Maryland Chiefs of Police Association
Maryland Sheriffs' Association

MEMORANDUM

TO: The Honorable Luke Clippinger Chairman and
                Members of the House Judiciary Committee

FROM: Chief David Morris, Co-Chair,   MCPA, Joint Legislative Committee
                Sheriff Darren Popkin, Co-Chair, MSA,   Joint Legislative Committee
                Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 22, 2022

RE: **HB 1046 Criminal Procedure - Facial Recognition Technology -**
                Requirements, Procedures, and Prohibitions

POSITION: **OPPOSE**

Since July 2021, the Maryland Sheriffs' Association (MSA) and the Maryland Chiefs of Police Association (MCPA) were pleased to participate with other stakeholders in a facial recognition working group formed by Senator Sydnor and Delegate Moon, at their request. Although there has been some productive dialogue over the last six months, the group has been unable to reach a consensus regarding a mutually agreeable bill. This has resulted in the production of a bill which restricts law enforcement's legitimate use of the technology and we feel it is imperative that changes be made to HB 1046. If changes are not made to this bill, public safety and crime victims could be adversely affected. Therefore, the MSA and the MCPA **OPPOSE HB 1046** in its current form**.**

Maryland law enforcement has successfully used facial recognition technology for many years. We recognize that there are misunderstandings surrounding facial recognition technology and its uses. There are many false narratives fueled by Hollywood portrayals which vastly misrepresent how law enforcement agencies legitimately use facial recognition. For example, facial recognition in Maryland is not used as ongoing government surveillance and it's not connected real time to live CCTV, Drone, Aviation or Body Worn Camera video. In reality, the facial recognition is primarily used in criminal investigations following an incident and under a process that requires a great deal of manual, human analysis, and an image of a sufficient quality to make a possible match.

The MCPA and MSA support the intention of the bill to establish safeguards for government use of the technology and we agree there should be use restrictions to ensure there is no intrusion on constitutionally protected activities. The successful use of facial recognition

technology in Maryland has aided in the identification of people whose images have been recorded on-camera committing robberies, burglaries, car jacking's, assaults, rapes, sexual assaults, shootings, homicides, kidnappings, hate crimes, human trafficking, sexual exploitation, threats of mass violence and other serious crimes. The technology has also been used to identify missing persons, deceased persons, incapacitated persons who can't identify themselves and to mitigate an imminent threat to health or public safety (e.g., to thwart an active terrorism scheme or plot).

The MCPA and MSA do not support the proposed amendments to this bill requiring the technology used by Maryland law enforcement to be made available to any third party for testing. The majority of facial recognition systems in use for law enforcement applications have algorithms which have been evaluated by the National Institute of Standards and Technology (NIST) for matching efficiency and accuracy, which includes an evaluation of the accuracy of the algorithm across demographics. Algorithms utilized for these systems are periodically updated as necessary based on subsequent NIST evaluations. The NIST Facial Recognition Vendor Test Program, located here in Gaithersburg, MD is already the world standard for independent, scientific evaluation of the technology.

Facial recognition is not an absolute science. It is not quantifiable like DNA, so while any potential match results will greatly contribute to the investigation, it will provide a tentative investigative lead only. When used in combination with human analysis and additional investigation, we have seen facial recognition technology is a proven valuable tool in solving crimes and increasing public safety.

We do not support HB 1046 mandating the use of a single facial recognition technology, which would limit photo sources to certain images which will have a clear and immediate negative impact on public safety. Due to the complexity of investigating crimes such as human trafficking and child sexual exploitation, there are some law enforcement agencies in the state using more than one facial recognition system, searching databases beyond driver's license, identification cards and booking photos. People who engage in this and other criminal activity often travel from out of state to commit crimes. Limiting use to a single facial recognition technology would prevent law enforcement from leveraging other legally obtained photos such as photos from other states and open-source photos which could assist with the identification of human trafficking/sexual exploitation victims, and individuals traveling from far outside the area to commit crime, as we saw with the unrest at the U.S. Capitol on January 6 last year.

We support ensuring that facial recognition alone does not constitute probable cause. However, it may generate investigative leads through a combination of biometric comparisons and human analysis. Investigators have to do the work, not the technology. The technology is used when there is already an investigation underway. We support that an arrest should not be made until the assigned investigator establishes, with other corroborating evidence, that the person identified by the photo match is the perpetrator in an alleged crime.

Facial recognition is a valuable time saving tool. Under traditional methods, law enforcement sought to identify an unknown person of interest during an investigation by manually looking through hundreds of mugshots with victims, canvassing areas with photos or searching a database using limited information. When time was crucial, the Anne Arundel County Police developed a tentative identification of the Capital Gazette shooter by using facial recognition technology to generate a lead. He was successfully identified, and later charged and convicted base

on other evidence. Let us not forget, when the need arose to expeditiously make tentative identification of persons involved in the unrest at the U.S. Capitol, the technology generated many investigative leads which when corroborated by additional investigative information led to the arrests and convictions of individuals who attacked our democracy.

The MCPA and MSA fully support strict guardrails and audit protocols to mitigate the risk of impartial and biased law enforcement and misuse of the technology, without eroding current investigative capabilities that have proven their worth. For example, we support the development of a model statewide use policy and ensuring relevant training in the use of the technology, as well as providing complete transparency through public reporting by agencies using the technology.

However, as currently drafted, HB 1046 contains several provisions that would unacceptably impact public safety in Maryland as well as hamper effective implementation of the requirements. We are unable to support the bill without key revisions. With the changes, HB1046 would be the strongest measure in the country for regulating the use of facial recognition technology used by law enforcement agencies, while addressing public concerns and preserving proven capabilities.

We applaud Co-Chair Moon and Senator Sydnor for their willingness to listen to participants in the facial recognition working group and we remain open to further discussion. However, HB 1046 as it stands limits the use of the technology, prevents human trafficking and juvenile victims from being identified and restricts law enforcement's ability to effectively investigate cases.

For aforementioned reasons, the MCPA and MSA OPPOSE HB 1046 and urge an UNFAVORABLE report.