

ASSEMBLY, No. 4211

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 1, 2020

Sponsored by:

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Imposes moratorium on use of biometric surveillance systems technology by law enforcement agencies; establishes commission to recommend appropriate law enforcement uses for biometric surveillance systems technology.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2020)

1 AN ACT concerning law enforcement use of biometric information.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. a. As used in this act:

7 “Biometric surveillance system” means any computer software
8 that performs facial recognition or other remote biometric
9 recognition.

10 “Facial recognition” means an automated or semi-automated
11 process that assists in identifying a person or capturing information
12 about a person based on the physical characteristics of the person’s
13 face, or that logs characteristics of a person’s face, head, or body to
14 infer emotion, associations, activities, or location of the person.

15 “Law enforcement agency” means a State, interstate, municipal,
16 or county law enforcement agency; a law enforcement agency of an
17 educational institution that appoints law enforcement officers
18 pursuant to P.L.1970, c.211 (C.18A:6-4.2 et seq.); or any other
19 department, division, bureau, commission, board, or other authority
20 of this State or political subdivision thereof which employs law
21 enforcement officers.

22 “Other remote biometric recognition” means an automated or
23 semi-automated process that assists in identifying a person or
24 capturing information about a person based on the characteristics of
25 a person’s gait, voice, or other immutable characteristic ascertained
26 from a distance, or that logs these characteristics to infer emotion,
27 associations, activities, or location of the person, but excludes
28 remote biometric recognition based on DNA, fingerprints, or palm
29 prints.

30 b. Except as provided in subsection c. of this section, a law
31 enforcement agency shall not acquire, possess, access, or use any
32 biometric surveillance system or information derived from a
33 biometric surveillance system operated by another entity until the
34 adoption of regulations or enactment of legislation based on the
35 recommendations of the report issued pursuant to section 2 of
36 P.L. , c. (C.) (pending before the Legislature as this bill).

37 c. The provisions of subsection b. of this section shall not
38 preclude a law enforcement agency from:

39 (1) lawfully utilizing a mobile fingerprint scanning device
40 during a detention to identify a person who does not have proof of
41 identification provided that the information retained through the use
42 of the device is otherwise permitted by law;

43 (2) accessing DNA information pursuant “pursuant to the “DNA
44 Database and Databank Act of 1994,” P.L.1994, c.136 (C.53:1-
45 20.17 et seq.) or for any other law enforcement purpose otherwise
46 permitted by law; and

47 (3) accessing and utilizing finger print data in accordance with
48 current law;

1 (4) utilizing a lawfully installed security system that processes
2 biometric information solely for the purpose of verifying the
3 identity of law enforcement officers and employees of law
4 enforcement agencies to determine whether they are permitted to
5 access information, goods, materials, areas, or other properties
6 under the custody of the law enforcement agency.

7 d. A person aggrieved by the misuse of information derived
8 from a biometric surveillance system in violation of this section
9 shall be entitled to bring a civil action in a court of competent
10 jurisdiction seeking injunctive or declaratory relief.

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12 2. a. There is established the “Biometric Surveillance Regulation
13 Commission,” which shall evaluate whether law enforcement agencies
14 in this State should be permitted to use biometric surveillance systems,
15 and, if appropriate, propose recommendations for legislation,
16 regulations, and standards governing the use of biometric surveillance
17 systems by law enforcement agencies. The commission specifically
18 shall examine:

19 (1) permissible and prohibited uses of biometric systems by law
20 enforcement agencies;

21 (2) minimum standards for accuracy that biometric surveillance
22 systems are required to achieve in order to be authorized for use by
23 law enforcement agencies and auditing requirements to ensure
24 compliance with those standards;

25 (3) standards for the use, management, and protection of
26 information derived from the use of biometric surveillance systems
27 by law enforcement agencies including, but not limited to, data
28 retention, information sharing, data access, and audit trails;

29 (4) protections for due process, privacy, free speech and
30 association, and racial, gender, and religious equity;

31 (5) training requirements for law enforcement personnel
32 authorized to use biometric surveillance systems;

33 (6) procedures to address instances in which a person is
34 wrongfully targeted, arrested, or interrogated based on inaccurate
35 information derived from the use of a biometric surveillance
36 system; and

37 (7) disclosure requirements for public transparency as well as
38 discovery procedures.

39 b. The commission shall consist of nine ex officio members or
40 their designees:

41 (1) the Superintendent of State Police;

42 (2) the Attorney General;

43 (3) the Public Defender;

44 (4) a county prosecutor who has been recommended by the County
45 Prosecutors Association of the State of New Jersey;

46 (5) the Administrative Director of the Courts;

47 (6) a representative of an organization that defends civil rights or
48 promotes social justice;

- 1 (7) a faculty member of a university with knowledge and
2 experience in utilizing biometric surveillance systems;
- 3 (8) one member of the public to be appointed by the Speaker of the
4 General Assembly; and
- 5 (9) one member of the public to be appointed by the Senate
6 President;
- 7 c. The commission shall organize within 30 days of the
8 appointment of its members. The commission shall elect a
9 chairperson from among its members, and the chairperson shall
10 select a secretary who need not be a member of the commission.
- 11 d. The commission may meet at the call of its chairperson at
12 times and in the places it may deem appropriate and necessary to
13 fulfill its duties, and may conduct public hearings at any place it
14 shall designate.
- 15 e. The commission may request at these hearings the
16 appearance of officials of any State agency or political subdivision
17 of the State and may solicit testimony of interested groups and the
18 general public.
- 19 f. The commission shall be entitled to call to its assistance and
20 avail itself of the services of the employees of any State, county, or
21 municipal department, board, bureau, commission, or agency as it
22 may require and as may be available to it for its purposes, and to
23 employ stenographic and clerical assistance and incur traveling and
24 other miscellaneous expenses necessary to perform its duties, within
25 the limits of funds appropriated or otherwise made available to it
26 for its purposes.
- 27 g. The members of the commission shall serve without
28 compensation, but may be reimbursed for necessary expenses
29 incurred in the performance of their duties to the extent that funds
30 are made available for that purpose.
- 31 h. Five members of the commission shall constitute a quorum
32 for the transaction of business.
- 33 i. The commission shall prepare and submit a report of its
34 findings and recommendations, including legislative proposals, to
35 the Governor and, pursuant to section 2 of P.L.1991, c.164
36 (C.52:14-19.1), to the Legislature, no later than 18 months after the
37 organizational meeting of the commission. The commission shall
38 expire upon submission of its report.

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40 3. This act shall take effect immediately and section 2 of this
41 act shall expire upon the submission of the commission's report.
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44 STATEMENT
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46 This bill imposes a moratorium on the use of information derived
47 from biometric surveillance systems by a law enforcement agency.
48 The bill also establishes the "Biometric Surveillance Regulation

1 Commission” to evaluate whether law enforcement agencies in this
2 State should be permitted to use biometric surveillance systems, and if
3 appropriate, propose recommendations for legislation, regulations, and
4 standards governing the use biometric surveillance systems by law
5 enforcement agencies.

6 Under the bill, law enforcement agencies would be prohibited
7 from acquiring, possessing, accessing, or using a biometric
8 surveillance system or information derived from a biometric
9 surveillance system until the adoption of regulations or enactment
10 of legislation based on the recommendations of the commission.
11 The bill does not preclude a law enforcement agency from utilizing
12 fingerprint and DNA data in a manner consistent with current law.
13 A person aggrieved by the misuse of information derived from a
14 biometric surveillance system would be entitled to bring a civil
15 action in a court of competent jurisdiction seeking injunctive or
16 declaratory relief.

17 In addition, the bill establishes the “Biometric Surveillance
18 Regulation Commission” to evaluate whether law enforcement
19 agencies in this State should be permitted to use biometric surveillance
20 systems, and, if appropriate, propose recommendations for legislation,
21 regulations, and standards governing the use biometric surveillance
22 systems by law enforcement agencies. The bill requires the
23 commission to examine:

- 24 • permissible and prohibited uses of biometric systems by law
25 enforcement agencies;
- 26 • minimum standards for accuracy that biometric surveillance
27 systems are required to achieve in order to be authorized for
28 use by law enforcement agencies and auditing requirements
29 to ensure compliance with those standards;
- 30 • standards for use, management, and protection of
31 information derived from the use of biometric surveillance
32 systems by law enforcement agencies including, but not
33 limited to, data retention, information sharing, data access,
34 and audit trials;
- 35 • protections for due process, privacy, free speech and
36 association, and racial, gender, and religious equity;
- 37 • training requirements for law enforcement personnel
38 authorized to use biometric surveillance systems;
- 39 • procedures to address instances in which a person is
40 wrongfully targeted, arrested, or interrogated based on
41 inaccurate information derived from the use of a biometric
42 surveillance system; and
- 43 • disclosure requirements for public transparency as well as
44 discovery procedures.

45 The commission would be comprised of the following nine ex
46 officio members or their designees: the Superintendent of State Police;
47 the Attorney General; the Public Defender; a county prosecutor who
48 has been recommended by the County Prosecutors Association of the

A4211 GIBLIN, BENSON

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1 State of New Jersey; the Administrative Director of the Courts; a
2 representative of an organization that defends civil rights or promotes
3 social justice; a faculty member of a university with knowledge and
4 experience in utilizing biometric surveillance systems; one member of
5 the public to be appointed by the Speaker of the General Assembly;
6 and
7 one member of the public to be appointed by the Senate President.

8 The commission is required to prepare and submit a report of its
9 findings and recommendations, including legislative proposals, to
10 the Governor and to the Legislature, no later than 18 months after
11 the organizational meeting of the commission. The commission is
12 to expire upon submission of its report. The moratorium on
13 utilizing information derived from biometric surveillance systems is
14 to stay in effect until the adoption of regulations or enactment of
15 legislation based on the recommendation of the report