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August 29, 2023

Joint Committee on Transportation  
Sen. Brendan P. Crighton & Rep. William Straus, Chairs

**SUPPORT FOR H.3404**  
**Driver Privacy Protections**

Dear Senator Crighton, Representative Straus, and members of the committee:

The ACLU of Massachusetts strongly supports H.3404, *An Act Establishing Driver Privacy Protections*, sponsored by Rep. Sarah Peake. This legislation would bring about the overdue regulation of the use of license plate readers (“LPR”) in the Commonwealth and protect the privacy of data derived from electronic tolling and vehicle GPS systems.

We likewise applaud the longstanding efforts of Chair Straus to establish privacy-protective guardrails for the use of license plate readers and electronic tolling, including with H.3431 and H.3434 in the current legislative session.<sup>1</sup>

For over a decade now, police across Massachusetts have engaged in dragnet surveillance of drivers and collected, stored, and shared extremely sensitive information showing where millions of them have been traveling—all without reasonable suspicion of criminal activity, judicial oversight, or state law protecting privacy. It is time for the legislature to impose basic privacy protections and checks and balances to protect against political surveillance, dragnet monitoring, and other civil rights harms that accrue from using LPR.<sup>2</sup>

*LPR Use for Law Enforcement Purposes*

Massachusetts residents don’t know how and how effectively LPR technology is used, and law enforcement consistently refuses to provide information about their LPR programs. This technology allows the government to identify vehicles of interest but simultaneously captures information about every driver on the road.<sup>3</sup> The cameras capture thousands of records per minute.<sup>4</sup> According to a national survey, 173 law enforcement agencies collected 2.5 billion license plate reader records

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<sup>1</sup> This testimony focuses specifically on H.3404, filed for the first time this session, because it addresses these issues in a single, tidy legislative vehicle.

<sup>2</sup> LPR systems are cameras—some mounted on police cars, and some affixed to permanent locations like bridges and tunnels—which “read” license plates by converting the plate numbers into machine-readable text and creating and storing a metadata file including the license plate number, GPS location of the car, and time and date.

<sup>3</sup> High Tech License Plate Readers Can Quickly Identify Stolen Cars, CBS Los Angeles, April 30, 2013. <http://losangeles.cbslocal.com/2013/04/30/high-tech-license-plate-reader-can-quickly-identify-stolen-vehicles/>

<sup>4</sup> License-plate reading devices fuel privacy debate, Boston Globe, April 9, 2013. <http://www.bostonglobe.com/metro/2013/04/08/big-brother-better-police-work-new-technology-automatically-runs-license-plates-everyone/1qoAoFfgp31UnXZT2CsFSK/story.html>

between 2016 and 2017.<sup>5</sup> **Regulation is needed to keep the use of LPR from functioning as dragnet surveillance of the entire driving population.**

Dragnet surveillance of drivers raises privacy concerns and conflicts with the principles behind the Fourth Amendment and Article 14 of the Massachusetts Declaration of Rights. According to the Supreme Judicial Court in a 2020 case, “[w]ith enough cameras in enough locations, the historic location data from an [LPR] system in Massachusetts would invade a reasonable expectation of privacy and would constitute a search for constitutional purposes.”<sup>6</sup> Whatever threshold the SJC might articulate in the future, the threats of unregulated LPR use in the Commonwealth are already substantial and worrisome.

#### *LPR Use for Transportation Management Purposes*

LPR technology is also behind toll collection technologies.<sup>7</sup> Every day, the department of transportation uses LPR as part of their Pay By Plate system that tracks when and where hundreds of thousands of motorists drive on roads and bridges. They collect detailed information about each vehicle traveling on toll roads, whether in the Commonwealth or out-of-state, including where each vehicle is located and when. While this has undeniable benefits for transportation management, the department’s regulations currently lack any meaningful privacy provision and only establish that records should be stored for up to seven years.<sup>8</sup>

#### **A Balance Between the Government’s Interests and Privacy**

*An Act Establishing Driver Privacy Protections* permits the responsible use of LPR technology for law enforcement and transportation purposes and strikes an appropriate balance between government interests and privacy rights.

Crucially, the bill prohibits the creation of a forever-growing database tracking the movements of all residents. The government shouldn’t keep detailed records of our every move absent a good reason to believe we are involved in some kind of criminal activity. This is a fundamental tenet of American justice and law—and necessary for a free society. Our statutes must reflect our values in the context of this technology.

*First*, the legislation allows law enforcement to deploy LPR to identify vehicles on hot lists and use LPR information in criminal investigations while imposing reasonable limitations on police retention and sharing of LPR data, including:

- limiting retention of LPR data to two weeks unless police connect the data to a specific criminal investigation;
- Prohibiting the use of LPR to monitor protected First Amendment activity;<sup>9</sup>
- prohibiting the sale or sharing of LPR data by government actors unless required by a court;
- requiring a warrant before law enforcement may access LPR data collected by another entity;
- and
- prohibiting the creation of a statewide database to track every motorist’s movement.

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<sup>5</sup> Data Driven: What We Learned, EFF, updated April 2021, <https://www.eff.org/pages/what-we-learned>

<sup>6</sup> *Commonwealth v. McCarthy*, 484 Mass. 493 (2020)

<sup>7</sup> See 700 Code Mass. Regs. § 7.00, Use of the Massachusetts Turnpike and the Metropolitan Highway System.

<sup>8</sup> Toll collection technologies allow the Massachusetts Department of Transportation (“MassDOT”) to assess, pursue, and collect tolls in an easy and streamlined way

<sup>9</sup> LPR should never be used to track who attends a political event, goes to a house of worship, participates in a convention, or shows up to hear a speaker at a public event.

*Second*, the bill establishes rules for the use of LPR technology in toll collection that focus on its transit management purpose. The main provisions would:

- allow toll collection technology, and tolling data, to be used only to identify the location of any vehicle for tolling purposes under section 13 of chapter 6C of the general laws.
- require a warrant before law enforcement may access tolling data.
- limit retention of tolling data to 120 days unless longer retention is required by a court.

*Finally*, the bill establishes an exclusionary rule and a private right of action that allows individuals to seek injunctive relief and damages if there is a willful violation.

### **Balanced regulation**

Surveillance technologies have been ubiquitous for years, but woefully underregulated. We need laws on the books that enable effective public safety practices *and* protect our privacy and liberties. This bill ensures the government can use LPR to great benefit while prohibiting dragnet surveillance and spying that infringes on fundamental rights.

We strongly urge you to advance legislation to protect drivers' privacy and to encourage its swift passage. We would welcome the opportunity to work with the Committee to address this important issue.