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**SENATE BILL 6280**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators Nguyen, Carlyle, Wellman, Salomon, Lovelett, Das, and Randall

1 AN ACT Relating to the use of facial recognition services; adding  
2 a new section to chapter 9.73 RCW; adding a new chapter to Title 43  
3 RCW; creating a new section; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Unconstrained use of facial recognition services by state and  
7 local government agencies poses broad social ramifications that  
8 should be considered and addressed. Accordingly, legislation is  
9 required to establish safeguards that will allow state and local  
10 government agencies to use facial recognition services in a manner  
11 that benefits society while prohibiting uses that threaten our  
12 democratic freedoms and put our civil liberties at risk.

13 (2) However, state and local government agencies may use facial  
14 recognition services in a variety of beneficial ways, such as  
15 locating missing or incapacitated persons, identifying victims of  
16 crime, and keeping the public safe.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires  
19 otherwise.

1 (1) "Accountability report" means a report developed in  
2 accordance with section 3 of this act.

3 (2) "Enroll," "enrolled," or "enrolling" means the process by  
4 which a facial recognition service creates a facial template from one  
5 or more images of a consumer and adds the facial template to a  
6 gallery used by the facial recognition service for recognition or  
7 persistent tracking of consumers. It also includes the act of adding  
8 an existing facial template directly into a gallery used by a facial  
9 recognition service.

10 (3) "Facial recognition service" means technology that analyzes  
11 facial features and is used for recognition or persistent tracking of  
12 consumers in still or video images.

13 (4) "Facial template" means the machine-interpretable pattern of  
14 facial features that is extracted from one or more images of a  
15 consumer by a facial recognition service.

16 (5) "Meaningful human review" means review or oversight by one or  
17 more individuals who are trained in accordance with section 8 of this  
18 act and who have the authority to alter the decision under review.

19 (6) "Ongoing surveillance" means tracking the physical movements  
20 of a specified individual through one or more public places over  
21 time, whether in real time or through application of a facial  
22 recognition service to historical records. It does not include a  
23 single recognition or attempted recognition of an individual, if no  
24 attempt is made to subsequently track that individual's movement over  
25 time after they have been recognized.

26 (7) "Persistent tracking" means the use of a facial recognition  
27 service to track the movements of a consumer on a persistent basis  
28 without recognition of that consumer. Such tracking becomes  
29 persistent as soon as:

30 (a) The facial template that permits the tracking is maintained  
31 for more than forty-eight hours after first enrolling that template;  
32 or

33 (b) Data created by the facial recognition service is linked to  
34 any other data such that the consumer who has been tracked is  
35 identified or identifiable.

36 (8) "Recognition" means the use of a facial recognition service  
37 to determine whether an unknown consumer matches:

38 (a) Any consumer who has been enrolled in a gallery used by the  
39 facial recognition service; or

1 (b) A specific consumer who has been enrolled in a gallery used  
2 by the facial recognition service.

3 (9) "Serious criminal offense" means any felony under chapter  
4 9.94A RCW or an offense enumerated by Title 18 U.S.C. Sec. 2516.

5 NEW SECTION. **Sec. 3.** (1) A state or local government agency  
6 using or intending to develop, procure, or use a facial recognition  
7 service must produce an accountability report for that service. The  
8 report must be clearly communicated to the public at least ninety  
9 days prior to the agency putting the facial recognition service into  
10 operational use, posted on the agency's public web site, and  
11 submitted to the consolidated technology services agency established  
12 in RCW 43.105.006. The consolidated technology services agency must  
13 post each submitted accountability report on its public web site.

14 (2) Each accountability report must include, at minimum, clear  
15 and understandable statements of the following:

16 (a) (i) The name of the facial recognition service, vendor, and  
17 version; and (ii) a description of its general capabilities and  
18 limitations, including reasonably foreseeable capabilities outside  
19 the scope of the proposed use of the agency;

20 (b) (i) The type or types of data inputs that the technology uses;  
21 (ii) how that data is generated, collected, and processed; and (iii)  
22 the type or types of data the system is reasonably likely to  
23 generate;

24 (c) (i) A description of the purpose and proposed use of the  
25 facial recognition service, including what decision or decisions will  
26 be used to make or support it; (ii) whether it is a final or support  
27 decision system; and (iii) its intended benefits, including any data  
28 or research demonstrating those benefits;

29 (d) A clear use and data management policy, including protocols  
30 for the following:

31 (i) How and when the facial recognition service will be deployed  
32 or used and by whom including, but not limited to, the factors that  
33 will be used to determine where, when, and how the technology is  
34 deployed, and other relevant information, such as whether the  
35 technology will be operated continuously or used only under specific  
36 circumstances. If the facial recognition service will be operated or  
37 used by another entity on the agency's behalf, the facial recognition  
38 service accountability report must explicitly include a description  
39 of the other entity's access and any applicable protocols;

1 (ii) Any measures taken to minimize inadvertent collection of  
2 additional data beyond the amount necessary for the specific purpose  
3 or purposes for which the facial recognition service will be used;

4 (iii) Data integrity and retention policies applicable to the  
5 data collected using the facial recognition service, including how  
6 the agency will maintain and update records used in connection with  
7 the service, how long the agency will keep the data, and the  
8 processes by which data will be deleted;

9 (iv) Any additional rules that will govern use of the facial  
10 recognition service and what processes will be required prior to each  
11 use of the facial recognition service;

12 (v) Data security measures applicable to the facial recognition  
13 service including how data collected using the facial recognition  
14 service will be securely stored and accessed, if and why an agency  
15 intends to share access to the facial recognition service or the data  
16 from that facial recognition service with any other entity, and the  
17 rules and procedures by which an agency sharing data with any other  
18 entity will ensure that such entities comply with the sharing  
19 agency's use and data management policy as part of the data sharing  
20 agreement; and

21 (vi) The agency's training procedures, including those  
22 implemented in accordance with section 8 of this act, and how the  
23 agency will ensure that all personnel who operate the facial  
24 recognition service or access its data are knowledgeable about and  
25 able to ensure compliance with the use and data management policy  
26 prior to use of the facial recognition service;

27 (e) The agency's testing procedures, including its processes for  
28 periodically undertaking operational tests of the facial recognition  
29 service in accordance with section 6 of this act;

30 (f) A description of any potential impacts of the facial  
31 recognition service on civil rights and liberties, including  
32 potential impacts to privacy and potential disparate impacts on  
33 marginalized communities, and the specific steps the agency will take  
34 to mitigate the potential impacts and prevent unauthorized use of the  
35 facial recognition service; and

36 (g) The agency's procedures for receiving feedback, including the  
37 channels for receiving feedback from individuals affected by the use  
38 of the facial recognition service and from the community at large, as  
39 well as the procedures for responding to feedback.

1 (3) Prior to finalizing and implementing the accountability  
2 report, the agency must consider issues raised by the public through:

3 (a) A public review and comment period; and

4 (b) Community consultation meetings during the public review  
5 period.

6 (4) The accountability report must be updated every two years and  
7 each update must be subject to the public comment and community  
8 consultation processes described in this section.

9 (5) An agency seeking to use a facial recognition service for a  
10 purpose not disclosed in the agency's existing accountability report  
11 must first seek public comment and community consultation on the  
12 proposed new use and adopt an updated accountability report pursuant  
13 to the requirements contained in this section.

14 NEW SECTION. **Sec. 4.** (1) State and local government agencies  
15 using a facial recognition service are required to prepare and  
16 publish an annual report that discloses:

17 (a) The extent of their use of such services;

18 (b) An assessment of compliance with the terms of their  
19 accountability report;

20 (c) Any known or reasonably suspected violations of their  
21 accountability report, including complaints alleging violations; and

22 (d) Any revisions to the accountability report recommended by the  
23 agency during the next update of the policy.

24 (2) The annual report must be submitted to the office of privacy  
25 and data protection.

26 (3) All agencies must hold community meetings to review and  
27 discuss their annual report within sixty days of its public release.

28 NEW SECTION. **Sec. 5.** State and local government agencies using  
29 a facial recognition service to make decisions that produce legal  
30 effects concerning consumers or similarly significant effects  
31 concerning consumers must ensure that those decisions are subject to  
32 meaningful human review. Decisions that produce legal effects  
33 concerning consumers or similarly significant effects concerning  
34 consumers must include, but not be limited to, denial of  
35 consequential services or support, such as financial and lending  
36 services, housing, insurance, education enrollment, criminal justice,  
37 employment opportunities, health care services, and access to basic  
38 necessities such as food and water.

1        NEW SECTION.    **Sec. 6.**    Prior to deploying a facial recognition  
2 service in the context in which it will be used, state and local  
3 government agencies must test the facial recognition service in  
4 operational conditions. State and local government agencies must take  
5 reasonable steps to ensure best quality results by following all  
6 reasonable guidance provided by the developer of the facial  
7 recognition service.

8        NEW SECTION.    **Sec. 7.**    A state or local government agency that  
9 deploys a facial recognition service must require a facial  
10 recognition service provider to make available an application  
11 programming interface or other technical capability, chosen by the  
12 provider, to enable legitimate, independent, and reasonable tests of  
13 those facial recognition services for accuracy and unfair performance  
14 differences across distinct subpopulations. These subpopulations may  
15 be defined by race, skin tone, ethnicity, gender, age, disability  
16 status, or other protected characteristic that is objectively  
17 determinable or self-identified by the individuals portrayed in the  
18 testing dataset. If the results of the independent testing identify  
19 material unfair performance differences across subpopulations, and  
20 those results are disclosed directly to the provider who, acting  
21 reasonably, determines that the methodology and results of that  
22 testing are valid, then the provider must develop and implement a  
23 plan to address the identified performance differences.

24        NEW SECTION.    **Sec. 8.**    State and local government agencies using  
25 a facial recognition service must conduct periodic training of all  
26 individuals who operate a facial recognition service or who process  
27 personal data obtained from the use of a facial recognition service.  
28 The training must include, but not be limited to, coverage of:

29        (1) The capabilities and limitations of the facial recognition  
30 service;

31        (2) Procedures to interpret and act on the output of the facial  
32 recognition service; and

33        (3) To the extent applicable to the deployment context, the  
34 meaningful human review requirement for decisions that produce legal  
35 effects concerning consumers or similarly significant effects  
36 concerning consumers.

1        NEW SECTION.    **Sec. 9.**    (1) State local and government agencies  
2 must disclose their use of a facial recognition service on a criminal  
3 defendant to that defendant in a timely manner prior to trial.

4        (2) State and local government agencies using a facial  
5 recognition service shall maintain records of their use of the  
6 service that are sufficient to facilitate public reporting and  
7 auditing of compliance with agencies' facial recognition policies.

8        (3) In January of each year, any judge who has issued a warrant  
9 for ongoing surveillance, or an extension thereof, as described in  
10 section 11(1) of this act, that expired during the preceding year, or  
11 who has denied approval of such a warrant during that year shall  
12 report to the Washington state supreme court:

13        (a) The fact that a warrant or extension was applied for;

14        (b) The fact that the warrant or extension was granted as applied  
15 for, was modified, or was denied;

16        (c) The period of ongoing surveillance authorized by the warrant  
17 and the number and duration of any extensions of the warrant;

18        (d) The identity of the applying investigative or law enforcement  
19 officer and agency making the application and the person authorizing  
20 the application; and

21        (e) The nature of the public spaces where the surveillance was  
22 conducted.

23        NEW SECTION.    **Sec. 10.**    (1)(a) A task force on facial recognition  
24 services is established, with members as provided in this subsection.

25        (i) The president of the senate shall appoint one member from  
26 each of the two largest caucuses of the senate;

27        (ii) The speaker of the house of representatives shall appoint  
28 one member from each of the two largest caucuses of the house of  
29 representatives;

30        (iii) Two representatives from advocacy organizations that  
31 represent consumers or protected classes of communities historically  
32 impacted by surveillance technologies including, but not limited to,  
33 African American, Hispanic American, Native American, and Asian  
34 American communities, religious minorities, protest and activist  
35 groups, and other vulnerable communities;

36        (iv) Two members from law enforcement or other agencies of  
37 government;

1 (v) One representative from a retailer or other company who  
2 deploys facial recognition services in physical premises open to the  
3 public;

4 (vi) Two representatives from companies that develop and provide  
5 facial recognition services; and

6 (vii) Two representatives from universities or research  
7 institutions who are experts in either facial recognition services or  
8 their sociotechnical implications, or both.

9 (b) The task force shall choose two cochairs from among its  
10 legislative membership. The governor shall staff and convene the task  
11 force.

12 (2) The task force shall review the following issues:

13 (a) Provide recommendations addressing the potential abuses and  
14 threats posed by the use of a facial recognition service to civil  
15 liberties and freedoms, privacy and security, and discrimination  
16 against vulnerable communities, as well as other potential harm,  
17 while also addressing how to facilitate and encourage the continued  
18 development of a facial recognition service so that consumers,  
19 businesses, government, and other stakeholders in society continue to  
20 utilize its benefits;

21 (b) Provide recommendations regarding the adequacy and  
22 effectiveness of applicable Washington state laws; and

23 (c) Conduct a study on the quality, accuracy, and efficacy of a  
24 facial recognition service including, but not limited to, its  
25 quality, accuracy, and efficacy across different subpopulations.

26 (3) Legislative members of the task force are reimbursed for  
27 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
28 members are not entitled to be reimbursed for travel expenses if they  
29 are elected officials or are participating on behalf of an employer,  
30 governmental entity, or other organization. Any reimbursement for  
31 other nonlegislative members is subject to chapter 43.03 RCW.

32 (4) The expenses of the task force must be paid jointly by the  
33 senate and the house of representatives. Task force expenditures are  
34 subject to approval by the senate facilities and operations committee  
35 and the house of representatives executive rules committee, or their  
36 successor committees.

37 (5) The task force shall report its findings and recommendations  
38 to the governor and the appropriate committees of the legislature by  
39 September 30, 2021.

40 (6) This section expires May 1, 2022.

1        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 9.73

2    RCW to read as follows:

3        (1) State and local government agencies may not use a facial  
4    recognition service to engage in ongoing surveillance unless the use  
5    is in support of law enforcement activities and the ongoing  
6    surveillance may provide evidence of a serious criminal offense, and  
7    either:

8        (a) A search warrant has been obtained to permit the use of the  
9    facial recognition service for ongoing surveillance; or

10       (b) Where the agency reasonably determines that ongoing  
11    surveillance is necessary to prevent or respond to an emergency  
12    involving imminent danger or risk of death or serious physical injury  
13    to a person, but only if written approval is obtained from the  
14    agency's director or the director's designee prior to using the  
15    service and a search warrant is subsequently obtained within forty-  
16    eight hours after the ongoing surveillance begins.

17       (2) State and local government agencies must not apply a facial  
18    recognition service to any consumer based on their religious,  
19    political, or social views or activities, participation in a  
20    particular noncriminal organization or lawful event, or actual or  
21    perceived race, ethnicity, citizenship, place of origin, age,  
22    disability, gender, gender identity, sexual orientation, or other  
23    characteristic protected by law. The prohibition in this subsection  
24    does not prohibit state and local government agencies from applying a  
25    facial recognition service to a consumer who happens to possess one  
26    or more of these characteristics where an officer of that agency  
27    holds a reasonable suspicion that that consumer has committed, is  
28    committing, or is about to commit a serious criminal offense.

29       (3) State and local government agencies may not use a facial  
30    recognition service to create a record describing any consumer's  
31    exercise of rights guaranteed by the First Amendment of the United  
32    States Constitution and by Article I, section 5 of the state  
33    Constitution, unless:

34       (a) Such use is specifically authorized by applicable law and is  
35    pertinent to and within the scope of an authorized law enforcement  
36    activity; and

37       (b) There is reasonable suspicion to believe the consumer has  
38    committed, is committing, or is about to commit a serious criminal  
39    offense.

1        NEW SECTION.    **Sec. 12.**    Sections 1 through 9 of this act  
2    constitute a new chapter in Title 43 RCW.

--- **END** ---