

HOUSE No. 119

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

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 establishing a commission on automated decision-making by government in the commonwealth.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------------|--------------------------------|------------------|
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> | <i>2/4/2021</i> |
| <i>Lindsay N. Sabadosa</i> | <i>1st Hampshire</i> | <i>2/23/2021</i> |
| <i>Carlos González</i> | <i>10th Hampden</i> | <i>2/26/2021</i> |
| <i>Vanna Howard</i> | <i>17th Middlesex</i> | <i>4/6/2021</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>4/26/2021</i> |

HOUSE No. 119

By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 119) of Sean Garballey and others for legislation to establish a commission (including members of the General Court) relative to state agency automated decision-making, artificial intelligence, transparency, fairness, and individual rights. Advanced Information Technology, the Internet and Cybersecurity.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2701 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act establishing a commission on automated decision-making by government in the commonwealth.

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 7D of the General Laws, as amended by chapter 64 of the acts of
2 2017, is hereby further amended by inserting after section 10 the following new section:-

3 Section 11. (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Algorithm”, a specific procedure, set of rules, or order of operations designed to solve a
6 problem or make a calculation, classification, or recommendation.

7 “Artificial intelligence”, computerized methods and tools, including but not limited to
8 machine learning and natural language processing, that act in a way that resembles human
9 cognitive abilities when it comes to solving problems or performing certain tasks.

10 “Automated decision system”, any computer program, method, statistical model, or
11 process that aims to aid or replace human decision-making using algorithms or artificial
12 intelligence. These systems can include analyzing complex datasets about human populations
13 and government services or other activities to generate scores, predictions, classifications, or
14 recommendations used by agencies to make decisions that impact human welfare.

15 “Commonwealth of Massachusetts or “Massachusetts office”, any agency, constitutional
16 office, department, board, commission, bureau, division or authority of the commonwealth, or of
17 any political subdivision thereof, or of any authority established by the general court to serve a
18 public purpose.

19 “Source code”, the structure of a computer program that can be read and understood by
20 people.

21 “Training data”, the data used to inform the development of an automated decision
22 system and the decisions or recommendations it generates.

23 (b) There shall be a commission within the executive office of technology services and
24 security for the purpose of studying and making recommendations relative to the use by the
25 commonwealth of automated decision systems that may affect human welfare, including but not
26 limited to the legal rights and privileges of individuals. In carrying out its work, the commission
27 shall examine the following on an ongoing basis:

28 (i) a complete and specific survey of all uses of automated decision systems by the
29 commonwealth of Massachusetts and the purposes for which such systems are used;

30 (ii) the principles, policies, and guidelines adopted by specific Massachusetts offices to
31 inform the procurement, evaluation, and use of automated decision systems, the procedures by
32 which such principles, policies, and guidelines are adopted, and any gaps in such principles,
33 policies, and guidelines;

34 (iii) the training specific Massachusetts offices provide to individuals using automated
35 decision systems, the procedures for enforcing the principles, policies, and guidelines regarding
36 their use, and any gaps in training or enforcement;

37 (iv) the manner by which Massachusetts offices validate and test the automated decision
38 systems they use, and the manner by which they evaluate those systems on an ongoing basis,
39 specifying the training data, input data, systems analysis, studies, vendor or community
40 engagement, third-parties, or other methods used in such validation, testing, and evaluation;

41 (v) matters related to the transparency, explicability, auditability, and accountability of
42 automated decision systems, including information about their structure; the processes guiding
43 their procurement, implementation and review; whether they can be audited externally and
44 independently; and the people who operate such systems and the training they receive;

45 (vi) the manner and extent to which Massachusetts offices make the automated decision
46 systems they use available to external review, and any existing policies, laws, procedures, or
47 guidelines that may limit external access to data or technical information that is necessary for
48 audits, evaluation, or validation of such systems;

49 (vii) the due process rights of individuals directly affected by automated decision
50 systems, and the public disclosure and transparency procedures necessary to ensure such
51 individuals are aware of the use of the systems and understand their related due process rights;

52 (viii) uses of automated decision systems that directly or indirectly result in disparate
53 outcomes for individuals or communities based on age, race, creed, color, religion, national
54 origin, gender, disability, sexual orientation, marital status, veteran status, receipt of public
55 assistance, economic status, location of residence, or citizenship status;

56 (ix) technical, legal, or policy controls to improve the just and equitable use of automated
57 decision systems and mitigate any disparate impacts deriving from their use, including best
58 practices and policies developed through research and academia or in other states and
59 jurisdictions;

60 (x) matters related to data sources, data sharing agreements, data security provisions,
61 compliance with data protection laws and regulations, and all other issues related to how data is
62 protected, used, and shared by agencies using automated decision systems;

63 (xi) matters related to automated decision systems and intellectual property, such as the
64 existence of non-disclosure agreements, trade secrets claims, and other proprietary interests, and
65 the impacts of intellectual property considerations on transparency, explicability, auditability,
66 accountability, and due process; and

67 (xii) any other opportunities and risks associated with the use of automated decision
68 systems by Massachusetts offices.

69 (c) The commission shall consist of the secretary of technology services and security or
70 the secretary's designee, who shall serve as chair; the house and senate chairs of the joint
71 committee on state administration and regulatory oversight; the chief justice of the supreme
72 judicial court or a designee; the attorney general or a designee; the state auditor or a designee;
73 the inspector general or a designee; the secretaries of the Executive Office of Public Safety and
74 Security, Department of Children and Families, and Executive Office of Health and Human
75 Services, or their designees; the chief counsel of the committee for public counsel services or a
76 designee; the chief legal counsel of the Massachusetts Bar Association or a designee; the
77 executive director of the American Civil Liberties Union of Massachusetts or a designee; 4
78 representatives from academic institutions in the Commonwealth who shall be experts in (i)
79 artificial intelligence and machine learning, (ii) data science and information policy, (iii) social
80 implications of artificial intelligence and technology; or (iv) technology and the law; the
81 executive director of the Massachusetts Law Reform Institute or a designee; 1 representative
82 from a the National Association of Social Workers; and 1 representative from the Massachusetts
83 High Technology Council.

84 (d) Members of the commission shall be appointed within 45 days of the effective date of
85 this act. The commission shall meet at the call of the chair based on the commission's workload
86 but not fewer than 6 times per calendar year.

87 (e) The commission shall submit an annual report by December 31 to the governor, the
88 clerks of the house of representatives and the senate, and the joint committee on state
89 administration and regulatory oversight. The report will be a public record and it shall include,
90 but not be limited to, a description of the commission's activities and any community
91 engagement undertaken by the commission, the commission's findings and any recommendations

92 for regulatory or legislative action, including recommendations about areas where Massachusetts
93 offices ought not to use automated decision systems, with a timeline for implementation, cost
94 estimates and finance mechanisms. The report shall also detail the extent of algorithmic decision-
95 making used by the commonwealth of Massachusetts and the progress made toward
96 implementing any previous recommendations issued by the commission.