A Bill Proposal to the California State Legislature
Regulating Public and Commercial Usage of Automatic License Plate Recognition
Regular Session 2017-2018

This bill proposal is presented by the California Civil Liberties Advocacy (CCLA), a statewide 501(c)(4) nonprofit lobby with the goal of protecting individual rights in California. The CCLA paints the ideas of civil liberties and civil rights with a very broad brush, encompassing many aspects typically glossed over by more contemporary organizations, such as the right to physical and mental health care, education, along with criminal justice reform, government surveillance, and due process. Furthermore, the CCLA does not peddle a national agenda and only takes a stand on national issues as they relate to California's specific needs and policies. For the 2017-2018 session, the CCLA is actively promoting legislation to enhance protections from suspicionless, mass surveillance. The CCLA rejects the All-or-Nothing Fallacy that the successful passage of a bill enhancing civil liberties constitutes a loss for law enforcement, or that the passage of a bill enhancing law enforcement constitutes a loss for civil liberties. Thus, the model language that follows has been drafted in attempt to balance the needs of the people with the tools necessary for law enforcement to achieve their goals.

The model legislation below is drafted to address the use of automatic license plate reader (ALPR) technology on two fronts: (1) the public sphere, and (2) the private sphere.

Section 1 establishes regulations prohibiting public agencies from using ALPR information to profile and track individuals or to "predict" prospective criminal conduct. Section 1 also contains a requirement that, apart from certain exceptions, ALPR information not be stored longer than 60 days — which is already required for the CHP under California Vehicle Code, section 2413. Also contained in Section 1 are exceptions for law enforcement, including where an individual is the subject of an ongoing investigation, when officers have a reasonable suspicion that someone has or is about to commit a crime, or when officers reasonably believe there is an emergency situation that may result in serious injury or death. Section 1 wraps up with an exception to the 60-day that allows law enforcement agencies to retain ALPR information for training purposes.

Section 2 increases the amount of damages by three times that an individual may collect if harmed by a misuse of ALPR information.

The CCLA feels that the time is thoroughly ripe for a statewide public policy addressing proper and improper uses of automatic license plate reader (ALPR) technology. It is true that such technology is helpful in detecting crime, especially in the sphere of recovering stolen vehicles. Lt. Commander of Detectives Tom Joyce (Ret.) of Vigilant Solutions, Inc. states that "[t]he development of new technologies is moving at what feels like the speed of light. New software, devices, and applications are changing the way data and information are acquired, processed, and used." (Joyce, Technology Talk: Case Closed with Digital Investigative Solutions, The Police Chief (Oct. 2016).) If not properly accounted for, this technology also has the riotous potential for sporadic abuses, as have already been documented in 325 incidents across the nation. (Gurman & Tucker, Across US, Police Officers Abuse Confidential Databases, 2016 Associated Press, Sept. 28, 2016 at (2016) [hereinafter AP].) Between 2013 and 2015, public agencies in California reported more than 75 suspensions, resignations, and terminations due to misuse of ALPR information and it is suspected that many more violations often go unreported. (AP.) In documented cases, law enforcement personnel have misused ALPR data to obtain information to women they found attractive, run checks on business associates, neighbors, and even to target journalists as political targets. (AP.) In the most egregious cases, officers have used ALPR information to stalk or harass individuals, or have tampered with or sold records they obtained. (AP.) And all of this is to say nothing of the efficiency of ALPR technology. A Northern California law enforcement agency captured 3.2 million license plate numbers in under three months, yet only 720 cases were linked to criminal activity, or a mere .02% of the sample. (Jackman, Are the Police Tracking You? Push to Restrict License Plate Readers Heads to Va. Supreme Court, Wash. Post (Dec. 23, 2016).) All of this really impels the

"Indifference to personal liberty is but the precursor of the state's hostility to it."
— Justice Kennedy, U.S. Supreme Court

following questions: Do public agencies need to store all of this data indefinitely? While it may be ruled as Constitutional, is it ethical to maintain such dragnet-like search capabilities, allowing public agencies to track millions of people's daily movements without requiring a reasonable suspicion? Naked-eye may be permissible, but ALPR technology allows surveillance on such a massive scale that literally everyone who drives a car in California will have their locations and movements stored for an indefinitely long period of time without being suspected of ever having engaged in criminal activity. This affords too great a potential for abuse, whether perpetrated without government approval or not.

Section 3 addresses commercial use of ALPR information by companies who wish to use ALPR technology for customer profiles and marketing purposes, requiring companies to send a notice to the consumer within 30 days of obtaining the information, to detail what kind of data is being collected and for how long, and to provide a mechanism for the consumer to opt out of the program.

The CCLA feels it is important that commercial uses—particularly in regards to retail and marketing—that the California legislature begin instituting such minimum requirements because consumers should have a right to know who is tracking them and how they are being tracked. The retail behemoth Amazon has recently announced plans to install ALPR cameras their brick-and-mortar shops. (Waddell, Amazon Wants to Scan Your License Plate, The Atlantic (Oct. 12, 2016) [hereinafter Atlantic].) It is obvious that when properly utilized, ALPR information can provide a goldmine of marketing data to retailers — "it [Amazon] could link your license plate number to your Amazon account. Then, if it bought data from another company that shows where else your car has traveled, it could potentially use that information to develop an even more complete picture of your habits, preferences, and personality." (Atlantic.) "In 2014, a mall in Syracuse, New York, began using a license-plate reader mounted on a security vehicle to figure out where shoppers were coming from, in order to better target advertising." (Atlantic.) Shouldn't consumers have the right to know who is tracking them, what kind of data is being stored, and how long that data is being retained? What if consumers do not want to be tracked? Is it fair to require companies to provide a mechanism by which clients may "opt out" of the ALPR tracking program?

The simple fact of the matter is that it typically takes years or decades for public policy to catch up with societal changes. But the vast changes in technology that we are now experiencing are causing broad and sweeping changes that are outpacing the evolution of public policy. This is similar to the challenges following the invention of the railroad in the 19th century. At a minimum, the regulations set forth in the following model language must be implemented before procedures and practices become so ingrained in corporate and government bureaucracy that it becomes too costly or difficult to amend at a later date.

The model legislation is provided herein:

SECTION 1. (Public Agencies – Prohibited Uses) Section 1798.90.50 is added to the Civil Code, to read:

1798.90.50

(a) Except as provided in subparagraph (c), no public agency shall use or store ALPR information for the following purposes:

(1) To profile or track the movements of individuals.

(2) To identify an individual's patterns of behavior, conduct, movement, or association.

(3) To predict an individual's prospective criminal conduct.

(b) Except as provided in subparagraph (c), ALPR information must be destroyed no later than sixty (60) days from the date the ALPR information was obtained.

(c) This section does not apply under the following circumstances:

(1) When an individual is the subject of an active, ongoing criminal investigation.

(2) When a law enforcement officer has a reasonable suspicion to believe that an individual is in the process of committing, is about to commit, or has committed a criminal offense.

(3) When a public agency or a law enforcement officer believes, in good faith, that an emergency involving danger of death or serious physical injury to any person may occur.

(4) Images, footage, or data retained for training purposes may be retained for a period longer than sixty (60) days but shall be used only for the education and instruction of a law enforcement agency's employees in matters related to the mission of the law enforcement agency and for no other purpose.

SECTION 2. Section 1798.90.54 is amended to read:

1798.90.54

(a) In addition to any other sanctions, penalties, or remedies provided by law, an individual who has been harmed by a violation of this title, including, but not limited to, unauthorized access or use of ALPR information or a breach of security of an ALPR system, may bring a civil action in any court of competent jurisdiction against a person who knowingly caused the harm.

(b) The court may award a combination of any one or more of the following:

(1) ~~Actual damages,~~ *Treble the amount of actual damages,* but not less than liquidated damages in the amount of two thousand five hundred ~~dollars ($2,500).~~ *dollars ($2,500) for each violation.*

(2) Punitive damages upon proof of willful or reckless disregard of the law.

(3) Reasonable attorney's fees and other litigation costs reasonably incurred.

(4) Other preliminary and equitable relief as the court determines to be appropriate.

SECTION 3. (Commercial Use of License Plate Information) Section 1798.91.2 is added to the Civil Code to read:

1798.91.2

(a) For the purpose of this section, the following definitions apply:

(1) "Person" means any natural person, sole proprietor, corporation, partnership, limited liability company, firm, or association.

(2) "Individual" means a natural person.

(3) "Commercial purpose" means any purpose which has financial gain as a major objective.

(4) "Automated license plate recognition information," or "ALPR information" means information or data collected through the use of an ALPR system as defined in subdivision (d) of section 1798.90.5.

(5) "Consumer behavior" means the study of individuals and the processes they use to select, secure, use, and/or dispose of products, services, experiences, and/or ideas to satisfy the needs and impacts that such processes have on the consumer and society.

(6) "Opt out" means an individual's choice not to participate in an activity or to cease from involvement in an activity.

(b) A person that conducts business in California, and that uses automated license plate reader information for any commercial purpose, or for the purpose of profiling or tracking the movements of individuals; or to identify consumer behavior, shall do all of the following:

(1) Adopt a policy allowing individuals to opt out of that entity's ALPR information storing program.

(2) Destroy all ALPR information of an individual within thirty (30) days of receiving written notice of that individual's decision to opt out.

(3) Within 30 days of the date an individual's ALPR information was obtained, send a notification to the individual, either in writing or by electronic mail, containing the following information:

(A) The type of information being stored and the first date the information was obtained.

(B) How ALPR information is being used.

(C) How long the information will be stored.

(D) A copy of the opt out policy and instructions on how to opt out of the ALPR information program.

(c) In addition to any other sanctions, penalties, or remedies provided by law, an individual who has been harmed by the failure a person to comply with the terms of this section may bring a civil action in any court of competent jurisdiction against that person.

(d) A court may award a combination of any one or more of the following:

(1) Treble the amount of actual damages, but not less than liquidated damages in the amount of two thousand five hundred dollars ($2,500) for each violation.

(2) Punitive damages upon proof of willful or reckless disregard of the law.

(3) Reasonable attorney's fees and other litigation costs reasonably incurred.

(4) Other preliminary and equitable relief as the court determines to be appropriate.