To limit the use of facial recognition technology by Federal agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To limit the use of facial recognition technology by Federal agencies, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Facial Recognition Technology Warrant Act of 2019”.

SEC. 2. DEFINITIONS.

In this Act:

(1) AGENCY.—The term “agency” has the meaning given the term in section 551 of title 5, United States Code.
(2) COVERED COURT ORDER.—The term “covered court order” means a court order obtained in accordance with rule 41 of the Federal Rules of Criminal Procedure and in connection with the investigation of an offense for which an order could be sought under section 2516 of title 18, United States Code.

(3) FACIAL RECOGNITION TECHNOLOGY.—The term “facial recognition technology” means technology that analyzes facial features and is used for the unique personal identification of individuals in still or video images.

(4) ONGOING SURVEILLANCE.—The term “ongoing surveillance”—

(A) means the utilization of facial recognition technology to engage in a sustained effort to track the physical movements of an identified individual through 1 or more public places where such movements occur over a period of time greater than 72 hours, whether in real time or through application of such technology to historical records; and

(B) does not include instances where facial recognition technology is utilized for a single identification or attempted identification of an
individual, if no subsequent attempt is made to
track that individual’s movement in real time or
through the use of historical records after the
individual has been identified.

SEC. 3. LIMITATION ON USE OF FACIAL RECOGNITION
TECHNOLOGY.

(a) IN GENERAL.—Subject to subsection (b), an officer or employee of an agency may not use facial recognition technology to engage in ongoing surveillance of an
individual or group of individuals in a public space, unless—

(1) the use of the facial recognition technology
is in support of a law enforcement activity; and

(2)(A) a covered court order has been obtained
to allow the use of facial recognition technology for
ongoing surveillance of the individual or group of in-
dividuals; or

(B) an investigative or law enforcement offi-

er—

(i) reasonably determines that exigent cir-
cumstances and compelling law enforcement
needs make it impractical to obtain a covered
court order;
(ii) reasonably determines that there are grounds for which a covered court order could be obtained under subparagraph (A); and

(iii) causes an application for a covered court order to be made in accordance with subparagraph (A) not later than 48 hours after the use of facial recognition technology to engage in ongoing surveillance.

(b) REQUIREMENT.—If an application for a covered court order made under subsection (a)(2)(B) is denied, the use of facial recognition technology shall terminate at the time of the denial.

(c) DURATION OF ORDERS.—

(1) In general.—Subject to paragraph (2), a covered court order may only authorize ongoing surveillance until the date on which the objective of the order is satisfied, except that such order may not authorize ongoing surveillance for a period of longer than 30 days.

(2) Requirement.—The 30-day period described in paragraph (1) shall begin on the earlier of—

(A) the date on which the agency begins to use facial recognition technology; or
(B) the date that is 10 days after the court order is issued.

(3) EXTENSION.—A court may grant an extension of the 30-day period described in paragraph (1) if the extension satisfies the requirements of subsection (a)(2)(A) and such extension may last not longer than 30 days.

(d) MINIMIZATION REQUIREMENT.—Any use of facial recognition technology pursuant to a covered court order shall be conducted in such a way as to minimize the acquisition, retention, and dissemination of information about the individuals other than those for whom there was probable cause to seek the covered court order obtained under subsection (a)(2)(A).

(e) MOTION TO SUPPRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), any aggrieved individual who has been the subject of ongoing surveillance using facial recognition technology, in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress information directly obtained through the use of facial recognition tech-
nology, or evidence derived therefrom, in violation of this section, on the grounds that—

(A) the information was unlawfully obtained;

(B) the order of authorization or approval under which the information was obtained is insufficient on its face; or

(C) the use of facial recognition technology was not used in conformity with the order of authorization or approval.

(2) EXCEPTION.—Evidence obtained through the use of facial recognition technology in violation of this section shall not be suppressed under paragraph (1) if the evidence was acquired by an officer or an employee of an agency with an objectively reasonable belief that the use of facial recognition technology was in compliance with this section.

(3) REQUIREMENT.—A motion described in paragraph (1) shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the individual was not aware of the grounds of the motion. If the motion is granted, the information directly obtained through the use of facial recognition technology, or evidence derived
therefrom, shall be treated as having been obtained
in violation of this section.

(4) INSPECTION OF INFORMATION.—The judge,
upon the filing of a motion under this subsection by
the aggrieved individual, may in his or her discretion
make available to the aggrieved individual or counsel
of the aggrieved individual for inspection such por-
tions of the information or evidence derived there-
from as the judge determines to be in the interests
of justice.

(5) APPEAL.—In addition to any other right to
appeal, the United States shall have the right to ap-
peal from an order granting a motion to suppress
made under this subsection, or the denial of an ap-
plication for an order of approval, if the United
States attorney shall certify to the judge or other of-
official granting such motion or denying such applica-
tion that the appeal is not taken for purposes of
delay. Such appeal shall be taken within 30 days
after the date the order was entered and shall be
diligently prosecuted.

(6) LIMITATION.—The remedies and sanctions
described in this subsection with respect to the use
of facial recognition technology are the only judicial
remedies and sanctions for nonconstitutional violations of this section involving such technology.

(f) FOREIGN INTELLIGENCE INFORMATION.—Nothing in this section shall be construed to affect the use of facial recognition technology to engage in ongoing surveillance connected with the acquisition of foreign intelligence information, as defined in section 101(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e)).

SEC. 4. REPORTS ON GOVERNMENT USE OF FACIAL RECOGNITION TECHNOLOGY.

(a) REPORT BY JUDGE.—Not later than 30 days after issuance of a covered court order under section 3(a)(2)(A) or an extension thereof under section 3(c)(3), or the denial of such a warrant or extension, the issuing or denying judge shall report to the Administrative Office of the United States Courts—

(1) the fact that a warrant or extension was applied for;

(2) the fact that the warrant or extension was granted as applied for, was modified, or was denied;

(3) the period of time for which the warrant approves the use of facial recognition technology, and the number and duration of any extensions; and

(4) the offense specified in the warrant or application.
(b) REPORTS.—Beginning 1 year after the date of enactment of this Act, and not later than September 30 of each year thereafter, the Director of the Administrative Office of the United States Courts shall transmit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, and make available to the public, a full and complete report summarizing the data required to be filed with the Administrative Office under subsection (a), including—

(1) the number of applications for covered court orders and extensions authorizing delayed notice;

(2) the number of covered court orders and extensions granted or denied during the preceding fiscal year;

(3) for each covered court order or extension granted—

(A) the period of time for which the warrant approves the use of facial recognition technology, and the number and duration of any extensions;

(B) the offense specified in the covered court order or application, or extension of an order;

(C) the identity of the applying investigative or law enforcement officer and agency mak-
ing the application and the person authorizing the application; and

(D) the nature of the facilities or cameras from which the data analyzed by facial recognition technology came from;

(4) a general description of the identifications made under a covered court order or extension, including—

(A) the approximate nature and frequency of use of the facial recognition technology;

(B) the approximate number of persons who were subjected to analysis using the facial recognition technology; and

(C) the approximate nature, amount, and cost of the manpower and other resources during the use of the facial recognition technology; and

(5) the number of misidentifications, including any arrest of an individual that does not result in charges being entered against the individual, made based upon information directly obtained through the use of facial recognition technology, or evidence derived therefrom.

(c) REGULATIONS.—The Director of the Administrative Office of the United States Courts, in consultation
with the Attorney General, may issue guidance regarding the content and form of the reports required to be filed under subsection (a).

**SEC. 5. HUMAN REVIEW AND TESTING.**

(a) **HUMAN REVIEW OF FACIAL RECOGNITION TECHNOLOGY.**—An agency shall require a trained officer to examine the output or recommendation of any facial recognition system before the agency investigates or otherwise interacts with an individual identified by the system in connection with a covered court order issued under section 3(a)(2)(A) or in connection with an emergency under section 3(a)(2)(B).

(b) **TESTING.**—The head of each agency, in consultation with the Director of the National Institute of Standards and Technology, shall establish testing procedures regarding all facial recognition technology systems used by the agency, including a process to—

1. periodically undertake independent tests of the performance of the system in typical operational conditions;
2. identify relative performance across different subpopulations, including error rates when the system is tested across subpopulations, alone and in combination with, different skin tones, ages, and genders; and
(3) review such tests and take action to improve the accuracy of the system across subpopulations upon a finding indicating there are disparate error rates when the system is tested across subpopulations.