Automated License Plate Readers in Virginia

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Introduction

An automated license plate reader (ALPR) is a surveillance method that combines high-speed cameras with optical character recognition. ALPRs convert license plate images into data, which can either be searched against databases or stored for future use. Law enforcement agencies most commonly use ALPRs. They mount ALPRs onto patrol cars or stationary objects along roads such as telephone poles. ALPRs allow officers to almost instantaneously run passing license plates against lists of stolen cars, outstanding warrants, and AMBER or Blue alerts. Recognizing these public safety benefits, the Department of Homeland Security distributed over $50 million in grants, earmarked for law enforcement offices' ALPR acquisitions throughout the United States. This led to the wide-dissemination of the technology and now 70 percent of police departments report using some form of ALPR. Despite extensive use, only five states (Maine, New Hampshire, Arkansas, Vermont, and Utah) have laws governing ALPR use. Since license plates contain identifiable personal information, ALPRs raise questions regarding the optimal balance between public safety and privacy concerns.

ALPRs in Virginia

Until spring 2013 the Virginia State Police (VSP) maintained a database of millions of geotagged and time-stamped license plate images. This database caused controversy when the American Civil Liberties Union (ACLU) reported that the VSP captured and stored the license plates of vehicles attending events, including those at President Barack Obama’s 2009 inauguration and Sarah Palin campaign rallies. As a result of this controversy, the database was deleted. Current VSP policy states that data collected by ALPRs can only be stored for 24 hours, unless it is relevant to a clearly defined criminal investigation.

Virginia ALPR Policy Recommendation

Virginia needs a law that delineates the appropriate uses for ALPRs and the length of time for which the data collected can be stored. While the VSP has internal policies regarding ALPR use, mission creep, or expansion of the original mission, could lead law officers to legally revert back to the original and controversial system. I propose amending the Government Data Collection and

1 “You Are Being Tracked: How License Plate Readers Are Being Used to Record Americans’ Movements.” American Civil Liberties Union, July 2013.
3 “Automated License Plate Readers (ALPR): A Civil Liberties Briefing,” American Civil Liberties Union of Ohio, September 2013.
4 Rebecca Glenberg, “Virginia State Police Used License Plate Readers At Political Rallies, Built Huge Database,” American Civil Liberties Union, October 8, 2013.
5 Ibid.
6 Ibid.
Dissemination Practice Act to include language specifically related to ALPRs. The proposed policy seeks to address the three main questions associated with ALPRs: 1) can they be used; 2) how can they be used; and 3) how long can law enforcement agencies keep the data collected? This new policy establishes that:

- ALPRs can be used in the state of Virginia, but only by law enforcement;
- Law enforcement agencies must release yearly reports on their ALPR usage;
- ALPRs can be used both for active and passive surveillance;
- Data collected by ALPRs must be deleted after 24 hours, unless it is pertinent to a defined criminal investigation; and
- Only data that is pertinent to a defined criminal investigation can be shared with agencies outside of Virginia.

Can ALPRs Be Used in Virginia?

In *Katz v. United States*, the Court said that the Fourth Amendment protects an individual’s privacy interests where “a person [has] exhibited an actual (subjective) expectation of privacy and… the expectation [is] one that society is prepared to recognize as ‘reasonable’.” The U.S. Tenth Circuit Court of Appeals has twice ruled that, “because they are in plain view, no privacy interest exists in license plates.” Given that Virginians have no expectation to license plate privacy, ALPRs can be used by state law enforcement agencies.

ALPR opponents may cite that ALPRs should be banned under the 4th amendment because they constitute “unreasonable searches.” The Court, however, has ruled that enhancing technologies (binoculars, sniffing dogs, aerial imaging) do not constitute illegal or unreasonable searches. ALPRs are considered enhancing technologies as, in the words of Lynchburg Police Chief Zuidema, they allow police to “do more efficiently and effectively the police work [they] are already doing.” Thus, using ALPRs in Virginia will likely not create constitutional concerns.

How Can ALPRs Be Used in Virginia?

Virginia can use ALPRs in two ways, through active and passive collection. In active collection, police use ALPRs to identify vehicles already known to be relevant to an investigation. Passive collection is when ALPRs are used to collect and transfer raw data, whether relevant to a current investigation or not, into comprehensive databases for potential future use. The recommended policy allows for both forms of collection.

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7 The Data Act regulates the government’s collection, maintenance, use and dissemination of personal information. It defines personal information as “information that describes, locates, or indexes anything about an individual.” Given that the ALPR may be used in locating an individual, “ALPR(s) generally meet the defined criteria of personal information and thus falls within the scope of the Data Act.” (Cuccinelli).
10 Hubbard, “Automatic License Plate Recognition.”
Passive collection is the area in which this proposal diverges from current Virginia policy. In a recent opinion, former Virginia Attorney General Ken Cuccinelli argued that the Government Data Collection and Dissemination Practice Act (Data Act) prohibits the use of ALPRs for passive collection. The Data Act has exemptions for collecting data if it pertains to “investigations and intelligence gathering related to criminal activity.”\(^{12}\) Cuccinelli writes that active gathering is permissible because it “relates to immediate public safety threats.”\(^{13}\) Passive collection, however, is not classified as “criminal intelligence information” as it is not been “determined to be relevant to the identification of criminal activity,” and thus is not exempt.\(^{14}\)

It is in Virginia’s best interest to extend the Data Act to allow ALPR use for passive intelligence gathering in the name of public safety.

**How Long Can Virginia Law Enforcement Keep ALPR Data?**

While the proposed policy enables ALPR use to help protect public safety, it places strict limitations on the creation of databases. Though Virginia citizens do not have an expectation to privacy with regards to license plates, they do have a reasonable expectation that they are not being tracked. In *United States v. Jones*, the United States Supreme Court found that police had violated the 4\(^{th}\) amendment by attaching a GPS device to a car and tracking it for 28 days.\(^{15}\) In a concurring opinion for the Court, Justice Alito wrote, “Society’s expectation has been that law enforcement agents would not secretly monitor and catalogue every single movement of an individual’s car for a long period.”\(^{16}\) ALPR databases would give police an accurate picture of where vehicles have gone over a long period of time, even if there is no suspicion of illegal activity. Thus, databases with no limitations violate Virginian’s expectation that their movements are not catalogued.

To prevent the creation of ALPR database, all gathered data must be deleted within 24 hours, unless it is relevant to an ongoing investigation. License plates images will be run against BOLO (“be on the lookout for”) lists twice, once upon being taken and then again before being deleted. A twenty-four hour delay is necessary because it can take some time for law enforcement agencies to upload wanted license plates into the system. The recommended policy is merely codifying existing VSP procedures.

Finally, should VSP share data with other jurisdictions, they would lose the ability to oversee how the data are used, stored, or shared. To protect the privacy of Virginians, the proposed policy prohibits VSP from sharing the data with other jurisdictions, unless the other agency can show that the information is relevant to a clearly defined investigation.


\(^{13}\) Ibid.

\(^{14}\) Ibid.

\(^{15}\) Ibid.

\(^{16}\) “Automated License Plate Readers (ALPRs) in Iowa,” *American Civil Liberties Union of Iowa.*
Advantages and Disadvantages of Proposed Policy

The proposed policy has the following advantages and disadvantages, which I will discuss in more detail below:

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<tr>
<th>ADVANTAGES</th>
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<td>Makes police work more efficient and safer, helping law enforcement protect public safety</td>
<td>Creates a Big Brother atmosphere</td>
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<td>Decreases racial or ideological profiling</td>
<td>Could lead citizens to unnecessarily change their behaviors</td>
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<tr>
<td>Ensures that Virginians are not tracked</td>
<td>System could be abused or hacked</td>
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Use of ALPRs: Pros and Cons

Allowing for the use of ALPRs is the least controversial component of the proposed policy. This is due to the fact that ALPRs are already used ubiquitously throughout the state of Virginia by toll-collectors and red light cameras. Even the ACLU, a major critic of ALPRs, “doesn’t have a problem with ALPRs when [they are] used for… police enforcement purposes.”

That being said, a disadvantage of the proposal is that allowing cameras to watch the movements of citizens may lead to a “Big Brother is watching” image of Virginia. Like many Americans, Virginians simply do not like the idea of the government spying on them. This can be seen in the fact that Virginia became the first state (and Charlottesville the first city) to pass anti-drone legislation. Another concern is that ALPRs can be used to target minorities. This was the case in New York City when the New York Police Department placed ALPRs near mosques. The proposed policy seeks to avoid such discriminatory practices by requiring that state agencies provide yearly reports of their ALPR use and practices. Such reports will increase public interest and assist watchdog groups in ensuring that ALPRs are not placed solely because of ethnic, religious, or racial demographics.

The public safety benefits of ALPRs outweigh these concerns. There is an “inherent value” to being able to process and identify vehicles quickly since over 50-percent of all crime is related to a vehicle. Previously, officers were given long lists of vehicles (hot sheets) that could be as long...
as 10-pages, each with six columns. Automating this process makes police work more efficient and effective, making ALPRs a vital tool in combating crime. Since February 2010, VSP has recovered 529 stolen vehicles, 751 stolen plates, and arrested 229 wanted persons based on ALPR hits.

According to a 2010 George Mason University study, ALPRs also make police work safer. ALPRs free officers from the distraction of looking at license plates while they are in motion. Instead, officers can now focus on driving. Additionally, ALPRs free up radio communication. Rather than having to call in license plates, police radios can now be used solely for critical communications.

**Passive and Active Use of ALPRs: Pros and Cons**

The ACLU will criticize changing the existing policy to include passive collection. The ACLU insists that ALPRs only be used for active collection, i.e. when there is a “reasonable suspicion that a crime occurred before collecting information”. According to the ACLU, passive collection amounts to “monitoring innocent people,” for which there is no legitimate need. They believe that once a license plate is scanned, if it comes back negative for a warrant or outstanding fine, then the data should be immediately deleted. Some argue that passive collection is also a violation of the Virginia Code. In §2.2-3800(C) of the Code of Virginia the State details several safeguards to personal privacy, including that “information shall not be collected unless the need for it has been clearly established in advanced.” Passive collection, by definition, occurs without clearly establishing need.

Passive collection may also set a precedent that it is acceptable for the government to monitor the day-to-day activities of its citizens. When there is no regard for who is being monitored, everyone becomes a potential suspect. Such an atmosphere may lead individuals to unnecessarily change their behavior. In the same way that seeing a police car in your rearview mirror makes you slow down, even if you are driving within the speed limit, ALPRs may cause Virginians to alter their decision-making about where they go. Specifically, the International Association of Police Chiefs outlined this disadvantage stating that there is “a risk that individuals will become more cautious in the exercise of their protected rights of expression, protest, association, and political participation because they consider themselves to be under constant surveillance.”

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21 Michael Martinez, “Policing advocates defend use of high-tech license plate readers,” *CNN*, July 18, 2013.
24 ACLU, “You Are Being Tracked.”
25 Ibid.
26 Ibid.
27 Cuccinelli, “§ 2.2-505 Opinion.”
29 Glenberg, “Virginia State Police Built Huge Database.”
The proposed policy, however, recognizes that many police leads occur ex post facto. Passive collection is an invaluable tool in developing leads in terrorism investigations and criminal cases. For example, if a crime is reported then police can look at license plates scanned near the crime scene to locate potential suspects, victims or witnesses.

In addition to assisting police investigations, another advantage of passive collection is that it decreases racial profiling. While it may only be subconsciously, officers may run license plates of minority-owned vehicles more frequently. ALPRs do not scan based on a license plate based on a driver’s appearance, in fact they scan all license plates without concern for who is in the car. Thus, by removing the officer from the process of running plates, ALPRs assist Virginia in maintaining law enforcement practices that are racially neutral.

**ALPR Storage Rules: Pros and Cons**

One of the main disadvantages in allowing VSP to store license plate images is that it can reveal extremely sensitive information about citizens. As the U.S. Court of Appeals for the D.C. Circuit articulated in 2010:

> A person who knows all of another’s travel can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, [or] an outpatient receiving medical treatment.\(^{30}\)

In 2012, the Minneapolis Star Tribune published a map of Mayor R.T. Ryback’s movements during the prior year, creating an accurate picture of where he lived and his acquaintances.\(^{31}\) They did so using 41 ALPR data points. A database that can allow for the mapping of an innocent individual’s movements goes against the expectations held by Virginians that they are not being tracked. There is a difference between seeing (no expectation to privacy- ALPRs permissible) and stalking someone (expectation of not being tracked- ALPR databases not permissible).\(^{32}\) The proposed policy takes such expectations into account by limiting the data to a 24-hour holding period if is not relevant to a criminal investigation.

Databases, even ones limited to short time frames, also have the disadvantage that those with access to the records can misuse them. For example, police officers could use a database to stalk a romantic partner, identify a reporter’s confidential sources, or find someone who went to a political rally, gun store, gay bar, or abortion clinic.\(^{33}\) In Ohio, for example, 30,000 police officers and court employees have access to driver’s license images in databases without oversight or audit controls.\(^{34}\) To ensure against potential abuses, the proposed policy entails stringent access rules. Only state employees who have been trained can access such records and agencies are required to log who accesses the database.

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\(^{30}\) ACLU, “You Are Being Tracked.”

\(^{31}\) Michael Martinez, “Policing advocates defend use of high-tech license plate readers,” CNN, July 18, 2013.

\(^{32}\) Kevin McArthur, “ALPR- Canada’s Big Brother? The Federal Data Base That’s Keeping Tabs on Vancouver,” Unrest.ca, June 14, 2006.

\(^{33}\) Hardy, “Not Intrusive.”

Not only do databases create security risks from law enforcement officers overstepping their authority, but hackers also pose a risk. Only months ago the Los Angeles County Police and Los Angeles Sheriff’s Departments were hacked.\textsuperscript{35} Hackers located the cell phone numbers, addresses, and even explicit photos of police officers and then posted them online for public access. Virginia agencies that use ALPRs must remain vigilant of these potential threats and ensure that proper security systems are in place.

VSP may feel that the 24-hour time period is too narrow. Crimes are not always reported within a 24-hour time period. Thus, deleting data may make it more challenging to find investigative leads. The advantage of the proposed policy, however, is that it balances law enforcement needs (letting them use ALPRs passively) with legitimate privacy concerns of Virginians (insisting data be deleted after 24 hours) without favoring either. Finally, the amended policy limits ALPR use to law enforcement. Privately owned ALPR databases have emerged in some states.\textsuperscript{36} Regulating and monitoring these databases presents many challenges. The proposed policy is based on the justification that there are public safety reasons for passively using ALPRs and allowing for data to be searched for 24 hours. Private companies, however, do not have the same public safety mandate and thus are not able to use such justifications. By restricting ALPRs to legitimate law enforcement purposes the policy includes greater protections for Virginians’ privacy.

\textbf{Conclusion}

ALPRs are essential law enforcement tools that make police work faster, safer, and more effective. By allowing for their use, the proposed amendment to the Data Act assists in protecting public safety in Virginia. Importantly, the policy also protects the privacy of Virginians. It includes procedural safeguards such as access limitations as well as maximum 24-hour holding period to prevent abuses of the system.

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\textsuperscript{36} ACLU, “You Are Being Tracked.”