

HOUSE No. 4098

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 22, 2014.

The committee on Transportation to whom was referred the petition (accompanied by bill, House, No. 3068) of Jonathan Hecht and others for legislation to regulate the use of automatic license plate reader systems, reports recommending that the accompanying bill (House, No. 4098) ought to pass.

For the committee,

WILLIAM M. STRAUS.

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The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act to regulate the use of automatic license plate reader systems.

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. WHEREAS, the motor vehicle, like the cellular telephone at issue in
2 Commonwealth v. Augustine, SJC-11482 (decided Feb. 18, 2014), is “an indispensable part of
3 modern [American] life;” and

4 WHEREAS, under chapter 90 of the General Laws, residents are required to register their
5 vehicles with the commonwealth and to affix license plates to the exterior of those vehicles; and

6 WHEREAS, advances in technology have resulted in the development and production of
7 so-called automatic license plate reader systems, or ALPR systems, consisting of high-speed
8 cameras that act in combination with certain computer algorithms to capture images of license
9 plates and reduce those images to searchable text; and

10 WHEREAS, such systems are further capable of stamping those images with searchable
11 time, date and GPS coordinates; and

12 WHEREAS, the data being generated by the use of ALPR systems has grown
13 exponentially in recent years, with law enforcement agencies and private data companies having
14 compiled hundreds of millions of license plate scans each month concerning a majority of the
15 registered vehicles in the nation; and

16 WHEREAS, this trend is expected to continue as the prices of ALPR and data storage
17 systems continue to fall; and

18 WHEREAS, law enforcement agencies and private users have utilized ALPR systems to
19 surveil specific groups or events, such as political rallies or low-income populations; and

20 WHEREAS, more generally, such data in the aggregate enables state and local
21 governments and other end-users to catalogue the travels of the commonwealth's citizens over
22 extended periods of time; and

23 WHEREAS, the existence of and awareness of such surveillance techniques "chill[]
24 associational and expressive freedoms," Commonwealth v. Augustine, quoting U.S. v. Jones,
25 132 S. Ct. 945 (2012); and

26 WHEREAS, such monitoring infringes upon "the existence of a reasonable societal
27 expectation of privacy in the sum of one's public movements," U.S. v. Jones, 132 S. Ct. 945
28 (2012); and

29 WHEREAS, users of ALPR systems necessarily avail themselves of state laws that
30 compel motor vehicle owners, under threat of criminal penalty, to compromise those
31 expectations of privacy by publicly displaying registration numbers; and

32 WHEREAS, the commonwealth now seeks to limit the extent to which motor vehicle
33 owners so compromise their privacy when they comply with such laws; and

34 NOW THEREFOR, the General Laws, as amended by section 9 of chapter 79 of the acts
35 of 2014, are hereby further amended by inserting after chapter 90I the following chapter:-

36 Chapter 90J Automatic License Plate Reader Systems

37 Section 1. Definitions

38 As used throughout this chapter, the following words shall have the following meanings:

39 "ALPR data" means any data captured, created or originated by an ALPR system,
40 including, without limitation, GPS coordinates, dates, times, images and license plate numbers,
41 existing in an any form or medium, whether electronic, paper or otherwise, and any copies
42 thereof;

43 "Automated license plate reader system" or "ALPR system" means a system of one or
44 more mobile or fixed high-speed cameras combined with computer algorithms to convert images
45 of license plates into computer-readable data;

46 "Department" means department of transportation;

47 "Executive office" means executive office of public safety and security;

48 "Governmental entity" means any official, officer, agency, office, instrumentality,
49 department, division, committee, board, advisory board, commission or other body or authority
50 of the commonwealth, or of any county or municipality, or any employee thereof, or any agent or

51 other person acting on behalf thereof while acting within the scope of such agency or
52 representation;

53 “Law enforcement agency” means any state or municipal law enforcement agency;

54 “Law enforcement officer” means a state or municipal police officer or traffic or parking
55 enforcement officer;

56 “Legitimate law enforcement purpose” means: detection or investigation of a crime,
57 traffic violation or parking violation; operation of AMBER alerts; or searches for missing or
58 endangered persons;

59 “Non-governmental entity” means any person other than a governmental entity;

60 “Person” means any individual, partnership, corporation, association, society, entity or
61 governmental entity;

62 “Preservation request” means written notice delivered by a federal, state or municipal law
63 enforcement agency or a defendant in a criminal case to the executive office or a non-
64 governmental entity requesting that certain ALPR data be preserved and retained for a specified
65 period of time not to exceed 30 days from the date such request is received; provided, that such
66 preservation request shall be accompanied by an affidavit stating: (i) the parameters identifying
67 which ALPR data must be preserved, including, without limitation, the license plate numbers, if
68 any, and the dates, times, and locations; and (ii) that such specified period of time is necessary to
69 obtain a search warrant or production order compelling the production of such ALPR data;
70 provided further, that the agency or defendant may serve subsequent preservation requests
71 pending resolution of any motion filed in connection with such search warrant or production
72 order, or any appeal related thereto;

73 “Production order” means an order or summons obtained by a defendant in a criminal
74 case charged with a felony requiring a non-governmental entity or the executive office to
75 produce ALPR data; provided, that such order or summons shall be issued in compliance with
76 Massachusetts Rule of Criminal Procedure 17(a)(2); provided further, that any ALPR data
77 produced in response to such order or summons shall be deemed privileged for the purposes of
78 complying therewith;

79 “Search warrant” means: (i) a federal search warrant issued upon a determination of
80 probable cause by a court or justice authorized to issue warrants in criminal cases that meets the
81 requirements of the Federal Rules of Criminal Procedure; or (ii) a state search warrant issued
82 pursuant to the requirements of sections 2 through 3A, inclusive, of chapter 276 by a court or
83 justice authorized to issue warrants in criminal cases; provided, that such federal or state search
84 warrant shall be issued only upon a determination that probable cause exists to believe that the
85 ALPR data described in such warrant is relevant and material to the investigation of a felony.

86 Section 2. State or municipal government; permitted uses

87 Notwithstanding any general or special law or regulation to the contrary, it shall be
88 unlawful for any governmental entity to use an ALPR system; provided, however, that an ALPR
89 system may be used by:

90 (a) law enforcement agencies for legitimate law enforcement purposes; and

91 (b) the department for the purpose of assessing and collecting tolls.

92 Section 3. General obligations

93 (a) Any database or other information against which license plate numbers are cross-
94 referenced by an ALPR system operated by any person shall be updated every 24 hours, or at
95 such other intervals as updated information become available if greater than 24 hours.

96 (b) Prior to taking any action in response to an alert or prompt from an ALPR system
97 operated by any person, the individual so alerted shall confirm that:

98 (1) the license plate number of the targeted vehicle matches the license plate number
99 that prompted the alert; and

100 (2) the information or circumstances giving rise to the alert have not changed
101 materially since the time such information was last updated pursuant to subsection (a).

102 (c) No person shall operate an ALPR system while traveling on:

103 (1) private ways or property without the prior written consent of the owner of record
104 of such way or property; or

105 (2) any property owned or leased by the commonwealth, or any agency, authority or
106 political subdivision thereof; provided, however, that a law enforcement agency may operate an
107 ALPR system on such property for a legitimate law enforcement purpose.

108 Section 4. Certification

109 No employee, agent or any individual acting on behalf of any governmental entity shall
110 access, search, review or disclose ALPR data or operate an ALPR system unless and until such
111 employee, agent or individual has been certified by the executive office as having reviewed and
112 understood the laws and regulations applicable to ALPR system operation and data storage.

113 Section 5. ALPR data; retention by law enforcement

114 Notwithstanding any general or special law or regulation to the contrary, not later than 48
115 hours following the time ALPR data is captured, created or originated by an ALPR system
116 operated by a law enforcement agency, the agency:

- 117 (a) may, at the option of the agency, transfer such data to the executive office; and
118 (b) shall permanently erase or destroy any such data in its possession, custody or
119 control.

120 Section 6. ALPR data; retention by the department

121 (a) Not later than 48 hours following the time ALPR data is captured, created or
122 originated by an ALPR system operated by the department or its agent, the department or its
123 agent shall transfer such data to the executive office.

124 (b) Not later than 90 days following the date ALPR data is captured, created or
125 originated by an ALPR system operated by the department or its agent, the department or its
126 agent shall permanently erase or destroy any such data in its possession, custody or control;
127 provided, however, that the department or its agent may retain such data for longer than 90 days
128 if such data is necessary to identify, collect or pursue unpaid tolls; provided further, that such
129 data shall be permanently erased or destroyed not later than 7 days following the date such tolls
130 are paid.

131 Section 7. ALPR data; retention by the executive office

132 (a) The executive office shall retain and store ALPR data transferred to it pursuant to
133 sections 5 or 6 for a period of 90 days. At the end of such 90-day period, the executive office
134 shall permanently erase or destroy all such data in its possession, custody, or control.

135 (b) ALPR data may be retained beyond the 90-day period established under
136 subsection (a) as necessary to comply with:

- 137 (1) a search warrant;
138 (2) a production order; or
139 (3) a preservation request.

140 (c) The executive office shall retain and store ALPR data pursuant to subsection (a):

141 (1) in a physically secure room used exclusively for the purposes set forth in
142 subsection (a); and

143 (2) if stored electronically, on a system that is not connected to the Internet or any
144 wide-area or local-area network.

145 Section 8. ALPR data; retention by non-governmental entities

146 (a) Notwithstanding any general or special law or regulation to the contrary, a non-
147 governmental entity shall permanently erase or destroy all ALPR data in its possession, custody,

148 or control that is derived from vehicles registered or operated within the commonwealth,
149 including any portions of documents or records derived from such ALPR data, not later than 90
150 days following the date such data was captured, created or originated by an ALPR system.

151 (b) Such ALPR data may be retained beyond the 90-day period established under
152 subsection (a) as necessary to comply with:

- 153 (1) a search warrant;
- 154 (2) a production order; or
- 155 (3) a preservation request.

156 Section 9. ALPR data; government access and review

157 Subject to section 4, notwithstanding any other general or special law or regulation to the
158 contrary, a governmental entity may not access, search, review, disclose, or exchange ALPR data
159 from any source; provided, however, that:

160 (a) a law enforcement officer may access, search or review ALPR data as necessary
161 to comply with subsection (a) of section 3;

162 (b) a law enforcement officer may access, search or review ALPR data immediately
163 following an alert from an ALPR system prior to executing a motor vehicle stop or issuing a
164 ticket or citation as necessary to comply with subsection (b) of section 3;

165 (c) an employee or agent of a law enforcement agency, the executive office or the
166 department may access ALPR data as necessary to install, maintain or repair an ALPR system or
167 a system storing ALPR data;

168 (d) a law enforcement officer or an employee of a law enforcement agency, the
169 executive office, or the department may access, search, review or disclose ALPR data as
170 necessary to respond to a reasonable belief that an individual is at imminent risk of serious
171 physical injury, death or abduction; provided, that not later than 48 hours after accessing such
172 ALPR data, the agency, executive office or department shall provide written notice to the office
173 of the attorney general describing with particularity the grounds for such emergency access and
174 the parameters of the ALPR data accessed, searched, reviewed or disclosed; provided further,
175 that such ALPR data within the possession, custody or control of the law enforcement agency
176 shall be permanently erased or destroyed not later than 48 hours after such imminent risk ceases
177 to exist;

178 (e) a law enforcement officer or an employee of a law enforcement agency may
179 access, search, review or disclose ALPR data as necessary to comply with:

- 180 (1) section 5;

181 (2) a search warrant; or
182 (3) a production order;
183 (f) an employee of the executive office may access, search, review or disclose ALPR
184 data as necessary to comply with:

- 185 (1) section 7;
- 186 (2) a search warrant;
- 187 (3) a production order; or
- 188 (4) a preservation request;

189 (g) a law enforcement agency, a district attorney's office or the office of the attorney
190 general may access, search, and review ALPR data obtained pursuant to a search warrant in
191 connection with the investigation or prosecution of a felony; provided, however, that such ALPR
192 data shall not be disclosed unless material to and in furtherance of such investigation or
193 prosecution; provided further, that any such ALPR data not material to such investigation or
194 prosecution shall be permanently erased or destroyed not later than 6 months following the date
195 the search warrant was executed; provided further, that such agency or office may apply to the
196 district or superior court for an order allowing for extensions of not more than 6 months upon a
197 showing that a determination as to the materiality of such ALPR data could not be made through
198 reasonable effort within such period of time; or

199 (h) an employee or agent of the department may access, search, review or disclose
200 ALPR data:

- 201 (1) as necessary to comply with section 6; or
- 202 (2) for the purpose of assessing, collecting or pursuing tolls.

203 Section 10. Additional protections

204 (a) ALPR data in the possession, custody or control of a non-governmental entity that
205 is derived from motor vehicles registered or operated within the commonwealth may not be
206 disclosed to or exchanged with any other person; provided, however, that such non-governmental
207 entity may disclose such data:

- 208 (1) to a law enforcement officer responding to a reasonable belief that an individual is
209 at imminent risk of serious physical injury, death or abduction; provided, that such law
210 enforcement officer submits an affidavit to such non-governmental entity describing with
211 particularity the grounds for such emergency access and the parameters of the ALPR data
212 requested; provided further, that not later than 48 hours after disclosing, sharing or exchanging

213 such ALPR data, such law enforcement officer shall deliver a copy of such affidavit to the office
214 of the attorney general;

215 (2) pursuant to a search warrant or production order;

216 (3) as necessary in connection with matters of motor vehicle or driver safety and
217 theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories,
218 performance monitoring of motor vehicles and dealers by motor vehicle manufacturers;

219 (4) as necessary in connection with motor vehicle market research activities, so long
220 as the ALPR data is not published, redisclosed, or used to contact individuals;

221 (5) for use by any insurer or insurance support organization, or by a self-insured
222 entity, or its agents, employees, or contractors, in connection with claims investigation activities;
223 or

224 (6) for use in connection with the operation of private toll transportation facilities.

225 (b) Notwithstanding subsection (a), or any other general or special law or regulation
226 to the contrary, ALPR data derived from vehicles registered or operated within the
227 commonwealth shall not be used in any way by any person:

228 (1) to determine a person's numerical or other credit rating; provided, however, that
229 nothing in this subsection shall be construed to prevent the department from reporting unpaid
230 tolls to any credit reporting agency or service;

231 (2) to make any determination with respect to any secured or unsecured credit facility
232 or loan, or any other form of financing, whether secured or unsecured, including, without
233 limitation, any determination as to whether to extend such financing, the applicable interest rate
234 or rate of return, or whether an event of default exists;

235 (3) to determine a person's insurance rate or rating with respect to any form of
236 insurance, including, without limitation, any policy of life insurance, health insurance,
237 automobile insurance or liability insurance;

238 (4) to make any determination with respect to hiring, dismissal, discharge,
239 suspension, compensation or any other employment decision; or

240 (5) to identify targets of or to engage in any form of promotion, marketing,
241 advertising or solicitation.

242 (c) A recipient of ALPR data disclosed pursuant to subsection (a) may disclose such
243 data only as permitted under subsection (a); provided, that any recipient of ALPR data shall be
244 subject to the retention limitations and obligations contained in sections 8 and 9, as applicable.

245 Section 11. ALPR data; admissibility

246 (a) Notwithstanding any general or special law or regulation to the contrary, ALPR
247 data produced, obtained or maintained in violation of this chapter shall not be admitted, offered
248 or cited by any governmental entity for any purpose in any criminal proceeding.

249 (b) Notwithstanding any general or special law or regulation to the contrary, ALPR
250 data shall not be discoverable, admissible in evidence or offered or cited for any purpose in any
251 civil or administrative proceeding by any party; provided, however, that subject to subsection (a),
252 such data shall be admissible when offered by the department in any civil or administrative
253 proceeding relating to the collection of tolls.

254 Section 12. Civil actions

255 (a) Any aggrieved person may institute a civil action in district or superior court for
256 damages resulting from a violation of this chapter, or in superior court to restrain any such
257 violation. If in any such action a willful violation is found to have occurred, the violator shall not
258 be entitled to claim any privilege absolute or qualified, and he shall, in addition to any liability
259 for such actual damages as may be shown, be liable for treble damages, or, in the alternative,
260 exemplary damages of not less than one hundred and not more than one thousand dollars for
261 each violation, together with costs and reasonable attorney's fees.

262 (b) A violation of sections 3, 8 or 10 of this chapter shall also be a violation of section
263 2 of chapter 93A.

264 Section 13. Violations; reporting requirements

265 Any individual certified in accordance with section 4 shall promptly provide written
266 notice to the office of the attorney general if such person has knowledge of a violation of any of
267 the provisions of this chapter.

268 Section 14. Data security

269 ALPR data derived from vehicles registered or operated within the commonwealth shall
270 be deemed personal information under chapter 93H and all rules and regulations promulgated
271 thereunder; provided, that the data security provisions contained in subsection (c) of section 7
272 applicable to the executive office shall not be construed in any way by any court, office, division
273 or agency to mean that less protection is required from any other governmental or non-
274 governmental entity.

275 Section 15. Further regulation by governmental entities

276 Nothing contained in this chapter shall be construed to prevent a law enforcement
277 agency, a municipality, the executive office or the department from adopting stricter limitations
278 with respect ALPR systems or ALPR data.

279 Section 16. Reporting

280 On or before March 1 annually, the executive office shall file a report with the clerks of
281 the senate and house of representatives containing the following information based on data from
282 the prior calendar year:

- 283 (i) the total number of ALPR systems being operated within the commonwealth;
- 284 (ii) the number of municipalities submitting ALPR data to the executive office
285 pursuant to section 5;
- 286 (iii) the number of license plate scans transferred to the executive office pursuant to
287 section 5;
- 288 (iv) the number of license plate scans transferred to the executive office pursuant to
289 section 6;
- 290 (v) the number of state warrants seeking ALPR data served on the executive office;
291 and
- 292 (vi) the number of federal warrants seeking ALPR data served on the executive office.

293 Section 17. Executive office; rules and regulations

294 The executive office shall promulgate rules and regulations necessary to implement
295 sections 2 through 9, inclusive, and section 16, including, without limitation, rules and
296 regulations:

- 297 (a) ensuring that only those governmental entities authorized by this chapter to use
298 ALPR systems and access ALPR data do so for the limited purposes set forth in this chapter; and
- 299 (b) establishing an auditing process to assess compliance with this chapter by
300 governmental entities.

301 Section 18. Office of the attorney general; enforcement

302 The attorney general shall enforce sections 2 through 10, inclusive, and shall have the
303 power to petition the court for injunctive relief, relief under chapter 93A, or other appropriate
304 relief against any person that fails to comply therewith.

305 Section 19. Severability

306 If any provision of this chapter or the application thereof to any person or circumstance is
307 held invalid, the invalidity shall not affect other provisions or applications of the chapter which
308 can be given effect without the invalid provision or application, and to this end the provisions of
309 this chapter are declared to be severable.