

**HOUSE . . . . . No. 1728**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Orlando Ramos and 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 to implement the recommendations of the special commission on facial recognition technology.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Orlando Ramos</i>	<i>9th Hampden</i>	<i>1/19/2023</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/19/2023</i>
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>2/2/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/2/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/2/2023</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/2/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/2/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/2/2023</i>
<i>Margaret R. Scarsdale</i>	<i>1st Middlesex</i>	<i>2/2/2023</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/2/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>2/2/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/2/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/2/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/2/2023</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>2/2/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>2/2/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/2/2023</i>

<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/13/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>2/13/2023</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/13/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/13/2023</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/13/2023</i>
<i>Tricia Farley-Bouvier</i>	<i>2nd Berkshire</i>	<i>2/13/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/13/2023</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>2/15/2023</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/15/2023</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/21/2023</i>

**HOUSE . . . . . No. 1728**

By Representatives Ramos of Springfield and Rogers of Cambridge, a petition (accompanied by bill, House, No. 1728) of Orlando Ramos, David M. Rogers and others for legislation to implement the recommendations of the special commission on facial recognition technology. The Judiciary.

**The Commonwealth of Massachusetts**

In the One Hundred and Ninety-Third General Court  
(2023-2024)

An Act to implement the recommendations of the special commission on facial recognition technology.

*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. Chapter 6 of the General Laws, as amended by chapter 253 of the acts of  
2 2020, is hereby amended by striking section 220 and inserting in place thereof the following  
3 section: -

4 Section 220. (a) As used in this section, the following words shall, unless the context  
5 clearly requires otherwise, have the following meanings:

6 “Biometric surveillance technology”, any computer software that performs facial  
7 recognition or other remote biometric recognition.

8 “Facial recognition”, an automated or semi-automated process that assists in identifying  
9 or verifying an individual or analyzing or capturing information about an individual based on the  
10 physical characteristics of an individual’s face, head or body, or that uses characteristics of an

11 individual’s face, head or body to derive information about the associations, activities or location  
12 of an individual; provided, however, that “facial recognition” shall not include the use of search  
13 terms to sort images in a database.

14 “Facial recognition search”, the use of facial recognition to analyze an image.

15 “Law enforcement agency”, as defined in section 1 of chapter 6E.

16 “Law enforcement officer” or “officer”, as defined in section 1 of chapter 6E.

17 “Other remote biometric recognition”, an automated or semi-automated process that  
18 assists in identifying or verifying an individual or analyzing or capturing information about an  
19 individual based on an individual’s gait, voice or other biometric characteristic or that uses such  
20 characteristics to derive information about the associations, activities or location of an  
21 individual; provided, however, that “other remote biometric recognition” shall not include the  
22 identification or verification of an individual using deoxyribonucleic acid, fingerprints, palm  
23 prints or other information derived from physical contact.

24 “Public agency”, any: (i) agency, executive office, department, board, commission,  
25 bureau, division or authority of the commonwealth; (ii) political subdivision thereof; or (iii)  
26 authority established by the general court to serve a public purpose.

27 “Public official”, any officer, employee, agent, contractor or subcontractor of any public  
28 agency.

29 (b) Absent express authorization in a general or special law to the contrary, it shall be  
30 unlawful for a law enforcement agency or officer to acquire, possess, access, use, assist with the  
31 use of or provide resources for the development or use of any biometric surveillance technology,

32 or to enter into a contract with or make a request to a third party, including any federal agency,  
33 for the purpose of acquiring, possessing, accessing or using information derived from a biometric  
34 surveillance technology.

35 Except in a judicial proceeding alleging a violation of this section, no information  
36 obtained in violation of this section shall be admissible in any criminal, civil, administrative or  
37 other proceeding.

38 (c) The registrar of motor vehicles may acquire, possess, or use facial recognition  
39 technology to verify an individual's identity when issuing licenses, permits or other documents  
40 pursuant to chapter 90; provided, however, that the registrar shall not allow any other entity to  
41 access or otherwise use its facial recognition technology except in accordance with subsection  
42 (d).

43 (d) The department of state police may perform a facial recognition search, or request the  
44 federal bureau of investigation to perform such a search, for the following purposes:

45 (1) to execute a warrant duly authorized by a judge based on probable cause that an  
46 unidentified or unconfirmed individual in an image has committed a felony;

47 (2) upon reasonable belief that an emergency involving immediate danger of death or  
48 serious physical injury to any individual or group of people requires the performance of a facial  
49 recognition search without delay;

50 (3) to identify a deceased person; or

51 (4)on behalf of another law enforcement agency or a federal agency, provided that such  
52 agency obtained a warrant pursuant to clause (1) or documented in writing the reason for a  
53 search requested under clauses (2) or (3).

54 One facial recognition operations group within the department shall be charged with  
55 receiving and evaluating law enforcement requests for facial recognition searches, performing  
56 facial recognition searches, reporting results, and recording relevant data. The department shall  
57 only use existing facial recognition technology used by the registrar of motor vehicles or federal  
58 bureau of investigations or facial recognition technology approved by the executive office of  
59 technology services and security, which may only be approved following a public hearing on the  
60 proposed software.

61 Any search performed or search request made to the federal bureau of investigation under  
62 this section shall be documented in writing.

63 (e) For any emergency facial recognition search performed or requested under subsection  
64 (d)(2), the law enforcement agency shall immediately document the factual basis for its belief  
65 that an emergency requires the performance of such a search without delay, and any emergency  
66 facial recognition search shall be narrowly tailored to address the emergency. Not later than 48  
67 hours after the law enforcement agency obtains access to the results of a facial recognition  
68 search, the agency shall file with the superior court in the relevant jurisdiction a signed, sworn  
69 statement made by a supervisory official of a rank designated by the head of the agency setting  
70 forth the grounds for the emergency search.

71 (f) All individuals charged with a crime who were identified using a facial recognition  
72 search under this subsection shall be provided notice that they were subject to such search,

73 pursuant to rule 14 of the rules of criminal procedure. Law enforcement agencies and district  
74 attorneys must make readily available to defendants and their attorneys in criminal prosecutions  
75 all records and information pertaining to any facial recognition searches performed or requested  
76 during the course of the investigation of the crime or offense that is the object of the criminal  
77 prosecution. This information shall include, but not be limited to, the results of the facial  
78 recognition search (including other possible matches identified by the search), as well as records  
79 regarding the particular program or algorithm used to conduct the facial recognition search, the  
80 accuracy rate of the facial recognition system, any audit testing of the facial recognition system,  
81 the identity of the individual or individuals who conducted the facial recognition search, training  
82 provided to law enforcement officials involved in conducting facial recognition searches, and the  
83 process by which the defendant was selected as the most likely match.

84 (g) The department shall document, as a public record, each facial recognition search  
85 request and each facial recognition search performed pursuant to this section and report this  
86 information quarterly to the executive office of public safety and security. Reported information  
87 shall include: the date and time of the search or request; the system used for the search; the  
88 specific criminal offense or offenses under investigation; the number of matched individuals  
89 returned, if any; the name and position of the requesting individual and employing law  
90 enforcement agency; a copy of the warrant or, if no warrant exists, a copy of the written  
91 emergency request; and data detailing the individual characteristics included in the facial  
92 recognition search or request, including the presumed race and gender of the person in the probe  
93 image(s), as assessed by the officer conducting the search.

94 (h) Annually, not later than March 31, the executive office of public safety and security  
95 shall publish on its website the following data for the previous calendar year: (i) the total number

96 of facial recognition searches performed by the department of state police, disaggregated by law  
97 enforcement agency or federal agency on whose behalf the search was performed; (ii) the total  
98 number of facial recognition searches performed by the federal bureau of investigation on behalf  
99 of law enforcement agencies, disaggregated by law enforcement agency on whose behalf the  
100 search was performed. For each category of data and each law enforcement agency, the  
101 published information shall include: the number of searches performed pursuant to a warrant, by  
102 alleged offense; the number of searches performed pursuant to an emergency; and the race and  
103 gender of the subjects of the searches, as assessed by the officer conducting the search.

104 (i) Each non-law enforcement public agency shall document, as a public record, each  
105 facial recognition search requested and each facial recognition search performed by its public  
106 officials and report this information quarterly to the executive office of public safety and  
107 security. Reported information shall include: the date and time of the search or request; the name  
108 and position of the requesting individual; the reason for the search or request; the name, position,  
109 and employer of the individual who conducted the search; the system used for the search; the  
110 number of matched individuals returned, if any; and data detailing the individual characteristics  
111 included in the facial recognition search or request, including the presumed race and gender of  
112 the person in the probe image(s), as assessed by the individual conducting the search.

113 (j) Annually, not later than March 31, the executive office of public safety and security  
114 shall publish on its website the following data for the previous calendar year: (i) the total number  
115 of facial recognition searches performed by or at the request of non-law enforcement public  
116 agencies, disaggregated by the public agency on whose behalf the search was performed. For  
117 each public agency, the published information shall include the race and gender of the subjects of  
118 the searches, as assessed by the individual conducting the search.



119 (k) Notwithstanding subsection (b), it shall be unlawful for a law enforcement agency of  
120 officer to use a biometric surveillance system to infer a person's emotions or affect. It shall also  
121 be unlawful for a law enforcement agency or officer to use a biometric surveillance system to  
122 analyze moving images or video data, whether in real time or as applied to archived information;  
123 provided, however, that facial recognition may be used on a still image taken from moving  
124 images or video data if authorized pursuant to subsection (d).

125 (l) Notwithstanding subsection (b), a law enforcement agency or officer may: (i) acquire  
126 and possess personal electronic devices, such as a cell phone or tablet, that utilize facial  
127 recognition technology for the sole purpose of user authentication; (ii) acquire, possess and use  
128 automated video or image redaction software; provided, that such software does not have the  
129 capability of performing facial recognition or other remote biometric recognition; and (iii)  
130 receive evidence related to the investigation of a crime derived from a biometric surveillance  
131 technology; provided, that the use of a biometric surveillance technology was not knowingly  
132 solicited by a law enforcement agency or officer in violation of subsection (b).