

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To create a moratorium on the government use of facial recognition technology until a Commission recommends the appropriate guidelines and limitation for use of facial recognition technology.

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IN THE SENATE OF THE UNITED STATES

Mr. MERKLEY (for himself and Mr. BOOKER) introduced the following bill;  
which was read twice and referred to the Committee on

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**A BILL**

To create a moratorium on the government use of facial recognition technology until a Commission recommends the appropriate guidelines and limitation for use of facial recognition technology.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ethical Use of Facial  
5 Recognition Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Facial recognition is a technology that is in-  
2           creasingly being used and marketed to law enforce-  
3           ment agencies across the United States without ap-  
4           propriate debate or consideration of its impacts.

5           (2) Facial recognition has been shown to dis-  
6           proportionately impact communities of color, activ-  
7           ists, immigrants, and other groups that are often al-  
8           ready unjustly targeted.

9           (3) Facial recognition has a history of being in-  
10          accurate, particularly for women, young people, Afri-  
11          can Americans, and other ethnic groups.

12          (4) There is evidence that facial recognition has  
13          been used at protests and rallies, which could chill  
14          speech.

15          (5) It is critical that facial recognition not be  
16          used to suppress First Amendment related activities,  
17          violate privacy, or otherwise adversely impact indi-  
18          viduals' civil rights and civil liberties.

19 **SEC. 3. DEFINITIONS.**

20          In this Act:

21           (1) **COMMISSION.**—The term “Commission”  
22          means the congressional commission established  
23          under section 6.

1           (2) COVERED GOVERNMENT OFFICIAL.— The  
2 term “covered government official” means any offi-  
3 cer, employee, or contractor of a Federal agency.

4           (3) FACIAL RECOGNITION TECHNOLOGY.—The  
5 term “facial recognition technology” means the  
6 automated or semi-automated process that assists in  
7 identifying or verifying an individual based on the  
8 characteristics of an individual’s face.

9           (4) FEDERAL AGENCY.—The term “Federal  
10 agency” has the meaning given the term “agency”  
11 in section 551 of title 5, United States Code.

12           (5) IMPLEMENTATION BILL.—The term “imple-  
13 mentation bill” means a bill—

14                   (A) consisting of the legislative language  
15                   prepared under section 6(e)(1)(A); and

16                   (B) introduced under section 6(e)(1)(B).

17 **SEC. 4. LIMITS ON USE OF FACIAL RECOGNITION TECH-**  
18 **NOLOGY.**

19           A covered government official may not set up any  
20 camera to be used in connection with facial recognition  
21 technology, access or use information obtained from facial  
22 recognition technology, or import facial recognition tech-  
23 nology to identify an individual in the United States with-  
24 out a warrant until the date on which Congress enacts  
25 legislation implementing the guidelines for use of facial

1 recognition technology established by the Commission  
2 under section 6.

3 **SEC. 5. ENFORCEMENT.**

4 (a) CIVIL ACTION.—Any person aggrieved by a viola-  
5 tion of section 4 by a covered government official may  
6 bring a civil action for injunctive or declaratory relief in  
7 the appropriate district court of the United States.

8 (b) LIMITATION ON FEDERAL GRANTS.—Notwith-  
9 standing any other provision of law, no Federal funds may  
10 be used by a State or unit of local government to invest  
11 in facial recognition software, purchase facial recognition  
12 technology services, or acquire images for use in facial rec-  
13 ognition technology systems.

14 **SEC. 6. COMMISSION.**

15 (a) IN GENERAL.—There is established a congres-  
16 sional commission to consider and create guidelines for the  
17 use of facial recognition technology in the United States.

18 (b) MEMBERSHIP.—

19 (1) IN GENERAL.—The Commission shall be  
20 composed of 13 members, of whom—

21 (A) 1 member shall be appointed by the  
22 President, and such member shall serve as the  
23 Chairperson of the Commission;

24 (B) 3 members shall be appointed by the  
25 Majority Leader of the Senate;

1 (C) 3 members shall be appointed by the  
2 Minority Leader of the Senate;

3 (D) 3 members shall be appointed by the  
4 Speaker of the House of Representatives; and

5 (E) 3 member shall be appointed by the  
6 Minority Leader of the House of Representa-  
7 tives.

8 (2) EXPERTISE OF MEMBERS.—

9 (A) IN GENERAL.—Members appointed  
10 under paragraph (1) shall represent each of the  
11 following groups:

12 (i) Law enforcement and immigration  
13 enforcement officials.

14 (ii) Privacy and technology experts.

15 (iii) Communities most impacted neg-  
16 atively by the use of facial recognition  
17 technology.

18 (B) REQUIREMENT.—Not fewer than 7  
19 members of the Commission shall be represent-  
20 atives of the group described in subparagraph  
21 (A)(iii).

22 (c) DUTIES.—The Commission shall—

23 (1) consider and create guidelines and limita-  
24 tions for the use of facial recognition technology in

1 the United States to ensure that the use of such  
2 technology does not—

3 (A) create a constant state of surveillance  
4 of individuals in the United States that does  
5 not allow for a level of reasonable anonymity;

6 (B) produce biased or inaccurate results;

7 (C) disproportionately impact a racial, eth-  
8 nic, national origin group, or other protected  
9 class of individuals;

10 (D) impinge on the privacy, free speech, or  
11 due process rights of individuals in the United  
12 States; or

13 (E) limit the ability of law enforcement of-  
14 ficers to track down missing and exploited chil-  
15 dren and trafficked individuals; and

16 (2) consider and recommend the appropriate  
17 rules for governing the use and limitations on both  
18 government and commercial use of facial recognition  
19 technology, including—

20 (A) whether there are appropriate uses for  
21 facial recognition technology without a warrant  
22 by government officials in a private or public  
23 space;

24 (B) what are the appropriate uses and lim-  
25 itations for commercial use, including what

1 rights individuals should have relating to the  
2 data produced and the use of their likeness in  
3 facial recognition technology;

4 (C) in what circumstances, if any, govern-  
5 ment officials should be permitted to use facial  
6 recognition without a warrant;

7 (D) what rules should govern how and  
8 where images may be acquired through facial  
9 recognition technology, taking into account indi-  
10 viduals' reasonable expectations of privacy or  
11 anonymity;

12 (E) in what situations individuals should  
13 be able to opt out or required to opt in to the  
14 use of facial recognition technology;

15 (F) what safeguards need to be put in  
16 place to prevent abuse of facial recognition  
17 technology;

18 (G) what are appropriate remedies when  
19 facial recognition technology is misused; and

20 (H) what rights individuals have relating  
21 to the data produced and the use of their like-  
22 ness in facial recognition technology.

23 (d) REPORT.—Not later than 18 months after the  
24 date of enactment of this Act, the Commission shall sub-  
25 mit a report to Congress that contains—

1           (1) the guidelines required to be created under  
2 subsection (c);

3           (2) recommendations for implementation of  
4 such guidelines; and

5           (3) any minority views or recommendations of  
6 the Commission.

7 (e) IMPLEMENTATION.—

8           (1) INTRODUCTION.—Not later than 90 days  
9 after the date on which the report required under  
10 subsection (d) is submitted to Congress—

11           (A) Congress shall prepare legislative lan-  
12 guage to implement the recommendations in-  
13 cluded in such report; and

14           (B) the legislative language prepared  
15 under subparagraph (A)—

16           (i) shall be introduced in the Senate  
17 (by request) not later than the third day  
18 on which the Senate is in session after the  
19 date on which the Commission approves  
20 the legislative language by the Majority  
21 Leader of the Senate or by a Member of  
22 the Senate designated by the Majority  
23 Leader of the Senate; and

24           (ii) shall be introduced in the House  
25 of Representatives (by request) not later



1 than the third day on which the House of  
2 Representatives is in session after the date  
3 on which the Commission approves the leg-  
4 islative language by the Majority Leader of  
5 the House of Representatives or by a  
6 Member of the House of Representatives  
7 designated by the Majority Leader of the  
8 House of Representatives.

9 (2) CONSIDERATION IN THE HOUSE OF REP-  
10 RESENTATIVES.—

11 (A) REFERRAL AND REPORTING.—Any  
12 committee of the House of Representatives to  
13 which an implementation bill is referred shall  
14 report it to the House not later 3 after the date  
15 on which the implementation bill is introduced  
16 in the House of Representatives. If a committee  
17 fails to report an implementation bill within  
18 that period, it shall be in order to move that the  
19 House of Representatives discharge the com-  
20 mittee from further consideration of the bill.  
21 Such a motion shall not be in order after the  
22 last committee authorized to consider the bill  
23 reports it to the House of Representatives or  
24 after the House of Representatives has disposed  
25 of a motion to discharge the bill. The previous

1 question shall be considered as ordered on the  
2 motion to its adoption without intervening mo-  
3 tion except 20 minutes of debate equally divided  
4 and controlled by the proponent and an oppo-  
5 nent. If such a motion is adopted, the House of  
6 Representatives shall proceed immediately to  
7 consider the implementation bill in accordance  
8 with subparagraphs (B) and (C). A motion to  
9 reconsider the vote by which the motion is dis-  
10 posed of shall not be in order.

11 (B) PROCEEDING TO CONSIDERATION.—  
12 After the last committee authorized to consider  
13 an implementation bill reports it to the House  
14 of Representatives or has been discharged from  
15 its consideration, it shall be in order to move to  
16 proceed to consider the implementation bill in  
17 the House of Representatives. Such a motion  
18 shall not be in order after the House of Rep-  
19 resentatives has disposed of a motion to proceed  
20 with respect to the implementation bill. The  
21 previous question shall be considered as ordered  
22 on the motion to its adoption without inter-  
23 vening motion. A motion to reconsider the vote  
24 by which the motion is disposed of shall not be  
25 in order.

1           (C) CONSIDERATION.—An implementation  
2 bill shall be considered as read. All points of  
3 order against an implementation bill and  
4 against its consideration are waived. The pre-  
5 vious question shall be considered as ordered on  
6 an implementation bill to its passage without  
7 intervening motion except 2 hours of debate  
8 equally divided and controlled by the proponent  
9 and an opponent and one motion to limit debate  
10 on an implementation bill. A motion to recon-  
11 sider the vote on passage of an implementation  
12 bill shall not be in order.

13           (3) EXPEDITED PROCEDURE IN THE SENATE.—

14           (A) COMMITTEE CONSIDERATION.—An im-  
15 plementation bill introduced in the Senate  
16 under paragraph (1) shall be jointly referred to  
17 the committee or committees of jurisdiction,  
18 which committees shall report the bill and with  
19 a favorable recommendation, an unfavorable  
20 recommendation, or without recommendation  
21 not later than 3 days after the date on which  
22 the implementation bill is introduced. If any  
23 committee fails to report an implementation bill  
24 within that period, that committee shall be  
25 automatically discharged from consideration of

1 the bill, and the implementation bill shall be  
2 placed on the appropriate calendar.

3 (B) MOTION TO PROCEED.—Notwith-  
4 standing rule XXII of the Standing Rules of  
5 the Senate, it is in order, not later than 3 days  
6 of session after the date on which an implemen-  
7 tation bill is reported or discharged from all  
8 committees to which it was referred, for the  
9 Majority Leader of the Senate or the Majority  
10 Leader’s designee to move to proceed to the  
11 consideration of the implementation bill. It shall  
12 also be in order for any Member of the Senate  
13 to move to proceed to the consideration of the  
14 implementation bill at any time after the con-  
15 clusion of such 3-day period. A motion to pro-  
16 ceed is in order even though a previous motion  
17 to the same effect has been disagreed to. All  
18 points of order against the motion to proceed to  
19 an implementation bill are waived. The motion  
20 to proceed is not debatable. The motion is not  
21 subject to a motion to postpone. A motion to  
22 reconsider the vote by which the motion is  
23 agreed to or disagreed to shall not be in order.  
24 If a motion to proceed to the consideration of  
25 an implementation bill is agreed to, the imple-

1           mentation bill shall remain the unfinished busi-  
2           ness until disposed of.

3           (C) CONSIDERATION.—All points of order  
4           against an implementation bill and against con-  
5           sideration of the implementation bill are waived.  
6           Consideration of an implementation bill, includ-  
7           ing amendments thereto, and debatable motions  
8           and appeals in connection therewith shall not  
9           exceed a total of 30 hours which shall be di-  
10          vided equally between the Majority and Minor-  
11          ity Leaders or their designees. A motion further  
12          to limit debate on an implementation bill is in  
13          order, shall require an affirmative vote of a ma-  
14          jority of the Members duly chosen and sworn,  
15          and is not debatable. Any debatable motion or  
16          appeal is debatable for not to exceed 1 hour, to  
17          be divided equally between those favoring and  
18          those opposing the motion or appeal. All time  
19          used for consideration of an implementation  
20          bill, including time used for quorum calls and  
21          voting, shall be counted against the total 30  
22          hours of consideration.

23          (D) LIMITATIONS ON CONSIDERATION.—A  
24          motion to postpone, or a motion to recommit  
25          the implementation bill or a motion to proceed

1 to the consideration of other business is not in  
2 order.

3 (E) RULINGS OF THE CHAIR ON PROCE-  
4 DURE.—Appeals from the decisions of the Chair  
5 relating to the application of the rules of the  
6 Senate, as the case may be, to the procedure re-  
7 lating to an implementation bill shall be decided  
8 without debate.

9 (4) CONSIDERATION BY THE OTHER HOUSE.—

10 (A) IN GENERAL.—If, before passing an  
11 implementation bill, one House receives from  
12 the other the implementation bill—

13 (i) the implementation bill of the  
14 other House shall be referred to a com-  
15 mittee; and

16 (ii) the procedure in the receiving  
17 House shall be the same as if no imple-  
18 mentation bill had been received from the  
19 other House.

20 (5) RULES TO COORDINATE ACTION WITH  
21 OTHER HOUSE.—

22 (A) TREATMENT OF IMPLEMENTATION  
23 BILL OF OTHER HOUSE.—If the Senate fails to  
24 introduce or consider an implementation bill  
25 under this section, the implementation bill of

1 the House of Representatives shall be entitled  
2 to expedited floor procedures under this section.

3 (B) TREATMENT OF COMPANION MEAS-  
4 URES IN THE SENATE.—If following passage of  
5 an implementation bill in the Senate, the Sen-  
6 ate then receives the implementation bill from  
7 the House of Representatives, the House-passed  
8 implementation bill shall not be debatable. The  
9 vote on passage of the implementation bill in  
10 the Senate shall be considered to be the vote on  
11 passage of the implementation bill received  
12 from the House of Representatives.

13 (6) VETOES.—If the President vetoes an imple-  
14 mentation bill, debate on a veto message in the Sen-  
15 ate under this section shall be 1 hour equally divided  
16 between the majority and minority leaders or their  
17 designees.