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Legislative District 12
Baltimore and Howard Counties

Education, Health, and Environmental Affairs
Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Chair

Joint Committee on Fair Practices and
State Personnel Oversight

Chair

Howard County Senate Delegation



THE SENATE OF MARYLAND
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Support: SB 649

Public Information Act – Motor Vehicle Administration –
Warrant and Subpoena for Personal Information and Reporting

Issue:

- Maryland is one of the states with the most unrestricted federal access to Motor Vehicle Administration (MVA) data in the US
- Immigration and Customs Enforcement (ICE) has access to MVA data via DPSCS's Maryland Criminal Justice Dashboard ("Dashboard"), which includes 7 million MD driver's license photos for facial recognition searches
- ICE agents *have* accessed the Dashboard with generic federal logins and *have* saved facial recognition searches *without a warrant or any oversight* by DPSCS
- There is little data on the accuracy of facial recognition technology (FRT), though FRT is known to be less accurate for people of color
- Unrestricted access is a serious threat to privacy of all Marylanders -- *you don't have to be the person of interest to be selected by FRT, you only have to look like that person*
- Additionally, undocumented immigrants are encouraged to get a driver's license, which makes their information available to ICE without any prior notification or state oversight

What SB640 does:

- Requires ICE to present a warrant prior to obtaining access to MVA information
- Requires the MVA to report data about federal requests for personal information and facial recognition searches

Sponsor amendment:

- Defines protected information in terms of the type of information rather than who controls it, to clarify that warrant requirement applies to both direct (e.g., contacting MVA directly) and indirect (e.g., DPSCS Dashboard) access points to MVA information

Action taken in other states:

- *California Values Act (2017)*: requires AG to make recommendations to ensure to the “fullest extent practicable” that law enforcement databases are not used to enforce immigration laws (ICE lost access to CA law enforcement databases in October 2019)
- *New York Green Light Law (2019)*: prohibits DMV disclosure of information to “any agency that primarily enforces immigration law” unless presented with a warrant; requires notification of individuals about whom requests are made
- *New Jersey P.L.2019, c.271 (2019)*: prohibits disclosure of DMV information to any federal, state, or local law enforcement without consent or warrant
- *8 states prohibit FRT*: AK, NH, LA, MO, MT, OK, OR, WA
- *21 additional states do not provide driver’s license photos to federal FRT databases*: CA, CT, FL, GA, HI, KS, MA, ME, MS, MN, NV, NY, OH, RI, SD, VT, WY, NJ, VA, WV, WI



Department of Public Safety and Correctional Services

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November 21, 2019

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241 House Office Building
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Dear Senators and Delegates:

Thank you for your letter regarding the Maryland Image Repository System (MIRS). The Department of Public Safety and Correctional Services (DPSCS) appreciates the time you took to visit with the agency's Information Technology and Communications Division (ITCD) in order to develop a better understanding of the MIRS system.

ITCD has housed and maintained the Maryland Image Repository System (MIRS) since 2011. MIRS is a digitized mug shot book designed used by law enforcement agencies throughout Maryland in the furtherance of their law enforcement investigation duties.

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As discussed during the demonstration, law enforcement officials can use MIRS to compare images of unidentified individuals to images from Motor Vehicle Administration (MVA) records, inmate case records, and mug shots. Law provides for the sharing and use of those photos for law enforcement. Uploaded images by members of law enforcement are not saved and any images uploaded are only used to determine the highest probability that the uploaded image may relate to an MVA and/or DPSCS image within MIRS. MIRS does not provide "hits" or "matches" to the uploaded image of the unidentified individual.

Similar to accessing the National Crime Information Center within the Federal Bureau of Investigation, only authorized users are able to access the MIRS for investigatory purposes. 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. All users must accept the terms of the legal disclaimer when accessing the system which, among other things, states that "[t]he unauthorized use of my Logon ID to access DPSCS, or a breach of any security procedures related to the use of my Logon ID may result in prosecution under the Criminal Law Article, Section 7-302 and Section 8-606, Annotated Code of Maryland."

In your letter, you requested additional information regarding MIRS. Please see below, responses to the inquiries contained in your letter.

1. The number of MIRS requests originating from ICE, over the past two 2 years

The user's search results are saved under their session and are not available to any other user. In 2018, 14 sessions were saved under one user, and in 2019, 42 sessions were saved; 41 sessions under one user and 1 session saved under another user.

2. The estimated costs to require and archive signed off affidavits certifying that a specific investigator is looking for a specific unidentified criminal suspect with reasonable suspicion before access is granted to MIRS, or after an authorized valid criminal warrant (not administrative) or subpoena is issued by a Maryland or Federal Court

DPSCS is unable to provide a cost estimate to require and archive such affidavits. It is incumbent upon the using agency to ensure that it is using information obtained from the MIRS lawfully and according to that agency's policies and procedures. In addition to warehousing and maintaining Maryland's Criminal Justice Repository,

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[Question 2 Cont'd]

DPSCS's primary mission is to oversee the Division of Correction, which houses inmates sentenced to terms of incarceration exceeding 18 months, the Division of Parole and Probation, and the Baltimore City Pretrial Complex. While DPSCS enjoys partnerships with both the Judiciary and law enforcement, DPSCS does not function as the intermediary between the Judiciary and law enforcement in terms of investigations and the issuance of criminal warrants or subpoenas. The Judiciary and State and local law enforcement agencies are best suited to provide input on this suggested process.

3. The purpose of including names, addresses, and other non-biometric indicators in the Maryland Image Repository System, and why that outweighs potential the concerns regarding whether the biometrics are the only features being examined during an identification process

The information provided via MIRS is information that law enforcement/criminal justice community is entitled to pursuant to current State laws and regulations. The MVA information incorporated with MIRS is the existing driver license information that is tied to the image.

4. The cost estimate to allow non-biometric data to be accessed only after an actual identification has been reduced to less than 5 potential hits, with probability > (0.700)?

The Department is unable to provide a cost estimate at this time to allow non-biometric data to be accessed only after an actual identification has been reduced to less than 5 potential hits, with probability > (0.700). However, any software modifications would be at a substantial cost.

It is important to reinforce that MIRS as an investigatory tool does not provide positive identification. As such, it does not meet the standard of evidence nor does it replace the investigative work of law enforcement.

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I hope this information is helpful. If the Department or I can be of further assistance, please do not hesitate to contact me or Rachel Sessa, Chief of Staff, at 410-339-5022.

Sincerely,



Kevin Combs
Chief Information Officer
Information Technology and Communications Division

cc: The Honorable Robert L. Green, Department of Public Safety and Correctional Services
Ms. Rachel Sessa, Chief of Staff, Department of Public Safety and Correctional Services