Department of Planning and Budget
2022 Fiscal Impact Statement

1. **Bill Number:** SB741S2

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

2. **Patron:** Surovell

3. **Committee:** Passed the Senate.

4. **Title:** Facial recognition technology; authorized uses.

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 purpose of identification. The bill provides that local law enforcement agencies may use the technology as described in the bill only for investigating a specific criminal incident that is an act of violence, identifying a victim of online child sexual abuse material, or identifying a deceased person. The bill provides that any matches made through the use of the technology shall not be used to establish probable cause for the purposes of the issuance of a search warrant or an arrest warrant, and may not be used as evidence at trial, but shall be admissible as exculpatory evidence. Law enforcement officers must apply for a search warrant from a judicial officer prior to their use of the technology for investigating a specific criminal incident. According to the bill, officers must also submit an affidavit to use the technology, and includes the types of information that must be included in the affidavit.

   The bill explains the conditions that must be met for a judicial officer to issue a search warrant, the terms of such warrants, and extensions of the terms of a search warrant. The bill also provides for how the related records should be kept by the Courts. Within 10 days after the use of the technology, a copy of the executed search warrant must be served on the person who was the subject; extensions to this time period may be granted by the Court under certain circumstances.

   Pursuant to the bill, local law enforcement agencies must publicly post and annually update their policies regarding the use of the technology, which may be the State Police Model Facial Recognition Technology Policy, or one developed by the agency. Local law enforcement agencies must also maintain records sufficient to facilitate discovery related to its use of the technology. By April 1 of each year, any chief of police who uses the technology must publicly post and update information for the public about the agency's use of the technology. Agencies must also notify their local governing bodies in writing at least 30 days prior to procuring any facial recognition technology. Any person having or acquiring access to the technology that willfully uses it in violation of the provisions of the bill is guilty of a Class 2 misdemeanor.

The bill also requires the Department of State Police to create a model policy for the use of facial recognition technology, which must be publicly posted by January 1, 2023 and annually updated thereafter.

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

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

8. **Fiscal Implications:** This bill is not anticipated to have a fiscal impact on the Virginia Lottery, the Department of State Police, the Division of Capitol Police, the Department of Conservation and Recreation, the Virginia Alcoholic Beverage Control Authority, or the Virginia Information Technologies Agency.

    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 creates a Class 2 misdemeanor for willfully violating the provisions of these sections. Anyone convicted of a Class 2 misdemeanor is subject to a sentence of up to six months in jail and a fine of not more than $1,000, either or both.

    There is not enough information 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 on a per prisoner, per day basis 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.

    Information about any potential fiscal impact on the Courts is unavailable at this time. This impact statement will be updated when information becomes available.

    Any potential fiscal impact on other state or local law enforcement agencies cannot be determined at this time.

9. **Specific Agency or Political Subdivisions Affected:** Department of General Services, Virginia Information Technologies Agency, State and local law enforcement agencies, Local and regional jails, localities.

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

11. **Other Comments:** None.