. Revenues are not affected. **The bill imposes a mandate on a unit of local government.**

**Small Business Effect:** None.

## Analysis

### Bill Summary:

*Agency Access to MIRS:* At the time an agency uploads an image of an unidentified individual to MIRS, or as soon as reasonably practicable in the event of exigent circumstances, the agency must produce and maintain for a period of not less than three years a document that is in writing, signed, dated, and sworn to by the applicant and accompanied by an affidavit that:

- sets forth the basis for probable cause to believe that a crime has been or is being committed by the unidentified individual and contains facts within the personal knowledge of the affiant that there is probable cause to believe a crime has been committed or is being committed; or
- contains facts within the personal knowledge of the affiant that the unidentified individual (1) has been reported missing; (2) is deceased, incapacitated, or reasonably expected to be the victim of a crime and, in good faith, cannot be identified through other means; or (3) is, according to the Motor Vehicle Administration (MVA), the subject of an investigation of identity fraud under § 8-301 of the Criminal Law Article.

On request of DPSCS for the purpose of conducting an audit, each agency must make available the documents produced and maintained in accordance with these provisions.

“Agency” is defined as a unit or agency of local, State, or federal government.

*Federal Agency Access to MIRS:* Except when exigent circumstances exist, DPSCS must require each federal agency authorized to access MIRS to enter into an agreement that provides:

- access to MIRS only to investigate or identify (1) a suspect of a pending criminal matter involving a crime of violence; (2) an individual who has been reported missing, as specified; (3) 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; (4) an individual who has been lawfully arrested, during the process of booking that individual, after an arrest, or during that individual’s custodial detention; or (5) at the request of MVA, an individual involved in an investigation of identity fraud through deduplication analysis;

- that the number of candidates produced by a search of MIRS may not exceed the five most likely matches; and
- that the search results made available to the federal agency must be limited to the image of each matching candidate, the name of each candidate, and the recorded physical characteristics of each candidate.

A federal agency may be authorized to access MIRS without entering into an agreement if exigent circumstances exist.

*Report:* By December 1 each year, DPSCS must report to the General Assembly on (1) each instance in which an agency accessed MIRS for exigent circumstances; (2) audits performed under the bill's provisions; and (3) each violation of the bill's provisions.

**Current Law:** MIRS is facial recognition software within DPSCS that allows law enforcement to compare images of unidentified individuals to images from MVA records, inmate case records, and mugshots. People in public places are never scanned by MIRS. MIRS only gives a probable list of potential suspects to be followed up on by law enforcement, not a positive identification.

Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

**Background:** According to news reports, local law enforcement agencies have used facial recognition software to varying degrees in recent years. Currently, local law enforcement agencies in the State are responsible for establishing a policy regarding the use of MIRS and decide when, where, and how it is used. The Anne Arundel County Police Department (AAPD) used MIRS to identify the suspected gunman at the Capital Gazette shooting that killed five people. AAPD used MIRS because the fingerprint identification system was operating slowly and the suspect did not have identification and refused to communicate with officers. The suspect's image was contained in MIRS because of a prior charge and conviction. The Baltimore City Police Department also reportedly used facial recognition software to identify individuals during the protests after the death of Freddie Gray.

**State Expenditures:** General fund expenditures for DPSCS increase by \$638,674 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring one administrative officer, one computer information officer, three administrators, and one administrative specialist to oversee the audits and account management required under the bill. It includes salaries, fringe benefits, one-time start-up costs, computer programming costs, and ongoing operating expenses.

Positions	6
Salaries and Fringe Benefits	\$326,476
Computer Programming	280,000
Other Operating Expenses	<u>32,198</u>
<b>Total FY 2021 DPSCS Expenditures</b>	<b>\$638,674</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The Department of State Police and MVA can implement the bill with existing resources. It is assumed that any other affected State agencies can also implement the bill with existing resources.

**Local Expenditures:** The bill may result in a significant increase in local government expenditures for some law enforcement agencies to hire staff to produce, maintain, and make available affidavits required under the bill. For example, Baltimore City estimates that it needs to hire at least two additional officers at a cost of at least \$168,000 annually. Montgomery County advises that it needs to hire an office support coordinator and a program specialist at a cost of approximately \$174,400 annually.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Baltimore City; Montgomery and Prince George’s counties; Maryland Association of Counties; Maryland Municipal League; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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