

**STATE OF HAWAI‘I**  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on Judiciary**

February 12, 2020

H.B. No. 2745: RELATING TO FACE SURVEILLANCE

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Public Defender strongly supports H.B. 2745.

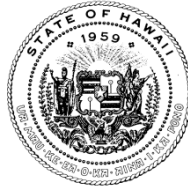
The rapid development and proliferation of facial recognition technology and recent evaluations of this technology have been a seriously cause for concern. This accuracy of this technology has yet to be fully vetted and is highly dependent on the accuracy of the data entered into the software or algorithms used by each system. We are deeply concerned about the very real biases that these systems have yet to protect against -- racial bias, gender bias and age bias. The technology has yet to reach the sophistication to check for or eliminate systematic problems with these types of biases and there are far too many instances of false positives to render the technology as reliable unless images entered into the system are clear, unblurred, and still. Many images, whether still or moving, may be blurred, grainy, and under circumstances where poor lighting, awkward angles, or partial images are captured.

We support H.B No. 2745 and agree that “until the technology matures and proper protections are put in place, the legislature finds further uses of face recognition technology should be vetted and approved by the legislature.” (*see* page 3, lines 3-6).

We also submit for your review and consideration two recent articles on facial recognition technology that support our concerns:

- National Institute of Standards and Technology, [NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software](https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software) (December 19, 2019) (<https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software> (last visited, February 8, 2020))
- Valention-DeVries, Jennifer, The New York Times, [How the Police Use of Facial Recognition, and Where It Falls Short](https://www.nytimes.com/2020/01/12/technology/facial-recognition-police.html) (January 12, 2020) (<https://www.nytimes.com/2020/01/12/technology/facial-recognition-police.html> (last visited, February 8, 2020))

Thank you for the opportunity to comment on this measure.



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 13, 2020  
2:05 P.M.  
State Capitol, Room 325

**LATE**

**H.B. 2745**  
**RELATING TO FACE SURVEILLANCE**

House Committee on Judiciary

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The Department of Transportation **supports** with amendments H.B. 2745, which limits the government use of face surveillance except in certain circumstances and limits the private use of face surveillance unless the subject of the face surveillance has given consent.

The bill needs to be amended to allow driver's license and state identification card (SID) issuing agencies to perform "face surveillance" as the terminology is defined in the bill. The driver's license and SID issuing agencies must perform a face recognition check to ensure that the individual holds only one of these credentials in the state. This is a requirement of the REAL ID Act and Hawaii meets the Department of Homeland Security Final Rules requirement by using facial recognition technology. Failure to allow this will jeopardize Hawaii's REAL ID compliance status and will affect how the driver's license and SID are accepted by airport and federal facility security screening.

SECTION 2, new section -2, which begins on page 5, line 17 should be amended as follows:

**§ -2 Restriction on government use of face surveillance.**

(a) Except as provided in subsection (b), it shall be unlawful for the government or any government official to obtain, retain, access, or use:

- (1) Any face surveillance system; or
- (2) Any information obtained from a face surveillance system.

(b) Face surveillance technology or information obtained from a face surveillance system shall only be obtained, retained, accessed, or used:

- (1) By law enforcement agency personnel trained in the use of face surveillance technology;
- (2) To compare surveillance photographs or videos to arrest booking photographs from the Hawaii criminal justice data center; ~~and~~
- (3) In a photo lineup conducted pursuant to section 801K-2[-]; and

(4) By driver's license and civil identification card issuing agencies to satisfy the requirements of the Federal REAL ID Act.

Thank you for the opportunity to provide testimony.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR

SUSAN BALLARD  
CHIEF

JOHN D. MCCARTHY  
CLYDE K. HO  
DEPUTY CHIEFS

OUR REFERENCE WO-KK

February 13, 2020

**LATE**

The Honorable Chris Lee, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 2745, Relating to Face Surveillance

I am Walter Ozeki, Major of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 2745, Relating to Face Surveillance.

While the HPD is familiar with the various published studies related to the use of face surveillance technology and with the objections raised by the American Civil Liberties Union and similar organizations, it is of note that because the technology associated with the use of face surveillance is fairly new and quickly evolving there are no federal regulations on the use of this technology.

With this in mind and citing this bill itself mentions that, "One known advantage of face surveillance in Hawaii is that some county police departments have used face surveillance technology in a limited capacity..." and "While the face surveillance program is relatively new and has been used relatively few times, the results of the program has been promising." It is the HPD's position that it is premature at this time to provide blanket regulations on the use of face surveillance technology by law enforcement when we do not have any indication at this time as to how quickly this technology may advance and how valuable these advances may prove to be in the near future.

The Honorable Chris Lee, Chair  
and Members  
February 13, 2020  
Page 2

Law enforcement is already approaching the use of face surveillance in a cautious and responsible manner, and ultimately it is the judiciary that would make the final determination of the admissibility of face surveillance evidence based on the constitution and established case law.

The HPD urges you to oppose House Bill No. 2745, Relating to Face Surveillance.

Thank you for the opportunity to testify.

Sincerely,



Walter Ozeki, Major  
Criminal Investigation Division

APPROVED:



Susan Ballard  
Susan Ballard  
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
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DWIGHT K. NADAMOTO  
ACTING PROSECUTING ATTORNEY



LYNN B.K. COSTALES  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY

**LATE**

**THE HONORABLE CHRIS LEE, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Thirtieth State Legislature  
Regular Session of 2020  
State of Hawai'i**

February 13, 2020

**RE: H.B. 2745; RELATING TO FACE SURVEILLANCE.**

Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (the Department) submits the following testimony in opposition of H.B. 2745.

Last year, pursuant to House Concurrent Resolution 225, the Hawaii State Legislature created the 21<sup>st</sup> Century Privacy Law Task Force. This task force addressed a number of privacy issues facing Hawaii. However, despite various discussions regarding facial recognition technology, the task force did not submit any policy or legislative recommendations in relation to facial recognition. Therefore, H.B. 2745 is not a byproduct of the task force and as drafted, H.B. 2745 fails to address a number of concerns by the Department.

The Department is greatly concerned that as drafted, H.B. 2745 fails to define the most important term – “surveillance”. This is problematic as it appears numerous times throughout the bill (ie. face surveillance, face surveillance system, and surveillance photograph) and could create a constitutional issue of being too vague and overbroad. Specifically, this bill creates the unintended consequence of subjecting every individual using a cellphone, camera or video camera to potential lawsuits. With today’s technological advances, most cellular phones, video cameras and personally owned cameras have the ability to capture information about a person’s physical characteristics, such as their face. Currently H.B. 2745 defines “face surveillance” to include “any process that captures information about an individual based on the physical characteristics of the individual’s face” and further incorporates the broad definition to “private entities” which essentially applies to every individual (pg. 7, line 13-15 – “any individual, partnership, corporation, limited liability company, association, or other group however organized”). Under the plain language of H.B. 2745, every person who uses a device (like a cell phone) operated by software (like cell phones and digital cameras and video recorders) who may

“capture information about an individual based on the physical characteristics of the individual’s face” would need a “written release” before “capturing information about another person’s physical characteristics, like their face. Further, an individual who shares the image or someone’s face without first obtaining written consent would also be in violation of H.B. 2745 and subject to a potential lawsuit. Lastly, this bill could lead to needless litigation and loss of otherwise valuable investigative evidence due to the remedies outlined on page 9, line 3 relating to suppression as an enforcement mechanism.

The Department would note to this committee that facial recognition technology is subject to an existing framework of laws, regulations, and administrative rules and best practices that already address the concerns of the proponents of this bill. Most significant is that Hawaii residents cannot be misidentified by facial recognition technology errors due to the fact that the technology does not identify perpetrators – humans do when they view photo lineups and live lineups. Moreover, the suggestion that facial recognition technology has an inherent racial bias is not factual. In fact, recent research by the NIST indicates that newer software algorithms have accuracy rates for African Americans equal to or even higher than for other groups. According to the NIST, between 2014 and 2018, facial recognition software got 20 times better overall at searching a database to find a matching photograph. After testing 127 software algorithms from 39 different developers, the combined failure rate was just 0.2 percent, meaning that systems were 99.8 percent accurate compared to 96 percent accurate four years before.

For these reasons, the Department of the Prosecuting Attorney opposes the passage of H.B. 2745. Thank you for this opportunity to testify.

Presentation to The  
Committee on Judiciary  
February 13, 2020 2:05 P.M.  
State Capitol Conference Room 325

**LATE**

**Testimony in Opposition to HB 2745**

TO: The Honorable Chris Lee, Chair  
The Honorable Joy A. San Buenaventura, Vice Chair  
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eight Hawaii banks and two banks from the continent with branches in Hawaii.

The Hawaii Bankers Association is concerned about the bill because the lack of clarity in the definition of “face surveillance”. The vagueness and broadness of the definition of face surveillance may lead to a conclusion that the legally required security cameras in bank branches are considered face surveillance systems. It should be recognized that such security cameras assist law enforcement to identify a perpetrator of a bank robbery. An ATM camera may also be considered face surveillance.

The FDIC requires that banks under its jurisdiction “maintain a camera that records activity in the banking office.” 12 CFR section 326.3.

Thank you for the opportunity to submit this testimony in opposition to HB 2745. Please let us know if we can provide further information.

Neal K. Okabayashi  
(808) 524-5161





Testimony to the House Committee on Judiciary  
Thursday, February 13, 2020, 2:05 pm  
State Capitol, Room 325

In Opposition to HB 2745 – Relating to Face Surveillance

To: The Honorable Chris Lee, Chair  
The Honorable Joy San Buenaventura, Vice-Chair  
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state.

We are in opposition to HB 2745, Relating to Face Surveillance. As currently written, “face surveillance” would encompass any security camera currently in use, such as those used in financial institutions and ATM machines. Security camera systems in financial institutions are extremely important, as they help to prevent robberies, or can assist law enforcement if a robbery has occurred.

Thank you for the opportunity to provide comments on this issue.



Hawai'i

Committee: Committee on Judiciary  
Hearing Date/Time: Thursday, February 13, 2020, 2:05 p.m.  
Place: Conference Room 325  
Re: Testimony of the ACLU of Hawai'i with comments on H.B. 2745, Relating to Face Surveillance

Dear Chair Lee, Vice Chair San Buenaventura, and Committee Members:

The American Civil Liberties of Hawai'i ("ACLU of Hawai'i") offers comments on H.B. 2745, which would limit government use of facial recognition technology ("FRT"), except as provided in subsection 2(b), and would ban private entities' use of this technology unless the subject has given clear, written consent. The ACLU of Hawai'i supports every provision of this bill except for subsection 2(b), which we request be stricken entirely. Alternatively, the ACLU of Hawai'i proposes an amendment, below, to ensure that FRT used by law enforcement does not carry racial or gender bias. H.B. 2745, if amended, would safeguard Hawaii's residents against dangerous, invasive, and biased systems that threaten civil rights and safety.

Subsection 2(b) should be stricken entirely or amended to prevent racial or gender bias in policing.

It is the understanding of the ACLU of Hawai'i that Honolulu Police Department (HPD) has already adopted this technology without any meaningful community input. HPD requires reasonable suspicion to run a face recognition search, with the exception for "requests that come directly from the Chief."<sup>1</sup> Right now, it is unclear whether searches can be run on witnesses or bystanders. Searches compare persons in photos or videos to existing booking photos.<sup>2</sup> The State has determined that current statutes, rules, and regulations prohibit driver's license and ID card photos from being included in the FRT.<sup>3</sup>

The costs of this technology to both civil rights and civil liberties substantially and categorically outweigh any benefits. **For this reason, the ACLU of Hawai'i respectfully requests that the bill's provision exempting HPD's existing use of FRT—subsection 2(b)—be stricken entirely.** If the Committee is inclined to retain subsection 2(b), we ask that, a minimum, the following language be

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<sup>1</sup>Garvie, C., Bedoya, A., Frankle, J. (2016, October 8). The Perpetual Line-Up: Unregulated Police Face Recognition in America. Georgetown Law Center on Privacy and Technology. Retrieved from <https://www.perpetuallineup.org/jurisdiction/hawaii>

<sup>2</sup>Honolulu Police Department Policy Auxiliary and Technical Services, Policy Number 8.21, September 14, 2015 Retrieved from <https://www.honoluluupd.org/information/pdfs/FacialRecognitionProgram-02-04-2016-12-19-14.pdf>

<sup>3</sup>Garvie, Bedoya, and Frankle, *supra*. See Attachment 016846, statement by Hawai'i Criminal Justice Data Center Representative via email correspondence with Clare Garvie regarding the Driver's Privacy Protection Act and Real ID Act protections against FRT

inserted into the bill to ensure that technology used by law enforcement does not carry racial or gender bias:

“The permissible uses provided for in subsection 2(b) shall only be allowed where the face surveillance technology or the face surveillance system from which the information is obtained has been demonstrated, through independent testing, to produce no greater rates of false positive identifications for any class of persons protected by the constitutions and laws of the United States of America and State of Hawaii.”

The science behind FRT is far from perfect.

FRT is used to verify the identity of a person using facial characteristics. Algorithms determine distinctive details of each face—for example, the distance between the eyes or shape of the chin. This information is converted into a mathematical representation, given a template, and stored in a database.<sup>4</sup> Photos collected of an individual via social media, police body cameras, surveillance cameras, traffic cameras, or in the field, are run against face templates in the database using algorithms that rely on facial markers to find the closest match. However, instead of yielding a single matching result, the system offers up several potential matches ranked in the order of likelihood of closest identification, which is problematic. FRT is also heavily reliant on “perfect” conditions and produce negative results in poor lighting conditions, low resolutions, faulty angles, and etc. FRT’s optimal performance relies on booking photo quality photographs with good lighting and from a frontal perspective.<sup>5</sup> When photographs are compared to those that have different lighting, shadows, backgrounds, poses, or expressions, misidentification rates increase.<sup>6</sup> Identifying someone under low resolution or a in a video footage also poses the same issues.

Fourth Amendment and First Amendment rights are at stake.

The City and County of Honolulu recently approved increased surveillance in its tourist district and are working towards establishing more surveillance in its public parks. Even if people are not suspected of a crime, meeting certain physical attributes that society considers “threatening” (like engaging in political protest in public spaces) is sufficient to garner the attention of law enforcement. Hawaii’s own history during World War II is a stark reminder that gathering data based on people’s race, ethnicity, religious beliefs, and political leanings, often leads to misuse, injustice, and the deterioration of civil rights and civil liberties protections.<sup>7</sup> The powerful and automated nature of FRT result in needless expansion of surveillance in communities. People should not have to be wary of having their private lives recorded when walking down the street. As a result, FRT can have a real chilling effect on people’s willingness to engage in civic duties, participate in religious events, or

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<sup>4</sup>Lynch, J. (2018, February 12). Face Off: Law Enforcement Use of Face Recognition-Technology. Retrieved from <https://www.eff.org/wp/law-enforcement-use-face-recognition>.

<sup>5</sup>*Id.*

<sup>6</sup>Phillips, J., Beveridge, R., Draper, B., et al. An Introduction to the Good, the Bad, & the Ugly Face Recognition Challenge Problem. Retrieved from <https://www.nist.gov/itl/iad/ig/upload/05771424.pdf>

<sup>7</sup>Cohen, A. (2011, May 5) Treatment of Japanese-Americans in WWII Hawaii Revealed in Article Retrieved from <https://www.law.berkeley.edu/article/treatment-of-japanese-americans-in-wwii-hawaii-revealed-in-article/>

engage in free speech.

FRT threatens the civil rights of communities of color and women.

A study by the ACLU of Northern California reveals that FRT marketed to law enforcement mistakenly matched the faces of one out of five lawmakers with images from an arrest photo database. More than half of the falsely identified are lawmakers of color, illustrating the most dangerous risk of FRT. A similar ACLU test conducted in 2018 also misidentified 28 sitting members of Congress. There are also multiple studies that reveal increased rates of error when running photos of women and people of color. An identification —accurate or not— could cost people their freedom or even their lives.

Other jurisdictions have adopted similar laws to protect their residents.

In May 2019, the city of San Francisco became the first city to prohibit government acquisition and use of FRT. Since then, the cities of Oakland, Berkley, Somerville, Cambridge have introduced and adopted similar legislation. More cities and states are beginning to understand the dangers and concerns of FRT and more will soon follow. Recently, the State of California successfully enacted a landmark law that blocks law enforcement from using FRT on body cameras. In 2008, Illinois passed the Biometric Information Privacy Act,<sup>8</sup> which restricts private use of FRT and is substantially similar to subsection three of H.B 2745. In light of the highly invasive collection of millions of people's biometric information by private companies,<sup>9</sup> prohibitions on private use are necessary.

It is integral that privacy protections keep up with technological advancements to ensure that the State of Hawaii continues to uphold our explicit constitutional right to privacy. We must reclaim control of our information; for when privacy is at stake, free speech, security, and equality will soon follow. For this reason, the ACLU of Hawai'i requests that the Committee support this measure, with our proposed amendments.

Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes  
Policy Director  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

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<sup>8</sup> 740 ILCS 14, Biometric Information Privacy Act.

<sup>9</sup> See, e.g., Kashmir Hill, *The Secretive Company that Might End Privacy as We Know It*, New York Times (Jan. 18, 2020), available at <https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>.



February 13, 2020

Representative Chris Lee, Chair  
Committee on Judiciary

Re: H.B. 2745 Relating to Face Surveillance  
Hearing: Thursday, February 13, 2020 at 2:05 p.m.  
Conference Room: 325

Dear Chair Lee and Members of the Committee on Judiciary:

At Microsoft, we believe in the power of advancing technology to bring important and exciting societal benefits. But we also recognize that as with all tools, technology has the potential to be misused. As technology companies create new and innovative technologies that are rapidly changing the world, they also have an obligation to help address the challenges and concerns that such changes bring. Facial recognition is one such technology that both offers tremendous benefits but also raises serious issues that call for thoughtful government regulation.

Facial recognition—which generally refers to the ability of a computer to recognize people’s faces from a photo or video—is a powerful tool that offers a range of important benefits. As the technology develops, it could be used to find missing persons, thwart terrorism, diagnose rare genetic conditions, and assist the blind. At the same time, as with any tool, it also holds the potential for misuse by both private companies and public authorities.

### **Potential misuses need to be addressed**

The potential for misuse is real. We believe there at least three problems that governments need to address: (1) use of facial recognition technologies that lead to biased and potentially discriminatory outcomes; (2) widespread intrusions on people’s privacy; and (3) mass surveillance that threatens to chill democratic freedoms. For example, without a thoughtful approach to facial recognition technology, law enforcement may rely on flawed or biased technological approaches to decide who to track, investigate, or even arrest for a crime. Governments may monitor the exercise of political and other public activities in ways that conflict with our democratic principles, chilling our core freedoms of assembly and expression. Similarly, companies may use facial recognition to make decisions that affect credit eligibility, employment opportunities, or purchasing behavior. These are important considerations of privacy, free speech, freedom of association, and even life and liberty.

## **Biases and inaccuracies need to be mitigated**

These concerns are heightened for many marginalized communities. For example, some facial recognition technologies have been found to work more accurately for white men than for women or people of color. While researchers across the tech sector are working to address these challenges and significant progress is being made, deficiencies remain. And even if biases are mitigated and facial recognition systems operate in a manner deemed fairer for all people, we will still face challenges, as with many AI technologies, of potential failures. These challenges call for meaningful human review where facial recognition systems may be used to make important decisions, including those that result in the denial of consequential services such as housing, insurance, education enrollment, criminal justice, employment opportunities, and health care services.

## **Regulation should permit responsible government and commercial use of facial recognition**

Some believe that these challenges necessitate an outright ban use. From our perspective, a general ban or moratorium would go too far—thwarting the benefits of this technology. Rather, we believe thoughtful legislation can provide protections and guardrails to help ensure due process and fair use of facial recognition technologies in both the government and commercial contexts. For example, we support legislation that requires testing prior to use and ensuring a human reviews important decisions impacting individuals. Facial recognition that is not fit for the purpose for which it is being deployed should not be used.

To strike an appropriate balance, Microsoft believes that legislation should be based upon the standards listed below regarding how and when companies can use facial recognition technology.

- **Fairness:** Suppliers of facial recognition technology must build their technology so that independent third parties can test its accuracy and examine it for unfair biases and inaccuracies across subpopulations. Companies must be required to take action when undisclosed problems with the technology are discovered and must be transparent about the capabilities and limitations of their technology.
- **Notice and Consent:** In any public place where facial recognition technology is used, companies must post clear notice. And as a default, companies must obtain meaningful consent from individuals before adding their image to a facial recognition database.
- **Human Review:** Accuracy must be a shared responsibility between the companies that develop facial recognition technology and the organizations that use it. Facial recognition alone should not be used to make legal or critical decisions like mortgage approval or job consideration; humans must be involved in the decision-making process.

It also critical to regulate the use of facial recognition by the government. Many of the safeguards that apply to corporate use should also apply specifically to government scenarios. For example, to protect due process, ongoing surveillance with facial recognition should only be used in public places to address a serious crime where a search warrant has been issued, or in the circumstance of a true emergency like a terrorist threat or a kidnapped child. Further, legislation should require law enforcement to disclose to an accused anytime facial recognition is used in a legal case against them.

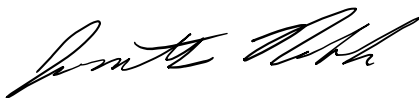
These principles provide strong baseline standards that will give people meaningful protections and will provide a solid foundation for legislators to build and improve upon them. If action is not taken, we risk waking up five years from now (or even sooner) to find that facial recognition services have spread in ways that exacerbate existing societal problems.

### **Moving forward**

The Hawaii legislature has an opportunity to establish appropriate standards for the use of facial recognition technology and Microsoft supports the discussion that the legislature has initiated on this important subject. To ensure society can realize the benefits of facial recognition while also addressing the challenges it poses around potential misuse, we encourage the Hawaii legislature to include provisions around fairness, notice and consent and human review, as outlined above. We also believe that the discussion of these challenging and important issues requires input from stakeholders across society.

We look forward to contributing to this conversation and would be happy to discuss these issues with you in more detail as the conversation develops. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Noble', written in a cursive style.

Jonathan Noble  
US Government Affairs  
Microsoft

**LATE**

**HB-2745**

Submitted on: 2/12/2020 4:51:44 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kat Brady	Community Alliance on Prisons	Support	Yes

Comments:



**HB-2745**

Submitted on: 2/12/2020 5:17:04 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rose Feliciano	Internet Association	Oppose	No

Comments:

TO: Members of the Committee on Transportation

FROM: Natalie Iwasa  
808-395-3233

HEARING: 2:05 p.m. Thursday, February 13, 2020

SUBJECT: HB 2745 Face Surveillance – **SUPPORT**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on HB 2745, which limits government use of face surveillance and disallows private use of face surveillance unless certain conditions are met, including written release from the proposed subject of the face surveillance.

Please vote “yes” on HB 2745.

Please also consider regulating surveillance from the air.

**HB-2745**

Submitted on: 2/11/2020 2:22:48 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

February 12, 2020

H.B. 2745 Relating to Face Surveillance

Committee: House Committee on Judiciary

Hearing Date/Time: Thursday, February 13, 2020, 2:05 p.m.

Place: Conference Room 325, State Capitol, 415 South Beretania Street

Dear Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary:

I write in **support** of H.B. 2745 Relating to Face Surveillance.

As a privacy expert, I have worked in the field of data privacy for over 15 years and am a member of the 21st Century Privacy Law Task Force, created by H.C.R. 225 in 2019.

I believe the bill addresses an important area of emerging technology that is in active use by both the public and private sector, but is currently entirely unregulated. In my opinion, this bill seeks to strike the right balance between a citizen's right to privacy in the Hawaii Constitution and the need for public safety and security in an increasingly digital world. This balance is sorely needed while the accuracy of this technology is still being established and while best practices are still being defined for acceptable use.

In order to further that balance between privacy and safety, I would recommend paragraph --3 be amended as follows:

(c) No private entity in possession of a face surveillance system or information obtained through a face surveillance system may disclose, redisclose, or otherwise disseminate information obtained through a face surveillance system unless

(1) the subject of the face surveillance or information obtained through the face surveillance system or the subject's legally authorized representative consents to the disclosure or redisclosure pursuant to the standards contained in subsection (a), or

(2) the private entity shares information lawfully obtained through a face recognition system with law enforcement as part of an active criminal investigation; provided that a request from law enforcement is made in writing, or the private entity or law enforcement agency documents the request contemporaneously in writing, including the name of the law enforcement officer and the officer's law enforcement agency engaged in the investigation.

Thank you for your consideration and the opportunity to support this legislation.



Kelly McCanlies

Fellow of Information Privacy, CIPP/US, CIPM, CIPT



# SHARAYAH BURNHAM

Wife | Mother | Friend

**February 12, 2020**

Judicial Committee

Hawaii State Capital  
415 South Beretania St.  
Honolulu, HI 96813

**LATE**

**Dear Judicial Committee:**

I SUPPORT HB2745.

Sincerely,

**Sharayah Burnham**