SENATE BILL 5528

State of Washington   **66th Legislature**   **2019 Regular Session**

By Senators Hasegawa, Saldaña, and Nguyen

Read first time 01/23/19. Referred to Committee on Environment, Energy & Technology.

1   AN ACT Relating to the procurement and use of facial recognition
2 technology by government entities in Washington state and privacy
3 rights relating to facial recognition technology; and adding a new
4 chapter to Title 10 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6   NEW SECTION. **Sec. 1.** FINDINGS. The legislature finds that:
7   (1) Washingtonians cherish privacy as an essential element of
8 their individual freedom, and Washington explicitly recognizes its
9 citizens' right to privacy in its Constitution under Article I,
10 section 7.
11   (2) Facial recognition technology poses unique and significant
12 civil rights and civil liberties concerns.
13   (3) Studies have found facial recognition technology to be less
14 accurate at identifying women, youth, and people of color, leading to
15 the risk of false matches.
16   (4) There is a long history of the use of previous surveillance
17 technologies to impact vulnerable communities, such as the use of
18 social media monitoring systems to track black lives matter activists
19 and license plate readers to track Muslim community members, and the
20 Chinese government is currently using facial recognition and other
21 technologies for general monitoring and social control.

1   (5) The use of facial recognition technology without warrant or
2   suspicion can chill the exercise of constitutionally protected free
3   speech, assembly, religious, privacy, and other rights.
4   (6) Before the widespread adoption of facial recognition
5   technology by government agencies occurs, there must be a public
6   discussion of acceptable uses of this technology, its accuracy must
7   be demonstrated, and disproportionate impacts on vulnerable
8   communities eliminated.

9   NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
10 section apply throughout this chapter unless the context clearly
11 requires otherwise.
12 (1) "Facial recognition" means both:
13 (a) The automated or semiautomated process by which a person is
14 identified or attempted to be identified based on the characteristics
15 of their face, including identification of known or unknown
16 individuals or groups; and
17 (b) The automated or semiautomated process by which the
18 characteristics of an individual's face are analyzed to determine the
19 individual's sentiment, state of mind, or other propensities
20 including but not limited to level of dangerousness.
21 (2) "Facial recognition system" means any computer software or
22 application that performs facial recognition.

23 NEW SECTION. **Sec. 3.** MORATORIUM ON GOVERNMENT USE OF FACIAL
24 RECOGNITION SYSTEMS. (1) Until the conditions set forth in subsection
25 (2) of this section are met, it is unlawful for any Washington state
26 or local government agency or any official thereof to obtain, retain,
27 access, or use:
28 (a) Any facial recognition system; or
29 (b) Any information obtained from or by use of a facial
30 recognition system.
31 (2) The restrictions set forth in subsection (1) of this section
32 remain in effect until such time as:
33 (a) The attorney general provides a report certifying to the
34 legislature that:
35 (i) Independent, third-party testing and auditing of the accuracy
36 of the five most commonly available facial recognition systems by
37 market share, under operational conditions, has taken place; and

1   (ii) Such testing and auditing shows no statistically significant
2   variation in the accuracy of such systems on the basis of the race,
3   skin tone, ethnicity, gender, or age of the individuals portrayed in
4   probe images, whether or not those categories are applied
5   individually or in combination;

6   (b) The legislature convenes a task force consisting of fifteen
7   representatives of communities historically impacted by surveillance
8   technologies including, but not limited to, African American,
9   Hispanic American, Native American, and Asian American communities,
10 religious minorities, protest and activist groups, and other
11 vulnerable communities, and such task force delivers to the
12 legislature a report documenting the potential consequences of
13 government use of facial recognition systems on the civil rights and
14 civil liberties of vulnerable communities; and

15   (c) On the basis of the reports set forth in (a) and (b) of this
16 subsection, the legislature passes legislation finding that the
17 conditions set forth in this subsection (2) have been met, and
18 includes appropriate, recommended restrictions on facial recognition
19 systems' use by government agencies.

20 NEW SECTION. **Sec. 4.** PRIVACY RIGHTS RELATING TO FACIAL
21 RECOGNITION TECHNOLOGY. (1) This section applies to all Washington
22 state and local government agencies.

23   (2) It is unlawful for any state or local government agency or
24 state or local government official to monitor public spaces without a
25 warrant using any facial recognition system or data obtained
26 therefrom; or to use facial recognition to analyze, whether or not
27 contemporaneously, any footage obtained from a police body worn
28 camera.

29 NEW SECTION. **Sec. 5.** ENFORCEMENT. (1) No data collected or
30 derived from any use of facial recognition in violation of this
31 chapter and no evidence derived therefrom may be received in evidence
32 in any trial, hearing, or other proceeding in or before any court,
33 grand jury, department, officer, agency, regulatory body, legislative
34 committee, or other authority subject to the jurisdiction of the
35 state of Washington. Facial recognition data collected or derived in
36 violation of this chapter must be considered unlawfully obtained and
37 must be deleted upon discovery.

1   (2) Any violation of this chapter constitutes an injury and any
2   person may institute proceedings for injunctive relief, declaratory
3   relief, or writ of mandate in any court of competent jurisdiction to
4   enforce this chapter. An action instituted under this subsection may
5   be brought against the appropriate state or local government agency
6   or state or local government official and, if necessary to effectuate
7   compliance with this chapter, any other government agency with
8   possession, custody, or control of data subject to this chapter.
9   (3) Any person who has been subjected to facial recognition in
10   violation of this chapter, or about whom information has been
11   obtained, retained, accessed, or used in violation of this chapter,
12   may institute proceedings in any court of competent jurisdiction
13   against the state and is entitled to recover actual damages, but not
14   less than liquidated damages of one thousand dollars or one hundred
15   dollars for each violation, whichever is greater.
16   (4) A court shall award costs and reasonable attorneys' fees to a
17   plaintiff who is the prevailing party in an action brought under
18   subsection (2) or (3) of this section.

19   NEW SECTION. Sec. 6.   Sections 1 through 5 of this act
20   constitute a new chapter in Title 10 RCW.

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