H.135 and S.47 : Facial Recognition Technology

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1648 Massachusetts Avenue
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July 28, 2021

Commission on Facial Recognition
Senator Jamie Eldridge and Representative Michael S. Day, Co-Chairs

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Public Comment
Government Use of Facial Recognition Technology

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Dear Senator Eldridge, Representative Day, and members of the Commission,

My name is Alissa Lerman. I am writing to provide some comments about the use of facial recognition technology in Massachusetts. I respectfully ask that the Commission recommend the legislature strengthen existing facial recognition law to ensure Massachusetts residents and visitors are shielded from discriminatory, dragnet surveillance and other harms.

For four years, I was the Fraud and Protection Specialist at a software company in Allston, MA. In this time, I worked closely with a vendor which provides algorithm-driven risk assessment for ecommerce. I was also responsible for helping to craft our company's compliance strategy around the GDPR (General Data Protection Regulation.) The risk assessment technology I worked with was, and still is, among the best of its kind available in the marketplace. At the same time, I found it, like any software designed to collect personal data and evaluate human behavior, vulnerable to misinterpretation and misuse. The GDPR afforded consumers in the EU an unprecedented level of protection in ensuring that their personal data would be protected and used only for the purposes where appropriate. Massachusetts citizens deserve no less assurance that their personal data is treated with the same level of care and protection from misuse of facial recognition technology.

In December 2020, Governor Baker signed into law "An Act Relative To Justice, Equity And Accountability In Law Enforcement In The Commonwealth," an omnibus police reform legislation. The law, codified in Chapter 253 of the Acts of 2020, contains several provisions pertaining to government agencies' use of facial recognition technology.

While I support some of those provisions, namely the creation of this Commission, the regulations governing police use of facial recognition fall far short of what we need.

Some of the main concerns with the existing law is that it

1. … does not prohibit or regulate the use of facial recognition technologies for purposes of surveillance of public spaces like streets and parks.

2. … does not restrict which public agencies can or cannot acquire and possess a facial recognition system. The law merely mentions the Registrar of Motor Vehicles ("R.M.V.") and the State Police ("M.S.P.") as possessing F.R.T. systems but does not explicitly restrict other agencies from buying or leasing their own systems.

3. … does not establish any limitation regarding who can directly use and operate a facial recognition system. It also imposes very weak regulations to govern police requests for facial recognition searches, establishing a very low standard for court orders and allowing the use of the technology in all criminal investigations, without limitation.

Thankfully, lawmakers have addressed these concerns in legislation filed this session. H.135, An Act To Regulate Face Surveillance, sponsored by Representatives Rogers and Ramos, and S.47, An Act To Regulate Face Surveillance, sponsored by Senator Creem, provide for some useful policy solutions to the ones outlined above.

H.135 and S.47

1. … prohibit the use of facial recognition for surveillance of public spaces. As a result, government agencies would be forbidden from using our biometric characteristics to track our activities and locations in the park, at the library, at school, or on public transit.

2. … clearly establish that only the R.M.V. would be allowed to acquire and possess the technology and use it to verify an individual's identity when issuing licenses, permits, or other documents. The bills also make a special caveat for the M.S.P. so that its officers can only access the R.M.V. system in three limited cases, i.e., to execute a warrant issued under probable cause, in case of an emergency involving immediate danger of death or serious physical injury, and to identify a deceased person.

3. … establish that only two agencies would be allowed to use the technology directly. These agencies are the R.M.V. and the M.S.P. As to the former, the use of the technology is allowed to verify an individual's identity when issuing licenses, permits, or other documents. As to the latter, the bills establish that facial recognition searches performed by the M.S.P, whether for its own use or on behalf of other law enforcement agencies, should only be used (i) to investigate violent felonies and (ii) after a warrant issued under probable cause, except in cases involving an emergency or the identification of a deceased person.

I encourage you to consider bills H.135 and S.47 when you decide on further regulations of the use of biometric surveillance technology by government entities. We need strong regulations to ensure it doesn't infringe on our civil rights and civil liberties, and this legislation provides an excellent model.

Thank you for your attention and consideration.

Sincerely,

Alissa H. Lerman
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