Local Government Mandate Statement
Kentucky Legislative Research Commission
2022 Regular Session

Part I: Measure Information

Bill Request #:   __1036__

Bill #:   __SB 176/SCS 1__

Document ID #: __7613__

Bill Subject/Title: AN ACT relating to use of facial recognition technology.

Sponsor: Senator Whitney Westerfield

Unit of Government: **X** City   **X** County   **X** Urban-County

                                          X Charter County   **X** Consolidated Local   **X** Unified Local Government

Office(s) Impacted: Law Enforcement

Requirement: **X** Mandatory ____ Optional

Effect on
Powers & Duties: ____ Modifies Existing   **X** Adds New ____ Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

SB 176/SCS 1 creates a new section of KRS Chapter 61 establishing a working group on facial recognition technology that is attached to the Justice and Public Safety Cabinet for administrative purposes. The working group shall be chaired by the secretary of the Justice and Public Safety Cabinet and be comprised of representatives appointed by the Governor from:

- The Kentucky Association of Chiefs of Police;
- The Department of Criminal Justice Training;
- The Kentucky League of Cities;
- The Kentucky Association of Counties; and
- The Kentucky Sheriff's Association.

On or before January 1, 2024, the working group shall make a model policy for use by law enforcement agencies publically available. The policy shall:

- Specify authorized uses of facial recognition technology including, but not limited to:
  - How search results using facial recognition technology relate to establishing probable cause for arrests; and
  - The prohibition of using facial recognition technology to identify a person participating in constitutionally protected activities in public spaces unless there is probable cause to believe that an offense has been committed.
- Specify requirements for persons within a law enforcement agency authorized to use the technology;
- Require law enforcement agencies to document instances in which the technology is used;
- Provide procedures for the confirmation of any initial findings generated by the facial recognition technology by a secondary examiner;
- Specify data integrity and retention policies applicable to the data collected;
- Specify data security measures applicable to facial recognition technology;
- Specify training procedures and processes to ensure all personnel who utilize facial recognition technology, or access its data, are knowledgeable about and able to ensure compliance with the policy;
- Specify a process that requires a law enforcement agency utilizing facial recognition technology to compare a publicly available or lawfully acquired image against a database of publicly available or lawfully acquired images;
- Specify a minimum accuracy standard for face matches in all demographic groups to ensure nondiscrimination against any demographic group;
- Provide a specific mechanism to produce a record of prior uses of facial recognition technology that can be used to audit and verify images and information use to make a match of a person;
- Provide a process that addresses the privacy of persons by excluding, redacting, blurring, or otherwise obscuring nudity or sexual conduct involving any identifiable person.

A law enforcement agency that uses the technology shall be required to have a usage policy in place prior to implementation of the technology. They shall file a full copy of its policy or any revision with the Justice and Public Safety Cabinet within 30 days of the adoption or revision.

The fiscal impact of this legislation is indeterminable but expected to be minimal. The impact of this legislation would be limited to law enforcement agencies that currently utilize facial recognition technology or is in the process of deploying this technology. Because the bill requires that an agency have a use policy in place prior to using the technology, that agency would need to suspend or stop using the technology until they submit a use policy to the Justice and Public Safety Cabinet. Costs to local law enforcement agencies would be associated with developing the policy and any impact from suspending the use of facial recognition technology.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II, above, pertains to the introduced bill as amended by SCS 1. The substitute removed the requirement for the creation of the Kentucky Law Enforcement Council and its subsequent development and adoption of a model facial recognition technology policy by January 1, 2023. Instead, SCS 1 establishes a working group attached to the Justice and Public Safety Cabinet, charged with developing a model policy for use by law enforcement agencies on or before January 1, 2024. This measure also requires law enforcement to have a facial recognition policy in place prior to its use.

The fiscal impact of SCS 1 is changed from being nil in the original local mandate to being indeterminable but expected to be minimal in the SCS 1 version. This because the original bill was permissive and did not mandate the use of facial recognition technology. **SCS 1** requires a use policy to be in place prior to using facial recognition technology.

Data Source(s): Kentucky Association of Chiefs of Police, Fraternal Order of Police, Kentucky League of Cities, LRC Staff

Preparer: MJO/kls   **Reviewer:** KHC   **Date:** 3/10/22