

REGULATING FACIAL RECOGNITION: UNFINISHED BUSINESS

H.1728/S.927 | Reps. Dave Rogers & Orlando Ramos | Sen. Cindy Creem

BACKGROUND

As technology advances, it's important to ensure that the law keeps pace, informed by expert analysis and careful consideration. Since 2019, the Massachusetts Legislature has examined the best way to regulate government use of facial recognition technology, enacting initial standards in 2020 and establishing a bipartisan commission to recommend further reforms.

In 2022, the Special Commission to Evaluate Government Use of Facial Recognition Technology in the Commonwealth issued balanced recommendations — endorsed by the Attorney General's Office, MA State Police, NAACP and others — to enable police to use facial recognition technology to investigate serious crimes, while establishing safeguards to guarantee civil rights and due process.

At the end of last session, the Joint Committee on the Judiciary favorably reported legislation implementing the commission's recommendations. The Senate gave the bill initial approval and the House passed it overwhelmingly, but it didn't make it all the way to the governor's desk. It's time to finish the job.

IT'S TIME TO IMPLEMENT THE RECOMMENDATIONS OF THE SPECIAL COMMISSION

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

- Allow police to use facial recognition technology in serious criminal investigations, **with a warrant**, or in an emergency without a warrant.
- Prevent the use of this technology to track ordinary people as we go about our daily lives.
- **Centralize all law enforcement face recognition searches** within the state police, standardizing police use of the technology for identification and ensuring public safety.
- **Protect people from wrongful arrest** and safeguard the integrity of criminal convictions.
- Establish **due process** protections for people who are identified using facial recognition to ensure that no one in Massachusetts is deprived of their liberty based on fallible software alone.

The federal government's own technology standards agency found that leading facial recognition **algorithms exhibit racial and gender biases.**

Multiple people in the U.S. are known to have been **falsely arrested based on facial recognition scans**—most of them Black people.



67%

Sixty-seven percent of Massachusetts voters favor requiring law enforcement to obtain a search warrant before conducting facial recognition searches