Department of Planning and Budget
2022 Fiscal Impact Statement

1. **Bill Number:** SB741ER

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

2. **Patron:** Surovell

3. **Committee:** Passed both houses.

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

5. **Summary:** Defines "facial recognition technology" as an electronic system or service for conducting an algorithmic comparison of images of a person's facial features for the purposes of identification. It requires the Division of Purchases and Supply to determine the appropriate facial recognition technology for use in accordance with the bill, and describes the criteria such technology must meet.

    The bill provides that a local law enforcement agency, a campus police department, and the Department of State Police (VSP) may use facial recognition technology for authorized uses, and provides that a match made through the technology shall not be included in an affidavit to establish probable cause for purposes of issuance of a search or arrest warrant, but is admissible as exculpatory evidence. Agencies shall not (i) use the technology for tracking the movements of an individual in a public space in real time; (ii) create a database of images using a live video feed for the purposes of using the technology, or (iii) enroll a comparison image in a commercial image repository of a facial recognition technology service provider except pursuant to an authorized use. Additionally, no comparison image may be retained or used further by the service provider except as required for auditing that use or as may be otherwise required by law. Local law enforcement agencies, campus police departments, and VSP are required to publicly post and annually update their policies regarding the use of the technology before they may employ it to investigate a specific criminal incident or citizen welfare situation. They may adopt the State Police Model Facial Recognition Technology policy or develop their own that meets or exceeds the model policy standards. Any agency that uses the technology must maintain records sufficient to facilitate discovery in criminal proceedings, post-conviction proceedings, public reporting, and auditing of compliance with the policies. The bill describes what data agencies are required to track. Any chief of police or a local law enforcement agency or campus police department, or the Superintendent of State Police whose agency uses the technology is required to publicly post and annually update a report each year to provide information to the public regarding the agency's use of the technology. The bill describes the information that is required to be included in the report. Any technology operator employed by a local law enforcement agency or campus police department who violates the agency's policies or conducts an unauthorized search is guilty of a Class 3 misdemeanor and shall be required to complete training on the policies and on authorized uses of the technology before being reinstated. The agency shall terminate

any employee who commits a second violation, and anyone who commits a second or subsequent violation is guilty of a Class 1 misdemeanor.

The bill requires VSP to create a model policy regarding the use of the technology, which shall be known as the State Police Model Facial Recognition Technology Policy. VSP must post the policy no later than January 1, 2023, and update it annually thereafter. The bill describes the information that must be included in the model policy.

The bill requires the Department of Criminal Justice Services (DCJS) to analyze and report on the usage data of facial recognition technology reported and published by local law enforcement agencies, campus police departments, and VSP. The bill describes the information DCJS is required to include in its report. It requires DCJS to submit the report to the Chairpersons 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 expire on July 1, 2026.

6. **Budget Amendment Necessary**: Yes, Items 82 and 406.

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, or the Virginia Information Technologies Agency.

   According to the Department of Criminal Justice Services (DCJS), the agency does not have the capacity to take on the additional reporting responsibilities set forth in the bill. DCJS believes at least one research analyst position to maintain, analyze, and summarize the data is needed. Based on similar positions at the agency, this position would cost approximately $144,799 per year, which includes salary, benefits, and equipment. DCJS also believes it would need a dedicated position to provide expertise in the operation of facial recognition technology and its use for law enforcement purposes. This position would help inform the analysis of the data and enable the agency to make recommendations based on the data for improving the use of the technology. This position is estimated to cost $138,249 annually, which includes salary, benefits, and equipment. Because the bill contains a clause that its provisions expire on July 1, 2026, it is possible the positions would no longer be required after that date.

   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.

A second or subsequent violation of that section is chargeable as a Class 1 misdemeanor. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than $2,500, either or both.

According to the Virginia Criminal Sentencing Commission, not enough information is available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities $4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged $37.58 per inmate, per day in FY 2020.

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 Department of Criminal Justice Services.

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

11. **Other Comments:** None.