Department of Planning and Budget
2022 Fiscal Impact Statement

1. **Bill Number:** HB1339EH1

House of Origin	☐ Introduced	☐ Substitute	☒ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. **Patron:** Leftwich

3. **Committee:** Passed the House

4. **Title:** Facial recognition technology; local law enforcement; campus police.

5. **Summary:** Defines "facial recognition technology" as an electronic system for conducting an algorithmic comparison of images of an individuals' facial features for the purposes of verification or identification. The bill provides that a local law enforcement agency may utilize facial recognition technology for criminal investigative and administrative investigative purposes. It includes criteria for the lawful use of this technology, including (i) it shall have been evaluated and received an accuracy score of 98 percent or better for true positives across all demographic groups, (ii) a match shall not constitute probable cause for arrest of an individual, but the match is permitted as exculpatory evidence, and (iii) a local law enforcement agency may use the technology to search against any publicly available or lawfully acquired image or image database. The bill requires the Department of State Police (VSP), in consultation with stakeholders, to develop and publicly post a model policy regarding the use of facial recognition technology by January 1, 2023. Local law enforcement agencies and campus police departments must publicly post the policies that will govern their use of this technology, they must maintain records sufficient to facilitate public reporting and auditing of compliance with the agency's facial recognition policies, and collect certain data related to their use of the technology. Local law enforcement and campus police department agency heads are required to publish an annual report by April 1 of each year to provide information to the community regarding the agency's use of this technology.

    The bill provides that any facial recognition technology operator employed by a local or campus law enforcement agency who violates the agency's policy for the use of the technology or conducts a search for any reason that is not authorized, is guilty of a Class 3 misdemeanor and shall be required to complete training on the agency's policies on and authorized uses of the technology before being reinstated to operate it. Agencies must terminate from employment any person who commits a second violation.

    The bill also provides that the Virginia State Crime Commission shall analyze and report on the usage data of facial recognition technology reported and published by local law enforcement agencies and campus police departments pursuant to the provisions of the bill. The bill includes the types of information required to be included in the report. The report shall be submitted to the Chairs of the Senate Committee on the Judiciary and the House Committee on Public Safety by November 1, 2025. The bill also provides that its provisions shall expire on July 1, 2026.

6. **Budget Amendment Necessary**: Yes, Item 82.

7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.

8. **Fiscal Implications:** The proposed legislation is not anticipated to have a fiscal impact on the Department of State Police, the Virginia Lottery, the Division of Capitol Police, the Department of Conservation and Recreation, the Virginia Information Technologies Agency, or the Virginia State Crime Commission.

   According to the Division of Purchases and Supply (DPS) within the Department of General Services (DGS), it is estimated that in order to meet the requirements of the bill, the agency will need to hire a consultant with the specific technical expertise needed to determine the appropriate facial recognition technology to be used by law enforcement agencies in the Commonwealth. DGS estimates this will be a one-time cost of $100,000.

   The proposed legislation also creates a new Class 3 misdemeanor for facial recognition technology operators who violate their agency's usage policies or use the technology for an unauthorized search. Class 3 misdemeanors are punishable by a fine of not more than $500. Any fiscal impact on the Commonwealth's Literary Fund, where such fines are deposited, is indeterminate at this time.

   Any potential fiscal impact on other state law enforcement agencies, campus police departments, or local law enforcement agencies is indeterminate at this time.

9. **Specific Agency or Political Subdivisions Affected:** State law enforcement agencies, campus police departments, local law enforcement agencies, the Virginia Information Technologies Agency, the Department of General Services, and the Virginia State Crime Commission.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** None.