

# STATE OF NEW YORK

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79

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

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Introduced by Sens. HOYLMAN, BAILEY, BIAGGI, KRUEGER, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to prohibiting the use of biometric surveillance technology by law enforcement; establishing the biometric surveillance regulation task force; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The legislature finds and declares the  
2 following:

3 (a) The use of biometric surveillance technology has been largely  
4 unregulated by all levels of government in the United States to date,  
5 allowing its unfettered use by private entities, government, and law  
6 enforcement with little to no requirements or restrictions relating to  
7 use, data retention, privacy protections, and use of information derived  
8 from such systems in law enforcement investigations. In New York, this  
9 lack of regulation and oversight has led to concerning practices by law  
10 enforcement, such as including sealed mugshots and arrest photos of  
11 juveniles in facial recognition databases and running photos of celebri-  
12 ty lookalikes through facial recognition software to attempt to identify  
13 potential suspects.

14 (b) Studies of currently available biometric surveillance technology  
15 demonstrate that such technology's consistency and accuracy can vary  
16 widely based on age, gender, sex, race, and other factors, and has been  
17 found to be particularly inaccurate when used on women, young people,  
18 and people of color.

19 (c) These accuracy concerns are particularly troubling in the context  
20 of this technology's ongoing and increasing use by law enforcement. New  
21 York's law enforcement should not rely on technology that has demon-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 strated accuracy issues, as such practice risks the wrongful targeting,  
2 interrogation, detention, or even conviction of an innocent person based  
3 on erroneous data.

4 (d) The largest U.S. supplier of police body cameras has publicly  
5 stated that this technology "is not currently reliable enough to  
6 ethically justify its use," and other major companies working on this  
7 technology have chosen not to offer it for general use until concerns  
8 about the technology's accuracy are resolved.

9 (e) In addition to accuracy concerns, the continuous use of this tech-  
10 nology for broad, untargeted surveillance purposes constitutes an unac-  
11 ceptable mass violation of privacy and could chill New Yorkers' right to  
12 free speech and freedom of assembly.

13 (f) In order to protect the personal data, civil rights, civil liber-  
14 ties, and due process rights of all New Yorkers, the use of this tech-  
15 nology by law enforcement should not currently be permitted, and more  
16 study and research should be conducted into the impacts of this technol-  
17 ogy before determining whether it should be authorized for use, and  
18 under what circumstances such use should be permitted.

19 § 2. The executive law is amended by adding a new section 837-w to  
20 read as follows:

21 § 837-w. Use of biometric surveillance systems prohibited. 1. Defi-  
22 nitions. For the purposes of this section, the following terms shall  
23 have the following meanings:

24 (a) "Biometric information" means any measurable physiological,  
25 biological or behavioral characteristics that are attributable to an  
26 individual person, including facial characteristics, fingerprint charac-  
27 teristics, hand characteristics, eye characteristics, vocal character-  
28 istics, and any other physical characteristics that can be used, singly  
29 or in combination with each other or with other information, to estab-  
30 lish individual identity. Examples of biometric information include,  
31 but are not limited to, fingerprints, handprints, retina and iris  
32 patterns, DNA sequence, voice, gait, and facial geometry.

33 (b)(i) "Biometric surveillance" means either of the following, alone  
34 or in combination:

35 (1) An automated or semi-automated process by which a person is iden-  
36 tified or attempted to be identified based on their biometric informa-  
37 tion, including identification of known or unknown individuals or  
38 groups; and/or

39 (2) An automated or semi-automated process that generates, or assists  
40 in generating, surveillance information about an individual based on  
41 their biometric information.

42 (ii) "Biometric surveillance" shall not include the use of an auto-  
43 mated or semi-automated process for the purposes of:

44 (1) redacting a recording for release or disclosure outside a police  
45 agency to protect the privacy of a subject depicted in the recording, if  
46 the process does not generate or result in the retention of any biome-  
47 tric information or surveillance information;

48 (2) the state DNA identification index in accordance with the  
49 provisions of section nine hundred ninety-five-c of this chapter; or

50 (3) the taking, submission, and processing of fingerprints for the  
51 state identification bureau, provided that such taking, submission and  
52 processing is explicitly authorized by law.

53 (c) "Biometric surveillance system" means any computer software or  
54 application that performs biometric surveillance, but does not include  
55 the state DNA identification index or the fingerprint identification  
56 portion of the state automated biometric identification system.

1 (d) "Police agency", "police officer" and "peace officer" shall have  
2 the same meanings as defined under section eight hundred thirty-five of  
3 this article.

4 (e) "Surveillance information" means either of the following, alone or  
5 in combination:

6 (i) Any information about a known or unknown individual, including but  
7 not limited to, a person's name, date of birth, gender, aggregated  
8 location data, or criminal background; and/or

9 (ii) Any information derived from biometric information, including but  
10 not limited to, assessments about an individual's sentiment, state of  
11 mind or level of dangerousness.

12 (f) "Use" means either of the following, alone or in combination:

13 (i) The direct use of a biometric surveillance system by a police  
14 agency, police officer or peace officer; and/or

15 (ii) A request by a police officer or peace officer that a police  
16 agency or other third party use a biometric surveillance system on  
17 behalf of the requesting entity.

18 2. No police agency, police officer or peace officer shall acquire,  
19 possess, access, install, activate or use any biometric surveillance  
20 system, or any biometric information or surveillance information derived  
21 from the use of a biometric surveillance system by any other entity,  
22 while in the course of their job duties or with regard to any informa-  
23 tion obtained, processed, or accessed in the course of those duties.

24 3. In addition to any other sanctions, penalties or remedies provided  
25 by law, a person may bring an action for equitable or declaratory relief  
26 in a court of competent jurisdiction against a police agency, police  
27 officer or peace officer that violates this section.

28 4. This section does not preclude a police agency, police officer or  
29 peace officer from:

30 (a) lawfully using a mobile fingerprint scanning device during a  
31 lawful detention to identify a person who does not have proof of iden-  
32 tification if a police officer or peace officer has reasonable cause to  
33 arrest such person or to issue to and serve upon such person an appear-  
34 ance ticket, provided that any biometric or surveillance information  
35 retained through the use of such device may be used solely for the  
36 purposes permitted in this paragraph or other purposes explicitly  
37 authorized by law;

38 (b) accessing DNA comparisons between forensic evidence and designated  
39 offenders, as defined in subdivision seven of section nine hundred nine-  
40 ty-five of this chapter, through the state DNA identification index  
41 pursuant to section nine hundred ninety-five-c of this chapter;

42 (c) accessing fingerprint comparisons using the statewide automated  
43 biometric identification system for the purpose of routine booking or  
44 crime scene comparisons; or

45 (d) using any lawfully installed security system that processes biome-  
46 tric information solely for the purpose of verifying the identity of  
47 members, officers, employees, agents, or other affiliated staff of the  
48 police agency in order to determine whether such persons are permitted  
49 to access information, goods, materials, areas, or other possessions or  
50 property belonging to or under the custody of the police agency.

51 § 3. The executive law is amended by adding a new section 235 to read  
52 as follows:

53 § 235. Use of biometric surveillance systems prohibited. 1. Defi-  
54 nitions. For the purposes of this section, the following terms shall  
55 have the following meanings:

(a) "Biometric information" means any measurable physiological, biological or behavioral characteristics that are attributable to an individual person, including facial characteristics, fingerprint characteristics, hand characteristics, eye characteristics, vocal characteristics, and any other physical characteristics that can be used, singly or in combination with each other or with other information, to establish individual identity. Examples of biometric information include, but are not limited to, fingerprints, handprints, retina and iris patterns, DNA sequence, voice, gait, and facial geometry.

(b) (i) "Biometric surveillance" means either of the following, alone or in combination:

(1) An automated or semi-automated process by which a person is identified or attempted to be identified based on their biometric information, including identification of known or unknown individuals or groups; and/or

(2) An automated or semi-automated process that generates, or assists in generating, surveillance information about an individual based on their biometric information.

(ii) "Biometric surveillance" shall not include the use of an automated or semi-automated process for the purposes of:

(1) redacting a recording for release or disclosure outside the state police to protect the privacy of a subject depicted in the recording, if the process does not generate or result in the retention of any biometric information or surveillance information;

(2) the state DNA identification index in accordance with the provisions of section nine hundred ninety-five-c of this chapter; or

(3) the taking, submission, and processing of fingerprints for the state identification bureau, provided that such taking, submission and processing is explicitly authorized by law.

(c) "Biometric surveillance system" means any computer software or application that performs biometric surveillance.

(d) "Surveillance information" means either of the following, alone or in combination:

(i) Any information about a known or unknown individual, including but not limited to, a person's name, date of birth, gender, aggregated location data, or criminal background; and/or

(ii) Any information derived from biometric information, including but not limited to, assessments about an individual's sentiment, state of mind or level of dangerousness.

(e) "Use" means either of the following, alone or in combination:

(i) The direct use of a biometric surveillance system by a member of the state police; and/or

(ii) A request by a member of the state police that a police agency or other third party use a biometric surveillance system on behalf of the requesting entity.

2. No member of the state police shall acquire, possess, access, install, activate or use any biometric surveillance system, or any biometric information or surveillance information derived from the use of a biometric surveillance system by any other entity, while in the course of their job duties or with regard to any information obtained, processed, or accessed in the course of those duties.

3. In addition to any other sanctions, penalties or remedies provided by law, a person may bring an action for equitable or declaratory relief in a court of competent jurisdiction against a member of the state police that violates this section.

4. This section does not preclude a member of the state police from:

1 (a) lawfully using a mobile fingerprint scanning device during a  
2 lawful detention to identify a person who does not have proof of iden-  
3 tification if a member of the state police has reasonable cause to  
4 arrest such person or to issue to and serve upon such person an appear-  
5 ance ticket, provided that any biometric or surveillance information  
6 retained through the use of such device may be used solely for the  
7 purposes permitted in this paragraph or other purposes explicitly  
8 authorized by law;

9 (b) accessing DNA comparisons between forensic evidence and designated  
10 offenders, as defined in subdivision seven of section nine hundred nine-  
11 ty-five of this chapter, through the state DNA identification index  
12 pursuant to section nine hundred ninety-five-c of this chapter;

13 (c) accessing fingerprint comparisons using the statewide automated  
14 biometric identification system for the purpose of routine booking or  
15 crime scene comparisons; or

16 (d) using any lawfully installed security system that processes biome-  
17 tric information solely for the purpose of verifying the identity of  
18 members, officers, employees, agents, or other affiliated staff of the  
19 state police in order to determine whether such persons are permitted to  
20 access information, goods, materials, areas, or other possessions or  
21 property belonging to or under the custody of the state police.

22 § 4. Biometric surveillance regulation task force. 1. (a) There is  
23 hereby established the task force on the regulation of biometric  
24 surveillance, which shall consist of twelve members as follows:

25 (a) the commissioner of the division of criminal justice services or  
26 his or her designee;

27 (b) the superintendent of state police or his or her designee;

28 (c) the commissioner of the New York city police department or his or  
29 her designee; and

30 (d) three members appointed by the governor, two members appointed by  
31 the temporary president of the senate, two members appointed by the  
32 speaker of the assembly, one member appointed by the minority leader of  
33 the senate, and one member appointed by the minority leader of the  
34 assembly, each of which shall have expertise and experience related to  
35 at least one of the following fields, disciplines, or areas:

36 (i) data privacy and data security;

37 (ii) civil rights, civil liberties, and due process and procedural  
38 rights;

39 (iii) the use and function of both existing and emerging biometric  
40 surveillance technology;

41 (iv) legal representation of low-income individuals and/or tenants; or

42 (v) criminal defense.

43 (b) The chairperson of the task force shall be one of the governor's  
44 appointees, whom the governor shall so designate.

45 (c) The task force shall meet as often as is necessary, but no less  
46 than three times per year, and at the call of the chairperson. Meetings  
47 may be held via teleconference. All members shall be provided with writ-  
48 ten notice reasonably in advance of each meeting with date, time and  
49 location of such meeting.

50 (d) Any vacancies on the task force shall be filled in the manner  
51 provided for in the initial appointment.

52 (e) Members of the task force shall receive no compensation for their  
53 services but shall be reimbursed for their actual expenses incurred in  
54 the performance of their duties in the work of the task force.

55 (f) The task force is authorized to hold public hearings and meetings  
56 and to consult with any relevant stakeholders it deems appropriate or

1 necessary to seek assistance, data, or other information that will  
2 enable the task force to carry out its powers and duties.

3 (g) The division of criminal justice services shall provide the task  
4 force with such facilities, assistance and data as will enable the task  
5 force to carry out its powers and duties. Additionally, all other agen-  
6 cies of the state or subdivisions thereof may, at the request of the  
7 chairperson of the task force, provide the task force with such facili-  
8 ties, assistance, and data as will enable the task force to carry out  
9 its powers and duties.

10 2. The task force shall:

11 (a) Examine the current and proposed use of biometric surveillance  
12 systems, as such term is defined pursuant to section 837-w of the execu-  
13 tive law, by governments and/or law enforcement, both in the United  
14 States and abroad;

15 (b) Examine current and proposed laws, rules, regulations, programs,  
16 and policies relating to the use of biometric surveillance systems;

17 (c) Examine currently available biometric surveillance systems or  
18 similar technology, and evaluate their effectiveness, efficacy, and  
19 accuracy, provided that such evaluation shall include the use of repre-  
20 sentative datasets according to targeted populations, and disaggregated  
21 testing for demographic subgroups by age, gender identity, and race;

22 (d) Evaluate the potential benefits and harms of the use of biometric  
23 surveillance systems, taking into account and analyzing the impact of  
24 the use of such systems on minorities, women, young people, seniors,  
25 lesbian, gay, bisexual, transgender, and gender-nonconforming individ-  
26 uals, and individuals with disabilities;

27 (e) Evaluate whether law enforcement should be permitted to use biome-  
28 tric surveillance systems, and if it is the judgment of the task force  
29 that such use should be permitted, the task force shall propose a  
30 comprehensive framework of recommendations for legislation, regulations  
31 and standards regarding the use of such systems by law enforcement,  
32 including, but not limited to:

33 (i) permissible uses and purposes for use of biometric surveillance  
34 systems by law enforcement;

35 (ii) prohibited uses and purposes for use of biometric surveillance  
36 systems by law enforcement;

37 (iii) minimum standards for accuracy that biometric surveillance  
38 systems must achieve in order to be authorized for use by law enforce-  
39 ment, and auditing requirements to ensure compliance with those stand-  
40 ards;

41 (iv) standards for use, management, and protection of information  
42 derived from the use of biometric surveillance systems by law enforce-  
43 ment, including, but not limited to data retention, sharing, access, and  
44 audit trails;

45 (v) rigorous protections for due process, privacy, free speech and  
46 association, and racial, gender, and religious equity;

47 (vi) training requirements for law enforcement personnel authorized to  
48 use biometric surveillance systems;

49 (vii) procedures to address instances in which a person is wrongfully  
50 targeted, arrested or interrogated based on inaccurate information  
51 derived from the use of a biometric surveillance system; and

52 (viii) disclosure requirements for broad public transparency as well  
53 as discovery procedures.

54 3. (a) No sooner than January 1, 2025, and no later than January 1,  
55 2026, the task force shall transmit a report to the governor, the tempo-  
56 rary president of the senate, the speaker of the assembly, the minority

1 leader of the senate, and the minority leader of the assembly detailing  
2 its findings and recommendations pursuant to subdivision two of this  
3 section.

4 (b) No later than ten days after the task force transmits such report  
5 to the governor, the temporary president of the senate, the speaker of  
6 the assembly, the minority leader of the senate, and the minority leader  
7 of the assembly, the division of criminal justice services shall make  
8 such report available on its website.

9 § 5. This act shall take effect immediately, provided that section  
10 four of this act shall expire and be deemed repealed 60 days after tran-  
11 smission of the report of the findings and recommendations of the task  
12 force to the governor, the temporary president of the senate, the speak-  
13 er of the assembly, the minority leader of the senate, and the minority  
14 leader of the assembly, as provided in paragraph (a) of subdivision 3 of  
15 section four of this act. Provided, however, that the commissioner of  
16 the department of criminal justice services shall notify the legislative  
17 bill drafting commission upon the transmission of the report of the  
18 findings of the task force, as provided in paragraph (a) of subdivision  
19 3 of section four of this act, in order that the commission may maintain  
20 an accurate and timely effective data base of the official text of the  
21 laws of the state of New York in furtherance of effectuating the  
22 provisions of section 44 of the legislative law and section 70-b of the  
23 public officers law.