

118TH CONGRESS
1ST SESSION

S. 681

To prohibit biometric surveillance by the Federal Government without explicit statutory authorization and to withhold certain Federal public safety grants from State and local governments that engage in biometric surveillance.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2023

Mr. MARKEY (for himself, Mr. MERKLEY, Ms. WARREN, Mr. SANDERS, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit biometric surveillance by the Federal Government without explicit statutory authorization and to withhold certain Federal public safety grants from State and local governments that engage in biometric surveillance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Facial Recognition and
5 Biometric Technology Moratorium Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) BIOMETRIC SURVEILLANCE SYSTEM.—The
2 term “biometric surveillance system” means any
3 computer software that performs facial recognition
4 or other remote biometric recognition in real time or
5 on a recording or photograph.

6 (2) BYRNE GRANT PROGRAM.—The term
7 “Byrne grant program” means the grant program
8 authorized under subpart 1 of part E of title I of
9 the Omnibus Crime Control and Safe Streets Act of
10 1968 (34 U.S.C. 10151 et seq.), whether character-
11 ized as the Edward Byrne Memorial State and Local
12 Law Enforcement Assistance Programs, the Local
13 Government Law Enforcement Block Grants Pro-
14 gram, the Edward Byrne Memorial Justice Assist-
15 ance Grant Program, or otherwise.

16 (3) FACIAL RECOGNITION.—The term “facial
17 recognition” means an automated or semi-automated
18 process that—

19 (A) assists in identifying an individual,
20 capturing information about an individual, or
21 otherwise generating or assisting in generating
22 surveillance information about an individual
23 based on the physical characteristics of the indi-
24 vidual’s face; or

1 (B) logs characteristics of an individual's
2 face, head, or body to infer emotion, associa-
3 tions, activities, or the location of an individual.

4 (4) FEDERAL OFFICIAL.—The term “Federal
5 official” means any officer, employee, agent, con-
6 tractor, or subcontractor of the United States Gov-
7 ernment.

8 (5) IN THE UNITED STATES.—The term “in the
9 United States” means all areas within the external
10 boundary of the United States, its territories and
11 possessions, including airports, ports of entry, and
12 border zones.

13 (6) OTHER REMOTE BIOMETRIC RECOGNI-
14 TION.—The term “other remote biometric recogni-
15 tion”—

16 (A) means an automated or semi-auto-
17 mated process that—

18 (i) assists in identifying an individual,
19 capturing information about an individual,
20 or otherwise generating or assisting in gen-
21 erating surveillance information about an
22 individual based on the characteristics of
23 the individual's gait or other immutable
24 characteristic ascertained from a distance;

1 (ii) uses voice recognition technology;

2 or

3 (iii) logs such characteristics to infer

4 emotion, associations, activities, or the lo-

5 cation of an individual; and

6 (B) does not include identification based

7 on fingerprints or palm prints.

8 (7) VOICE RECOGNITION TECHNOLOGY.—The

9 term “voice recognition technology” means the auto-

10 mated or semi-automated process that assists in

11 identifying or verifying an individual based on the

12 characteristics of an individual’s voice.

13 **SEC. 3. PROHIBITION ON FEDERAL GOVERNMENT USE OF**

14 **BIOMETRIC SURVEILLANCE.**

15 (a) IN GENERAL.—Except as provided in subsection

16 (b), it shall be unlawful for any Federal agency or Federal

17 official, in an official capacity, to acquire, possess, access,

18 or use in the United States—

19 (1) any biometric surveillance system; or

20 (2) information derived from a biometric sur-

21 veillance system operated by another entity.

22 (b) EXCEPTION.—The prohibition set forth in sub-

23 section (a) does not apply to activities explicitly authorized

24 by an Act of Congress that describes, with particularity—

1 (1) the entities permitted to use the biometric
2 surveillance system, the specific type of biometric
3 authorized, the purposes for such use, and any pro-
4 hibited uses;

5 (2) standards for use and management of infor-
6 mation derived from the biometric surveillance sys-
7 tem, including data retention, sharing, access, and
8 audit trails;

9 (3) auditing requirements to ensure the accu-
10 racy of biometric surveillance system technologies,
11 standards for minimum accuracy rates, and accuracy
12 rates by gender, skin color, and age;

13 (4) rigorous protections for due process, pri-
14 vacy, free speech and association, and racial, gender,
15 and religious equity; and

16 (5) mechanisms to ensure compliance with the
17 provisions of the Act.

18 (c) JUDICIAL INVESTIGATIONS AND PROCEEDINGS.—

19 (1) ADMISSIBILITY.—Except in a judicial inves-
20 tigation or proceeding alleging a violation of this sec-
21 tion, information obtained in violation of this section
22 is not admissible by the Federal Government in any
23 criminal, civil, administrative, or other investigation
24 or proceeding.

25 (2) CAUSE OF ACTION.—

1 (A) IN GENERAL.—A violation of this sec-
2 tion constitutes an injury to any individual ag-
3 grieved by a violation of this Act.

4 (B) RIGHT TO SUE.—An individual de-
5 scribed in subparagraph (A) may institute pro-
6 ceedings against the Federal Government whose
7 official is alleged to have violated this section
8 for the relief described in subparagraph (D) in
9 any court of competent jurisdiction.

10 (C) ENFORCEMENT BY STATE ATTORNEYS
11 GENERAL.—The chief law enforcement officer
12 of a State, or any other State officer authorized
13 by law to bring actions on behalf of the resi-
14 dents of a State, may bring a civil action, as
15 parens patriae, on behalf of the residents of
16 that State in an appropriate district court of
17 the United States to enforce this Act, whenever
18 the chief law enforcement officer or other State
19 officer has reason to believe that the interests
20 of the residents of the State have been or are
21 being threatened or adversely affected by a vio-
22 lation of this Act.

23 (D) RELIEF.—In a civil action brought
24 under subparagraph (B) in which the plaintiff
25 prevails, the court may award—

- 1 (i) actual damages;
- 2 (ii) punitive damages;
- 3 (iii) reasonable attorneys' fees and
- 4 costs; and
- 5 (iv) any other relief, including injunc-
- 6 tive relief, that the court determines to be
- 7 appropriate.

8 (d) CIVIL PENALTIES.—Any Federal official who is
9 found to have violated this section may be subject to re-
10 training, suspension, termination, or any other penalty, as
11 determined in an appropriate tribunal, subject to applica-
12 ble due process requirements.

13 (e) FEDERAL FUNDING.—

14 (1) IN GENERAL.—No Federal funds may be
15 obligated or expended by a Federal law enforcement
16 agency for the purchase or use of a biometric sur-
17 veillance system.

18 (2) UNALLOCATED FUNDS.—No Federal agency
19 may use any unallocated funds appropriated to the
20 agency for the purchase or use of a biometric sur-
21 veillance system.

22 (f) RULES OF CONSTRUCTION.—Nothing in this sec-
23 tion may be construed—

24 (1) to prohibit the National Institute of Stand-
25 ards and Technology (NIST) from testing or re-

1 searching biometric surveillance systems or other re-
2 mote biometric recognition technologies in commer-
3 cial use; or

4 (2) to preempt or supersede any Federal, State,
5 or local law that imposes a more stringent limitation
6 than the limitations described in this section.

7 **SEC. 4. MORATORIUM ON STATE AND LOCAL GOVERNMENT**

8 **USE OF BIOMETRIC SURVEILLANCE SYSTEMS.**

9 (a) **FEDERAL FINANCIAL ASSISTANCE.**—Beginning
10 on the first day of the first fiscal year beginning after the
11 date of the enactment of this Act, a State or unit of local
12 government is ineligible to receive Federal financial assist-
13 ance under the Byrne grant program unless the State or
14 unit of local government is complying with a law or policy
15 that is substantially similar to the prohibition set forth
16 in section 3(a).

17 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
18 tion may be construed to preempt or supersede any Fed-
19 eral, State, or local law that imposes a more stringent lim-
20 itation than the prohibition set forth in section 3(a).

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