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Date: (Filing No. H-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1174, L.D. 1585, “An Act To Increase Privacy and Security by Prohibiting the Use of Facial Surveillance by Certain Government Employees and Officials”

Amend the bill by striking out the title and substituting the following:
'An Act To Increase Privacy and Security by Regulating the Use of Facial Surveillance Systems by Departments, Public Employees and Public Officials'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 25 MRSA Pt. 14 is enacted to read:

PART 14

SURVEILLANCE

CHAPTER 701

FACIAL SURVEILLANCE

§6001. Facial surveillance

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Another jurisdiction" has the same meaning as in Title 17-A, section 2, subsection 3-B.

B. "Bureau of Motor Vehicles" means the Department of the Secretary of State, Bureau of Motor Vehicles.

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1 C. "Department" means a state, county or municipal government or a department,
2 agency or subdivision thereof or any other entity identified in law as a public
3 instrumentality, including, but not limited to, a law enforcement agency.

4 D. "Facial surveillance" means an automated or semi-automated process that assists in
5 identifying or verifying an individual, or in capturing information about an individual,
6 based on the physical characteristics of an individual's face.

7 E. "Facial surveillance system" means any computer software or application that
8 performs facial surveillance.

9 F. "Law enforcement agency" has the same meaning as in section 3701, subsection 1.

10 G. "Public employee" means a person employed by a department, including, but not
11 limited to, a law enforcement officer.

12 H. "Public official" means a person elected or appointed to a public office that is part
13 of a department.

14 I. "Serious crime" means:

15 (1) A crime under the laws of this State that:

16 (a) Is punishable by a term of imprisonment of one year or more; or

17 (b) Is a Class D or Class E crime under the laws of this State that is a violation
18 of Title 17-A, chapter 9, 11, 12, 13 or 35; Title 15, section 1092, if the violation
19 is based on a condition under Title 15, section 1026, subsection 3, paragraph
20 A, subparagraph (5) or (8); or Title 19-A, section 4011; or

21 (2) A crime under the laws of another jurisdiction that:

22 (a) Has, as an element, the use of a firearm or other dangerous weapon against
23 a person;

24 (b) Is elementally substantially similar to a crime under subparagraph (1); or

25 (c) Is punishable by a term of imprisonment of one year or more.

26 **2. Use of facial surveillance by department, public employee or public official.**

27 The following provisions govern the use of facial surveillance systems and facial
28 surveillance data by a department or by a public employee or public official in the
29 performance of their official duties.

30 A. Except as provided in paragraphs B and D, a department, public employee or public
31 official may not:

32 (1) Obtain, retain, possess, access, request or use a facial surveillance system or
33 information derived from a search of a facial surveillance system;

34 (2) Enter into an agreement with a 3rd party for the purpose of obtaining, retaining,
35 possessing, accessing or using, by or on behalf of a department, public employee
36 or public official, a facial surveillance system or information derived from a search
37 of a facial surveillance system; or

38 (3) Issue a permit or enter into any other agreement that authorizes a 3rd party to
39 obtain, retain, possess, access or use a facial surveillance system or information
40 derived from a search of a facial surveillance system.

1 B. Notwithstanding the provisions of paragraph A, a department, public employee or
2 public official may request a search of a facial surveillance system as provided in
3 paragraph C and may obtain, retain, possess, access or use the results of a search of a
4 facial surveillance system, as provided in paragraph C, for the purposes of:

5 (1) Investigating a serious crime, when there is probable cause to believe that an
6 unidentified individual in an image has committed the serious crime;

7 (2) Assisting in the identification of a person who is deceased or believed to be
8 deceased;

9 (3) Assisting in the identification of a missing or endangered person; or

10 (4) Performing a duty authorized under paragraph D, subparagraph (1), if the
11 Bureau of Motor Vehicles or a public employee or public official of the Bureau of
12 Motor Vehicles makes the request for the search of the facial surveillance system.

13 C. The following provisions apply when a department, public employee or public
14 official requests a search of a facial surveillance system under paragraph B,
15 subparagraph (1), (2) or (3).

16 (1) A request for a search of the facial surveillance system within the State must
17 be made to the Bureau of Motor Vehicles.

18 (2) Except as provided in subparagraph (3), a request for a search of the facial
19 surveillance system of a state agency that issues government credentials in another
20 jurisdiction or the Federal Bureau of Investigation must be made to the State Police
21 unless there is an emergency posing an imminent danger of death or serious
22 physical injury. If an emergency exists under this subparagraph, the department,
23 public employee or public official may request the search directly from a state
24 agency that issues government credentials in another jurisdiction or the Federal
25 Bureau of Investigation and shall file a report of the request with the State Police
26 as soon as practicable.

27 (3) The Bureau of Motor Vehicles may request a search of a facial surveillance
28 system from a state agency that issues government credentials in another
29 jurisdiction or the Federal Bureau of Investigation for the purposes of fraud
30 prevention or investigation.

31 D. Nothing in paragraph A prohibits a department, public employee or public official
32 from:

33 (1) Obtaining, maintaining or using a facial surveillance system or the results of a
34 search of a facial surveillance system within the Bureau of Motor Vehicles in
35 accordance with Title 29-A, section 1401, subsection 9 or for the purposes of fraud
36 prevention or investigation;

37 (2) Using facial surveillance technology that analyzes the eye's iris in a regional
38 jail or county jail;

39 (3) Using evidence that has been generated from a search of a facial surveillance
40 system that is related to an investigation of a specific crime;

- 1 (4) Obtaining or possessing for evidentiary purposes an electronic device,
2 including, but not limited to, a cellular telephone, tablet or computer, that performs
3 facial surveillance for the sole purpose of user authentication;
- 4 (5) Using social media or communications software or applications for
5 communicating with the public as long as such use does not include the affirmative
6 use of facial surveillance;
- 7 (6) Using automated redaction software as long as such software is not capable of
8 performing facial surveillance;
- 9 (7) Performing duties required by the National Child Search Assistance Act of
10 1990, 34 United States Code, Sections 41307 and 41308 (2021); or
- 11 (8) Using facial surveillance on an electronic device, including, but not limited to,
12 a cellular telephone, tablet or computer, owned by the public employee or public
13 official for that person's personal use for the sole purpose of user authentication of
14 that person.
- 15 E. Facial surveillance data does not, without other evidence, establish probable cause
16 justifying arrest, search or seizure.
- 17 F. The State Police and the Bureau of Motor Vehicles shall maintain logs that track all
18 requests for searches of facial surveillance systems received and performed pursuant
19 to paragraph C. De-identified logs containing the date of the search request, the name
20 of the public employee or public official who made the request and the name of the
21 department for which the employee or official works, the databases searched, the
22 statutory offense under investigation and the race and sex of the person under
23 investigation are public records for the purpose of Title 1, chapter 13, subchapter 1.
24 The provisions of Title 16, chapter 9 do not apply to records created or maintained
25 pursuant to this paragraph.
- 26 **3. Enforcement.** The following provisions apply to a violation of this section by a
27 department or a public employee or public official acting in the performance of their official
28 duties.
- 29 A. Facial surveillance data collected or derived in violation of this section:
- 30 (1) Must be considered unlawfully obtained and, except as otherwise provided by
31 law, must be deleted upon discovery; and
- 32 (2) Is inadmissible in evidence in any proceeding in or before any public official,
33 department, regulatory body or authority.
- 34 B. A person injured or aggrieved by a violation of this section may bring an action in
35 a court in this State against the department, public employee or public official having
36 possession, custody or control of facial surveillance data in violation of this section and
37 may seek injunctive or declaratory relief or a writ of mandamus.
- 38 C. A public employee or public official who, in the performance of their official duties,
39 violates this section may be subject to disciplinary action, including, but not limited to,
40 retraining, suspension or termination, subject to the requirements of due process and
41 of any applicable collective bargaining agreement.

1 D. Nothing in this subsection limits the rights under state or federal law of a person
2 injured or aggrieved by a violation of this section.

3 **Sec. 2. Effective date.** This Act takes effect October 1, 2021.'

4 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
5 number to read consecutively.

6 **SUMMARY**

7 This amendment provides a new title and replaces the bill. The amendment provides
8 a structure for requests from state, county and municipal government agencies, public
9 employees and public officials for facial surveillance searches and allowed uses of the
10 results of facial surveillance searches and specifies the manner in which requests for
11 searches must be made to the Department of the Secretary of State, Bureau of Motor
12 Vehicles and the Department of Public Safety, Bureau of State Police. The amendment
13 continues current authority in the Bureau of Motor Vehicles to perform facial surveillance
14 searches and to receive requests for searches. The amendment requires the Bureau of State
15 Police and the Bureau of Motor Vehicles to maintain de-identified records of searches
16 requested and performed and designates those records as public records. The amendment
17 states that facial surveillance data does not, without other evidence, establish probable
18 cause justifying arrest, search or seizure. The amendment includes enforcement provisions
19 in case of a violation. The amendment includes a delayed effective date of October 1, 2021.