
A BILL FOR AN ACT

RELATING TO VIOLATION OF PRIVACY.

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

1 PART I

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

4 "(a) This chapter shall not apply when:

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

7 (2) The offense charged is:

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

12 (B) A misdemeanor or petty misdemeanor that carries a
13 mandatory minimum sentence and that involves the
14 intentional, knowing, or reckless bodily injury,
15 substantial bodily injury, or serious bodily
16 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."

18 PART II

19 SECTION 2. The legislature finds that the unregulated and
20 unfettered use of face surveillance poses unique and significant



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

3 The legislature further finds that face surveillance
4 technology has already been used in concerning ways in other
5 states and countries. Face surveillance 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 an overly broad application
14 of government face surveillance in public spaces is the
15 functional equivalent of requiring every person to carry and
16 display a personal photo identification card at all times and
17 carry a government global positioning system tracking device,
18 which would constitute an unacceptable violation of privacy.

19 The legislature further believes, however, that there are
20 circumstances in which the use of face surveillance does not
21 infringe on an individual's privacy rights. One known advantage



1 of face surveillance in Hawaii is that some county police
2 departments have used face surveillance technology in a limited
3 capacity, in coordination with the Hawaii criminal justice data
4 center in the department of the attorney general. In the police
5 departments, surveillance images of a crime are compared against
6 mugshots that already exist in the Hawaii criminal justice data
7 center's database. The face surveillance program is intended to
8 identify possible suspects by generating investigative leads for
9 detectives. While the face surveillance program is relatively
10 new and has been used relatively little, the results of the
11 program have been promising. The legislature believes that
12 county police departments should be allowed to continue to use
13 face surveillance for this limited purpose. However, until the
14 technology matures and proper protections are put in place, the
15 legislature finds that further uses of face recognition
16 technology should be vetted and approved by the legislature.

17 The legislature further finds that the airports division of
18 the department of transportation plans to use face surveillance
19 technology to identify persons in airports who have fevers and
20 may be infected with COVID-19 or other infectious diseases that
21 pose a public health risk to the State. The legislature



1 "Face surveillance" 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 "Face surveillance system" means any computer software or
10 application that performs face surveillance.

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 face surveillance.**

19 (a) Except as provided in subsection (b), it shall be unlawful
20 for the government or any government official to obtain, retain,
21 share, access, or use:



- 1 (1) Any face surveillance system; or
- 2 (2) Any information obtained from a face surveillance
- 3 system.
- 4 (b) A face surveillance system or information obtained
- 5 from a face surveillance 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 face surveillance 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 in
- 18 conjunction with thermal scanning technology as used
- 19 at state airports upon a determination by the director
- 20 of health that there is a potential for a serious
- 21 outbreak of a communicable or dangerous disease or



Report Title:

Honolulu Prosecuting Attorney Package; Face Surveillance;
Violation of Privacy

Description:

Excludes violation of privacy in the first degree, and certain paragraphs of violation of privacy in the second degree, from qualifying for deferred acceptance of guilty plea or nolo contendere plea. Limits the government use of face surveillance systems, except in certain circumstances. (HD1 PROPOSED)

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