

Amendment # 1 HB 338

Article – Criminal Procedure. Section 2-501
Add:

(D) “FALSE POSITIVE” MEANS THE SOFTWARE WRONGLY CONSIDERED PHOTOS OF TWO DIFFERENT INDIVIDUALS TO SHOW THE SAME PERSON.

(E) “TRUE POSITIVE” MEANS THE PERSON IN THE PROBE IMAGE IS ENROLLED AND THEY ARE CORRECTLY MATCHED.

Amendment # 2 HB 338

Article – Criminal Procedure. Section 2-503(A)(1)(III)
Amend to state:

“USE FACIAL RECOGNITION TECHNOLOGY TO ANALYZE A SKETCH, ~~OR MANUALLY PRODUCED IMAGES,~~ OR IMAGES PRODUCED USING A PREDICTIVE METHOD OR GENERATIVE ARTIFICIAL INTELLIGENCE;

Rationale: This language will ensure that law enforcement officers are not analyzing images produced by probabilistic software that predict or generate faces.

Amendment # 3 HB 338

Article – Criminal Procedure. Section 2-505(A)
Add:

(A) BEFORE DEPLOYING A FACIAL RECOGNITION SYSTEM, A LAW ENFORCEMENT AGENCY SHALL:

- (1) CONDUCT AN INDEPENDENT VERIFICATION, PERFORMED IN THE INTENDED REAL-WORLD CONTEXT AND USING REAL-WORLD SAMPLES AND CONDITIONS, TO EVALUATE THE RELIABILITY AND ACCURACY OF THE SOFTWARE.
- (2) DEVELOP OR USE A PREEXISTING ARTIFICIAL INTELLIGENCE OR FACIAL RECOGNITION TECHNOLOGY RISK MANAGEMENT FRAMEWORK TO IDENTIFY AND MANAGE RISKS, ESTABLISH APPROPRIATE MEASURES TO PROTECT PRIVACY, DETERMINE THE APPROPRIATE LEVEL OF HUMAN

OVERSIGHT, AND IDENTIFY AND MITIGATE POTENTIAL HARM, BIAS, AND CONCERNS AROUND EQUITY.

(B) THE RESULTS OF THE ASSESSMENTS IN PARAGRAPH (1) AND (2) OF SUBSECTION (A) SHALL BE MADE PUBLICLY ACCESSIBLE AND AVAILABLE.

Rationale: This language is recommended to make sure that law enforcement agencies are independently assessing the accuracy and reliability of FRT before deploying them and evaluating the risks associated with and impact of using FRT. Paragraphs (1) and (2) come from requirements for federal uses of AI under the OMB draft guidelines, which state that agencies must “complete an AI impact assessment,” “test the AI for performance in a real-world context,” and “independently evaluate the AI.” Paragraph (2) also draws on a recommendation from the National Academies of Sciences, Engineering, and Medicine’s report entitled “Facial Recognition Technology: Current Capabilities, Future Prospects, and Governance.”

Amendment # 4 HB 338

Article – Criminal Procedure. Section 2-503(A)(2)(II)

Add:

3. CONSUMER DATABASES CAN ONLY BE UTILIZED IF THE ENTITY MAINTAINING THE DATABASE INFORMS THE USERS ABOUT THE AGREEMENT WITH THE LAW ENFORCEMENT AGENCY OR USER CONSENT IS REQUESTED AND PROVIDED.

Rationale: This language is recommended to prevent law enforcement from using consumer databases without the consent or knowledge of the database users.

Amendment # 5 HB 338

Article – Criminal Procedure. Section 2-510(A)

Amend to state:

(1) THE NAME OF EACH FACIAL RECOGNITION SYSTEM AND THE NAMES AND A DESCRIPTION OF THE DATABASES SEARCHED;

(2) FOR EACH FACIAL RECOGNITION SYSTEM, THE TOTAL NUMBER OF FACIAL RECOGNITION SEARCHES PERFORMED BY THE LAW ENFORCEMENT AGENCY AND THE TYPE OF CRIME OR INCIDENT ASSOCIATED WITH EACH USE;

(3) THE NUMBER OF INDIVIDUALS ARRESTED AND/OR SEARCHED RESULTING FROM THE USE OF FACIAL RECOGNITION TECHNOLOGY

~~(3)~~ (4) THE TOTAL NUMBER OF POSSIBLE TRUE AND FALSE POSITIVE MATCHES RETURNED THAT LED TO FURTHER INVESTIGATIVE ACTION FOR EACH FACIAL RECOGNITION SYSTEM AND FOR EACH DATABASE SEARCHED; AND

(1) EACH FALSE POSITIVE MATCH BY LAW ENFORCEMENT SHOULD BE REPORTED, ANALYZED TO DETERMINE THE FACTORS WHICH LED TO THE FALSE POSITIVE, AND A ROOT CAUSE ANALYSIS CONDUCTED TO PREVENT FALSE POSITIVES IN THE FUTURE.

(5) THE AGE, RACE, AND SEX OF THE TRUE AND FALSE POSITIVES MATCHES; AND

(46) ANY DATA BREACHES OR UNAUTHORIZED USES OF FACIAL RECOGNITION TECHNOLOGY UNDER THE LAW ENFORCEMENT AGENCY'S CONTROL.

Rationale: This language is recommended to allow the public to properly examine the accuracy, effectiveness, and fairness of facial recognition systems.

Amendment # 6 HB 338

Article – Criminal Procedure. Section 2-506(C)
Amend to state:

(C) (1) ON OR BEFORE JUNE 30, 2026, THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES SHALL DEVELOP AND ADMINISTER A TRAINING PROGRAM REGARDING THE USE OF FACIAL RECOGNITION TECHNOLOGY IN THE COURSE OF CRIMINAL INVESTIGATIONS, INCLUDING TRAINING ON ~~CULTURAL DIVERSITY AND IMPLICIT, ALGORITHMIC, AND SAMPLING BIAS~~ AND THE PROBABILISTIC NATURE OF FACIAL RECOGNITION TECHNOLOGY.

(2) IN DEVELOPING THE TRAINING PROGRAM REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL:

(1) ESTABLISH A MULTI-DISCIPLINARY AND MULTI-STAKEHOLDER WORKING GROUP ON FACIAL RECOGNITION TECHNOLOGY. TO DEVELOP AND PERIODICALLY REVIEW STANDARDS FOR REASONABLE AND EQUITABLE USE, AS WELL AS OTHER NEEDED GUIDELINES AND REQUIREMENTS FOR THE RESPONSIBLE USE OF FACIAL RECOGNITION TECHNOLOGY. THAT BODY, WHICH SHOULD INCLUDE A MEMBER FROM LAW ENFORCEMENT, LAW ENFORCEMENT ASSOCIATIONS, ADVOCACY AND CIVIL RIGHT GROUPS, TECHNICAL EXPERTS, AND LEGAL SCHOLARS, SHOULD BE CHARGED WITH DEVELOPING:

1. STANDARDS FOR APPROPRIATE, EQUITABLE, AND FAIR USE OF FRT BY LAW ENFORCEMENT.
2. MINIMUM TECHNICAL REQUIREMENTS FOR FRT PROCURED BY LAW ENFORCEMENT AGENCIES AND A PROCESS FOR PERIODICALLY REEVALUATING AND UPDATING SUCH STANDARDS.
3. STANDARDS FOR MINIMUM IMAGE QUALITY FOR PROBE IMAGES, BELOW WHICH AN IMAGE SHOULD NOT BE SUBMITTED TO AN FRT SYSTEM BECAUSE OF LOW CONFIDENCE IN ANY ENSUING MATCH. SUCH STANDARDS

WOULD NEED TO TAKE INTO ACCOUNT SUCH FACTORS AS THE TYPE OF INVESTIGATION (INCLUDING THE SEVERITY OF THE CRIME AND WHETHER OTHER EVIDENCE IS AVAILABLE) AND THE RESOURCES AVAILABLE TO THE AGENCY UNDERTAKING THE INVESTIGATION.

4. GUIDANCE FOR WHETHER FRT SYSTEMS SHOULD (1) PROVIDE ADDITIONAL INFORMATION ABOUT CONFIDENCE LEVELS FOR CANDIDATES OR (2) PRESENT ONLY AN UNRANKED LIST OF CANDIDATES ABOVE AN ESTABLISHED MINIMUM SIMILARITY SCORE.
5. REQUIREMENTS FOR THE TRAINING AND CERTIFICATION OF LAW ENFORCEMENT OFFICERS AND STAFF AND CERTIFICATION OF LAW ENFORCEMENT AGENCIES USING FRT AS WELL AS REQUIREMENTS FOR DOCUMENTATION AND AUDITING. AN APPROPRIATE BODY TO AUDIT THIS TRAINING AND CERTIFICATION SHOULD ALSO BE IDENTIFIED.
6. POLICIES AND PROCEDURES TO ADDRESS LAW ENFORCEMENT FAILURES TO ADHERE TO PROCEDURES OR FAILURE TO ATTAIN APPROPRIATE CERTIFICATION.
7. MECHANISMS FOR REDRESS BY INDIVIDUALS HARMED BY FRT MISUSE OR ABUSE, INCLUDING BOTH DAMAGES OR OTHER REMEDIES FOR INDIVIDUALS AND MECHANISMS TO CORRECT SYSTEMATIC ERRORS.
8. POLICIES FOR THE USE OF FRT FOR REAL-TIME POLICE SURVEILLANCE OF PUBLIC AREAS SO AS TO NOT INFRINGE ON THE RIGHT OF ASSEMBLY OR TO DISCOURAGE LEGITIMATE POLITICAL DISCOURSE IN PUBLIC PLACES, AT POLITICAL GATHERINGS, AND IN PLACES WHERE PERSONALLY SENSITIVE INFORMATION CAN BE GATHERED, SUCH AS SCHOOLS, PLACES OF WORSHIP, AND HEALTH-CARE FACILITIES.
9. RETENTION AND AUDITING REQUIREMENTS FOR SEARCH QUERIES AND RESULTS TO ALLOW FOR PROPER OVERSIGHT OF FRT USE.
10. GUIDELINES FOR PUBLIC CONSULTATION AND COMMUNITY OVERSIGHT OF LAW ENFORCEMENT FRT.
11. GUIDELINES AND BEST PRACTICES FOR ASSESSING PUBLIC PERCEPTIONS OF LEGITIMACY AND TRUST IN LAW ENFORCEMENT USE OF FRT.
12. POLICIES AND STANDARDIZED PROCEDURES FOR REPORTING OF STATISTICS ON THE USE OF FRT IN LAW ENFORCEMENT, SUCH AS THE NUMBER OF SEARCHES AND THE NUMBER OF ARRESTS RESULTING FROM THE USE OF FRT, TO ENSURE GREATER TRANSPARENCY.

(II) EVALUATE THE AVAILABILITY AND RELEVANCE OF ANY PROFICIENCY TESTING REGARDING THE USE OF FACIAL RECOGNITION TECHNOLOGY IN THE COURSE OF CRIMINAL INVESTIGATIONS.

(3) THE TRAINING PROGRAM MUST CONSIST OF A COMPETENCY TEST THAT ALL LAW ENFORCEMENT EMPLOYEES MUST PASS BEFORE USING ANY FACIAL RECOGNITION SYSTEM.

Rationale: This language is recommended because the FRT training program must include concerns and biases that are unique to artificial intelligence systems. Additionally, after completing the training program, law enforcement officers must display a high level of competency before they are allowed to use a facial recognition system. The recommendation to establish a multidisciplinary and multi-stakehold working group was taken from the National Academies of Sciences, Engineering, and Medicine's report entitled "Facial Recognition Technology: Current Capabilities, Future Prospects, and Governance."

Amendment # 7 HB 338

Article – Criminal Procedure. Section 2-505

Add:

(A) A LAW ENFORCEMENT AGENCY SHALL ONLY USE FRT SYSTEMS THAT PRESENT ONLY CANDIDATES WHO MEET A MINIMUM SIMILARITY THRESHOLD, ESTABLISHED BY AN EXISTING STANDARD OR THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, AND RETURN ZERO MATCHES IF NO CANDIDATES MEET THE THRESHOLD WHEN THE OUTPUT OF A FACIAL RECOGNITION SYSTEM IS BEING USED FOR FURTHER INVESTIGATION.

Rationale: This recommendation comes from the National Academies of Sciences, Engineering, and Medicine's FRT report and will help to reduce false positive results.