

Talking Points SB 1038 (Bradford)

Summary:

- SB 1038 is a continuation of existing law that protects our privacy and civil rights by ensuring that body cameras are not used as roving face surveillance devices.
(NOTE: This talking point should be used often, in combination with other talking points, to repeatedly emphasize the continuation of a protective status quo.)
- Specifically, SB 1038 is a continuation of AB 1215 – authored by Assemblymember Ting in 2019; implemented in 2020 but set to expire on 1/1/2023. It ensures the continued protections of Californians’ civil rights against the use of biometric surveillance (facial recognition) by law enforcement on officer-worn body cameras.
- For nearly three years, existing law has successfully prevented the harms of body camera face surveillance by protecting privacy, safeguarding our freedom of speech, helping prevent the misidentification and wrongful imprisonment of Californians, and halting the creation of vulnerable biometric databases. California must ensure these protections do not sunset in 2023.
- SB 1038 would permanently prohibit law enforcement from installing, activating, or using any facial recognition system in connection with an officer camera or data collected by an officer camera. This prohibition narrowly focuses on the use of facial recognition in the context of officer cameras. It does not prohibit the use of face recognition in other contexts.
- Body cameras were intended to guard against police misconduct, not as a surveillance system for the police to identify and track Californians. Facial recognition has no place on officer body cameras.
- All Californians should be worried about facial recognition on body cameras. We all want to feel safe in our communities. Face-scanning body cameras won’t make us safer, but they will make us less free. These risks are particularly acute in communities where police misconduct regularly threatens the safety of Black people, Latinos, and immigrants. This bill ensures the continued protection of civil rights for these communities and all Californians.

Facial recognition technology is uniquely incompatible with body cameras:

- Facial recognition uses computer software to automatically convert the unique features on a person’s face into a mathematical code, called a faceprint. Unlike other biometric identifiers like fingerprints or DNA, facial recognition technology allows faceprints to be taken without our permission or knowledge, with no way to opt-out. Allowing police body

cameras to become roving face recognition devices would wrongfully force millions of Californians to subject themselves to invasive surveillance now and at any point in the future.

- Facial recognition performs notoriously poorly on images captured by officer body cameras, according to research, with inaccuracy error rates as high as 100%. The nature of body camera footage – captured by shaky cameras with wide angle lenses that warp people’s faces – contributes to accuracy problems.
- Since the current law was enacted, federal research has continued to show facial recognition software is inaccurate and biased, generating up to 100 times more false positives for women and people of color. The nature of body camera footage – captured by shaky cameras with wide angle lenses that warp people’s faces – contributes to these accuracy problems. 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.
- Face-scanning body cameras would undermine the primary purpose of body cameras, which is to promote officer accountability and prevent against police misconduct. Adding face recognition to body cameras would further erode trust between police and communities and would lead to dangerous misidentifications, threatening Californian’s safety and our fundamental rights.
- For these reasons and more, the most prominent body camera maker, Axon, has refused to add face recognition to its body cameras.

As a global leader in tech innovation, California has a responsibility to make wise decisions about new technology:

- We have unparalleled technological expertise in California – 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 such as Microsoft, IBM, and Amazon have stated their opposition to the police use of face recognition, including on body cameras.
- 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.
- It’s important to make proactive decisions about the use of powerful tech like face recognition rather than unleashing surveillance that we know will lead to harm. The American public has pushed back recently against this kind of action by federal

agencies, including the General Services Administration and the IRS, which proposed mandating the use of facial recognition to access government services including unemployment benefits and tax records.

Face scanning body cameras would violate Californian's rights and liberties:

- We should all be able to safely live our lives without being routinely watched and targeted by the government.
- Face-scanning body cameras would represent a radical expansion of police powers in California. 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. We know that police abuse of surveillance technology is a pervasive problem. This technology is simply too dangerous and too inherently flawed to be in the hands of every law enforcement officer in the state.
- The widespread use of face recognition on police body cameras would be the equivalent of requiring every person to show their photo ID card to every police officer they pass, which would be an unacceptable mass violation of privacy.
- 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. 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.

Face recognition is racist in design and practice – it has no place on police body cameras:

- Facial recognition is notoriously inaccurate on Black and Asian faces. 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. In other states that permit the widespread use of facial recognition, multiple Black men have been subjected to wrongful arrests.
- In 2019, the ACLU of Northern California conducted a study modeled after law enforcement's known uses of facial recognition technology. Comparing all 120 legislators with a database of mugshot photos, the analysis showed that facial recognition software marketed for sale to law enforcement agencies mistakenly matched the faces of one out of five lawmakers, 26 lawmakers total, with images in an arrest photo database. More than half of those falsely identified are lawmakers of color. In the real world, such mistakes on roving face recognition-enabled body cameras could have falsely implicated those legislators in alleged crimes.

- All Californians should be worried about facial recognition on body cameras. But the risks are particularly acute in communities where police misconduct regularly threatens the safety of Black people, Latinos, and immigrants. This bill ensures the continued protection of civil rights for these communities and all Californians.
- When new surveillance technologies arrive on the market, they are beta tested on people of color, immigrants, and protestors. This has been true of automatic license plate readers, social media monitoring software, and Stingray cell phone trackers, and it would be true of face scanning body cameras as well. Our communities deserve better.

Face scanning body cameras would further harm marginalized Californians:

- We have already seen governments use face surveillance to identify and track immigrants and cast digital dragnets in communities where people of color are already subject to near-constant police monitoring. We can't allow face recognition to be further weaponized against our communities on police body cameras.
- Because of continued collaborations between ICE and local law enforcement, we know that adding face recognition to body cameras would put immigrant Californians at risk. It would automate widespread forcible identification and facilitate the creation of new databases of immigrants' faces; databases that ICE has already demanded access to in other states.
- Surveillance-powered body cameras would enable law enforcement to subject millions of Californians to a digital stop-and-frisk. The combination of racist police practices with biased software would mean that even more Black and immigrant Californians would be targeted and harassed by police.
- Surveillance systems are frequently turned against marginalized people after being sold to the public as crime fighting systems. Automatic license plate readers were supposed to help police find stolen cars - instead they created vast databases that ICE used to target immigrants. Social media monitoring software was supposed to help police stop weapons sales - instead it was used to track activists who spoke out against police shootings.
- History has taught us that when new surveillance technologies arrive on the market, they are beta tested on people of color, immigrants, and protestors. We can't allow face recognition to be weaponized against our communities.
- Californians are already rightly concerned about law enforcement's misuse of powerful surveillance technologies. In 2020, California Highway Patrol (CHP) used aerial surveillance tech to spy on peaceful Black Lives Matter protests in cities across California – including Sacramento, Los Angeles, and San Francisco. In Sacramento, multiple people who work in the Capitol were captured in CHP's high tech aerial 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. This bill seeks to prevent the deployment of face scanning body cameras on our streets before it is too late.

Face scanning body cameras are not an effective response to crime:

- We all want to feel safe in our communities. Face-scanning body cameras won't make us safer, but they will make us less free.
- Face-scanning body cameras will only further erode trust between police and the community, and inevitable false matches will lead to dangerous encounters between police and the public.
- How many Californians are we willing to subject to false matches and wrongful arrests, on the chance we will catch one shoplifter? Those errors are inevitable, and they will harm Black and Brown people first and worst. How many of our immigrant neighbors are we willing to condemn to the dangers of a face recognition database? That's what we'll get if we put a face recognition device on the body camera of every law enforcement officer in this state. How many innocent Californians are we willing to subject to a perpetual line-up, just so we can say we gave the police every single surveillance gadget they asked for? We must be willing to recognize that some technologies do far more harm than good in certain contexts.
- True public safety innovation means investing in the health of our communities. The problems of today call for a human approach to public safety, not an algorithmic one.
- 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.

SB 1038 mirrors an emerging status quo regarding facial recognition:

- People across the country are taking a stand against the uncontrolled proliferation of facial recognition. Like California, 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.