

SENATE No. 1909

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/23/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/26/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2017</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>1/30/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/30/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/2/2017</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>2/3/2017</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/3/2017</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/3/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/3/2017</i>

SENATE No. 1909

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1909) of Cynthia S. Creem, Michael J. Barrett, Jay R. Kaufman, Marjorie C. Decker and other members of the General Court for legislation to regulate the use of automatic license plate reader systems. Transportation.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1817 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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. The General Laws are hereby amended by inserting after chapter 90C the
2 following chapter:-

3 CHAPTER 90C½.

4 LICENSE PLATE TRACKING.

5 Section 1.

6 In this chapter, unless the context otherwise requires, the following words shall have the
7 following meanings:-

8 “Automatic license plate reader system” or “ALPR system”: an automated system of one
9 or more mobile or fixed high speed cameras used in combination with computer algorithms to
10 convert images of license plates into computer-readable license plate identifying data.

11 “ALPR data”: the GPS coordinates, date and time, photograph, license plate number, and
12 any other data captured by or derived from any ALPR system.

13 “Secured area”: an area, enclosed by clear boundaries, to which access is limited and
14 entry is obtainable only through specific access-control points.

15 Section 2.

16 (a) Persons acting under color of state law shall not use ALPR systems except in the
17 following ways:

18 (1) By parking enforcement entities, for the regulation of public parking pursuant to
19 sections 20A and 20A½ of chapter 90;

20 (2) For the purpose of controlling access to secured areas;

21 (3) By the Department of Transportation, for the purpose of electronic toll collection
22 under section 13 of chapter 6C;

23 (4) By state, county, or municipal law enforcement agencies, using ALPR systems for
24 the immediate comparison of captured plate data with data held by the Registry of Motor
25 Vehicles, the Department of Criminal Justice Information Services, the National Crime
26 Information Center, the Federal Bureau of Investigation Kidnappings and Missing Persons list,
27 and the child protective alert system established pursuant to section 51H of chapter 119 or the

28 silver alert system, so-called, established pursuant to section 18L of chapter 6A for the purpose
29 of identifying:

30 a. Outstanding parking or traffic violations;

31 b. A violation of vehicle registration requirements

32 c. A vehicle in violation of the inspection requirements set forth in section 7A of
33 chapter 90;

34 d. A stolen vehicle or stolen license plate;

35 e. A vehicle registered to an individual for whom there is an outstanding default or
36 arrest warrant for felony charges appearing in the warrant management system established
37 pursuant to section 23A of chapter 276, or outstanding default or arrest warrants for felony
38 charges issued in another jurisdiction; or

39 f. A vehicle associated with a missing person; or

40 (5) Pursuant to a valid warrant issued pursuant to the requirements of sections 2
41 through 3A of chapter 276.

42 (b) Persons acting under color of state law shall not access ALPR data from other
43 governmental or non-governmental entities except pursuant to a valid warrant issued pursuant to
44 the requirements of sections 2 through 3A of chapter 276.

45 (c) Persons acting under color of state law authorized to obtain or access ALPR data
46 under this chapter shall not sell, trade, or exchange such data for any purpose.

47 Section 3.

48 (a) Any entity that uses ALPR systems pursuant to section 2(a)(4) shall update those
49 systems from the enumerated databases every 24 hours if such updates are available.

50 (b) An alert from an ALPR system used under section 2(a)(4) shall not constitute
51 reasonable suspicion or probable cause to perform a traffic stop. If an ALPR system alerts on a
52 plate, officers shall visually confirm that the plate number and state of origin match the alert
53 before taking law enforcement action.

54 (c) ALPR data obtained for the purposes described under this chapter shall be
55 automatically deleted within 14 days, and may be preserved beyond 14 days only pursuant to a
56 valid warrant issued pursuant to the requirements of sections 2 through 3A of chapter 276.

57 Section 4.

58 Any entity that uses ALPR systems pursuant to section 2(a) shall:

59 (a) Adopt a policy governing use of the system, including data retention and deletion, and
60 conspicuously post the policy on the entity's web site;

61 (b) Adopt a privacy policy to ensure that ALPR data is not shared in violation of this
62 chapter or any other law and conspicuously post the privacy policy on the agency's web site; and

63 (c) Report annually its automatic license plate reader practices and usage to the state
64 authority that governs the entity, and conspicuously post the report on the entity's web site. The
65 report shall include:

66 (1) The number of license plates scanned;

67 (2) The number of license plate scans retained by the entity at the time of reporting;

68 (3) For law enforcement agencies operating ALPR systems pursuant to section 2(a)(4),
69 the names of the lists against which captured plate data was checked, and for each list the
70 number of confirmed matches;

71 (4) The number of warrants issued under sections (a) and (b) of section 2;

72 (5) The number of license plate scans the agency obtained or accessed from private
73 ALPR operators and government entities outside Massachusetts pursuant to warrants or
74 emergency requests;

75 (6) The number of warrants resulting in criminal charges, the particular offenses
76 charged, and the number of such charges resulting in conviction;

77 (7) Any contracts or agreements regarding the purchase, rental, or licensing of any
78 ALPR system from a private entity;

79 (8) Any contracts or agreements regarding access to captured plate data from a private
80 entity; and

81 (9) Any changes in policy that affect privacy concerns.

82 Section 5.

83 ALPR data held by a person acting under color of state law shall be considered personal
84 data under chapter 66A of the general laws. Such data may be disclosed only to, or with the
85 prior written consent of, the person to whom the vehicle is registered; provided, however, that
86 upon presentation to a state, county, or municipal law enforcement agency of a valid, current
87 abuse prevention order under chapter 209A protecting the driver of a vehicle jointly registered
88 with or registered solely in the name of the individual against whom the order was issued, the

89 law enforcement agency shall not disclose ALPR data regarding such vehicle except pursuant to
90 a valid warrant issued pursuant to the requirements of sections 2 through 3A of chapter 276.

91 Section 6.

92 Any ALPR data captured or accessed in violation of Section 2 or improperly maintained
93 in violation of Section 3(c) shall not be introduced by the commonwealth in any grand jury or
94 criminal proceeding or in any civil or administrative proceeding brought by the commonwealth
95 or any government office or official.

96 The commonwealth shall disclose to the defense in a criminal prosecution the existence
97 and the contents of any captured plate data pursuant to the provisions of Rule 14(a)(1) of the
98 Massachusetts Rules of Criminal Procedure. A criminal defendant shall be entitled to introduce
99 evidence of ALPR data, however obtained and maintained, in his or her defense.

100 An individual whose rights have been violated by the improper capture, access, or
101 maintenance of ALPR data may introduce evidence concerning such data in a civil action
102 brought pursuant to section 8 or may grant permission to another party in a civil proceeding to
103 introduce such evidence.

104 Section 7.

105 ALPR data derived from vehicles registered or operated within the commonwealth shall
106 not be used by any person as the basis, in whole or in part, for any of the following:

107 (a) to determine a person's numerical or other credit rating;

108 (b) to make any determination with respect to any secured or unsecured credit facility or
109 loan, or any other form of financing, including any determination as to whether to extend such
110 financing, the applicable interest rate or rate of return, or whether an event of default exists;

111 (c) to determine a person's insurance rate or rating with respect to any form of insurance,
112 including any policy of life insurance, health insurance, automobile insurance or liability
113 insurance;

114 (d) to make any determination with respect to hiring, dismissal, discharge, suspension,
115 compensation or any other employment decision; or

116 (e) to identify targets of or to engage in any form of promotion, marketing, advertising or
117 solicitation.

118 Section 8.

119 Any unauthorized use of ALPR systems or ALPR data, and any access to ALPR data
120 provided by a non-governmental entity to a person acting under color of state law without a valid
121 warrant issued pursuant to the requirements of sections 2 through 3A of chapter 276 shall be a
122 violation of chapter 93A.

123 Any aggrieved person may institute a civil action in district or superior court for damages
124 resulting from a violation of this chapter, or in superior court to restrain any such violation. If in
125 any such action a willful violation is found to have occurred, the violator shall not be entitled to
126 claim any privilege absolute or qualified, and he shall, in addition to any liability for such actual
127 damages as may be shown, be liable for exemplary damages of not less than one hundred and not

- 128 more than one thousand dollars for each violation, together with costs and reasonable attorneys’
129 fees and disbursements incurred by the person bringing the action.