

VIRGINIA ACTS OF ASSEMBLY -- 2021 RECONVENED SPECIAL SESSION I

CHAPTER 537

An Act to amend the Code of Virginia by adding in Article 1 of Chapter 17 of Title 15.2 a section numbered 15.2-1723.2 and by adding a section numbered 23.1-815.1, relating to facial recognition technology; authorization of use by local law-enforcement agencies and public institutions of higher education.

[H 2031]

Approved April 7, 2021

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 17 of Title 15.2 a section numbered 15.2-1723.2 and by adding a section numbered 23.1-815.1 as follows:

§ 15.2-1723.2. Facial recognition technology; approval.

A. For purposes of this section, "facial recognition technology" means an electronic system for enrolling, capturing, extracting, comparing, and matching an individual's geometric facial data to identify individuals in photos, videos, or real time. "Facial recognition technology" does not include the use of an automated or semi-automated process to redact a recording in order to protect the privacy of a subject depicted in the recording prior to release or disclosure of the recording outside of the law-enforcement agency if the process does not generate or result in the retention of any biometric data or surveillance information.

B. No local law-enforcement agency shall purchase or deploy facial recognition technology unless such purchase or deployment of facial recognition technology is expressly authorized by statute. For purposes of this section, a statute that does not refer to facial recognition technology shall not be construed to provide express authorization. Such statute shall require that any facial recognition technology purchased or deployed by the local law-enforcement agency be maintained under the exclusive control of such local law-enforcement agency and that any data contained by such facial recognition technology be kept confidential, not be disseminated or resold, and be accessible only by a search warrant issued pursuant to Chapter 5 (§ 19.2-52 et seq.) of Title 19.2 or an administrative or inspection warrant issued pursuant to law.

C. Nothing in this section shall apply to commercial air service airports.

§ 23.1-815.1. Facial recognition technology; approval.

A. For purposes of this subsection, "facial recognition technology" means an electronic system for enrolling, capturing, extracting, comparing, and matching an individual's geometric facial data to identify individuals in photos, videos, or real time. "Facial recognition technology" does not include the use of an automated or semi-automated process to redact a recording in order to protect the privacy of a subject depicted in the recording prior to release or disclosure of the recording outside of the law-enforcement agency if the process does not generate or result in the retention of any biometric data or surveillance information.

B. No campus police department shall purchase or deploy facial recognition technology unless such purchase or deployment of facial recognition technology is expressly authorized by statute. For purposes of this section, a statute that does not refer to facial recognition technology shall not be construed to provide express authorization. Such statute shall require that any facial recognition technology purchased or deployed by the campus police department be maintained under the exclusive control of such campus police department and that any data contained by such facial recognition technology be kept confidential, not be disseminated or resold, and be accessible only by a search warrant issued pursuant to Chapter 5 (§ 19.2-52 et seq.) of Title 19.2 or an administrative or inspection warrant issued pursuant to law.

2. That local law-enforcement agencies and campus police departments at public institutions of higher education using facial recognition technology prior to July 1, 2021, are prohibited from using such technology on or after July 1, 2021, unless and until such use is authorized by an act of the General Assembly pursuant to the provisions of this act.