Facial recognition in Washington State
Overview of Senate Bill 6280

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Background

- Senate Bill 6280 was passed by the Legislature during the 2020 legislative session.
- The scope of the bill is limited to state and local government agencies.
- Separate legislation, the Washington Privacy Act (Senate Bill 6281), provided a regulatory framework for the commercial use of facial recognition services. Senate Bill 6281 did not pass into law.
- In 2021, King County – Washington’s most populous county – passed legislation to ban the use of facial recognition by county departments, including the Sheriff’s Office.
- Any agency intending to develop or use a facial recognition services must submit a notice of intent to a legislative body and prior to using the service the agency must produce an accountability report.

- Accountability reports must include information such as:
  - Descriptions of the proposed use of the service
  - The service’s rate of false matches
  - Data security measures
  - Testing procedures and methods of receiving feedback
Meaningful human review

- Any decision that produces legal or similarly significant effects based on the use of a facial recognition service must be subject to meaningful human review.
  - This encompasses decisions that result in the provision of or denial of things like lending services, housing, insurance, education enrollment, employment opportunities, health care services, access to basic necessities, or decisions that impact civil rights.
Testing requirements

• Agencies must require the service provider to make an API available to enable independent testing for accuracy and bias across populations.

• If results of the independent testing identify material unfair performance differences across subpopulations the provider must develop a plan to mitigate the performance difference within 90 days.

• Any agency using a service must test the service in operational conditions prior to deploying the service.
Prohibitions

• Agencies are prohibited from using a service to engage in ongoing surveillance, conduct real-time or near real-time identification, or start persistent tracking unless:
  ○ There is a warrant
  ○ There are exigent circumstances; or
  ○ A court order is obtained for the purpose of locating or identifying a missing person or a deceased person.

• Law enforcement agencies are prohibited from:
  ○ Using results of a service as the sole basis to establish probable cause in a criminal investigation
  ○ Use a service to identify a person based on a sketch or manually produced image
  ○ Substantively manipulate an image for use in a service in a way that is not consistent with the intended use and training of the service provider.