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HOUSE BILL NO. 454

Offered January 9, 2002

Prefiled January 8, 2002

A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 6.1, consisting of sections numbered 19.2-70.4, 19.2-70.5 and 19.2-70.6, relating to warrants; facial recognition technology.

Patrons—Griffith, Lingamfelter and Nutter

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 6.1, consisting of sections numbered 19.2-70.4, 19.2-70.5 and 19.2-70.6, as follows:

CHAPTER 6.1.**ORDERS FOR FACIAL RECOGNITION TECHNOLOGY.****§ 19.2-70.4. Definition.**

As used in this chapter, "facial recognition technology" means any technology or software system capable of matching an image captured by cameras placed in any public place with an image stored in a database.

§ 19.2-70.5. Who may apply for order authorizing facial recognition technology.

A. No locality or law-enforcement agency shall employ facial recognition technology prior to complying with all of the provisions of this chapter.

B. The Attorney General or Chief Deputy Attorney General, if the Attorney General so designates in writing, in any case where the Attorney General is authorized by law to prosecute or pursuant to a request in his official capacity of an attorney for the Commonwealth in any city or county, may apply to a judge of competent jurisdiction, for the jurisdiction where the proposed facial recognition technology is to be used, for an order authorizing the placement of facial recognition technology by the locality or any law-enforcement agency in the jurisdiction, when the technology may reasonably be expected to provide (i) evidence of the commission of a crime, (ii) a match of persons with outstanding warrants, (iii) a match of persons who are identifiable as affiliated with a terrorist organization, or (iv) a match of persons known to be missing. The Attorney General or Chief Deputy Attorney General may apply for authorization for the use of facial recognition technology by a police department of a county or city or by law-enforcement officers of the United States. The application shall be made, and the order may be granted, in conformity with the provisions of this chapter.

§ 19.2-70.6. Application for and issuance of order authorizing use of facial recognition technology; contents of order; introduction in evidence of information obtained.

A. Each application for an order authorizing the use of facial recognition technology shall be made in writing upon oath or affirmation to the appropriate judge of competent jurisdiction and shall state the applicant's authority to make the application. Each application shall be verified by the Attorney General to the best of his knowledge and belief and shall include the following information:

1. The identity of the attorney for the Commonwealth and law-enforcement agency who requested the Attorney General to apply for the order;

2. A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including (i) details either as to the particular offenses that have been, are being or are about to be committed, or the event or appearance that would attract individuals affiliated with a terrorist organization; (ii) a specific description of the nature and location of the facilities from which or the place where the facial recognition technology is to be used; (iii) a particular description of the type of match being sought; and (iv) the identity of any specific persons, if known, sought by the use of facial recognition technology;

3. A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

4. A statement of the period of time for which facial recognition technology is required to be maintained. However, in no case shall any request for an order granting the use of facial recognition technology be for longer than a period of ninety days;

5. A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to use facial recognition technology involving any of the same persons, facilities or places specified in the

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59 application, and the action taken by the judge on each application;

60 6. Where the application is for the extension of an order, a statement setting forth the results thus
61 far obtained from the use of facial recognition technology, or a reasonable explanation of the failure to
62 obtain the results; and

63 7. If authorization is requested for use by a police department of a county or city or by
64 law-enforcement officers of the United States, a statement containing the name of the police department
65 or United States agency, and an explanation of the reasons the use is necessary.

66 The judge may require the applicant to furnish additional testimony or documentary evidence in
67 support of the application.

68 B. Upon the application the judge may enter an order, as requested or as modified, authorizing the
69 use of facial recognition technology within the territorial jurisdiction of the court in which the judge is
70 sitting, if the judge determines on the basis of the facts submitted that the provisions of this chapter
71 have been met.

72 C. Each order authorizing the use of facial recognition technology shall specify:

73 1. The identity of any persons, if known, who are the object of the use of the facial recognition
74 technology;

75 2. The nature and location of the facilities as to which, or the place where, authority to use facial
76 recognition technology is granted;

77 3. A particular description of the type of facial recognition technology to be used, and a statement of
78 the particular reasons enumerated in § 19.2-70.5 to which it relates;

79 4. The name of the agency authorized to use the facial recognition technology;

80 5. A statement that only the agency named shall use the facial recognition technology; and

81 6. The period of time, not to exceed sixty days, during which the use of the facial recognition
82 technology is authorized, including a statement that the use shall automatically terminate at the end of
83 the time period specified, unless the agency applies for an extension.

84 D. No order entered under this section may authorize the use of facial recognition technology for
85 any period longer than ninety days from the time the facial recognition technology is operational.
86 Extensions of an order may be granted, but only after application for an extension made in accordance
87 with subsection A and after the court makes the findings required by subsection B. The period of
88 extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for
89 which it was granted and in no event for longer than sixty days. Every order and extension thereof shall
90 contain a provision that the authorization shall be executed as soon as practicable.

91 E. Whenever an order is entered pursuant to this chapter, the order shall require reports to be made
92 to the judge who issued the order showing what progress has been made toward achievement of the
93 authorized objective and the need for continued use of the facial recognition technology. The reports
94 shall be made at such intervals as the judge shall require.

95 Any violation of the provisions of this subsection may be punished as contempt of the issuing or
96 denying court.