

HOUSE No. 1538

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to unregulated face recognition and emerging biometric surveillance technologies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Lenny Mirra</i>	<i>2nd Essex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>

<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Joseph F. Wagner</i>	<i>8th Hampden</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>

HOUSE No. 1538

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 1538) of David M. Rogers and others for legislation to provide for the regulation of face recognition and emerging biometric surveillance technologies. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to unregulated face recognition and emerging biometric surveillance technologies.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The general court hereby finds and declares that:

2 WHEREAS, the Massachusetts General Court finds that government use of face
3 recognition poses unique and significant civil rights and civil liberties threats to the residents of
4 the Commonwealth of Massachusetts.

5 WHEREAS, the Massachusetts General Court finds that face recognition technology has
6 a history of being far less accurate in identifying the faces of women, young people, and dark
7 skinned people, and that such inaccuracies lead to harmful “false positive” identifications.

8 WHEREAS, the Massachusetts General Court finds that many of the databases to which
9 face recognition technology is applied are plagued by racial disparities and other biases, which
10 generate copycat biases in face recognition data.

11 WHEREAS, the Massachusetts General Court finds that the broad application of face
12 recognition in public spaces is the functional equivalent of requiring every person to carry and
13 display a personal photo identification card at all times, which constitutes an unacceptable mass
14 violation of privacy.

15 WHEREAS, the Massachusetts General Court is likewise concerned about the
16 deployment of other biometric surveillance systems, including gait and voice recognition, which
17 raise similar concerns as face recognition.

18 WHEREAS, the Massachusetts General Court finds that the public use of biometric
19 surveillance systems can chill the exercise of constitutionally protected free speech and
20 association.

21 WHEREAS, the Massachusetts General Court finds that the benefits of using biometric
22 surveillance systems, which are few and speculative, are greatly outweighed by their harms,
23 which are substantial.

24 THEREFORE, be it enacted by the Senate and House of Representatives in General
25 Court assembled, and by the authority of the same, as follows:

26 SECTION 2. Chapter 4 of the General Laws is hereby amended by inserting at the end of
27 section 13, as appearing in the 2016 Official Edition, the following:-

28 Section 14.

29 (a) Definitions. As used in this section, the following words shall have the following
30 meanings:

31 “Face recognition”, an automated or semi-automated process that assists in identifying an
32 individual or capturing information about an individual based on the physical characteristics of
33 an individual’s face, or that logs characteristics of an individual’s face, head, or body to infer
34 emotion, associations, activities, or the location of an individual.

35 “Other remote biometric recognition”, an automated or semi-automated process that
36 assists in identifying an individual or capturing information about an individual based on the
37 characteristics of an individual’s gait, voice, or other immutable characteristic ascertained from a
38 distance, or that logs such characteristics to infer emotion, associations, activities, or the location
39 of an individual; provided, however, that other remote biometric recognition shall not include
40 recognition based on DNA, fingerprints, or palm prints.

41 “Biometric surveillance system,” any computer software that performs face recognition
42 or other remote biometric recognition.

43 “Commonwealth of Massachusetts”, any agency, executive office, department, board,
44 commission, bureau, division or authority of the commonwealth, or of any political subdivision
45 thereof, or of any authority established by the general court to serve a public purpose.

46 “Massachusetts government official”, any officer, employee, agent, contractor, or
47 subcontractor of any agency, executive office, department, board, commission, bureau, division
48 or authority of the commonwealth, or of any political subdivision thereof, or of any authority
49 established by the general court to serve a public purpose.

50 (b) Moratorium on government use of biometric surveillance.

51 Absent express statutory authorization, it shall be unlawful for the Commonwealth of
52 Massachusetts or any Massachusetts government official to acquire, possess, access, or use any
53 biometric surveillance system, or acquire, possess, access, or use information derived from a
54 biometric surveillance system operated by another entity.

55 Statutory authorization for government use of a biometric surveillance system shall
56 describe with particularity:

57 (i) the entities permitted to use the biometric surveillance system, the purposes for
58 such use, and prohibited uses;

59 (ii) standards for use and management of information derived from the biometric
60 surveillance system, including but not limited to data retention, sharing, access, and audit trails;

61 (iii) auditing requirements to ensure the accuracy of biometric surveillance system
62 technologies, standards for minimum accuracy rates, and accuracy rates by gender, skin color,
63 and age;

64 (iv) rigorous protections for due process, privacy, free speech and association, and
65 racial, gender, and religious equity; and

66 (v) mechanisms to ensure compliance.

67 (c) Until such time as the General Court enacts an authorizing statute in accordance with
68 subsection (b), the following provisions shall be in force:

69 (i) Admissibility. Except in a judicial proceeding alleging a violation of this section,
70 no information obtained in violation of this section shall be admissible by the government in any
71 criminal, civil, administrative or other proceeding.

72 (ii) Cause of Action. Any violation of this Act constitutes an injury and any person
73 may institute proceedings against the Commonwealth of Massachusetts for injunctive relief,
74 declaratory relief, or writ of mandamus in any court of competent jurisdiction to enforce this Act,
75 and shall be entitled to recover actual damages and additional damages of an amount equal to
76 \$100 for each violation, or \$1,000, whichever is greater. A court shall award costs and
77 reasonable attorneys' fees to a plaintiff who is the prevailing party in an action brought under this
78 section.

79 (iii) Training. Violations of this Act by any Massachusetts government official shall
80 result in consequences that may include retraining, suspension, or termination, subject to due
81 process requirements.