

STATE OF NEW YORK

1601

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. FERNANDEZ -- read once and referred to the
Committee on Governmental Operations

AN ACT to amend the executive law, in relation to prohibiting facial
recognition technology to be used in connection with an officer
camera; and providing for the repeal of such provisions upon expira-
tion thereof

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

1 Section 1. The executive law is amended by adding a new section 837-w
2 to read as follows:

3 § 837-w. Use of facial recognition in connection with an officer
4 camera prohibited. 1. Definitions. For the purposes of this section,
5 the following terms shall have the following meanings:

6 (a) "Biometric data" means a physiological, biological or behavioral
7 characteristic that can be used, singly or in combination with each
8 other or with other information, to establish individual identity.

9 (b) (i) "Facial recognition or other biometric surveillance" means
10 either of the following, alone or in combination:

11 (1) An automated or semi-automated process by which a person is iden-
12 tified or attempted to be identified based on the characteristics of
13 their face or based on their biometric data, including identification of
14 known or unknown individuals or groups; and/or

15 (2) An automated or semi-automated process that generates, or assists
16 in generating, surveillance information about an individual based on the
17 characteristics of an individual's face or based on biometric data.

18 (ii) "Facial recognition or other biometric surveillance" shall not
19 include the use of an automated or semi-automated process for the
20 purpose of redacting a recording for release or disclosure outside a
21 police agency to protect the privacy of a subject depicted in the
22 recording, if the process does not generate or result in the retention
23 of any biometric data or surveillance information.

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

LBD02559-01-1

1 (c) "Facial recognition or biometric surveillance system" means any
2 computer software or application that performs facial recognition or
3 other biometric surveillance.

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

7 (e) "Officer camera" means a body-worn camera or similar device that
8 records or transmits images or sound and is attached to the body or
9 clothing of, or carried by, a police officer or peace officer.

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

12 (i) Any information about a known or unknown individual, including but
13 not limited to, a person's name, date of birth, gender or criminal back-
14 ground; and/or

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

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

19 (i) The direct use of a facial recognition or biometric surveillance
20 system by a police agency, police officer or peace officer; and/or

21 (ii) A request by a police officer or peace officer that a police
22 agency or other third party use a facial recognition or biometric
23 surveillance system on behalf of the requesting entity.

24 2. No police agency, police officer or peace officer shall install,
25 activate or use any facial recognition or biometric surveillance system
26 in connection with an officer camera or data collected by an officer
27 camera.

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

32 4. This section does not preclude a police agency, police officer or
33 peace officer from using a mobile fingerprint scanning device during a
34 lawful detention to identify a person who does not have proof of iden-
35 tification if this use is lawful and does not generate or result in the
36 retention of any biometric data or surveillance information.

37 § 2. The executive law is amended by adding a new section 235 to read
38 as follows:

39 § 235. Use of facial recognition in connection with an officer camera
40 prohibited. 1. Definitions. For the purposes of this section, the
41 following terms shall have the following meanings:

42 (a) "Biometric data" means a physiological, biological or behavioral
43 characteristic that can be used, singly or in combination with each
44 other or with other information, to establish individual identity.

45 (b) (i) "Facial recognition or other biometric surveillance" means
46 either of the following, alone or in combination:

47 (1) An automated or semi-automated process by which a person is iden-
48 tified or attempted to be identified based on the characteristics of
49 their face or based on their biometric data, including identification of
50 known or unknown individuals or groups; and/or

51 (2) An automated or semi-automated process that generates, or assists
52 in generating, surveillance information about an individual based on the
53 characteristics of an individual's face or based on biometric data.

54 (ii) "Facial recognition or other biometric surveillance" shall not
55 include the use of an automated or semi-automated process for the
56 purpose of redacting a recording for release or disclosure outside the

1 division of state police to protect the privacy of a subject depicted in
2 the recording, if the process does not generate or result in the
3 retention of any biometric data or surveillance information.

4 (c) "Facial recognition or biometric surveillance system" means any
5 computer software or application that performs facial recognition or
6 other biometric surveillance.

7 (d) "Officer camera" means a body-worn camera or similar device that
8 records or transmits images or sound and is attached to the body or
9 clothing of, or carried by, a member of the state police.

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

12 (i) Any information about a known or unknown individual, including but
13 not limited to, a person's name, date of birth, gender or criminal back-
14 ground; and/or

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

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

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

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

24 2. No member of the state police shall install, activate or use any
25 facial recognition or biometric surveillance system in connection with
26 an officer camera or data collected by an officer camera.

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

31 4. This section does not preclude a member of the state police from
32 using a mobile fingerprint scanning device during a lawful detention to
33 identify a person who does not have proof of identification if this use
34 is lawful and does not generate or result in the retention of any biome-
35 tric data or surveillance information.

36 § 3. This act shall take effect on the ninetieth day after it shall
37 have become a law and shall expire and be deemed repealed 5 years after
38 such date.