ALABAMA JUSTICE INFORMATION COMMISSION
ADMINISTRATIVE CODE

CHAPTER 265-X-5
LAW ENFORCEMENT USE OF FACIAL COMPARISON TECHNOLOGY

TABLE OF CONTENTS

265-X-5-.01 Purpose
265-X-5-.02 Background
265-X-5-.03 Scope
265-X-5-.04 Definitions
265-X-5-.05 Data Limitations
265-X-5-.06 Acceptable Investigation Uses
265-X-5-.07 Privacy Protections
265-X-5-.08 Submission And Retention Of Probe Images
265-X-5-.09 Training
265-X-5-.10 Audits And Penalties For Misuse

265-X-5-.01 Purpose.

The purpose of this rule is to establish policies and acceptable procedures for using images, information, and tools in a facial comparison system for public safety or criminal justice purposes pursuant to §41-9-590, Code of Ala. 1975. The rule aims to provide a framework for using a facial comparison system so that all uses are consistent with authorized purposes while maintaining individual privacy rights, civil rights, and civil liberties.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: New Rule: Filed January 31, 2023; effective March 17, 2023.

265-X-5-.02 Background.

(1) Facial comparison uses facial mapping and biometric algorithms contained in a software application to examine and compare distinguishing characteristics of a human face from an image.

(2) Facial comparison technology provides a valuable public safety and investigative capability to investigate criminal activity, reduce an imminent threat to health or safety, help identify persons who are unable to identify themselves, or identify deceased persons.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.

History: New Rule: Filed January 31, 2023; effective March 17, 2023.

265-X-5-.03 Scope.

This policy applies to all criminal justice agencies and user agencies, as defined in §41-9- 590, Code of Ala. 1975, including all sworn officers and operational personnel and all employees, contractors, and subcontractors permitted to access to the State Facial Comparison Repository, any data or information resulting from using this technology, and anyone permitted to request the use of facial comparison searches for criminal justice or public safety activity, including investigations, security, and operations that are subject to the rules, policies, and procedures established by the Alabama Justice Information Commission.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: New Rule: Filed January 31, 2023; effective March 17, 2023.

265-X-5-.04 Definitions.

(1) **Image.** A photograph or other visual representation that represents a likeness or identifying feature associated with a person.

(2) **Probe image.** An image submitted for facial comparison.

(3) **Registered probe image.** A probe image submitted for inclusion in a facial comparison repository.

(4) **Repository.** A database of images maintained for facial comparison.

(5) **State Facial Comparison Repository or State Repository.** The official State database operated and managed by ALEA that maintains photographs and images (i.e., scars, marks, and tattoos) and associated identifying demographics for all individuals arrested or subject to custody for criminal activity, provided through consent, and registered probe images.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: New Rule: Filed January 31, 2023; effective March 17, 2023.

265-X-5-.05 Data Limitations.

(1) Facial comparison technology relies on known data from databases that contain known and identifiable images. Individuals or agencies that access data and information within any databases used for facial comparison subject to this policy must adhere to all laws and policies that govern use, maintenance, storage, and dissemination of this data.

(2) Individuals who directly or indirectly access systems that contain information from a repository maintained by a criminal justice agency must log in with his/her unique credentials and provide a description of the purpose justifying his/her using the system.

(3) All criminal justice agencies that collect biometric identifiers shall submit images and associated identifying demographics for all individuals arrested or subject to custody for criminal activity to the State Repository.

(4) A criminal justice agency may maintain its own investigative image repository and may use that repository facial comparison according to this policy and State and federal laws and regulations.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: **New Rule:** Filed January 31, 2023; effective March 17, 2023.

265-X-5-.06 Acceptable Investigation Uses.

(1) **Field Identification** (Situational Awareness).

(a) An officer may use a mobile device facial recognition application, regardless of whether the application is connected to a repository, for situational awareness when:

1. an individual consents to have the officer take his/her photograph for the purpose of identification.

2. an officer has reasonable suspicion to believe an individual is concealing his/her identity and the individual committed a crime other than concealing his/her identity.

(i) An officer must first attempt to ascertain the individual's identity by means other than facial comparison, such as requesting identification.

(ii) Nothing in this section is meant to prevent an officer from taking an enforcement action based on the totality of the circumstances and not solely on a Field Identification search result.

3. an individual is unable to provide consent or identification due to physical incapacitation or defect, mental incapacitation or defect, or death, and the officer needs immediate identification to perform lawful duties.

(2) **Non-field Searches.**

(a) Officers may request a facial comparison search through a repository as an investigative tool to identify suspects, victims, or witnesses when:

1. an individual consents to have the officer take his/her photograph for identification purposes.

2. an officer has reasonable susp1c1on to believe an individual is concealing his/her identity and to believe the individual committed a crime other than concealing his/her identity.

(i) An officer must first attempt to ascertain the individual's identity by means other than facial recognition, such as requesting identification.

(ii) Nothing in this section is meant to prevent an officer from taking an enforcement action based on the totality of the circumstances and not solely on an Investigative Search result.

3. an officer is attempting to identify an unknown subject based solely on an image captured during a criminal act or an image obtained while investigating a criminal act.

4. an individual is unable to provide consent or identification due to physical incapacitation or defect, mental incapacitation or defect, or death, and the officer needs immediate identification to perform lawful duties.

(b) Only a trained Biometric Examiner may conduct an officer-requested repository comparison search. (See **265-X-5-.08** for training requirements)

1. Biometric Examiners determine whether probe images are suitable for facial comparison and may enhance such images to conduct a facial comparison search.

2. Examiners shall submit their analysis conclusions for peer review before returning the results to the requesting officer.

3. When enhancements are performed on an image, the original image must be preserved.

4. An officer may not take an enforcement action based solely on the conclusion from a Biometric Examiner.

(3) **Probable Cause Determination.** In making a determination of probable cause, a judge, magistrate, or grand jury may take into consideration a result provided through facial comparison technology. A comparison result may be used when taken together with all other factors for determination of probable cause to issue a search warrant or arrest warrant. A comparison result alone may not be used to find probable cause.

(4) **Arrest.** An officer may use facial comparison to confirm the identity of an individual when processing that individual for arrest. The mug shot the officer submits as the probe photo will be enrolled in the State Repository.

(5) **Other uses.** Criminal justice agencies or other user agencies may use facial comparison to record, verify, or approve access to secure facilities or movement of offenders or criminal defendants within secure facilities (e.g., military installations, detention facilities, courthouses, etc.).
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: **New Rule:** Filed January 31, 2023; effective March 17, 2023.

265-X-5-.07 Privacy Protections.

(1) Facial comparison is a uniquely powerful investigative and identification tool. Criminal justice agencies or other user agencies shall not employ this technology to conduct dragnet screening of individuals or mass surveillance of places, groups, or activities.

(2) Officers may not use facial comparison technology to conduct surveillance of persons or groups based solely on the issues of religion, politics, race, ethnicity, gender, sexual orientation, or any other constitutionally protected activity.

(3) Officers must use facial comparison technology according to all federal and State laws, and all departmental policies, including those addressing racial profiling.

(4) This section is not intended to prohibit law enforcement agencies from using facial comparison as an investigative tool to screen individuals or groups when doing so is based on actionable intelligence of an impending terrorist or criminal act.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: **New Rule:** Filed January 31, 2023; effective March 17, 2023.

265-X-5-.08 Submission And Retention Of Probe Images.

(1) A probe image submitted for inclusion in a repository must include the following data:

(a) Name of person submitting the image.

(b) Agency ORI of person submitting the image.

(c) Date and time of submission of the image.

(d) Local case number.

(e) Purpose for submission of the image.

(2) A registered probe image may be retained for future comparison:

(a) while the image is associated with an open criminal investigation (or within the statute of limitations) and/or

(b) when the image is of a vulnerable person (i.e., missing person, mental defective person, deceased person, etc.), until the person is identified or located.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: **New Rule:** Filed January 31, 2023; effective March 17, 2023.

265-X-5-.09 Training.

(1) All criminal justice agencies and other user agency employees, contractors, or subcontractors authorized to use facial comparison technology for criminal justice and public safety purposes shall be trained in the following areas prior to utilizing such technology:

(a) An officer who utilizes facial comparison must receive basic training and acknowledge understanding of these rules and, if applicable, the user's agency policy.

(b) The user agency shall provide basic training on an annual basis, which shall include the following:

1. proper and lawful use of face images for facial comparison purposes;

2. techniques to capture high-quality face images in the field for most accurate results;

3. appropriate use and sharing of information obtained from a facial comparison search; and

4. deletion of a field identification probe image used for comparison.

(c) A Biometric Examiner must receive training compliant with the Facial Identification Scientific Working Groups (see www.fiswg.org) requirements for morphological comparisons.

(2) Persons who have not received basic training shall not utilize facial comparison technology but may request that a trained officer or Biometric Examiner conduct a facial comparison search using such technology.

(3) An agency that utilizes facial-comparison technology or information obtained from any investigative image repository must maintain a record of each authorized user's training and acknowledgement of this policy.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: **New Rule:** Filed January 31, 2023; effective March 17, 2023.

265-X-5-.10 Audits And Penalties For Misuse.

(1) The ALEA CJIS Division may audit all facial comparison technology use and search requests subject to this policy.

(2) Penalties for misuse may include, but are not limited to, terminating a user's access to the State Repository, terminating User Agency access to the State Repository, sanctions up to and including a lifetime suspension of all access to criminal justice information systems, and prosecution under §13A-8-110 et seq., Code of Ala. 1975.
Author: Maury Mitchell
Statutory Authority: Code of Ala. 1975, §41-9-620.
History: **New Rule:** Filed January 31, 2023; effective March 17, 2023.