Roadway Safety Request for Information & Ideas

Submission from the **ACLU of Massachusetts**

Contact information: Emiliano Falcon-Morano, Policy Counsel, efalcon@aclum.org

Idea Title or Tagline (Required):

The Use of Automated Enforcement for Road Safety Requires New Rules Around Privacy and Accuracy

With which component(s) of the Safe System Approach does this idea correspond? (Required):

Safer People

Safer Vehicles

Safer Speeds

Safer Roads

Post-Crash Care

Other

Describe your idea (Required)

Every day, the Department of Transportation ("DOT") tracks when and where hundreds of thousands of motorists drive on toll roads and bridges, through its tolling program. Additionally, according to public records obtained by the ACLU, the Massachusetts State Police uses MassDOT property for its license plate reader (LPR) surveillance program, which hoovers up huge quantities of information showing who is driving where, when, across the state.

Today, toll and LPR data are vulnerable to misuse and abuse because neither regulations nor state law sufficiently protect drivers' privacy. This is particularly concerning considering the Supreme Court's decision in *Dobbs*, which opened the door to the criminalization of abortion. Today, abortion is illegal in over half of US states. According to data from Planned Parenthood, more patients are now coming to Massachusetts to benefit from our robust reproductive rights protections. While Massachusetts state law prohibits police from sharing information with out-of-state law enforcement when the information pertains to an investigation into the provision of healthcare that is lawful in Massachusetts, enforcement of this provision can be challenging. A bootstraps approach to protecting sensitive data like LPR and tolling information would apply broader retention and access restrictions, to ensure patient and general public privacy.

The use of license plate readers (LPRs) and other technologies for the purpose of road safety (technologies collectively referred to as "automated enforcement" or "AE") would add more data to the existing troves of information that can be misused and abused to violate the privacy of motorists. Thus, **if the DOT plans to revamp or expand AE it must update its regulations**.

For LPRs, the DOT should:
- Promulgate regulations to prohibit law enforcement (LE) from accessing LPR data absent a judge-issued warrant or in life-threatening emergencies.
  - These regulations should also apply to LPR data collected by other entities on DOT property. For example, data collected by the MSP on DOT property should not be accessible to any other LE agency absent a warrant or emergency.
- Promulgate regulations to limit data retention periods to the shortest possible duration. This period should be measured in weeks or months, not years.
- Ensure all funds from AE revenues are dedicated to projects that promote safe streets, including road diets, bike lanes, and public transit, and prohibit agreements with companies that incentivize technology providers to produce more citations.
- Encrypt LPR data to protect it from unauthorized access or breaches.

For electronic tolling data, the DOT should:
- Ensure tolling data is only used to collect and process tolls.
- Amend regulations to prohibit LE access to tolling data absent a judge-issued warrant or in life-threatening emergencies.
- Amend regulations to limit the data retention period to the shortest possible duration. This period should be measured in weeks or months, not years.
- Encrypt tolling data to protect it from unauthorized access or breaches.

To ensure accuracy in the use of AE, the DOT should
- Budget for, schedule, and implement regular audits of AE systems to ensure compliance with privacy regulations and data security standards, to include audits of contractors and anyone else with access to data collected on DOT property, including LE.
- Conduct regular audits of AE systems to reduce the likelihood of false positives and ensure fair enforcement of traffic laws.
- Establish regulations that require human review before commencing an enforcement action.
- Conduct regular calibration and maintenance of speed safety cameras and AE equipment to maintain high levels of accuracy.
- Implement a transparent process for addressing and correcting any inaccuracies identified in the enforcement process.

To ensure fair enforcement, the DOT should:
- Undertake a study to determine where AE should be used, considering the potential for racial and economic disparities and centering data on traffic accidents and fatalities.
- Allow individuals to appeal any decision where AE was used, providing a mechanism for redress in case of errors or disputes.
- Impose penalties for violations of privacy and accuracy regulations to deter non-compliance.
- Conduct regular training for staff and contractors on privacy and accuracy standards.

These regulatory updates would help balance the need for road safety with the protection of privacy, due process, racial and economic justice, and the assurance of accuracy in AE.

Please briefly describe both the advantages and disadvantages of your idea. (Required)

Advantages:

1. **Privacy Protection:** Restricting access to LPR databases and electronic tolling data ensures individual privacy is safeguarded, reducing the potential for surveillance and unauthorized tracking.
2. **Purpose Limitation and Data Minimization:** Limiting data collection and retention periods for LPR and tolling data minimizes the risk of misuse and data breaches, enhancing security.
3. **Accuracy Enhancement:** Requiring vendors to provide maximum accuracy in AE systems reduces false positives, ensuring fair and just enforcement of traffic laws.
4. **Accountability and Redress:** Allowing individuals to appeal decisions made by automated systems ensures accountability and provides a mechanism for addressing errors or disputes.

Disadvantages:

1. **Cost Implications:** Implementing stricter regulations and requiring higher accuracy standards may increase costs for vendors and, by extension, for the DOT.
2. **Technological Limitations:** Achieving maximum accuracy in AE systems may be challenging due to limitations in current technology.
3. **Appeal Process Complexity:** Establishing an effective and fair appeal process for decisions made by automated systems could be complex and resource-intensive.

Overall, while the proposed updates aim to enhance privacy, accuracy, and fairness in using speed safety cameras and AE, they also present challenges in terms of cost, enforcement, and technological feasibility.