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HOUSE BILL NO. 454**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Militia, Police and Public Safety)

(Patron Prior to Substitute—Delegate Griffith)

House Amendments in [] — February 11, 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 through 19.2-70.7, relating to warrants; facial recognition technology.

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 through 19.2-70.7, 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 [that identifies humans by using a biometric system to identify and analyze a person's facial characteristics and is] employed for the purpose of matching a facial image captured by cameras placed in any public place, other than in a state or local correctional facility as defined in § 53.1-1, with an image stored in a database.

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

A. Except as provided in subsection A of § 19.2-70.7, 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 his designee, 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, or an attorney for the Commonwealth, may apply to the circuit court, for the jurisdiction where the proposed facial recognition technology is to be used, for an order authorizing the placement of facial recognition technology by any law-enforcement agency in the jurisdiction, when the technology may reasonably be expected to provide (i) evidence of the commission of a felony or Class 1 misdemeanor, (ii) a match of persons with outstanding felony warrants, (iii) a match of persons or class of persons who are identifiable as affiliated with a terrorist organization, or (iv) a match of persons reported to a law-enforcement agency as missing.

§ 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 circuit court and shall state the applicant's authority to make the application. Each application shall be verified by the applicant to the best of his knowledge and belief and shall include the following information:

1. The identity of the applicant and the law-enforcement agency;

2. A full and complete statement of the facts and circumstances relied upon by the applicant in support of his request that an order be issued, including, but not limited to, (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 where or the place from which the facial recognition technology is to be used; (iii) a description of the type of match being sought; (iv) the identity of any persons or class of persons sought by the use of facial recognition technology as provided in subsection B of § 19.2-70.5; and (v) a description of the type of facial recognition technology to be used and a description of the contents of the database;

3. 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;

4. A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to the court for authorization to use facial recognition technology involving any of the same persons, facilities or places specified in the application, and the action taken by the court on each application; and

5. Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the use of facial recognition technology, or a reasonable explanation of the failure to obtain the expected results.

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

B. If the court determines on the basis of the facts submitted that the provisions of this chapter have

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HB454EH1

60 *been met, and upon submission of a proper application, the court shall enter an order, as requested or*
61 *as modified, authorizing the use of facial recognition technology within the territorial jurisdiction of the*
62 *court. The application and any order granted or denied may be sealed by the court.*

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

64 *1. The identity of any persons or class of persons who are the object of the use of the facial*
65 *recognition technology, or the expected evidence of the commission of felonies or Class 1 misdemeanors*
66 *from the use of the facial recognition technology;*

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

69 *3. A description of the type of facial recognition technology to be used;*

70 *4. A description of the contents of the database;*

71 *5. The name of the agency authorized to use the facial recognition technology;*

72 *6. The requirement that only the agency named shall use the facial recognition technology;*

73 *7. The period of time, not to exceed ninety days, during which the use of the facial recognition*
74 *technology is authorized, including a statement that the use shall be terminated at the end of the time*
75 *period specified, unless the agency applies for and is granted an extension;*

76 *8. If the court deems it appropriate, the submission of reports at specified intervals to the court that*
77 *issued the order, showing what progress has been made toward achievement of the authorized objective*
78 *and the need for continued use of the facial recognition technology; and*

79 *9. The requirement that any facial image captured that is not relevant to (i) evidence of the*
80 *commission of a felony or Class 1 misdemeanor, (ii) a match of persons with outstanding felony*
81 *warrants, (iii) a match of persons or class of persons who are identifiable as affiliated with a terrorist*
82 *organization, or (iv) a match of persons reported to a law-enforcement agency as missing shall be*
83 *disposed of as soon as possible, but in no event be retained for more than ten days.*

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 in accordance with subsection A. The period of extension shall*
87 *be no longer than the court deems necessary to achieve the purposes for which it was granted and in no*
88 *event shall the extension be for longer than sixty days.*

89 *E. Any violation of the provisions of this subsection may be punished as contempt of court.*

90 *§ 19.2-70.7. Certain exemptions from chapter.*

91 *A. The provisions of this chapter shall not apply to security measures undertaken at (i) public-use*
92 *airports in the Commonwealth or (ii) harbors and seaports of the Commonwealth.*

93 *B. Any information acquired through facial recognition technology prior to July 1, 2002, shall be*
94 *admissible in evidence in any suit, action or proceeding.*