

ESSB 6280 - CONF REPT  
By Conference Committee

SENATE ADOPTED 03/12/2020

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

11 (2) However, state and local government agencies may use facial  
12 recognition services to locate or identify missing persons, and  
13 identify deceased persons, including missing or murdered indigenous  
14 women, subjects of Amber alerts and silver alerts, and other possible  
15 crime victims, for the purposes of keeping the public safe.

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

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

21 (2) "Enroll," "enrolled," or "enrolling" means the process by  
22 which a facial recognition service creates a facial template from one  
23 or more images of an individual and adds the facial template to a  
24 gallery used by the facial recognition service for recognition or  
25 persistent tracking of individuals. It also includes the act of  
26 adding an existing facial template directly into a gallery used by a  
27 facial recognition service.

28 (3) (a) "Facial recognition service" means technology that  
29 analyzes facial features and is used by a state or local government  
30 agency for the identification, verification, or persistent tracking  
31 of individuals in still or video images.

1 (b) "Facial recognition service" does not include: (i) The  
2 analysis of facial features to grant or deny access to an electronic  
3 device; or (ii) the use of an automated or semiautomated process for  
4 the purpose of redacting a recording for release or disclosure  
5 outside the law enforcement agency to protect the privacy of a  
6 subject depicted in the recording, if the process does not generate  
7 or result in the retention of any biometric data or surveillance  
8 information.

9 (4) "Facial template" means the machine-interpretable pattern of  
10 facial features that is extracted from one or more images of an  
11 individual by a facial recognition service.

12 (5) "Identification" means the use of a facial recognition  
13 service by a state or local government agency to determine whether an  
14 unknown individual matches any individual whose identity is known to  
15 the state or local government agency and who has been enrolled by  
16 reference to that identity in a gallery used by the facial  
17 recognition service.

18 (6) "Legislative authority" means the respective city, county, or  
19 other local governmental agency's council, commission, or other body  
20 in which legislative powers are vested. For a port district, the  
21 legislative authority refers to the port district's port commission.  
22 For an airport established pursuant to chapter 14.08 RCW and operated  
23 by a board, the legislative authority refers to the airport's board.  
24 For a state agency, "legislative authority" refers to the technology  
25 services board created in RCW 43.105.285.

26 (7) "Meaningful human review" means review or oversight by one or  
27 more individuals who are trained in accordance with section 7 of this  
28 act and who have the authority to alter the decision under review.

29 (8) "Nonidentifying demographic data" means data that is not  
30 linked or reasonably linkable to an identified or identifiable  
31 individual, and includes, at a minimum, information about gender,  
32 race or ethnicity, age, and location.

33 (9) "Ongoing surveillance" means using a facial recognition  
34 service to track the physical movements of a specified individual  
35 through one or more public places over time, whether in real time or  
36 through application of a facial recognition service to historical  
37 records. It does not include a single recognition or attempted  
38 recognition of an individual, if no attempt is made to subsequently  
39 track that individual's movement over time after they have been  
40 recognized.

1 (10) "Persistent tracking" means the use of a facial recognition  
2 service by a state or local government agency to track the movements  
3 of an individual on a persistent basis without identification or  
4 verification of that individual. Such tracking becomes persistent as  
5 soon as:

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

9 (b) Data created by the facial recognition service is linked to  
10 any other data such that the individual who has been tracked is  
11 identified or identifiable.

12 (11) "Recognition" means the use of a facial recognition service  
13 by a state or local government agency to determine whether an unknown  
14 individual matches:

15 (a) Any individual who has been enrolled in a gallery used by the  
16 facial recognition service; or

17 (b) A specific individual who has been enrolled in a gallery used  
18 by the facial recognition service.

19 (12) "Verification" means the use of a facial recognition service  
20 by a state or local government agency to determine whether an  
21 individual is a specific individual whose identity is known to the  
22 state or local government agency and who has been enrolled by  
23 reference to that identity in a gallery used by the facial  
24 recognition service.

25 NEW SECTION. **Sec. 3.** (1) A state or local government agency  
26 using or intending to develop, procure, or use a facial recognition  
27 service must file with a legislative authority a notice of intent to  
28 develop, procure, or use a facial recognition service and specify a  
29 purpose for which the technology is to be used. A state or local  
30 government agency may commence the accountability report once it  
31 files the notice of intent by the legislative authority.

32 (2) Prior to developing, procuring, or using a facial recognition  
33 service, a state or local government agency must produce an  
34 accountability report for that service. Each accountability report  
35 must include, at minimum, clear and understandable statements of the  
36 following:

37 (a) (i) The name of the facial recognition service, vendor, and  
38 version; and (ii) a description of its general capabilities and

1 limitations, including reasonably foreseeable capabilities outside  
2 the scope of the proposed use of the agency;

3 (b) (i) The type or types of data inputs that the technology uses;  
4 (ii) how that data is generated, collected, and processed; and (iii)  
5 the type or types of data the system is reasonably likely to  
6 generate;

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

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

14 (i) How and when the facial recognition service will be deployed  
15 or used and by whom including, but not limited to, the factors that  
16 will be used to determine where, when, and how the technology is  
17 deployed, and other relevant information, such as whether the  
18 technology will be operated continuously or used only under specific  
19 circumstances. If the facial recognition service will be operated or  
20 used by another entity on the agency's behalf, the facial recognition  
21 service accountability report must explicitly include a description  
22 of the other entity's access and any applicable protocols;

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

26 (iii) Data integrity and retention policies applicable to the  
27 data collected using the facial recognition service, including how  
28 the agency will maintain and update records used in connection with  
29 the service, how long the agency will keep the data, and the  
30 processes by which data will be deleted;

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

34 (v) Data security measures applicable to the facial recognition  
35 service including how data collected using the facial recognition  
36 service will be securely stored and accessed, if and why an agency  
37 intends to share access to the facial recognition service or the data  
38 from that facial recognition service with any other entity, and the  
39 rules and procedures by which an agency sharing data with any other  
40 entity will ensure that such entities comply with the sharing

1 agency's use and data management policy as part of the data sharing  
2 agreement;

3 (vi) How the facial recognition service provider intends to  
4 fulfill security breach notification requirements pursuant to chapter  
5 19.255 RCW and how the agency intends to fulfill security breach  
6 notification requirements pursuant to RCW 42.56.590; and

7 (vii) The agency's training procedures, including those  
8 implemented in accordance with section 7 of this act, and how the  
9 agency will ensure that all personnel who operate the facial  
10 recognition service or access its data are knowledgeable about and  
11 able to ensure compliance with the use and data management policy  
12 prior to use of the facial recognition service;

13 (e) The agency's testing procedures, including its processes for  
14 periodically undertaking operational tests of the facial recognition  
15 service in accordance with section 5 of this act;

16 (f) Information on the facial recognition service's rate of false  
17 matches, potential impacts on protected subpopulations, and how the  
18 agency will address error rates, determined independently, greater  
19 than one percent;

20 (g) A description of any potential impacts of the facial  
21 recognition service on civil rights and liberties, including  
22 potential impacts to privacy and potential disparate impacts on  
23 marginalized communities, and the specific steps the agency will take  
24 to mitigate the potential impacts and prevent unauthorized use of the  
25 facial recognition service; and

26 (h) The agency's procedures for receiving feedback, including the  
27 channels for receiving feedback from individuals affected by the use  
28 of the facial recognition service and from the community at large, as  
29 well as the procedures for responding to feedback.

30 (3) Prior to finalizing the accountability report, the agency  
31 must:

32 (a) Allow for a public review and comment period;

33 (b) Hold at least three community consultation meetings; and

34 (c) Consider the issues raised by the public through the public  
35 review and comment period and the community consultation meetings.

36 (4) The final accountability report must be updated every two  
37 years and submitted to a legislative authority.

38 (5) The final adopted accountability report must be clearly  
39 communicated to the public at least ninety days prior to the agency  
40 putting the facial recognition service into operational use, posted

1 on the agency's public web site, and submitted to a legislative  
2 authority. The legislative authority must post each submitted  
3 accountability report on its public web site.

4 (6) A state or local government agency seeking to procure a  
5 facial recognition service must require vendors to disclose any  
6 complaints or reports of bias regarding the service.

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

12 (8) This section does not apply to a facial recognition service  
13 under contract as of the effective date of this section. An agency  
14 must fulfill the requirements of this section upon renewal or  
15 extension of the contract.

16 NEW SECTION. **Sec. 4.** A state or local government agency using a  
17 facial recognition service to make decisions that produce legal  
18 effects concerning individuals or similarly significant effects  
19 concerning individuals must ensure that those decisions are subject  
20 to meaningful human review. Decisions that produce legal effects  
21 concerning individuals or similarly significant effects concerning  
22 individuals means decisions that result in the provision or denial of  
23 financial and lending services, housing, insurance, education  
24 enrollment, criminal justice, employment opportunities, health care  
25 services, or access to basic necessities such as food and water, or  
26 that impact civil rights of individuals.

27 NEW SECTION. **Sec. 5.** Prior to deploying a facial recognition  
28 service in the context in which it will be used, a state or local  
29 government agency using a facial recognition service to make  
30 decisions that produce legal effects on individuals or similarly  
31 significant effects on individuals must test the facial recognition  
32 service in operational conditions. An agency must take reasonable  
33 steps to ensure best quality results by following all guidance  
34 provided by the developer of the facial recognition service.

35 NEW SECTION. **Sec. 6.** (1)(a) A state or local government agency  
36 that deploys a facial recognition service must require a facial  
37 recognition service provider to make available an application

1 programming interface or other technical capability, chosen by the  
2 provider, to enable legitimate, independent, and reasonable tests of  
3 those facial recognition services for accuracy and unfair performance  
4 differences across distinct subpopulations. Such subpopulations are  
5 defined by visually detectable characteristics such as: (i) Race,  
6 skin tone, ethnicity, gender, age, or disability status; or (ii)  
7 other protected characteristics that are objectively determinable or  
8 self-identified by the individuals portrayed in the testing dataset.  
9 If the results of the independent testing identify material unfair  
10 performance differences across subpopulations, the provider must  
11 develop and implement a plan to mitigate the identified performance  
12 differences within ninety days of receipt of such results. For  
13 purposes of mitigating the identified performance differences, the  
14 methodology and data used in the independent testing must be  
15 disclosed to the provider in a manner that allows full reproduction.

16 (b) Making an application programming interface or other  
17 technical capability does not require providers to do so in a manner  
18 that would increase the risk of cyberattacks or to disclose  
19 proprietary data. Providers bear the burden of minimizing these risks  
20 when making an application programming interface or other technical  
21 capability available for testing.

22 (2) Nothing in this section requires a state or local government  
23 agency to collect or provide data to a facial recognition service  
24 provider to satisfy the requirements in subsection (1) of this  
25 section.

26 NEW SECTION. **Sec. 7.** A state or local government agency using a  
27 facial recognition service must conduct periodic training of all  
28 individuals who operate a facial recognition service or who process  
29 personal data obtained from the use of a facial recognition service.  
30 The training must include, but not be limited to, coverage of:

31 (1) The capabilities and limitations of the facial recognition  
32 service;

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

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

1        NEW SECTION.    **Sec. 8.**    (1) A state or local government agency  
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) A state or local government agency using a facial recognition  
5 service shall maintain records of its use of the service that are  
6 sufficient to facilitate public reporting and auditing of compliance  
7 with the agency's facial recognition policies.

8        (3) In January of each year, any judge who has issued a warrant  
9 for the use of a facial recognition service to engage in any  
10 surveillance, or an extension thereof, as described in section 11 of  
11 this act, that expired during the preceding year, or who has denied  
12 approval of such a warrant during that year shall report to the  
13 administrator for the courts:

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

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

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

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

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

24        (4) In January of each year, any state or local government agency  
25 that has applied for a warrant, or an extension thereof, for the use  
26 of a facial recognition service to engage in any surveillance as  
27 described in section 11 of this act shall provide to a legislative  
28 authority a report summarizing nonidentifying demographic data of  
29 individuals named in warrant applications as subjects of surveillance  
30 with the use of a facial recognition service.

31        NEW SECTION.    **Sec. 9.**    (1) This chapter does not apply to a state  
32 or local government agency that: (a) Is mandated to use a specific  
33 facial recognition service pursuant to a federal regulation or order,  
34 or that are undertaken through partnership with a federal agency to  
35 fulfill a congressional mandate; or (b) uses a facial recognition  
36 service in association with a federal agency to verify the identity  
37 of individuals presenting themselves for travel at an airport or  
38 seaport.



1 (2) A state or local government agency must report to a  
2 legislative authority the use of a facial recognition service  
3 pursuant to subsection (1) of this section.

4 NEW SECTION. **Sec. 10.** (1)(a) The William D. Ruckelshaus center  
5 must establish a facial recognition task force, with members as  
6 provided in this subsection.

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

9 (ii) The speaker of the house of representatives shall appoint  
10 one member from each of the two largest caucuses of the house of  
11 representatives;

12 (iii) Eight representatives from advocacy organizations that  
13 represent individuals or protected classes of communities  
14 historically impacted by surveillance technologies including, but not  
15 limited to, African American, Latino American, Native American,  
16 Pacific Islander American, and Asian American communities, religious  
17 minorities, protest and activist groups, and other vulnerable  
18 communities;

19 (iv) Two members from law enforcement or other agencies of  
20 government;

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

24 (vi) Two representatives from consumer protection organizations;

25 (vii) Two representatives from companies that develop and provide  
26 facial recognition services; and

27 (viii) Two representatives from universities or research  
28 institutions who are experts in either facial recognition services or  
29 their sociotechnical implications, or both.

30 (b) The task force shall choose two cochairs from among its  
31 legislative membership.

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

33 (a) Provide recommendations addressing the potential abuses and  
34 threats posed by the use of a facial recognition service to civil  
35 liberties and freedoms, privacy and security, and discrimination  
36 against vulnerable communities, as well as other potential harm,  
37 while also addressing how to facilitate and encourage the continued  
38 development of a facial recognition service so that individuals,

1 businesses, government, and other stakeholders in society continue to  
2 utilize its benefits;

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

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

8 (3) Legislative members of the task force are reimbursed for  
9 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
10 members are not entitled to be reimbursed for travel expenses if they  
11 are elected officials or are participating on behalf of an employer,  
12 governmental entity, or other organization. Any reimbursement for  
13 other nonlegislative members is subject to chapter 43.03 RCW.

14 (4) The task force shall report its findings and recommendations  
15 to the governor and the appropriate committees of the legislature by  
16 September 30, 2021.

17 (5) This section expires September 30, 2022.

18 NEW SECTION. **Sec. 11.** (1) A state or local government agency  
19 may not use a facial recognition service to engage in ongoing  
20 surveillance, conduct real-time or near real-time identification, or  
21 start persistent tracking unless:

22 (a) A warrant is obtained authorizing the use of the service for  
23 those purposes;

24 (b) Exigent circumstances exist; or

25 (c) A court order is obtained authorizing the use of the service  
26 for the sole purpose of locating or identifying a missing person, or  
27 identifying a deceased person. A court may issue an ex parte order  
28 under this subsection (1)(c) if a law enforcement officer certifies  
29 and the court finds that the information likely to be obtained is  
30 relevant to locating or identifying a missing person, or identifying  
31 a deceased person.

32 (2) A state or local government agency may not apply a facial  
33 recognition service to any individual based on their religious,  
34 political, or social views or activities, participation in a  
35 particular noncriminal organization or lawful event, or actual or  
36 perceived race, ethnicity, citizenship, place of origin, immigration  
37 status, age, disability, gender, gender identity, sexual orientation,  
38 or other characteristic protected by law. This subsection does not

1 condone profiling including, but not limited to, predictive law  
2 enforcement tools.

3 (3) A state or local government agency may not use a facial  
4 recognition service to create a record describing any individual's  
5 exercise of rights guaranteed by the First Amendment of the United  
6 States Constitution and by Article I, section 5 of the state  
7 Constitution.

8 (4) A law enforcement agency that utilizes body worn camera  
9 recordings shall comply with the provisions of RCW 42.56.240(14).

10 (5) A state or local law enforcement agency may not use the  
11 results of a facial recognition service as the sole basis to  
12 establish probable cause in a criminal investigation. The results of  
13 a facial recognition service may be used in conjunction with other  
14 information and evidence lawfully obtained by a law enforcement  
15 officer to establish probable cause in a criminal investigation.

16 (6) A state or local law enforcement agency may not use a facial  
17 recognition service to identify an individual based on a sketch or  
18 other manually produced image.

19 (7) A state or local law enforcement agency may not substantively  
20 manipulate an image for use in a facial recognition service in a  
21 manner not consistent with the facial recognition service provider's  
22 intended use and training.

23 NEW SECTION. **Sec. 12.** Nothing in this chapter applies to the  
24 use of a facial recognition matching system by the department of  
25 licensing pursuant to RCW 46.20.037.

26 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act  
27 constitute a new chapter in Title 43 RCW.

28 NEW SECTION. **Sec. 14.** Sections 1 through 9 and 11 through 13 of  
29 this act take effect July 1, 2021."

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**SENATE ADOPTED 03/12/2020**

1        On page 1, line 1 of the title, after "services;" strike the  
2 remainder of the title and insert "adding a new chapter to Title 43  
3 RCW; providing an effective date; and providing an expiration date."

--- **END** ---