

SENATE No. 1402

The Commonwealth of Massachusetts

PRESENTED BY:

Ryan C. Fattman

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 ensuring the safety of our communities and citizens.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/1/2019</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>	<i>2/1/2019</i>

SENATE No. 1402

By Mr. Fattman, a petition (accompanied by bill, Senate, No. 1402) of Ryan C. Fattman, David Allen Robertson and Michael J. Soter for legislation to ensure the safety of our communities and citizens. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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

An Act ensuring the safety of our communities and citizens.

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 30 of the General Laws, as appearing in the 2016 Official Edition,
2 is hereby amended by adding the following section:-

3 Section 66. (a) Under no circumstances shall the commonwealth, any political
4 subdivision thereof, or any employee or agent of the commonwealth or any of its political
5 subdivisions, establish any operation or program that requires, or has the effect of causing,
6 persons to register or check in based in whole or in part on their religion, national origin,
7 nationality, citizenship, race, ethnicity, gender, gender identity, sexual orientation or age, or
8 maintain any records system, government file or database for the purpose of registering persons
9 based in whole or in part on those categories.

10 (b) In the event that any federal government operation or program requires, or has the
11 effect of causing, persons to register or check in based in whole or in part on their religion,
12 national origin, nationality, citizenship, race, ethnicity, gender, gender identity, sexual

orientation or age, including but not limited to any such operation or program created pursuant to 8 United States Code, sections 1302(a) and 1303(a):

(i) no resources of the commonwealth or any political subdivision thereof shall be expended in the enforcement or implementation of such registry or check-in program;

(ii) no employee or agent of the commonwealth or any of its political subdivisions shall access, or seek to access, any information maintained pursuant to such registry or check-in program; and

(iii) no employee or agent of the commonwealth or any of its political subdivisions shall provide or disclose or offer to provide or disclose information to, or respond to a request for information from, such registry or check-in program.

(c) The prohibitions under subsections (a) and (b) shall not apply to any government operation or program that: (1) merely collects and compiles data about nationals of a foreign country entering or exiting the United States; or (2) issues visas, grants United States citizenship, confers an immigration benefit, or temporarily or permanently protects noncitizens from removal.

(d) Nothing in this section shall prohibit or restrain the commonwealth, any political subdivision thereof, or any employee or agent of the commonwealth or any of its political subdivisions, from sending to, or receiving from, any local, state, or federal agency, information regarding citizenship or immigration status, consistent with Section 1373 of Title 8 of the United States Code."

SECTION 2. Chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after section 20R the following section:-

Section 20S. (a) Any employee of the Commonwealth, or a public instrumentality or political subdivision thereof, who holds police powers or the powers of a sheriff or deputy sheriff, including but not limited to municipal police officers, court officers, and state troopers, and who has lawful custody of a person may, upon receipt of (1) a written request from United States Immigration and Customs Enforcement requesting detention of such person on the grounds that there is probable cause that such person is a removable alien and (2) an administrative warrant for arrest or warrant of removal/deportation, detain such person for a reasonable period of time after such person would otherwise be released from custody in order to transfer custody of such person to United States Immigration and Customs Enforcement, provided that a supervisory officer of such employee's agency has, in accordance with a policy promulgated in accordance with subsection (c), first determined that there are specific facts indicating that the person to be detained poses a threat to public safety; and further provided that such person be provided with a copy of such written request; and further provided that in no circumstances shall such detention exceed 48 hours unless an appropriate judicial officer shall have made a probable cause determination under the procedure set forth in subsection (d).

(b) As used in subsection (a), "specific facts indicating that the person to be detained poses a threat to public safety" shall mean that, at a minimum, any of the following facts are true with respect to such person:

1. The person has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security;

2. The person has been convicted of an offense of which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a);

3. The person has been convicted of an offense classified as a felony, other than a state or local offense for which an essential element was the person's immigration status;

4. The person has been convicted of an aggravated felony, as defined under 8 U.S.C. § 1101(a)(43); or

5. The person has been convicted of a crime of (i) domestic violence; (ii) sexual abuse or exploitation; (iii) trafficking in persons in violation of sections 50 or 51 of chapter 265 or like violations of the law of another state, the United States or a military, territorial or Indian tribal authority; (iv) burglary; (v) unlawful possession or use of a firearm; (vi) drug distribution or trafficking; (vii) second or subsequent operating or driving under the influence; or (viii) any other offense for which the person has been sentenced to time in custody of 180 days or more.

(c) Each agency of the Commonwealth or any public instrumentality or political subdivision of the Commonwealth that chooses to allow its employees to exercise the authority granted by subsection (a) shall promulgate a written policy designating which supervisory officers may make the determination required by subsection (a) before a person is detained and the criteria such supervisory officer shall use in making such determination.

(d) A determination of probable cause for detention shall be made by an appropriate judicial officer and promptly reduced to writing. The appropriate judicial officer shall consider any information presented by the detaining agency, whether or not known at the time of initial detention. The detaining agency shall present the information under oath or affirmation or under the pains and penalties of perjury, and may present the information orally, in person or by any

other means, or in writing. If presented in writing, the information may be transmitted to the appropriate judicial officer by facsimile transmission or by electronic mail or by such other electronic means as may be found acceptable by the court. The determination of probable cause for detention shall be an ex parte proceeding. The person detained shall have no right to appear, either in person or by counsel. If the judicial officer determines that there is not probable cause to believe the person detained is a removable alien, then the judicial officer shall order that the person be released forthwith. Such a determination and order shall be filed in the District Court having jurisdiction over the location of the detention, together with all written information submitted by the detaining agency. Such documents shall be filed separately from the records of criminal cases, and shall be open for inspection by the public. If a determination under this subsection is necessary, the detaining agency shall present the information necessary to obtain such determination to the appropriate judicial officer as soon as reasonably possible after the detention begins, but no later than 48 hours after the detention begins.

(e) This section shall not be construed to give rise to a private right of action and shall not be construed so as to make unlawful any arrest in this commonwealth which would otherwise be lawful.