To:	The Honorable William C. Smith, Jr.; Members of the Senate Judicial Proceedings Committee
From:	Katie Kinsey, Chief of Staff, The Policing Project at NYU School of Law
Date:	February 14, 2023
Re:	SB0192 – Criminal Procedure – Facial Recognition Technology – Requirements, Procedures, and Prohibitions
Position:	FAVORABLE

Chairman Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee: thank you for the opportunity to submit testimony on this Bill, which seeks to regulate law enforcement use of facial recognition technology (FRT). My name is Katie Kinsey, and I am the Chief of Staff at the Policing Project at New York University School of Law, a nonpartisan organization dedicated to partnering with communities, policymakers, police, and technology companies across the country to bring democratic accountability to policing. By democratic accountability we mean that the public should have a voice in setting transparent, ethical, and effective policing policies **before** the police act. Your consideration of this legislation is a great example of democratic accountability in action, and I am grateful to participate.

In my testimony, I would like to make two brief but essential points:

1. The current unregulated, non-transparent use of facial recognition technology by Maryland law enforcement is a recipe for real and serious to harm to all Marylanders.

2. There is an urgent need for the type of comprehensive, nuanced legislation before this Committee.

I. Unregulated use of facial recognition technology by law enforcement causes harm

Since the inception of Maryland's facial recognition program in 2011, law enforcement's use here has been almost entirely unregulated. Unsurprisingly, this unregulated, unrestrained use has violated basic constitutional rights and caused real harm. In Maryland, police have used FRT to target individuals exercising their First Amendment rights.[1] Across the country, police use of facial recognition has led to multiple false arrests – all of Black men.[2] And these are only the false arrests that are **publicly known**. The

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[1] Jameson Spivack, Maryland's face recognition system is one of the most invasive in the nation, Baltimore Sun (Mar. 9, 2020), https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0310-face-recognition-20200309-hg6jkfav2fdz3ccs55bvqjtnmu-story.html.

[2] Jon Brodkin, Black man wrongfully jailed for a week after face recognition error, report says, Ars Technica (Jan. 4, 2023), https://arstechnica.com/tech-policy/2023/01/facial-recognition-error-led-to-wrongful-arrest-of-black-man-report-says; Khari Johnson, How wrongful arrests based on AI derailed 3 men's lives, Wired (Mar. 7, 2022), https://www.wired.com/story/wrongful-arrests-ai-derailed-3-mens-

actual number of misidentifications from police use of this technology likely is far greater – the problem is that the lack of transparency around use precludes an accurate assessment. In the absence of laws requiring agencies to track and report their use of FRT or disclose their use to defense counsel in discovery, there is no way of accounting for the actual impact of this technology.

Unsurprisingly, this non-transparent approach to use has bred public mistrust, especially in Black communities and marginalized communities, which already feel the brunt of many unfortunate policing practices. In short, unregulated law enforcement use of FRT is a recipe for harm – and it is undemocratic.

II. This bill is an important first step toward meaningful safeguards for this powerful technology

At the Policing Project, our evaluation of any policing technology starts with a basic question: will the public benefit from the use of this tool? If a technology has identifiable, concrete benefits then we can begin to address costs and ways to mitigate them before it is used. Current law enforcement use of FRT has inverted this analytical process – applying a deploy first, assess benefit later (if ever) approach.

This is exactly backward. If law enforcement is going to be permitted to use this powerful technology, there must be guardrails in place to provide essential transparency and accountability so that a real assessment of benefits can be made and any harms that might result can be mitigated.

Put simply, if public dollars are going to be invested in this expensive and powerful technology, then the public deserves to know if its use is actually making them safer – and at what cost. What is needed is a full accounting of how FRT is being used. Fortunately, section 2-510 of this Bill takes huge strides in the right direction by requiring comprehensive data collection and reporting requirements on agencies' FRT use. The data required to be collected by this section – how many searches, for what types of crimes, the results generated – will enable an actual evaluation of whether or not law enforcement use of this tool improves public safety.

Furthermore, this bill contains additional meaningful safeguards designed to mitigate some of the greatest risks to citizens' civil liberties and civil rights, and to racial justice. For example, the crime restrictions set forth in section 2-503 should help ensure that FRT use does not exacerbate this country's epidemic of overcriminalization. And section 2-504's requirement that FRT use be disclosed to the accused in discovery will help protect these individuals' due process rights.

In short, this body should join the growing number of states that have recognized the need to regulate police use of this powerful technology – from your neighbor Virginia, to Colorado, Washington, Maine and more. Marylanders will be safer if you pass this Bill.

Thank you again for the opportunity to submit this written testimony. We would be happy to provide any other information that could be useful.

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