Louisiana's Statewide Motor Vehicle Theft and Uninsured Motorist ID Program: The Short Life and Senseless Death of Senate Bill 250

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Louisiana, perhaps one of the most beautiful, unique, and culture-rich states in the nation, is truly a place like no other. Despite its laissez-faire attitude, crime and violence continue to plague Louisiana, from its lively cities to once peaceful towns nestled on the bayou. Louisiana is dangerously disassociating itself as a true Sportsman's Paradise and is encroaching on a reputation as the nation's murder capital. While violent-crime rates continue to drop across the country, Louisiana is one of a few states where violent crime has remained fairly consistent. In comparison with the national average, Louisiana has the second highest murder rate per capita in the country. Approximately ten murders are reported for every one hundred thousand people. Louisiana has also seen a marked increase in robbery
and automobile thefts. Historically, Louisiana is also known for having the highest incarceration rate in the nation. Crime not only has disparaging moral implications, it is also negatively impacting Louisiana’s economy. Louisiana holds the record of having one of the highest automobile insurance rates. Louisiana residents pay annual rates significantly disproportionate with the rest of the country that is said to be a direct consequence concerning the number of uninsured motorists on Louisiana roadways.

The legislature recognized the critical need to implement programs in order to actively combat crime in an expeditious manner. The legislature initiated the process of implementing a program to detect and deter automobile theft, uninsured motorist, and other felonious criminal activity. During the 2015 Regular Legislative Session, Senate Bill Number 250 was introduced. Senate Bill 250 sought to create a Statewide Motor Vehicle Theft and Uninsured Motorist Identification Program. The bill sought to implement a pilot program using automatic license plate recognition systems (ALPR), for the purpose of identifying stolen vehicles, uninsured motorists, and assist with investigations concerning felony offenses. If successful, Senate Bill 250 would have enacted Revised Statute 32:46, relative to motor vehicles and traffic regulations. Although it successfully passed in the house and the senate, a gubernatorial veto prevented Senate Bill 250 from becoming law. In his reasoning, Governor Bobby Jindal cites constitutional concerns, system vulnerability, and the potential for abuse.

First, this article will provide an overview relating to the basic function of ALPR systems and the specific nature of the Statewide Motor Vehicle Theft and Uninsured Motorist Program. Next, it will address constitutional concerns surrounding the program, addressing both the Fourth Amendment of the United States Constitution. Thirdly, it will address public policy concerns, focusing on whether information pertaining to law-abiding citizens is vulnerable to system abuse, infiltration, as well as fears relating to mass collections of data. Finally, it will also address the need to balancing those concerns with the interest of public safety.

**Development of aLPR systems**

*Automatic License Plate Recognition Systems, in general*

It is important to understand what an ALPR system is and what information it is capable of extracting. ALPR systems come in both mobile and fixed units. A fixed unit will generally remain in a stationary position while a mobile unit if often installed on the exterior of law enforcement vehicles. ALPR systems are essentially high speed cameras capable of capturing images of vehicles traveling on a public roadways. Many systems are capable of capturing over seventeen hundred vehicles within a minute even if the vehicle is traveling in excess of one hundred fifty miles per hour.

The critical image typically captured by ALPR system is the vehicle’s license plate, which is generally the identifying link to criminal activity. After the image is
captured, it will be transcribed into alpha-numeric characters. The software will then analyze and compare the license plate number into a variety of databases utilized by law enforcement agencies, in order to identify whether that vehicle is wanted in connection with criminal activity. The process is complete in mere seconds, and the law enforcement officer is alerted if the captured license plate is identified as a vehicle of interest associated with criminal activity.

**Statewide Motor Vehicle Theft and Uninsured Motorist Identification Program**

Senate Bill 250 sought to codify a program titled the Statewide Motor Vehicle Theft and Identification Program that would create a pilot program authorizing the use of ALPR systems to include a larger number law enforcement agencies throughout the state of Louisiana. The law enforcement agencies targeted in the pilot program include sheriff’s offices within each parish of the state, in direct collaboration with the district attorney’s office located in that particular parish. Although, the program would allow for participating law enforcement agencies to contract with other entities, all participants are strictly restricted to uses that are official and legitimate.

The scope of use is limited to law enforcement purposes, by law enforcement officials, actively participating in the pilot program. The program originally allowed for a data retention rate of sixty days; however, the bill was amended during the legislative session limiting the data retention rate to thirty days at the request of privacy advocates. Participating sheriff’s and district attorney offices would be responsible for creating and operating a central database to securely store the information. The central databases must conform to federal security standards and will be located in a secure area. Additionally, the program called for strict oversight in the form of an annual report to the Senate and House Committees on Homeland Security. Criminal penalties are provided, and subject both authorized and unauthorized users to imprisonment and fines in the event information is used in an illegitimate and unofficial manner.

The drafters of Senate Bill 250 took great care to create a program that would assist law enforcement officers in reducing crime and ease the financial burden of uninsured motorists on the roadway, all while keeping privacy as a top priority. Despite imposing strict guidelines and short data retention rates, programs such as this raise concerns from privacy advocates who posits that ALPR systems somehow violate constitutional rights, which warrants further discussion.

**Constitutional Concerns**

**Fourth Amendment of the United States Constitution**

The Fourth Amendment of the United States Constitution reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,
and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [xxxiii]

Courts today are tasked with the arduous duty of applying the fourth amendment in a world with evolving technological advances. In 1928, the United States Supreme Court first addressed the use of wiretapping as an unreasonable search [xxxiv] and nearly forty years later, it was still at issue. [xxxv] More recently, courts have addressed fourth amendment concerns relating to global positioning systems [xxxvi], the use of infrared devices [xxxvii], and drone technology. [xxxviii] As more states pass legislation implementing the use of ALPR systems, they too have come under the judicial spotlight.

An express provision concerning an individual’s right to privacy does not exist in the United States Constitution. [xxxix] The majority of laws correlating privacy rights and the Fourth Amendment originate from Katz v. United States. [xli] The Supreme Court established a two-part test in order for privacy rights to fall under the purview of Fourth Amendment protection. [xlii] There must be a subjective and an objective expectation of privacy in order for Fourth Amendment protection to apply. [xliii] More simply stated, a person must have an actual expectation of privacy, and it is one society is prepared to accept as reasonable. [xliii] Although a different technological advance from the issue at hand, in Katz, the Court said the government’s activity of wiretapping a public telephone booth was a violation of the fourth amendment. [xliv] The Court determined that a person who enters a telephone booth, shuts, the door, and engages in conversation has a subjective expectation of privacy and society would likely be prepared to recognize that expectation as reasonable. [xlv] On the other hand, a person who engages in activity or displays something in an area open to the public’s eye would likely not have a reasonable expectation of privacy and would ultimately fail the objective portion of the test, consequentially the Fourth Amendment would not apply. [xlvi]

The United States Supreme Court has yet to address Fourth Amendment concerns with automatic license plate recognition systems; however, the issue has been raised in other courts. [xlvii] In U.S. v. Ellison, the Sixth Circuit Court of Appeals addressed the issue of whether there exists a constitutionally protected expectation of privacy in a license plate. [xlviii] While the issue was not specifically urged on appeal, the court said a failure to consider this matter would result in a miscarriage of justice. [xlix] Recognizing the exceptional nature of the case, the court addressed the issue. The court said the question of whether a motorist has an expectation of privacy in a license plate is a pure legal question. [li] The court held the Fourth Amendment safeguards only what a person aims to keep private. [lii] The sole purpose of a license plate is to particularly identify a vehicle to law enforcement officials. [liii] The public nature and plain-view component of the license plate, places the issue outside the purview of the Fourth Amendment. [liii] The court also rejected the notion that information contained within a license plate is subject to protection. [liv] It concluded that the retrieval of non-private information from the non-protected
source would not constitute a search under the Fourth Amendment, and further articulated that every court in addressing this issue has reached the same conclusion.\[lv\]

Other courts have also addressed the constitutionality of using information obtained from automatic license plate recognition systems by law enforcement officials to initiate contact with individuals.\[lvii\] In *U.S. v. Williams*, a police officer relied upon information obtained from an automatic license plate reader to conduct a traffic stop and arrest the defendant for a felony firearm offense.\[lviii\] The police officer initiated a traffic stop based off of information placed in the system concerning the defendant’s involvement in a domestic assault case in a neighboring jurisdiction.\[lixiv\] The defendant claimed that reasonable suspicion did not exist for the officer to make the stop because the information obtained by the automatic license plate recognition system failed to establish such suspicion.\[lix\] The court said, police officers may rely on information obtained from other departments concerning wanted persons or motor vehicles.\[lxi\] They are justified in initiating a traffic stop of the individual or motor vehicle, even though specific facts rising to the level of reasonable suspicion were not specifically articulated by the department seeking assistance.\[lxii\] Here, the court said the use of the ALPR system is similar to this method and does not constitute a Fourth Amendment violation.\[lxiii\] Furthermore, the defendant was unable to establish jurisprudence showing that a police officer’s reliance on information obtained through ALPR systems violates the Fourth Amendment.\[lxiv\] Additionally, ALPR systems simply systematizes what could be done by comparing the license-plate number against a “hot sheet” of numbers.\[lxv\] The police officer could manually enter the number into a patrol car’s computer, or request a check of a citizen’s information through personnel at the police station.\[lxvi\] Therefore, the police officer’s use of the ALPR system did not infringe upon the defendant’s constitutional rights.

Thus far, courts have not found the use of ALPR systems as an infringement of the Fourth Amendment. However, this does not settle the debate. While the use of ALPR systems appear to pass constitutional muster, a number of public policy concerns surround its use that call for additional discussion.

**Public Policy Concerns**

**Potential for Abuse, System Vulnerability, and the Mass Collection of Data**

In vetoing Senate Bill 250, Governor Jindal reasoned that ALPR systems are vulnerable to theft or misuse. Additionally, many civil liberty organizations also express concerns that ALPR systems are susceptible to misuse, vulnerable to outside infiltration, and expressed concerns that too much information is being collected and retained for extended periods of time.\[lxvii\] If not properly addressed or safeguarded, the misappropriation of ALPR system data can take place. Suggested remedies include appropriate and proper legislation regulating and monitoring how the information is used, implementation of security standards, and limitations on data retention.\[lxviii\] Senate Bill 250 did just that in directly addressing and
implementing safeguards to prevent system abuse, ensure physical integrity of the database, and limit data retention rates in order to adequately protect personal information.

Abuse of ALPR systems occurs when an authorized user misappropriates the information for fraudulent purposes. The Statewide Motor Vehicle Theft and Uninsured Motorist Identification Program contains provisions to deter and address system abuse. The bill included stipulations that would make the dissemination of private information by an authorized user for an illegitimate purpose a criminal offense. The bill defines legitimate purpose for law enforcement agencies as “access to collected data for the investigation, detection, analysis, or enforcement of the law regarding a criminal offense.” Law enforcement agencies not participating in the program are restricted to information pertaining to criminal felony prosecutions after a written request. This makes it easier to document recipients of information and verify that it is only being used to assist with felonious events. Criminal provisions in the bill provide serious penalties for authorized users distributing information for illegitimate purposes and subjects violators to six months in jail and fines up to one thousand dollars.

Another legitimate fear is the potential for unauthorized users to infiltrate the systems and disseminate confidential information. In 2015, the Electronic Frontier Foundation (EEF) discovered over one hundred ALPR cameras throughout the United States were infiltrated and images were exposed on the Internet. The images were visible by anyone with an Internet service provider. Unfortunately, a number of the ALPR cameras exposed were linked to law enforcement agencies in Louisiana, including the Jefferson Parish Sheriff’s Office. While the law enforcement agencies immediately secured and quickly resolved the problem, it serves as a reminder of the missed opportunity to pass legislation in order to streamline the standards of ALPR use throughout the state. Under the Statewide Motor Vehicle Theft and Uninsured Motorist Identification Program, ALPR systems, databases, and software were required to comply with National Law Enforcement Telecommunications System (NLTES) and Federal Bureau of Investigations hosting and security standards. NLTES provides reliable networks to criminal justice agencies and is specially built to endure outside threats. In addition to these internal security measures, the central database networks were required to be physically located in a secure location, supervised by respected district attorney offices and sheriff’s office. By requiring law enforcement agencies to comply with strict standards, Senate Bill 250 served to guarantee that the systems would be used in accordance with federal security standards in the most responsible and secure manner possible, avoiding instances exposed by the EEF.

Opponents of automatic license plate recognition systems argue that the data collected from the cameras will be retained and used against innocent parties. Some go as far to claim, the government will track a person’s daily activities to include, regularity of doctor’s appointments, church activities, or attending political events. This is a genuine concern when data retention rates are non-existent or
unreasonably long; however, shorter retention periods alleviate the likelihood of this practice from occurring. By imposing data retention rates not to exceed thirty days it becomes very difficult to document patterns of behavior. A true pattern of behavior can only be established from surveillance over a substantial period of time and not from short surveillance periods of observation of sporadic activities. By way of example, mobile ALPR systems are only capable of determining whether a specific license plate passed a law enforcement officer (equipped with a mobile ALPR system) within the past thirty days. Due to the random nature of this type of encounter, it is not a situation that is conducive in enabling a law enforcement officer to establish a pattern of activity for any particular person.

While these apprehensions are valid, it does not mean the program should be abandoned altogether. The Senate’s well-written policy implementing an ALPR program in Louisiana, directly addressed these concerns and was adequately prepared to deal with abuse, outside infiltration, and limits the duration of data storage.[lxxxiii] Even after such strict standards were implemented to guarantee ALPR systems will be used as intended and in a responsible manner, Governor Jindal did not embrace the opportunity to take advantage of this technology. This raises the question as to whether Governor Jindal’s veto of the bill was motivated by influences other than those concerning the best interest of the state.

**Balancing Public Safety**

Driving on a roadway in Louisiana is a privilege granted by the State of Louisiana and not a constitutional right and the legislature may impose conditions on such a privilege.[lxxxiv] Law-abiding citizens are subjected to the economically draining effects of those who take advantage of this privilege. For those involved in a crash with an uninsured motorist, it can be a complex and financially devastating process.[lxxxv] Additionally, sharing public roadways with criminals operating stolen vehicles or those who are engaged in criminal activity also exposes citizens to great risks and unnecessary dangers.[lxxxvi] Louisiana courts have historically protected the legislature’s ability to pass laws narrowly tailored to achieve the compelling interest of public safety.[lxxxvii] Courts have also recognized some invasions are considered minimal at best and do not outweigh the interest of promoting public safety, however[lxxxviii] the means used to achieve public safety is often the source of contention.[lxxix] Louisiana legislators have passed laws to curb the number of uninsured motorist and crime on public roadways; however, some methods are proving to be ineffective and are in need of change in order to adequately address existing problems. Today many law enforcement agencies use police checkpoints, which involves officers stopping every vehicle traveling on a pre-determined public roadway while in a stationary position, in order to identify and apprehend motorists violating state laws, including insurance violations.[xc] Because this alternative exist, one could argue that ALPR systems are not necessary to reduce the number of uninsured motorist on Louisiana roadways and combat crime. However, the increasing use of social media which allows motorists to by-pass roadblocks could and arguably is decreasing the effectiveness of law enforcement checkpoints.[xci] Law enforcement agencies must adapt and conform to societal use of evolving technology. ALPR’s are not only convenient and contemporary law enforcement
tools, as technology evolves, they will become critical in assisting law enforcement officers to effectively perform the significant task of keeping Louisiana citizens, visitors, and roadways safe.

Law enforcement agencies in Louisiana who currently use APLR systems are showing that the technology is extremely valuable and can be used in a responsible manner. Since the inception of stationary ALPR systems by the Louisiana State Police, Superintendent Mike Edmonson credits the technology as an integral part in assisting troopers with a number of drug interdiction arrests, retrieval of countless stolen vehicles, recovery of missing children, and the discovery of a counterfeit license plate scam. In Jefferson Parish, double murder suspects were identified, within hours, by using an ALPR system. Investigators with the Jefferson Parish Sheriff’s Office were able to thwart the alibi of a prime suspect in a sexual assault investigation when an ALPR camera confirmed his presence at the crime scene. Again, in Jefferson parish, police officers were able to identify and stop a convicted felon operating a van which appeared to be “outfitted for an assassin” by using ALPR technology. Despite only having seven ALPR systems operating in a heavily populated city, police officers with the New Orleans Police Department have recovered several stolen vehicles and weapons, which resulted in felony arrests. Taking the success stories into consideration, it would be extremely beneficial to the citizens of Louisiana to expand the use of the systems throughout the state by allowing law enforcement agencies in other large cities and rural areas to experience the benefits these systems provide.

Louisiana legislators did not introduce novel or unconventional legislation with Senate Bill 250. A number of states are using ALPR technology in a widespread manner and are reaping the benefits. By way of example, an ALPR system alerted a Virginia state trooper to the exact location of a suspect who blatantly gunning down two local news reporters on air. Within hours of this horrific incident the threat was quickly eliminated. In Maryland, police officers were able to return a five year old girl to her mother after she was violently abducted from the family home during a home invasion. Mississippi police officers located and pursued Delta State College shooting suspect Shannon Lamb, by using an ALPR system, before he had the opportunity to harm another innocent citizen. Dallas Police are using ALPR technology to clear up a large back log of individuals with active arrest warrants. In a four-hour operation, Dallas police officers identified thirty two people with active arrest warrants. This allows police officers to focus on solving serious crimes because it reduces the amount of hours they would spend attempting to track these individuals down. These success stories show that ALPR systems are impacting crime and the benefits are real, while those who oppose using ALPR systems rely solely on arguments regarding potential negative implications. Hopefully, future leaders will take these success stories into consideration in the event Louisiana is ever in the position to once again benefit from legislation authorizing the use of ALPR systems.

Conclusion
In order to directly address the steady rise of crime in Louisiana, the legislature attempted to enact legislation that would assist the efforts of law enforcement officers to reduce crime. However, Governor Bobby Jindal disagreed with the use of ALPR’s in Louisiana and vetoed Senate Bill 250. Governor Jindal alleges that the use of ALPR systems are concerning to a citizens’ right to privacy, despite both federal and state courts holding otherwise. Furthermore, he cites the potential for misuse and system vulnerability, not only as legitimate concerns but as ones that justify killing the bill. The legislature took great care in providing safeguards to adequately protect citizens from being victimized by a weakness in the system itself and from those persons who are authorized to use it. It is clear that the benefits to public safety greatly outweigh any potential risks possibly encountered by creating an APLR program in Louisiana. Furthermore, the dangers of not having such a program in Louisiana is proving to be senseless and out of sync with the rest of the country.


[iv] Id.

[v] Id.

[vi] Id.


[ix] Id.


[xii] La. S.B. 250.


[xviii] Id.


[xxi] Id.

[xxii] Id.


[xxiv] Id.


La. S.B. 250.

La. S.B. 250.

La. S.B. 250.

La. S.B. 250.

U.S. Const. amend. IV.


U.S. v. Ellison, 462 F.3d 557, 560-64 (6th Cir. 2006).

Id. at 560.

Id. at 561.

Id. at 561.

U.S. v. Ellison, 462 F.3d 557, 560-64 (6th Cir. 2006).

Id. at 562.

Id.

U.S. v. Williams, 796 F.3d 951, 955-59 (8th Cir. 2015).

Id. at 955.

Id. at 957.

Id. at 957.

Id.

U.S. v. Williams, 796 F.3d 957 (8th Cir. 2015).

Id.

Id at 957; see also Privacy Impact Assessment Report for the Utilization of License Plate Readers, International Association of Chiefs of Police 8-26 (Sept. 2009).

U.S. v. Williams, 796 F.3d 957 (8th Cir. 2015).


[lxxv] Id.

[lxxvi] Id.

[lxxvii] Id.

[lxxviii] Id.


[lxxxi] Id.; see also Privacy Impact Assessment Report for the Utilization of License Plate Readers, International Association of Chiefs of Police 8-26 (Sept. 2009).


[lxxxv] Kevin Litten, House Passes Bill Allowing License Plate Scanners to Catch Uninsured Motorists, The Times-Picayune (June 8, 2015 5:40 PM)

[lxxxvi] Blake Hanson, Number of Uninsured Drivers Remain High, WDSU News (Nov. 25, 2013 9:00 AM),


[xc] Id.


[xcv] Id.

[xcvi] Id.

[xcvi] Id.


[cix] Id.


[ciii] Id.

[civ] Id.


[cvi] Id.

[cvii] Id.

[cviii] Id.


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