

Facial Recognition Technology Use

610.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the use of facial recognition technology (FRT) by an officer to assist in the development of investigative leads (MD Code CP § 2-501 et seq.). This policy also provides guidance for FRT data access, use, and retention.

This policy does not apply to the use of FRT in user identification applications for personal electronic devices, access control systems, or automated video redaction software that does not generate or result in the retention of any biometric data or surveillance information (MD Code CP § 2-501; MD Code CP § 2-507).

610.1.1 DEFINITIONS

Definitions related to this policy include:

Facial recognition technology (FRT) - A software application, electronic system, or a third-party service that uses biometric algorithms to compare facial features of a probe image with the features of images contained within an image database.

Probe image - A search image submitted to FRT for comparison with images contained within an image database.

610.2 POLICY

It is the policy of the Elkton Police Department to limit FRT use to developing investigative leads for legitimate law enforcement purposes while recognizing and protecting established constitutional and privacy rights (MD Code CP § 2-503).

610.3 CHIEF OF POLICE RESPONSIBILITIES

The Chief of Police or the authorized designee shall approve any FRT system or service prior to its implementation and use by the Department. Any FRT system or service approved for use must comply with the requirements of state law (MD Code CP § 2-506).

610.4 FRT COORDINATOR

The Chief of Police or the authorized designee shall appoint an FRT coordinator (MD Code CP § 2-505). The responsibilities of the FRT coordinator include:

- (a) Establishing procedures for department FRT use that conform to applicable laws, regulations, and best practices (MD Code CP § 2-505). Procedures should include:
 - 1. A process for submitting and assessing officer requests to use FRT.
 - 2. Requirements related to processing and reviewing results generated from the use of FRT.
- (b) Establishing procedures for collecting, processing, and storing FRT data.

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- (c) Establishing procedures for access and security controls for department FRT systems, services, and data.
 - 1. Access levels should be no higher than necessary to accomplish organizational tasks, missions, or functions.
- (d) Establishing a procedure for submitting images to the image database. The procedure should include:
 - 1. A requirement that officers submit images.
 - 2. Restrictions related to the use of images voluntarily provided to the Department by members of the public (e.g., driver's license, state identification, passport, any other official identification that includes a photograph).
 - 3. Restrictions related to the types of image databases against which probe images may be compared (e.g., driver's license and identification photos, mugshots) (MD Code CP § 2-503).
- (e) Administering data quality assurance measures (e.g., probe image suitability, quality, integrity).
- (f) Conducting periodic audits of department FRT use.
 - 1. The audit should include a review of FRT use, documentation of those uses, and confirmation of data purging, where appropriate.
 - 2. At least annually, an audit shall include a review of the department's FRT use for compliance with applicable state and local laws, regulations, and policies (MD Code CP § 2-505).
- (g) Confirming that authorized users have completed department-approved FRT and forensic image comparison training prior to using FRT.
- (h) Coordinating with the Support Services Commander to develop, identify, and update FRT training for officers who utilize the FRT system (MD Code CP § 2-503; MD Code CP § 2-505).
- (i) Establishing and implementing a schedule for routine maintenance, upgrades, enhancements, testing, and refreshes of FRT for proper performance purposes.
- (j) Establishing procedures for reporting errors, malfunctions, or deficiencies of FRT systems, services, or data.
- (k) Coordinating with the information systems technology supervisor, department counsel, and appropriate administrators to develop information-sharing procedures with outside agencies in accordance with state and federal law.
- (l) Establishing and implementing any other procedures necessary to comply with state law (MD Code CP § 2-501 et seq.).

610.5 AUTHORIZED USES OF FRT

FRT may be used as a tool to develop investigative leads for legitimate law enforcement purposes to assist in the identification of the following:

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- (a) Unknown suspects where attempts at identification through other means have been exhausted or ineffective
- (b) Potential victims, as appropriate (e.g., human trafficking, child sexual abuse material)
- (c) Deceased individuals (MD Code CP § 2-507)
- (d) Individuals who are incapacitated or do not know their identities (MD Code CP § 2-507)
- (e) Individuals who are lawfully detained and whose identities are in question (e.g., no identification or false identification provided)
- (f) Suspects in unsolved crimes
- (g) Missing or endangered persons (MD Code CP § 2-507)
- (h) Unknown individuals pursuant to any other legitimate law enforcement purpose

610.5.1 ADDITIONAL USES UNDER STATE LAW

FRT may also be used for (MD Code CP § 2-507):

- (a) The forensic analysis of electronic media seized by the Department in relation to a specific investigation if the person identified in the electronic media is not the subject of criminal charges resulting from the forensic analysis.
- (b) Conducting other legitimate law enforcement activity unrelated to criminal investigations.

Only approved image databases may be used for comparison purposes. All results of FRT in criminal investigations shall be independently verified by an approved officer (MD Code CP § 2-503).

610.6 ACCESS TO FRT

Only officers authorized by the Department may use FRT.

Prior to using FRT, an officer seeking authorization shall submit a request to the appropriate supervisor consistent with department procedures.

The request should, at a minimum, include the following:

- (a) The nature of the investigation
- (b) The reason an officer believes that FRT use is necessary
- (c) An explanation of how FRT may assist with the development of investigative leads
- (d) A case identification number

610.7 FRT SEARCHES

An officer may submit a probe image for comparison with images available within the department FRT image database consistent with department procedures.

FRT searches shall only be conducted using lawfully obtained probe images.

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Before proceeding with official law enforcement action based on FRT results, the results should be thoroughly reviewed by an officer trained in FRT.

610.7.1 USES AND LIMITATIONS OF FRT SEARCH RESULTS

Information resulting from an FRT search shall be considered an investigative lead only and not a positive identification of any person or utilized solely as the basis for engaging in any law enforcement action. Image comparisons generated from FRT use do not represent definitive confirmation of an identity match or non-match. Any positive identification and connection of a person to an investigation shall be determined through additional investigative means and resources.

610.7.2 FRT SEARCH DOCUMENTATION

The investigating officer shall document all FRT searches in the appropriate department report, including any arrest report where FRT was used as an investigative tool. Documentation shall include:

- (a) The requesting officer's name and position.
- (b) Confirmation that the search was pre-approved pursuant to department procedures.
- (c) The purpose of the search.
- (d) The search parameters, if any.
- (e) The date and time of the search.
- (f) A list of any image databases searched.
- (g) The results of the search, including the number of investigative leads produced and, where applicable, the matching score of each.
- (h) The additional means used to identify any person (e.g., visual comparison of images by a trained investigator, other subsequent investigation).

610.8 PRIVACY CONSIDERATIONS

The Department shall adhere to all applicable federal and state laws regarding privacy concerns related to FRT use (MD Code CP § 2-503). Absent a warrant or exigent circumstances, the officer shall not record or capture images where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure, mass surveillance of public places or quasi-public places). Officers shall take reasonable precautions to avoid inadvertently recording or capturing images where there is a reasonable expectation of privacy.

610.9 PROHIBITED USES

FRT shall not be used in a manner that targets individuals or groups solely based on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, or any other classification or status protected by law.

In addition, FRT shall not be used:

- (a) For the arrest of individuals based solely on FRT results (MD Code CP § 2-502).

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- (b) For any purpose that violates the U.S. Constitution or laws of the United States, including the protections of the First, Fourth, and 14th Amendments.
- (c) For any non-law enforcement purpose.
- (d) As the sole basis for identification to establish probable cause in a criminal investigation (MD Code CP § 2-502).
- (e) To harass or intimidate any individual or group.
- (f) In any other manner that would violate applicable law, regulation, or policy.

No officer shall request that a third-party use FRT to obtain results that would not be permitted under this policy.

610.9.1 ADDITIONAL STATE RESTRICTIONS

FRT may not be used in a criminal investigation to (MD Code CP § 2-503):

- (a) Investigate a crime other than those specifically authorized by law (e.g., a crime of violence, human trafficking, a hate crime, certain weapons crimes).
- (b) Analyze an image/recording of an individual engaged in activity protected under law without reasonable suspicion they are involved in a crime.
- (c) Analyze a sketch or manually produced image.
- (d) Disclose to a witness, prior to their participation in a live/photo lineup, that FRT identified a suspect.
- (e) Provide live or real-time identification of an image/recording.
- (f) Identify an individual based solely on:
 - 1. A member's personal interest unrelated to legitimate law enforcement duties/objectives.
 - 2. The individual's race, color, religious beliefs, sexual orientation, gender, disability, national origin, homeless status, political/social beliefs/activities, participation in lawful activities, or any other characteristic/activity prohibited by law.

610.10 RELEASE OF FRT DATA

Unless disclosure is required by law or court order, FRT data should only be released to the public in accordance with federal and state public record laws. Requests for the release of FRT data shall be processed in accordance with the Records Maintenance and Release Policy.

Required audit data shall be released to the Attorney General, public defender, State's Attorney, United States Attorney, or their designee as required by law (MD Code CP § 2-505).

610.11 RETENTION OF FRT DATA

FRT data shall be retained in accordance with the established records retention schedule.

Unmatched probe images shall be purged in accordance with the established records retention schedule.

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Required audit data shall be retained for at least three years after completion of the required audit (MD Code CP § 2-505).

610.12 DOCUMENTATION

The FRT coordinator should coordinate with the Brady coordinator to establish processes for disclosing information in the department's possession concerning FRT to the relevant prosecuting attorney so they can comply with their FRT disclosure obligations (MD Code CP § 2-504). See the Brady Information Policy.

610.13 REPORTING REQUIREMENTS

The FRT coordinator shall prepare and publish an annual report disclosing all information required by law and provide a copy of that report to the Governor's Office of Crime Prevention, Youth, and Victim Services (MD Code CP § 2-510).

The FRT coordinator shall post a copy of this policy on the department's website, along with any disclosures required by law (e.g., the names and databases of any nongovernment FRT systems used) (MD Code CP § 2-508).

610.14 TRAINING

Officers whose duties may require the use of FRT should receive initial training and periodic refresher training on this policy and related procedures and should demonstrate their knowledge and understanding. Training should include but is not limited to the following:

- (a) Capabilities and limitations of FRT
- (b) FRT system functions and interpretation of results
- (c) Data security and privacy concerns
- (d) Documentation and reporting requirements (e.g., FRT results, general statistics, collection of FRT data, FRT requests)
- (e) Digital media handling and protections
- (f) Common terminology (e.g., human face recognition, automated face recognition, holistic face processing, unfamiliar face matching)
- (g) Principles of comparison
- (h) Cognitive bias, confirmation bias, implicit bias, and automation bias
- (i) Applicable policy, procedure, and federal and state law requirements

An officer who uses mobile facial recognition shall receive additional training appropriate to that application of the technology.

The FRT coordinator shall maintain a record of each authorized officer's training and acknowledgement of this policy.

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610.14.1 ADDITIONAL TRAINING REQUIREMENTS

Officers authorized to use FRT shall complete any state-mandated training as required (e.g., annual training administered by the DPSCS) (MD Code CP § 2-505).