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# A BILL FOR AN ACT

RELATING TO VIOLATION OF PRIVACY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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PART I

SECTION 1. Section 853-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply when:

(1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;

(2) The offense charged is:

(A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or

(B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;



- 1           (3) The offense charged involves a conspiracy or
- 2                   solicitation to intentionally, knowingly, or
- 3                   recklessly kill another person or to cause serious
- 4                   bodily injury to another person;
- 5           (4) The offense charged is a class A felony;
- 6           (5) The offense charged is nonprobationable;
- 7           (6) The defendant has been convicted of any offense
- 8                   defined as a felony by the Hawaii Penal Code or has
- 9                   been convicted for any conduct that if perpetrated in
- 10                  this State would be punishable as a felony;
- 11           (7) The defendant is found to be a law violator or
- 12                  delinquent child for the commission of any offense
- 13                  defined as a felony by the Hawaii Penal Code or for
- 14                  any conduct that if perpetrated in this State would
- 15                  constitute a felony;
- 16           (8) The defendant has a prior conviction for a felony
- 17                  committed in any state, federal, or foreign
- 18                  jurisdiction;
- 19           (9) A firearm was used in the commission of the offense
- 20                  charged;



- 1 (10) The defendant is charged with the distribution of a  
2 dangerous, harmful, or detrimental drug to a minor;
- 3 (11) The defendant has been charged with a felony offense  
4 and has been previously granted deferred acceptance of  
5 guilty plea or no contest plea for a prior offense,  
6 regardless of whether the period of deferral has  
7 already expired;
- 8 (12) The defendant has been charged with a misdemeanor  
9 offense and has been previously granted deferred  
10 acceptance of guilty plea or no contest plea for a  
11 prior felony, misdemeanor, or petty misdemeanor for  
12 which the period of deferral has not yet expired;
- 13 (13) The offense charged is:
- 14 (A) Escape in the first degree;
- 15 (B) Escape in the second degree;
- 16 (C) Promoting prison contraband in the first degree;
- 17 (D) Promoting prison contraband in the second degree;
- 18 (E) Bail jumping in the first degree;
- 19 (F) Bail jumping in the second degree;
- 20 (G) Bribery;
- 21 (H) Bribery of or by a witness;



- 1 (I) Intimidating a witness;
- 2 (J) Bribery of or by a juror;
- 3 (K) Intimidating a juror;
- 4 (L) Jury tampering;
- 5 (M) Promoting prostitution;
- 6 (N) Abuse of family or household member;
- 7 (O) Sexual assault in the second degree;
- 8 (P) Sexual assault in the third degree;
- 9 (Q) A violation of an order issued pursuant to
- 10 chapter 586;
- 11 (R) Promoting child abuse in the second degree;
- 12 (S) Promoting child abuse in the third degree;
- 13 (T) Electronic enticement of a child in the first
- 14 degree;
- 15 (U) Electronic enticement of a child in the second
- 16 degree;
- 17 (V) Prostitution pursuant to section 712-1200(1)(b);
- 18 (W) Street solicitation of prostitution under section
- 19 712-1207(1)(b);
- 20 (X) Solicitation of prostitution near schools or
- 21 public parks under section 712-1209;



- 1 (Y) Habitual solicitation of prostitution under
- 2 section 712-1209.5; [~~or~~]
- 3 (Z) Solicitation of a minor for prostitution under
- 4 section 712-1209.1;
- 5 (AA) Violation of privacy in the first degree; or
- 6 (BB) Violation of privacy in the second degree under
- 7 section 711-1111(1)(d), (e), (f), (g), or (h);
- 8 (14) The defendant has been charged with:
  - 9 (A) Knowingly or intentionally falsifying any report
  - 10 required under chapter 11, part XIII with the
  - 11 intent to circumvent the law or deceive the
  - 12 campaign spending commission; or
  - 13 (B) Violating section 11-352 or 11-353; or
- 14 (15) The defendant holds a commercial driver's license and
- 15 has been charged with violating a traffic control law,
- 16 other than a parking law, in connection with the
- 17 operation of any type of motor vehicle."

PART II

19 SECTION 2. The legislature finds that the unregulated and  
20 unfettered use of facial recognition poses unique and



1 significant implications with respect to the civil rights and  
2 liberties of residents and visitors of Hawaii.

3       The legislature further finds that facial recognition  
4 technology has already been used in concerning ways in other  
5 states and countries. Facial recognition technology has  
6 reportedly been used to identify peaceful protestors during 2020  
7 Black Lives Matter protests in various cities. Additionally, at  
8 least one foreign government is reported to have complete facial  
9 recognition profiles on all its citizens, which it uses to  
10 suppress free speech and invade the privacy of people within its  
11 borders without restraint. Hawaii's citizens should not be  
12 subject to such violations of privacy.

13       The legislature also finds that the broad application of  
14 government facial recognition in public spaces is the functional  
15 equivalent of requiring every person to carry and display a  
16 personal photo identification card at all times and carry a  
17 government global positioning system tracking device, which  
18 would constitute an unacceptable violation of privacy.

19       The legislature further believes, however, that there are  
20 limited circumstances in which the use of facial recognition  
21 does not infringe on an individual's privacy rights. Some



1 county police departments have used facial recognition  
2 technology in a limited capacity, in coordination with the  
3 Hawaii criminal justice data center in the department of the  
4 attorney general. In the police departments, surveillance  
5 images of a crime are compared against mugshots that already  
6 exist in the Hawaii criminal justice data center's database.  
7 The facial recognition program is intended to identify possible  
8 suspects by generating investigative leads for detectives, but  
9 any identification cannot constitute probable cause for arrest.  
10 The legislature believes that county police departments should  
11 be allowed to continue to use facial recognition for this  
12 limited passive purpose. However, the legislature finds that  
13 further uses of facial recognition technology should be  
14 prohibited unless vetted and approved by the legislature.

15 The legislature further finds that the airports division of  
16 the department of transportation plans to use facial recognition  
17 technology to identify persons passing through airports who have  
18 fevers and may be infected with COVID-19 or other infectious  
19 diseases that pose a public health risk to the State. The  
20 legislature believes that monitoring passengers is a necessary  
21 step to ensure that Hawaii's economy can fully function while



1 keeping the public safe. The legislature believes that the  
2 airports division of the department of transportation should be  
3 allowed to continue to use facial recognition technology for  
4 this emergency purpose solely within airports. However, any  
5 monitoring must be properly balanced with the constitutional  
6 right to privacy, the immediate destruction of obtained data,  
7 and prohibitions on sharing that data.

8 The purpose of this part is to ensure that the legislature  
9 can properly vet future uses of the rapidly evolving technology  
10 and prevent unintended consequences from interfering with the  
11 privacy and freedom of Hawaii residents, as has occurred in  
12 other states and countries, by placing limits on the  
13 government's use of facial recognition, other than specified  
14 exceptions.

15 SECTION 3. The Hawaii Revised Statutes is amended by  
16 adding a new chapter to be appropriately designated and to read  
17 as follows:

18 "CHAPTER

19 FACIAL RECOGNITION PROHIBITION

20 § -1 Definitions. As used in this chapter:





1 "Facial recognition" means an automated or semiautomated  
2 process that:

- 3 (1) Assists in identifying or verifying an individual or
- 4 capturing information about an individual based on the
- 5 physical characteristics of the individual's face; or
- 6 (2) Uses characteristics of an individual's face, head, or
- 7 body to infer emotion, associations, activities, or
- 8 the location of the individual.

9 "Facial recognition system" means any computer software or  
10 application that performs facial recognition.

11 "Government" means the State, or any of its political  
12 subdivisions, departments, agencies, and instrumentalities,  
13 corporate or otherwise.

14 "Government official" means any person or entity acting on  
15 behalf of the State, or any of its political subdivisions,  
16 including any officer, employee, agent, contractor,  
17 subcontractor, or vendor.

18 **§ -2 Restriction on government use of facial**  
19 **recognition.** (a) Except as provided in subsection (b), it  
20 shall be unlawful for the government or any government official  
21 to obtain, retain, share, access, or use:



- 1 (1) Any facial recognition system; or
- 2 (2) Any information obtained from a facial recognition
- 3 system.
- 4 (b) A facial recognition system or information obtained
- 5 from a facial recognition system shall only be obtained,
- 6 retained, shared, accessed, or used:
- 7 (1) By law enforcement agency personnel trained in the use
- 8 of a facial recognition system:
- 9 (A) To compare surveillance photographs or videos to
- 10 arrest booking photographs from the Hawaii
- 11 criminal justice data center; or
- 12 (B) In a photo lineup conducted pursuant to section
- 13 801K-2;
- 14 (2) By driver's license and civil identification card
- 15 issuing agencies to satisfy the requirements of the
- 16 federal REAL ID Act of 2005; or
- 17 (3) By the government or a government official:
- 18 (A) Upon a determination by the director of health
- 19 that there is a potential for a serious outbreak
- 20 of a communicable or dangerous disease or there
- 21 is the likelihood of extensive injury or death;



- 1 (B) At state airports;
- 2 (C) In conjunction with thermal scanning technology;
- 3 and
- 4 (D) To identify an individual whom there is reason to
- 5 believe, based on thermal scanning technology,
- 6 could be infected with a communicable or
- 7 dangerous disease;
- 8 provided that information obtained from a facial
- 9 recognition system shall be destroyed within sixty
- 10 minutes after it is obtained.
- 11 (c) Information obtained from a facial recognition system
- 12 shall not constitute probable cause for an arrest."

13 PART III

14 SECTION 4. If any provision of this Act, or the

15 application thereof to any person or circumstance, is held

16 invalid, the invalidity does not affect other provisions or

17 applications of the Act that can be given effect without the

18 invalid provision or application, and to this end the provisions

19 of this Act are severable.



1 SECTION 5. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.



S.B. NO. 2185  
H.D. 1

**Report Title:**

Honolulu Prosecuting Attorney Package; Violation of Privacy;  
Facial recognition

**Description:**

Excludes violations of privacy in the first degree and certain violations of privacy in the second degree, from qualifying for deferred acceptance of a guilty plea or nolo contendere plea. Limits the government use of facial recognition systems, except in certain circumstances. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

SB2185 HD1 HMS 2020-2174-1

