

Feb 13, 2019

Representative Zack Hudgins
Members of the House Innovation, Technology & Economic Development
Committee
205A John L. O'Brien, P.O. Box 40600
Olympia, WA 98504-0600

Dear Chair Hudgins and Members of the House Innovation, Technology &
Economic Development Committee:

We, the undersigned organizations dedicated to protecting civil rights and liberties and safeguarding communities, write to urge your support for HB 1654, concerning the procurement and use of facial recognition technology by government entities in Washington. Face surveillance, also known as facial recognition, is game-changing technology that gives the government unprecedented power to automatically identify, locate, and track people based on images of their faces. Face surveillance is being widely adopted, including by many agencies in Washington, but without safeguards and without considering what constitutes acceptable and off-limits uses of this technology. HB 1654 would create a task force to have this important discussion; would ensure through AG certification that the technology could only be used if shown to be free of bias; and would halt public use of this technology without warrant or suspicion, including in police body cameras.

Face surveillance poses unique civil rights and civil liberties concerns. A person can choose to not drive their car or not to bring their cell phone to a political protest, but they cannot leave their face at home. The use of facial recognition technology without a warrant or suspicion of criminal activity—as in Washington County near Portland, for example—can leave communities hesitant to engage in constitutionally protected free speech, such as attending protests, going to places of worship, or just going about their daily lives without being watched by the government.

Face surveillance hits vulnerable communities hardest. The government has long used surveillance technologies to target specific communities, and face surveillance is a far more powerful technology with the potential to amplify existing biases. For example, since communities of color are already under much more video and image surveillance than white neighborhoods, cameras with face surveillance looking for violations of the law are more likely to find them in those areas. Current facial recognition technology is also biased and inaccurate.^{1,2,3} Multiple expert studies have found facial recognition technology to be less accurate at identifying women, youth, trans and gender non-conforming people, and people of color, leading to the risk of



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¹ Harwell, D. (2019). Amazon facial-identification software used by police falls short on tests for accuracy and bias, new research finds. *The Washington Post*. Available at: https://www.washingtonpost.com/technology/2019/01/25/amazon-facial-identification-software-used-by-police-falls-short-tests-accuracy-bias-new-research-finds/?noredirect=on&utm_term=.1422e0e6aeb7 [Accessed 31 Jan 2019].

² Lohr, S. (2019). Facial Recognition is Accurate, if You're a White Guy. *The New York Times*. Available at: <https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html> [Accessed 31 Jan 2019].

³ Knight, W. (2018). Facial recognition has to be regulated to protect the public, says AI report. *MIT Technology Review*. Available at: <https://www.technologyreview.com/s/612552/facial-recognition-has-to-be-regulated-to-protect-the-public-says-ai-report/> [Accessed 31 Jan 2019].

false matches.^{4,5}

Unfortunately, existing federal and state law places no clear limits on the use of facial recognition technology, which use proprietary programs that are not available for public inspection and are often deployed without public knowledge. Face surveillance in some form is in use by at least 11 Washington agencies, and 33 agencies have made requests to use another agency's technology.⁶ In addition to creating surveillance concerns, facial recognition technology enables affect recognition, a technology that, without evidence, "claims to detect things such as personality, inner feelings, mental health, and 'worker engagement' based on images or video of faces."⁷

The Legislature should protect communities by ensuring this technology is not deployed without full consideration of its impact, and should put basic safeguards against biased, suspicionless, and warrantless use immediately. We urge you to move HB 1654 forward with a do-pass recommendation.

Signed,

ACLU of Washington
American Muslim Empowerment Network- Muslim Association of Puget Sound
Asian Counseling and Referral Services
Asian Pacific Islander Coalition
Casa Latina
Critical Platform Studies Group
Densho
El Centro de la Raza
Entre Hermanos
The John T. Williams Organizing Committee
OneAmerica
Real Change Homeless Empowerment Project
Washington Association of Criminal Defense Lawyers
Washington Civil & Disability Advocate
Washington Defender Association

⁴ Snow, J. (2018). Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots. *The American Civil Liberties Union*. Available at: <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28> [Accessed 31 Jan 2019].

⁵ Hao, K. (2019). Making face recognition less biased doesn't make it less scary. *MIT Technology Review*. Available at: <https://www.technologyreview.com/s/612846/making-face-recognition-less-biased-doesnt-make-it-less-scary/> [Accessed 31 Jan 2019].

⁶ Based on public disclosure requests done by ACLU-WA.

⁷ Whittaker, M et al. (2018). AI Now Report 2018. *AI Now Institute*. Available at: https://ainowinstitute.org/AI_Now_2018_Report.pdf [Accessed 31 Jan 2019].