ASSEMBLY, No. 4211

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 1, 2020

Sponsored by:
Assemblyman THOMAS P. GIBLIN
District 34 (Essex and Passaic)
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)

SYNOPSIS
Imposes moratorium on use of biometric surveillance systems technology by law enforcement agencies; establishes commission to recommend appropriate law enforcement uses for biometric surveillance systems technology.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 6/1/2020)
AN ACT concerning law enforcement use of biometric information.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. a. As used in this act:
   “Biometric surveillance system” means any computer software that performs facial recognition or other remote biometric recognition.
   “Facial recognition” means an automated or semi-automated process that assists in identifying a person or capturing information about a person based on the physical characteristics of the person’s face, or that logs characteristics of a person’s face, head, or body to infer emotion, associations, activities, or location of the person.
   “Law enforcement agency” means a State, interstate, municipal, or county law enforcement agency; a law enforcement agency of an educational institution that appoints law enforcement officers pursuant to P.L.1970, c.211 (C.18A:6-4.2 et seq.); or any other department, division, bureau, commission, board, or other authority of this State or political subdivision thereof which employs law enforcement officers.
   “Other remote biometric recognition” means an automated or semi-automated process that assists in identifying a person or capturing information about a person based on the characteristics of a person’s gait, voice, or other immutable characteristic ascertained from a distance, or that logs these characteristics to infer emotion, associations, activities, or location of the person, but excludes remote biometric recognition based on DNA, fingerprints, or palm prints.
   b. Except as provided in subsection c. of this section, a law enforcement agency shall not acquire, possess, access, or use any biometric surveillance system or information derived from a biometric surveillance system operated by another entity until the adoption of regulations or enactment of legislation based on the recommendations of the report issued pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).
   c. The provisions of subsection b. of this section shall not preclude a law enforcement agency from:
      (1) lawfully utilizing a mobile fingerprint scanning device during a detention to identify a person who does not have proof of identification provided that the information retained through the use of the device is otherwise permitted by law;
      (2) accessing DNA information pursuant “pursuant to the “DNA Database and Databank Act of 1994,” P.L.1994, c.136 (C.53:1-20.17 et seq.) or for any other law enforcement purpose otherwise permitted by law; and
      (3) accessing and utilizing finger print data in accordance with current law;
(4) utilizing a lawfully installed security system that processes biometric information solely for the purpose of verifying the identity of law enforcement officers and employees of law enforcement agencies to determine whether they are permitted to access information, goods, materials, areas, or other properties under the custody of the law enforcement agency.

d. A person aggrieved by the misuse of information derived from a biometric surveillance system in violation of this section shall be entitled to bring a civil action in a court of competent jurisdiction seeking injunctive or declaratory relief.

2. a. There is established the “Biometric Surveillance Regulation Commission,” which shall evaluate whether law enforcement agencies in this State should be permitted to use biometric surveillance systems, and, if appropriate, propose recommendations for legislation, regulations, and standards governing the use of biometric surveillance systems by law enforcement agencies. The commission specifically shall examine:

(1) permissible and prohibited uses of biometric systems by law enforcement agencies;

(2) minimum standards for accuracy that biometric surveillance systems are required to achieve in order to be authorized for use by law enforcement agencies and auditing requirements to ensure compliance with those standards;

(3) standards for the use, management, and protection of information derived from the use of biometric surveillance systems by law enforcement agencies including, but not limited to, data retention, information sharing, data access, and audit trials;

(4) protections for due process, privacy, free speech and association, and racial, gender, and religious equity;

(5) training requirements for law enforcement personnel authorized to use biometric surveillance systems;

(6) procedures to address instances in which a person is wrongfully targeted, arrested, or interrogated based on inaccurate information derived from the use of a biometric surveillance system; and

(7) disclosure requirements for public transparency as well as discovery procedures.

b. The commission shall consist of nine ex officio members or their designees:

(1) the Superintendent of State Police;

(2) the Attorney General;

(3) the Public Defender;

(4) a county prosecutor who has been recommended by the County Prosecutors Association of the State of New Jersey;

(5) the Administrative Director of the Courts;

(6) a representative of an organization that defends civil rights or promotes social justice;
(7) a faculty member of a university with knowledge and experience in utilizing biometric surveillance systems;
(8) one member of the public to be appointed by the Speaker of the General Assembly; and
(9) one member of the public to be appointed by the Senate President;
c. The commission shall organize within 30 days of the appointment of its members. The commission shall elect a chairperson from among its members, and the chairperson shall select a secretary who need not be a member of the commission.
d. The commission may meet at the call of its chairperson at times and in the places it may deem appropriate and necessary to fulfill its duties, and may conduct public hearings at any place it shall designate.
e. The commission may request at these hearings the appearance of officials of any State agency or political subdivision of the State and may solicit testimony of interested groups and the general public.
f. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission, or agency as it may require and as may be available to it for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses necessary to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.
g. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties to the extent that funds are made available for that purpose.
h. Five members of the commission shall constitute a quorum for the transaction of business.
i. The commission shall prepare and submit a report of its findings and recommendations, including legislative proposals, to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, no later than 18 months after the organizational meeting of the commission. The commission shall expire upon submission of its report.
3. This act shall take effect immediately and section 2 of this act shall expire upon the submission of the commission’s report.

STATEMENT

This bill imposes a moratorium on the use of information derived from biometric surveillance systems by a law enforcement agency. The bill also establishes the “Biometric Surveillance Regulation
Commission” to evaluate whether law enforcement agencies in this State should be permitted to use biometric surveillance systems, and if appropriate, propose recommendations for legislation, regulations, and standards governing the use biometric surveillance systems by law enforcement agencies.

Under the bill, law enforcement agencies would be prohibited from acquiring, possessing, accessing, or using a biometric surveillance system or information derived from a biometric surveillance system until the adoption of regulations or enactment of legislation based on the recommendations of the commission. The bill does not preclude a law enforcement agency from utilizing fingerprint and DNA data in a manner consistent with current law. A person aggrieved by the misuse of information derived from a biometric surveillance system would be entitled to bring a civil action in a court of competent jurisdiction seeking injunctive or declaratory relief.

In addition, the bill establishes the “Biometric Surveillance Regulation Commission” to evaluate whether law enforcement agencies in this State should be permitted to use biometric surveillance systems, and, if appropriate, propose recommendations for legislation, regulations, and standards governing the use biometric surveillance systems by law enforcement agencies. The bill requires the commission to examine:

- permissible and prohibited uses of biometric systems by law enforcement agencies;
- minimum standards for accuracy that biometric surveillance systems are required to achieve in order to be authorized for use by law enforcement agencies and auditing requirements to ensure compliance with those standards;
- standards for use, management, and protection of information derived from the use of biometric surveillance systems by law enforcement agencies including, but not limited to, data retention, information sharing, data access, and audit trials;
- protections for due process, privacy, free speech and association, and racial, gender, and religious equity;
- training requirements for law enforcement personnel authorized to use biometric surveillance systems;
- procedures to address instances in which a person is wrongfully targeted, arrested, or interrogated based on inaccurate information derived from the use of a biometric surveillance system; and
- disclosure requirements for public transparency as well as discovery procedures.

The commission would be comprised of the following nine ex officio members or their designees: the Superintendent of State Police; the Attorney General; the Public Defender; a county prosecutor who has been recommended by the County Prosecutors Association of the
State of New Jersey; the Administrative Director of the Courts; a representative of an organization that defends civil rights or promotes social justice; a faculty member of a university with knowledge and experience in utilizing biometric surveillance systems; one member of the public to be appointed by the Speaker of the General Assembly; and one member of the public to be appointed by the Senate President.

The commission is required to prepare and submit a report of its findings and recommendations, including legislative proposals, to the Governor and to the Legislature, no later than 18 months after the organizational meeting of the commission. The commission is to expire upon submission of its report. The moratorium on utilizing information derived from biometric surveillance systems is to stay in effect until the adoption of regulations or enactment of legislation based on the recommendation of the report.