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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 465

01/28/2021 Authored by Lucero and Munson

The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act  
1.2 relating to public safety; limiting use of facial recognition technology; proposing  
1.3 coding for new law in Minnesota Statutes, chapter 626A.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. SHORT TITLE.

1.6 This act may be cited as the "Facial Recognition Technology Warrant Act of 2021."

1.7 Sec. 2. [626A.50] DEFINITIONS.

1.8 (a) For the purposes of sections 626A.50 to 626A.53, the terms in this section have the  
1.9 meanings given them.

1.10 (b) "Agency" means all departments, offices, and boards in the executive branch of state  
1.11 government and all law enforcement agencies.

1.12 (c) "Covered court order" means a court order obtained according to Minnesota Rules  
1.13 of Criminal Procedure rules 36 and 37 and in connection with the investigation of an offense  
1.14 for which an order could be sought under this chapter.

1.15 (d) "Facial recognition technology" means technology that analyzes facial features and  
1.16 is used for the unique personal identification of individuals in still or video images.

1.17 (e) "Ongoing surveillance" means the use of facial recognition technology to engage in  
1.18 a sustained effort to track the physical movements of an identified individual through one  
1.19 or more public places where the movements occur over a period of time greater than 72  
1.20 hours, whether in real time or through application of the technology to historical records.  
1.21 Ongoing surveillance does not include instances where facial recognition technology is

2.1 used for a single identification or attempted identification of an individual, if no subsequent  
2.2 attempt is made to track that individual's movement in real time or through the use of  
2.3 historical records after the individual has been identified.

2.4 **Sec. 3. [626A.51] LIMITATION ON USE OF FACIAL RECOGNITION**  
2.5 **TECHNOLOGY.**

2.6 Subdivision 1. **General.** (a) Subject to paragraph (b), an officer or employee of an agency  
2.7 may not use facial recognition technology to engage in ongoing surveillance of an individual  
2.8 or group of individuals in a public space unless:

2.9 (1) the use of the facial recognition technology is in support of a law enforcement activity;  
2.10 and

2.11 (2) a covered court order has been obtained to allow the use of facial recognition  
2.12 technology for ongoing surveillance of the individual or group of individuals; or

2.13 (3) an investigative or law enforcement officer:

2.14 (i) reasonably determines that exigent circumstances and compelling law enforcement  
2.15 needs make it impractical to obtain a covered court order;

2.16 (ii) reasonably determines that there are grounds for which a covered court order could  
2.17 be obtained under clause (2); and

2.18 (iii) causes an application for a covered court order to be made according to clause (2)  
2.19 not later than 48 hours after the use of facial recognition technology to engage in ongoing  
2.20 surveillance.

2.21 (b) If an application for a covered court order made under paragraph (a), clause (3), is  
2.22 denied, the use of facial recognition technology shall terminate at the time of the denial.

2.23 Subd. 2. **Duration of orders.** (a) Subject to paragraph (b), a covered court order may  
2.24 only authorize ongoing surveillance until the date on which the objective of the order is  
2.25 satisfied, except that the order may not authorize ongoing surveillance for more than 30  
2.26 days.

2.27 (b) The 30-day period under paragraph (a) shall begin on the earlier of:

2.28 (1) the date on which the agency begins to use facial recognition technology; or

2.29 (2) ten days after the date the court order is issued.

3.1 (c) A court may grant an extension of the 30-day period under paragraph (a) if the  
3.2 extension meets the requirements of subdivision 1, paragraph (a), clause (2), and the extension  
3.3 is no longer than 30 days.

3.4 Subd. 3. **Minimization requirement.** Any use of facial recognition technology under  
3.5 a covered court order shall be conducted in a way to minimize the acquisition, retention,  
3.6 and dissemination of information about the individuals other than those for whom there was  
3.7 probable cause to seek the covered court order obtained under subdivision 1, paragraph (a),  
3.8 clause (2).

3.9 Subd. 4. **Motion to suppress.** (a) Except as provided in paragraph (b), an aggrieved  
3.10 individual who has been the subject of ongoing surveillance using facial recognition  
3.11 technology, in a trial, hearing, or proceeding in or before a court, department, officer, agency,  
3.12 regulatory body, or other authority of the state or a political subdivision of the state may  
3.13 move to suppress information directly obtained through the use of facial recognition  
3.14 technology or evidence derived from it in violation of this section, on the grounds that:

3.15 (1) the information was unlawfully obtained;

3.16 (2) the order of authorization or approval under which the information was obtained is  
3.17 not prima facie evidence; or

3.18 (3) the use of facial recognition technology was not used in conformity with the order  
3.19 of authorization or approval.

3.20 (b) Evidence obtained through the use of facial recognition technology in violation of  
3.21 this section shall not be suppressed under paragraph (a) if the evidence was acquired by an  
3.22 officer or employee of an agency with an objectively reasonable belief that the use of facial  
3.23 recognition technology was in compliance with this section.

3.24 (c) A motion described under paragraph (a) shall be made before the trial, hearing, or  
3.25 proceeding unless there was no opportunity to make the motion or the individual was not  
3.26 aware of the grounds of the motion. If the motion is granted, the information directly obtained  
3.27 through the use of facial recognition technology or evidence derived from it shall be treated  
3.28 as having been obtained in violation of this section.

3.29 (d) The judge, upon the filing of a motion under this subdivision by the aggrieved  
3.30 individual, may in the judge's discretion make available to the aggrieved individual or  
3.31 counsel of the aggrieved individual for inspection the portions of the information or evidence  
3.32 that the judge determines to be in the interests of justice.

4.1 (e) In addition to any other right to appeal, the prosecutor shall have the right to appeal  
4.2 from an order granting a motion to suppress made under this subdivision, or the denial of  
4.3 an application for an order of approval, if the prosecutor certifies to the judge or other official  
4.4 granting the motion or denying the application that the appeal is not taken for purposes of  
4.5 delay. The appeal shall be taken within 30 days after the date the order was entered and  
4.6 shall be diligently prosecuted.

4.7 (f) The remedies and sanctions described in this subdivision with respect to the use of  
4.8 facial recognition technology are the only judicial remedies and sanctions for  
4.9 nonconstitutional violations of this section involving that technology.

4.10 **Sec. 4. [626A.52] REPORTS ON GOVERNMENT USE OF FACIAL RECOGNITION**  
4.11 **TECHNOLOGY.**

4.12 Subdivision 1. **Report by judge.** Not later than 30 days after issuance of a covered court  
4.13 order under section 626A.51, subdivision 1, paragraph (a), clause (2); an extension under  
4.14 section 626A.51, subdivision 2, paragraph (c); or the denial of the warrant or extension, the  
4.15 issuing or denying judge shall report to the supreme court:

4.16 (1) that a warrant or extension was applied for;

4.17 (2) that the warrant or extension was granted without modification, was modified and  
4.18 granted, or was denied;

4.19 (3) the period of time for which the warrant approves the use of facial recognition  
4.20 technology, and the number and duration of any extensions; and

4.21 (4) the offense specified in the warrant or application.

4.22 Subd. 2. **Reports.** Beginning one year after the effective date of this section, and not  
4.23 later than September 30 of each year thereafter, the supreme court shall submit to the house  
4.24 of representatives and senate committees with jurisdiction over the judiciary and make  
4.25 available to the public a full and complete report summarizing the data required to be filed  
4.26 with the supreme court under subdivision 1, including at a minimum:

4.27 (1) the number of applications for covered court orders and extensions authorizing  
4.28 delayed notice;

4.29 (2) the number of covered court orders and extensions granted or denied during the  
4.30 preceding fiscal year;

4.31 (3) for each covered court order or extension granted:

5.1 (i) the period of time for which the warrant approves the use of facial recognition  
 5.2 technology, and the number and duration of any extensions;

5.3 (ii) the offense specified in the covered court order or application, or extension of an  
 5.4 order;

5.5 (iii) the identity of the applying investigative or law enforcement officer and agency  
 5.6 making the application and the person authorizing the application; and

5.7 (iv) the nature of the facilities or cameras from which the data analyzed by facial  
 5.8 recognition technology came from;

5.9 (4) a general description of the identifications made under a covered court order or  
 5.10 extension, including at a minimum:

5.11 (i) the approximate nature and frequency of use of the facial recognition technology;

5.12 (ii) the approximate number of persons who were subjected to analysis using the facial  
 5.13 recognition technology; and

5.14 (iii) the approximate nature, amount, and cost of the manpower and other resources  
 5.15 when using facial recognition technology; and

5.16 (5) the number of misidentifications, including an arrest of an individual that does not  
 5.17 result in charges being entered against the individual, made based upon information directly  
 5.18 obtained through the use of facial recognition technology, or evidence derived from it.

5.19 Subd. 3. **Regulations.** The supreme court may issue guidelines regarding the content  
 5.20 and form of the reports required to be filed under subdivision 1.

5.21 Sec. 5. **[626A.53] HUMAN REVIEW AND TESTING.**

5.22 Subdivision 1. **Human review of facial recognition technology.** An agency shall require  
 5.23 a trained officer to examine the output or recommendation of a facial recognition system  
 5.24 before the agency investigates or otherwise interacts with an individual identified by the  
 5.25 system in connection with a covered court order issued under section 626A.51, subdivision  
 5.26 1, paragraph (a), clause (2), or in connection with an emergency under section 626A.51,  
 5.27 subdivision 1, paragraph (a), clause (3).

5.28 Subd. 2. **Testing.** The head of each agency, in consultation with the director of the  
 5.29 National Institute of Standards and Technology, shall establish testing procedures regarding  
 5.30 facial recognition technology systems used by the agency, including a process to:

- 6.1 (1) periodically undertake independent tests of the performance of the system in typical  
6.2 operational conditions;
- 6.3 (2) identify relative performance across different subpopulations, including error rates  
6.4 when the system is tested across subpopulations, alone and in combination with different  
6.5 skin tones, ages, and genders; and
- 6.6 (3) review the tests and take action to improve the accuracy of the system across  
6.7 subpopulations upon a finding indicating there are disparate error rates when the system is  
6.8 tested across subpopulations.