

HOUSE No. 5091

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 26, 2022.

The committee on The Judiciary to whom was referred the petition (accompanied by bill, House, No. 135) of David M. Rogers, Orlando Ramos and others for legislation to regulate face surveillance, reports recommending that the accompanying bill (House, No. 5091) ought to pass.

For the committee,

MICHAEL S. DAY.

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to regulate face surveillance.

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 appearing in the 2020 Official Edition, as
2 amended by chapter 253 of the acts of 2020, is hereby amended by striking section 220 and
3 inserting in place thereof the following 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
52 such 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).