

# **SB 1038 (Bradford)**

## **Frequently Asked Questions**

### **What will this bill do?**

SB 1038 is a continuation of existing law that protects Californians' privacy and civil rights by ensuring that law enforcement body-worn cameras are not used as roving face recognition devices. Body cameras were intended to protect against police misconduct, not to enable the mass surveillance of Californians. As such, SB 1038 makes indefinite state law's existing prohibition on California law enforcement from installing, activating, or using any biometric surveillance system – including facial recognition – in connection with an officer camera or data collected by an officer camera. This bill is narrowly focused on the use of face and biometric recognition with officer cameras and does not ban the use of facial recognition in other contexts.

### **Isn't the use of facial recognition on body cameras already prohibited in California?**

Yes – although these protections sunset on January 1, 2023, per AB 1215 (Ting, 2019). SB 1038 will extend this existing law,<sup>1</sup> which has since January 1, 2020 effectively protected privacy, safeguarded our freedom of speech, prevented wrongful imprisonment of Californians due to misidentification, and halted the creation of vulnerable biometric databases.

### **Why should face-scanning body cameras be concerning to people?**

In a free country, we should all be able to walk down the street without being forcibly identified and tracked in a government database. Adding facial recognition to body cameras would constitute a radical expansion of police power and intrusion into personal freedom and liberty, and one that would put marginalized Californians at risk. If we allow California's existing law to sunset, we risk subjecting millions of Californians to a digital stop-and-frisk. Our state is on a mission to end racist police practices. Supercharging those systemic problems with biased and notoriously inaccurate software would mean that even more Black and Brown and immigrant Californians would be ensnared in our unjust system of mass incarceration.

### **Do Californians have a right to privacy when we leave our homes?**

Yes. All of us deserve a certain amount of anonymity in public and we have a right to our privacy that we keep when we leave our homes. In this country, we are not required to show our IDs to every police officer we pass on the street. Facial recognition on body cameras would automate this type of forcible identification. We would be compelled to identify ourselves without our knowledge and consent, subjecting Californians to a perpetual lineup. This will make people – and particularly immigrants, victims of crime, and people even more fearful of police abuse.

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<sup>1</sup> California Penal Code, section 832.19

In California, Article 1 Section 1 of our state constitution grants all Californians an inalienable right to privacy, a right that doesn't end when we step outside. According to the U.S. Supreme Court, our right to privacy does not disappear when we step out our front door – we keep some constitutional privacy protections when we enter public spaces. In a 2018 Supreme Court case about surveillance of cell phone location information, the Court held that the government's unilateral tracking of a person's location and movements over time counts as an unconstitutional search. The Court emphasized that “a person does not surrender all Fourth Amendment protection by venturing into the public sphere ... what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.”<sup>2</sup>

### **As the home of Silicon Valley, shouldn't California be leading the way when it comes to technological solutions to social problems?**

Yes. Our position as a technological world leader is precisely why California must show leadership in this moment. We have unparalleled expertise in this state – enough to know that not all tech is good tech and that there are contexts where certain technologies do more harm than good. That's why multiple tech leaders have stated their opposition to the police use of face recognition, including on body cameras. In 2020, IBM, Microsoft, and Amazon all announced they would not sell facial recognition products to law enforcement.

SB 1038 is focused on a uniquely dangerous use-case for facial recognition technology. Law enforcement argues that facial recognition is a valuable tool, and therefore should be allowed on police body cameras. But any tool can be dangerous in the wrong context. Facial recognition does not belong on police body cameras. This ban, which is a continuation of existing law, narrowly focuses on the use of face recognition on body cameras and the inevitable harms that use-case creates. It does not prohibit the use of face recognition in other contexts.

Here in California, we know how to be discerning about the use of new technologies. If we're going to massively expand the use of powerful AI in our state, let's champion technologies that truly better our lives and strengthen our communities.

### **Is face recognition technology deployed after the recording is captured or do the images get analyzed in real time?**

The technology is capable of doing both types of surveillance. The footage can be analyzed in real time while officers are walking around, or later on. SB 1038 covers both use cases, in order to prevent the kinds of problems we see in other states. For instance, Detroit and Chicago have both operated real-time facial recognition. The Georgetown Privacy Center issued a report<sup>3</sup> heavily criticizing these programs for being costly and lacking meaningful civil rights protections and transparency. Detroit is home to Robert Williams, a Black man who was wrongfully accused of a crime because of a false facial recognition

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<sup>2</sup> *Carpenter v. United States*, 585 U. S. \_\_\_, No. 16-402 (June 22, 2018)

<sup>3</sup> <https://www.americaunderwatch.com/>

match on recorded footage.<sup>4</sup> He is just one of multiple Black men wrongfully accused of crimes as the result of facial recognition misuse.

**Would face recognition-enabled body cameras harm the vast majority of surveilled people who are not ultimately arrested for or charged with a crime?**

Face recognition is a dangerous technology that gives governments an unprecedented power to automatically identify us without our consent and track where we go, who we know, and even how we feel. Face-scanning body cameras would scan the faces of law-abiding Californians, with a disproportionate impact on people in marginalized and over-policed communities. It has no place on police body cameras, which is why California lawmakers took it off the table for these devices in 2019.

**How does this bill protect immigrants from the harms of face surveillance?**

The use of face recognition on body cameras would drive the creation of face databases that contain invasive data about anyone caught in their crosshairs. These surveillance databases are already vulnerable to exploitation by private actors and agencies like ICE. In fact, ICE has already been caught tapping into and demanding access to facial recognition databases in other states.<sup>5</sup> California has refused to create a surveillance network that invites anti-immigrant exploitation by the federal government, and it should continue to stand for the rights of immigrants.

SB 1038 protects existing California law that ensures immigrant communities, including victims of crimes, do not have to worry their face will be scanned and shared with ICE. California has refused to create a surveillance network that invites anti-immigrant exploitation by the Federal government, and it should continue to stand for the rights of immigrants.

**Face recognition critics say that accuracy problems with the technology endanger Californians, especially Californians of color, women, and transgender people. Is this still a problem?**

Yes – face recognition technology is notoriously inaccurate.<sup>6</sup> That is partly because it relies on databases and algorithms built on a history of discriminatory policing. A 2019 study conducted by ACLU of Northern California found that 26 out of the 120 California Legislators were falsely identified by facial recognition.<sup>7</sup> The deployment of face recognition on body cameras would inevitably result in false matches throughout the state, which would lead to innocent people being arrested, injured, and even killed by police. The federal government’s gold standard test – by the National Institute of Standards and Technology (NIST) – found that Asian and Black people continue to be 100 times more likely to be misidentified by facial recognition algorithms than white men.<sup>8</sup> These problems have not been eliminated from facial recognition.

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<sup>4</sup> <https://www.washingtonpost.com/technology/2021/04/13/facial-recognition-false-arrest-lawsuit/>

<sup>5</sup> <https://www.nytimes.com/2019/07/07/us/politics/ice-drivers-licenses-facial-recognition.html>

<sup>6</sup> <https://www.media.mit.edu/articles/bias-in-facial-recognition-isn-t-hard-to-discover-but-it-s-hard-to-get-rid-of/>

<sup>7</sup> <https://www.aclunc.org/news/facial-recognition-technology-falsely-identifies-26-california-legislators-mugshots>

<sup>8</sup> <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>

Facial recognition also performs poorly on images captured by officer body cameras, according to research, with error rates as high as 100%.<sup>9</sup> The nature of body camera footage – captured by shaky cameras with wide angle lenses that warp people’s faces – also contributes to these accuracy problems.

However, even if facial recognition technology was perfectly accurate, it would have no place on police body cameras. These cameras were never designed or intended to scan our faces and were intended as tools for accountability to prevent police misconduct, not surveillance of the public. A system capable of invasive and discriminatory surveillance is a threat to our civil rights, and California values.

### **Is SB 1038 a full ban on facial recognition use by law enforcement?**

No. This bill is a continuation of California existing law and narrowly focuses its prohibition on the use of face recognition and biometric surveillance in connection with officer cameras and the inevitable harms that use-case creates. It does not prohibit the use of face recognition in other contexts.

### **Why are face-scanning body cameras an ineffective tool to promote public safety?**

Some members of law enforcement argue that facial recognition is a valuable tool, and therefore should be allowed on police body cameras. But any tool can be dangerous in the wrong context. Facial recognition does not belong on police body cameras. Face-scanning body cameras will only further erode trust between police and the community. The deployment of face recognition on body cameras would make face recognition ubiquitous throughout the state, inevitably resulting in false matches, which would lead to innocent people being arrested, injured, and even killed by police. In other states that permit the widespread use of facial recognition, multiple Black men have been subjected to wrongful arrests. More mass surveillance would only add fuel to the fire in a state where mass incarceration and over-policing is hurting our families and communities. We deserve a justice system that works for all Californians. Ours has long relied on the over-policing, criminalization, and invasive surveillance of people of color. We can and should invest in the safety and health of our communities, but supercharging police surveillance with face-scanning body cameras is not the answer.

### **California has the Olympic Games and the World Cup on the horizon - both in Los Angeles. How should we think about the use of face recognition on body cameras at those events?**

SB 1038 is not about the use of facial recognition and biometrics writ large. The bill continues existing legal protections that are focused on continuing current protections that prevent the use of biometric surveillance on body cameras – accountability devices that were intended to protect the people from abuses of power by police.

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<sup>9</sup> Lisa M Brown and Quanfu Fan, Enhanced face detection using body part detections for wearable cameras. In 2016 23rd International Conference on Pattern Recognition (ICPR), pages 715–720. IEEE, (2016); JBryan, Julia (2020): Effects of Movement on Biometric Facial Recognition in Body-Worn Cameras. Purdue University Graduate School. Thesis. <https://doi.org/10.25394/PGS.12227372.v1>

America has shown already that it can safely host the Olympics and the World Cup without constructing a massive surveillance state and a facial recognition system that subjects law-abiding people to forced identification and tracking. Allowing police body cameras to become roving surveillance networks would be at odds with the spirit of the World Cup and Olympic Games. We are not an authoritarian nation, and we can distinguish ourselves from those that are.<sup>10</sup>

### **How does this bill protect free speech and the right to protest?**

The existing law that this bill reauthorizes (AB 1215) has already protected Californians during massive events. This law was on the books in 2020 and helped protect the civil rights and liberties of tens of thousands of Californians following the murder of George Floyd. AB 1215 was the ‘law of the land’ during the biggest protest movement in U.S. history, and the sky did not fall for law enforcement and public safety because they didn’t have access to facial recognition on their body cameras.

Californians are already rightly concerned about law enforcement’s misuse of powerful surveillance technologies. For example, a public records investigation by the ACLU of Northern CA investigation of the California Highway Patrol’s aerial surveillance found that CHP spied on the 2020 protests in over twenty-five cities across California – including Sacramento, Los Angeles, and San Francisco.<sup>11</sup> In Sacramento, multiple people who work in the Capitol were captured in the footage, their faces clear and identifiable. There is no reason to think that face-scanning body cameras would not be used to similarly surveil Californians calling for justice. CHP’s invasive surveillance underscores the looming threat of facial recognition and why continuing the protections of current law for Californians going about their daily lives and exercising constitutional rights are so essential.

### **What other states and cities have banned facial recognition technology in connection with police body cameras?**

People across the country are taking a stand against the uncontrolled proliferation of facial recognition. Like California, the states of Oregon and New Hampshire specifically ban facial recognition in connection with police body cameras. Vermont, Virginia, Maine, and Massachusetts have also placed limits on government use of face recognition, recognizing the technology’s inherent threat to civil rights and liberties.

Twenty U.S. cities have also passed bans on government use of face recognition technology, including four in California: San Francisco, Oakland, Berkeley, and Santa Cruz.

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<sup>10</sup> <https://www.washingtonpost.com/sports/olympics/2022/02/02/china-digital-surveillance-beijing-winter-olympics/>

<sup>11</sup> <https://www.aclunc.org/blog/recordings-show-california-highway-patrol-s-aerial-surveillance-racial-justice-protests>.