

117TH CONGRESS
2D SESSION

S. 5289

To create a moratorium on the government use of facial recognition technology until a Commission recommends the appropriate guidelines and limitation for use of facial recognition technology.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2022

Mr. MERKLEY (for himself and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To create a moratorium on the government use of facial recognition technology until a Commission recommends the appropriate guidelines and limitation for use of facial recognition technology.

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 “Ethical Use of Facial
5 Recognition Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Facial recognition is a technology that is in-
2 creasingly being used and marketed to law enforce-
3 ment agencies across the United States without ap-
4 propriate debate or consideration of its impacts.

5 (2) Facial recognition has been shown to dis-
6 proportionately impact communities of color, activ-
7 ists, immigrants, and other groups that are often al-
8 ready unjustly targeted.

9 (3) Facial recognition has a history of being in-
10 accurate, particularly for women, young people, Afri-
11 can Americans, and other ethnic groups.

12 (4) There is evidence that facial recognition has
13 been used at protests and rallies, which could chill
14 speech.

15 (5) It is critical that facial recognition not be
16 used to suppress First Amendment related activities,
17 violate privacy, or otherwise adversely impact indi-
18 viduals' civil rights and civil liberties.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) **COMMISSION.**—The term “Commission”
22 means the congressional commission established
23 under section 6.

1 (2) COVERED GOVERNMENT OFFICIAL.—The
2 term “covered government official” means any offi-
3 cer, employee, or contractor of a Federal agency.

4 (3) FACIAL RECOGNITION TECHNOLOGY.—The
5 term “facial recognition technology” means the
6 automated or semi-automated process that assists in
7 identifying or verifying an individual based on the
8 characteristics of an individual’s face.

9 (4) FEDERAL AGENCY.—The term “Federal
10 agency” has the meaning given the term “agency”
11 in section 551 of title 5, United States Code.

12 (5) IMPLEMENTATION BILL.—The term “imple-
13 mentation bill” means a bill—

14 (A) consisting of the legislative language
15 prepared under section 6(e)(1)(A); and

16 (B) introduced under section 6(e)(1)(B).

17 **SEC. 4. LIMITS ON USE OF FACIAL RECOGNITION TECH-**
18 **NOLOGY.**

19 A covered government official may not set up any
20 camera to be used in connection with facial recognition
21 technology, access or use information obtained from facial
22 recognition technology, or import facial recognition tech-
23 nology to identify an individual in the United States with-
24 out a warrant until the date on which Congress enacts
25 legislation implementing the guidelines for use of facial

1 recognition technology established by the Commission
2 under section 6.

3 **SEC. 5. ENFORCEMENT.**

4 (a) CIVIL ACTION.—Any person aggrieved by a viola-
5 tion of section 4 by a covered government official may
6 bring a civil action for injunctive or declaratory relief in
7 the appropriate district court of the United States.

8 (b) LIMITATION ON FEDERAL GRANTS.—Notwith-
9 standing any other provision of law, no Federal funds may
10 be used by a State or unit of local government to invest
11 in facial recognition software, purchase facial recognition
12 technology services, or acquire images for use in facial rec-
13 ognition technology systems.

14 **SEC. 6. COMMISSION.**

15 (a) IN GENERAL.—There is established a congres-
16 sional commission to consider and create guidelines for the
17 use of facial recognition technology in the United States.

18 (b) MEMBERSHIP.—

19 (1) IN GENERAL.—The Commission shall be
20 composed of 13 members, of whom—

21 (A) 1 member shall be appointed by the
22 President, and such member shall serve as the
23 Chairperson of the Commission;

24 (B) 3 members shall be appointed by the
25 majority leader of the Senate;

1 (C) 3 members shall be appointed by the
2 minority leader of the Senate;

3 (D) 3 members shall be appointed by the
4 Speaker of the House of Representatives; and

5 (E) 3 members shall be appointed by the
6 minority leader of the House of Representa-
7 tives.

8 (2) EXPERTISE OF MEMBERS.—

9 (A) IN GENERAL.—Members appointed
10 under paragraph (1) shall represent each of the
11 following groups:

12 (i) Law enforcement and immigration
13 enforcement officials.

14 (ii) Privacy and technology experts.

15 (iii) Communities most impacted neg-
16 atively by the use of facial recognition
17 technology.

18 (B) REQUIREMENT.—Not fewer than 7
19 members of the Commission shall be represent-
20 atives of the group described in subparagraph
21 (A)(iii).

22 (c) DUTIES.—The Commission shall—

23 (1) consider and create guidelines and limita-
24 tions for the use of facial recognition technology in

1 the United States to ensure that the use of such
2 technology does not—

3 (A) create a constant state of surveillance
4 of individuals in the United States that does
5 not allow for a level of reasonable anonymity;

6 (B) produce biased or inaccurate results;

7 (C) disproportionately impact a racial, eth-
8 nic, national origin group, or other protected
9 class of individuals;

10 (D) impinge on the privacy, free speech, or
11 due process rights of individuals in the United
12 States; or

13 (E) limit the ability of law enforcement of-
14 ficers to track down missing and exploited chil-
15 dren and trafficked individuals; and

16 (2) consider and recommend the appropriate
17 rules for governing the use and limitations on both
18 government and commercial use of facial recognition
19 technology, including—

20 (A) whether there are appropriate uses for
21 facial recognition technology without a warrant
22 by government officials in a private or public
23 space;

24 (B) what are the appropriate uses and lim-
25 itations for commercial use, including what

1 rights individuals should have relating to the
2 data produced and the use of their likeness in
3 facial recognition technology;

4 (C) in what circumstances, if any, govern-
5 ment officials should be permitted to use facial
6 recognition without a warrant;

7 (D) what rules should govern how and
8 where images may be acquired through facial
9 recognition technology, taking into account indi-
10 viduals' reasonable expectations of privacy or
11 anonymity;

12 (E) in what situations individuals should
13 be able to opt out or required to opt in to the
14 use of facial recognition technology;

15 (F) what safeguards need to be put in
16 place to prevent abuse of facial recognition
17 technology;

18 (G) what are appropriate remedies when
19 facial recognition technology is misused; and

20 (H) what rights individuals have relating
21 to the data produced and the use of their like-
22 ness in facial recognition technology.

23 (d) REPORT.—Not later than 18 months after the
24 date of enactment of this Act, the Commission shall sub-
25 mit a report to Congress that contains—

1 (1) the guidelines required to be created under
2 subsection (c);

3 (2) recommendations for implementation of
4 such guidelines; and

5 (3) any minority views or recommendations of
6 the Commission.

7 (e) IMPLEMENTATION.—

8 (1) INTRODUCTION.—Not later than 90 days
9 after the date on which the report required under
10 subsection (d) is submitted to Congress—

11 (A) Congress shall prepare legislative lan-
12 guage to implement the recommendations in-
13 cluded in such report; and

14 (B) the legislative language prepared
15 under subparagraph (A)—

16 (i) shall be introduced in the Senate
17 (by request) not later than the third day
18 on which the Senate is in session after the
19 date on which the Commission approves
20 the legislative language by the majority
21 leader of the Senate or by a Member of the
22 Senate designated by the majority leader
23 of the Senate; and

24 (ii) shall be introduced in the House
25 of Representatives (by request) not later

1 than the third day on which the House of
2 Representatives is in session after the date
3 on which the Commission approves the leg-
4 islative language by the majority leader of
5 the House of Representatives or by a
6 Member of the House of Representatives
7 designated by the majority leader of the
8 House of Representatives.

9 (2) CONSIDERATION IN THE HOUSE OF REP-
10 REPRESENTATIVES.—

11 (A) REFERRAL AND REPORTING.—Any
12 committee of the House of Representatives to
13 which an implementation bill is referred shall
14 report it to the House not later than 3 days
15 after the date on which the implementation bill
16 is introduced in the House of Representatives.
17 If a committee fails to report an implementa-
18 tion bill within that period, it shall be in order
19 to move that the House of Representatives dis-
20 charge the committee from further consider-
21 ation of the bill. Such a motion shall not be in
22 order after the last committee authorized to
23 consider the bill reports it to the House of Rep-
24 resentatives or after the House of Representa-
25 tives has disposed of a motion to discharge the

1 bill. The previous question shall be considered
2 as ordered on the motion to its adoption with-
3 out intervening motion except 20 minutes of de-
4 bate equally divided and controlled by the pro-
5 ponent and an opponent. If such a motion is
6 adopted, the House of Representatives shall
7 proceed immediately to consider the implemen-
8 tation bill in accordance with subparagraphs
9 (B) and (C). A motion to reconsider the vote by
10 which the motion is disposed of shall not be in
11 order.

12 (B) PROCEEDING TO CONSIDERATION.—
13 After the last committee authorized to consider
14 an implementation bill reports it to the House
15 of Representatives or has been discharged from
16 its consideration, it shall be in order to move to
17 proceed to consider the implementation bill in
18 the House of Representatives. Such a motion
19 shall not be in order after the House of Rep-
20 resentatives has disposed of a motion to proceed
21 with respect to the implementation bill. The
22 previous question shall be considered as ordered
23 on the motion to its adoption without inter-
24 vening motion. A motion to reconsider the vote

1 by which the motion is disposed of shall not be
2 in order.

3 (C) CONSIDERATION.—An implementation
4 bill shall be considered as read. All points of
5 order against an implementation bill and
6 against its consideration are waived. The pre-
7 vious question shall be considered as ordered on
8 an implementation bill to its passage without
9 intervening motion except 2 hours of debate
10 equally divided and controlled by the proponent
11 and an opponent and one motion to limit debate
12 on an implementation bill. A motion to recon-
13 sider the vote on passage of an implementation
14 bill shall not be in order.

15 (3) EXPEDITED PROCEDURE IN THE SENATE.—

16 (A) COMMITTEE CONSIDERATION.—An im-
17 plementation bill introduced in the Senate
18 under paragraph (1) shall be jointly referred to
19 the committee or committees of jurisdiction,
20 which committees shall report the bill and with
21 a favorable recommendation, an unfavorable
22 recommendation, or without recommendation
23 not later than 3 days after the date on which
24 the implementation bill is introduced. If any
25 committee fails to report an implementation bill

1 within that period, that committee shall be
2 automatically discharged from consideration of
3 the bill, and the implementation bill shall be
4 placed on the appropriate calendar.

5 (B) MOTION TO PROCEED.—Notwith-
6 standing rule XXII of the Standing Rules of
7 the Senate, it is in order, not later than 3 days
8 of session after the date on which an implemen-
9 tation bill is reported or discharged from all
10 committees to which it was referred, for the
11 majority leader of the Senate or the majority
12 leader's designee to move to proceed to the con-
13 sideration of the implementation bill. It shall
14 also be in order for any Member of the Senate
15 to move to proceed to the consideration of the
16 implementation bill at any time after the con-
17 clusion of such 3-day period. A motion to pro-
18 ceed is in order even though a previous motion
19 to the same effect has been disagreed to. All
20 points of order against the motion to proceed to
21 an implementation bill are waived. The motion
22 to proceed is not debatable. The motion is not
23 subject to a motion to postpone. A motion to
24 reconsider the vote by which the motion is
25 agreed to or disagreed to shall not be in order.

1 If a motion to proceed to the consideration of
2 an implementation bill is agreed to, the imple-
3 mentation bill shall remain the unfinished busi-
4 ness until disposed of.

5 (C) CONSIDERATION.—All points of order
6 against an implementation bill and against con-
7 sideration of the implementation bill are waived.
8 Consideration of an implementation bill, includ-
9 ing amendments thereto, and debatable motions
10 and appeals in connection therewith shall not
11 exceed a total of 30 hours which shall be di-
12 vided equally between the majority and minority
13 leaders or their designees. A motion further to
14 limit debate on an implementation bill is in
15 order, shall require an affirmative vote of a ma-
16 jority of the Members duly chosen and sworn,
17 and is not debatable. Any debatable motion or
18 appeal is debatable for not to exceed 1 hour, to
19 be divided equally between those favoring and
20 those opposing the motion or appeal. All time
21 used for consideration of an implementation
22 bill, including time used for quorum calls and
23 voting, shall be counted against the total 30
24 hours of consideration.

1 (D) LIMITATIONS ON CONSIDERATION.—A
2 motion to postpone, or a motion to recommit
3 the implementation bill or a motion to proceed
4 to the consideration of other business is not in
5 order.

6 (E) RULINGS OF THE CHAIR ON PROCE-
7 DURE.—Appeals from the decisions of the Chair
8 relating to the application of the rules of the
9 Senate, as the case may be, to the procedure re-
10 lating to an implementation bill shall be decided
11 without debate.

12 (4) CONSIDERATION BY THE OTHER HOUSE.—

13 (A) IN GENERAL.—If, before passing an
14 implementation bill, one House receives from
15 the other the implementation bill—

16 (i) the implementation bill of the
17 other House shall be referred to a com-
18 mittee; and

19 (ii) the procedure in the receiving
20 House shall be the same as if no imple-
21 mentation bill had been received from the
22 other House.

23 (5) RULES TO COORDINATE ACTION WITH
24 OTHER HOUSE.—

1 (A) TREATMENT OF IMPLEMENTATION
2 BILL OF OTHER HOUSE.—If the Senate fails to
3 introduce or consider an implementation bill
4 under this section, the implementation bill of
5 the House of Representatives shall be entitled
6 to expedited floor procedures under this section.

7 (B) TREATMENT OF COMPANION MEAS-
8 URES IN THE SENATE.—If following passage of
9 an implementation bill in the Senate, the Sen-
10 ate then receives the implementation bill from
11 the House of Representatives, the House-passed
12 implementation bill shall not be debatable. The
13 vote on passage of the implementation bill in
14 the Senate shall be considered to be the vote on
15 passage of the implementation bill received
16 from the House of Representatives.

17 (6) VETOES.—If the President vetoes an imple-
18 mentation bill, debate on a veto message in the Sen-
19 ate under this section shall be 1 hour equally divided
20 between the majority and minority leaders or their
21 designees.

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