

# 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.

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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.