

Representative Robert E. Craven, Sr.  
Chair, House Judiciary Committee, State of Rhode Island General Assembly

House Bill No. 5365 (“HB 5365”)

Wednesday, March 22, 2023  
4:00 PM, House Lounge – State House

## IN SUPPORT

Representative Craven and Committee Members:

My name is Max Isaacs and I am a staff attorney at the Policing Project at New York University School of Law, an organization dedicated to promoting democratic policing. The Policing Project has worked with policymakers and policing agencies across the country to help the public capture the benefits of policing technologies while mitigating potential civil rights and civil liberties harms. This work has included publication of a [report](#) on police use of automated license plate readers (“ALPRs”) as well as [model ALPR legislation](#).

The Policing Project strongly supports HB 5365, a balanced bill which would implement common-sense rules around police use of ALPRs. We also have some suggestions to strengthen the bill.

ALPRs, a camera-based technology designed to automatically read passing license plates, have been widely adopted by policing agencies across the country. These devices are used to create databases of vehicle information (known as “historical data”) which can be used to track the locations and movements of individuals over time. ALPRs also are used to alert officers when they detect a license plate on a list of sought-after vehicles (known as a “hotlist”).

Like many policing technologies, ALPRs have the potential to make society safer, yet there are legitimate concerns that their use may impact individual rights and liberties. At the Policing Project, we believe that the right approach is to minimize the potential harms of policing technologies while still allowing the public to capture the technology’s benefits.

Some of the major civil rights and civil liberties concerns relating to ALPR use include:

- Individual privacy. ALPRs enable police to collect data about our location and movements as we go about our daily lives. These data can reveal a wealth of sensitive information — as the Supreme Court has said in the context of GPS and cell-phone tracking, location data “provides an intimate window into a person’s life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations.”<sup>1</sup>

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<sup>1</sup> *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018) (internal quotation omitted).

- Overpolicing. In some jurisdictions, ALPRs have been used to investigate non-violent low-level offenses, which are disproportionately enforced against Black and brown individuals and other marginalized groups, and their enforcement can diminish trust in law enforcement, undermining public safety. Moreover, [evidence](#) suggests that *declining* to prosecute certain nonviolent misdemeanors *reduces* the likelihood that people will reoffend. Additionally, some agencies use ALPRs for fines and fees enforcement — a particularly concerning use of the technology. In Rhode Island, a failure to pay traffic court debt can lead to a [driver’s license suspension](#). These suspensions can have a devastating impact on individuals and families unable to make the payments, many of whom rely on their vehicles for work or education.
- Democratic accountability. Policing agencies often deploy ALPRs without any legislative authorization to do so. This is exactly backwards — it is a foundational principle of American governance that executive agencies must have legislative authorization for their activities.<sup>2</sup> Whether to deploy technologies that could abridge individual rights and liberties is a substantial policy question for the people’s elected representatives to decide.

If enacted, HB 5365 would go a long way towards addressing each of these issues:

- Individual privacy. HB 5365 would help mitigate privacy concerns by requiring the deletion of ALPR data after thirty days in most circumstances. Importantly, this limitation would not prevent police from accessing historical data, but would reasonably limit their ability to track individuals’ locations and movements over long periods of time.
- Overpolicing. HB 5365 would prevent the use of ALPRs for fines and fees enforcement and enforcement of most low-level offenses, while still permitting the use of ALPRs in response to serious crimes and incidents.
- Democratic accountability. HB 5365 would require policing agencies to obtain legislative approval prior to acquiring ALPRs or ALPR data. This provision, which ensures democratic accountability around police use of ALPRs, is enormously consequential.

**This bill is an important step forward and we recommend that this committee report favorably on it.** The bill could be further strengthened to better protect the civil rights and liberties of Rhode Island citizens in the following ways:

- Individual privacy. We recommend that the bill be amended to require police to obtain a warrant in order to use ALPRs to conduct location tracking. Although HB 5365’s retention period helps mitigate privacy concerns significantly, police access to thirty days of location data can still constitute a significant incursion on individual privacy.<sup>3</sup> Requiring police to obtain a judicial warrant prior to conducting location tracking through ALPRs, as

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<sup>2</sup> See *INS v. Chadha*, 462 U.S. 919, 953 n.16 (1983) (“[T]he Executive’s administration of the laws . . . cannot reach beyond the limits of the statute that created it.”).

<sup>3</sup> Indeed, in the context of location tracking via cell phone data, the Supreme Court has said that seven days of tracking is a significant enough incursion on privacy to constitute a search under the Fourth Amendment. See *Carpenter*, 138 S. Ct. at 2217 n.3.

[Minnesota's ALPR statute](#) does, would provide strong privacy protection for Rhode Island citizens. Moreover, implementing a warrant requirement would bring the bill into alignment with an existing [state law](#) requiring law enforcement to obtain a warrant prior to obtaining location information of certain electronic devices such as cell phones.

- [Immigration and gang hotlists](#). We recommend that HB 5365 be amended to prohibit policing agencies from using ALPRs to identify vehicles on the National Crime Information Center's ("NCIC") "immigration violator" and "gang" hotlists. There are serious concerns that these hotlists may contain erroneous information which may lead to unwarranted police contact. For example, a [2005 study](#) found that a significant number of NCIC immigration violator hits were "false positives," in which the Department of Homeland Security was unable to confirm that the individual in question was an actual immigration violator. And inclusion in NCIC's gang file can be based on subjective or unreliable criteria. For example, an individual [may be deemed a gang member](#) based on a self-admission and their "frequent[ing] a gang's area" — despite the fact that self-admissions are notoriously unreliable (especially for youth) and the fact that many people have no choice but to live or work in an area with gang activity.

HB 5365 would enact crucial safeguards enabling Rhode Island citizens to capture the benefits of ALPR while minimizing the harms. We strongly support this bill (with or without amendments, although we believe our recommendations will strengthen the bill). We thank the Committee for the opportunity to submit this written testimony and would be pleased to provide more information or answer any questions members of the committee might have. We urge the Committee to favorably report on HB 5365 and adopt the amendments we suggest.