

JAN 23 2020

A BILL FOR AN ACT

RELATING TO FACE SURVEILLANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the unregulated use
2 of face surveillance poses a unique and significant threat to
3 the civil rights and liberties of residents and visitors of
4 Hawaii, especially with regard to the rights guaranteed by the
5 First, Fourth, and Fourteenth Amendments of the Constitution of
6 the United States and article I, sections 4, 5, 6, and 7 of the
7 Hawaii State Constitution.

8 The legislature further finds that a study published in
9 2019 by the National Institute of Standards and Technology found
10 that the majority of face surveillance technology systems are
11 far less accurate in identifying the faces of women, elderly
12 people, children, and people of color. These inaccuracies place
13 certain persons at an elevated risk of harmful "false positive"
14 identifications. Multiple studies and a growing base of experts
15 have had similar findings. Additionally, numerous studies have
16 shown that many of the databases to which face surveillance



1 technology is applied are plagued by racial and other biases,
2 which generate copycat biases in face surveillance data.

3 The legislature also finds that the broad application of
4 face surveillance in public spaces is the functional equivalent
5 of requiring every person to carry and display a personal photo
6 identification card at all times and carry a government global
7 positioning system tracking device, which constitutes an
8 unacceptable mass violation of privacy without probable cause.

9 The legislature further believes that the benefits of using
10 unregulated face surveillance can be outweighed by its harms.
11 One known advantage of face surveillance in Hawaii is that some
12 county police departments have used face surveillance technology
13 in a limited capacity, in coordination with the Hawaii criminal
14 justice data center in the department of the attorney general.
15 In the police departments, surveillance images from a crime are
16 compared against mugshots already existing in the Hawaii
17 criminal justice data center's database. The program is
18 intended to identify possible suspects by generating
19 investigative leads for detectives. While the face surveillance
20 program is relatively new and has been used relatively few
21 times, the results of the program have been promising. The



1 legislature believes that county police departments should be
2 allowed to continue to use face surveillance for this limited
3 purpose. However, until the technology matures and proper
4 protections are put in place, the legislature finds further uses
5 of face recognition technology should be vetted and approved by
6 the legislature.

7 The legislature further finds that the increasing
8 prevalence and sophistication of face surveillance technology
9 for commercial purposes poses a unique threat to the civil
10 rights and liberties of the State's residents and visitors.
11 Commercial venues are beginning to incorporate face surveillance
12 technology to support in-store tracking of individuals. The
13 technology identifies individuals entering stores or, if the
14 precise identity of an individual is yet unknown, surveys the
15 individual's face to determine the individual's age and gender.

16 The legislature finds that this information is being sold
17 to third parties or provided to foreign governments for purposes
18 that are wholly inconsistent with the State's public policy and
19 democratic principles. At least one foreign government is said
20 to already have complete facial recognition profiles on all its
21 citizens, which it uses to suppress free speech and invade the



1 privacy of people within its borders without restraint.
2 Hawaii's citizens should not be subject to such violation of
3 privacy.

4 The purpose of this Act is to prohibit the:

- 5 (1) Government use of face surveillance other than
- 6 existing police department use; and
- 7 (2) Private use of face surveillance unless the subject of
- 8 the face surveillance has given clear, discrete,
- 9 written consent.

10 SECTION 2. The Hawaii Revised Statutes is amended by
11 adding a new chapter to be appropriately designated and to read
12 as follows:

13 "CHAPTER

14 FACE SURVEILLANCE

15 § -1 Definitions. As used in this chapter:

16 "Face surveillance" means an automated or semiautomated
17 process that:

- 18 (1) Assists in identifying or verifying an individual or
- 19 capturing information about an individual based on the
- 20 physical characteristics of the individual's face; or



1 (2) Uses characteristics of an individual's face, head, or
2 body to infer emotion, associations, activities, or
3 the location of the individual.

4 "Face surveillance system" means any computer software or
5 application that performs face surveillance.

6 "Government" means the State, or any of its political
7 subdivisions, departments, agencies, and instrumentalities,
8 corporate or otherwise.

9 "Government official" means any person or entity acting on
10 behalf of the State, or any of its political subdivisions,
11 including any officer, employee, agent, contractor,
12 subcontractor, or vendor.

13 "Private entity" means any individual, partnership,
14 corporation, limited liability company, association, or other
15 group, however organized.

16 "Written release" means informed written consent.

17 **§ -2 Restriction on government use of face surveillance.**

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

21 (1) Any face surveillance system; or



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

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

6 (1) By law enforcement agency personnel trained in the use
7 of face surveillance technology;

8 (2) To compare surveillance photographs or videos to
9 arrest booking photographs from the Hawaii criminal
10 justice data center; and

11 (3) In a photo lineup conducted pursuant to section
12 801K-2.

13 Information obtained from a face surveillance system shall not
14 constitute probable cause for an arrest.

15 **§ -3 Restriction on private use of face surveillance**

16 **without permission.** (a) It shall be unlawful for any private
17 entity to obtain, retain, access, or use any face surveillance
18 system or any information obtained through a face surveillance
19 system, unless the private entity first:

20 (1) Informs the subject or the subject's legally
21 authorized representative in writing that the private



1 entity wishes to obtain, retain, access, or use face
2 surveillance or information obtained through a face
3 surveillance system;

4 (2) Informs the subject or the subject's legally
5 authorized representative in writing of the specific
6 purpose and length of term for which the private
7 entity wishes to obtain, retain, access, or use face
8 surveillance or information obtained through a face
9 surveillance system; and

10 (3) Receives a clear, discrete, written release, which is
11 not a part of or otherwise combined with any other
12 permission granting instrument or function, executed
13 by the proposed subject of the face surveillance or
14 information obtained through a face surveillance
15 system or that subject's legally authorized
16 representative, granting permission to obtain, retain,
17 access, or use face surveillance or information
18 obtained through a face surveillance system with
19 respect to that subject.

20 (b) In the absence of a clear, discrete, written release
21 to do so, no private entity in possession of a face surveillance



1 system or information obtained through a face surveillance
2 system may sell, share, lease, trade, or otherwise profit from
3 information obtained through a face surveillance system.

4 (c) No private entity in possession of a face surveillance
5 system or information obtained through a face surveillance
6 system may disclose, redisclose, or otherwise disseminate
7 information obtained through a face surveillance system unless
8 the subject of the face surveillance or information obtained
9 through the face surveillance system or the subject's legally
10 authorized representative consents to the disclosure or
11 redisclosure pursuant to the standards contained in subsection
12 (a).

13 (d) A private entity in possession of a face surveillance
14 system or information obtained through a face surveillance
15 system shall store, transmit, and protect from disclosure all
16 information obtained through a face surveillance system:

- 17 (1) Using the reasonable standard of care within the
18 private entity's industry; and
- 19 (2) In a manner that is the same as or more protective
20 than the manner in which the private entity stores,



1 transmits, and protects other confidential and
2 sensitive information.

3 **§ -4 Enforcement.** (a) Notwithstanding any other law to
4 the contrary, no data collected or derived from any use of face
5 surveillance in violation of this chapter and no evidence
6 derived therefrom may be received in evidence in any trial,
7 hearing, or other proceeding in or before any court, grand jury,
8 department, officer, agency, regulatory body, legislative
9 committee, or other authority subject to the jurisdiction of the
10 State. Face surveillance data collected or derived in violation
11 of this chapter shall be considered unlawfully obtained and
12 shall be deleted upon discovery.

13 (b) Any violation of this chapter constitutes an injury
14 and any person may institute proceedings for injunctive relief,
15 declaratory relief, or writ of mandate in any court of competent
16 jurisdiction to enforce this chapter. An action instituted
17 under this subsection shall be brought against the respective
18 private entity or respective government, and, if necessary to
19 effectuate compliance with this chapter, any other governmental
20 agency with possession, custody, or control of data subject to
21 this chapter.



1 (c) Any person who has been subjected to face surveillance
2 in violation of this chapter or about whom information has been
3 obtained, retained, accessed, or used in violation of this
4 chapter, may institute proceedings in any court of competent
5 jurisdiction against the private entity or government and shall
6 be entitled to recover actual damages, but not less than
7 liquidated damages of \$100 for each violation or \$1,000,
8 whichever is greater.

9 (d) A court shall award costs and reasonable attorneys'
10 fees to a plaintiff who is the prevailing party in an action
11 brought under subsection (b) or (c).

12 (e) Violations of this chapter by an employee of the
13 government shall result in consequences that may include
14 retraining, suspension, or termination, subject to due process
15 requirements and the employee's collective bargaining
16 agreement."

17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: Kul Khush



S.B. NO. 3148

Report Title:

Face Surveillance; Government Use; Private Use; Consent

Description:

Limits the government use of face surveillance except in certain circumstances. Limits the private use of face surveillance unless the subject of the face surveillance has given consent.

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