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# Top court in Mass. to review controversial technology police use to track cars

By [Matt Rocheleau](#) Globe Staff, June 4, 2019, 7:27 p.m.



An automatic license plate reader atop a police car. SUZANNE KREITER/GLOBE STAFF/FILE 2013/GLOBE STAFF

Massachusetts' highest court will soon review the legality of controversial surveillance technology that state and local law enforcement use to track vehicles in real time, collecting voluminous data on motorists not suspected of any crime.

Police departments in Massachusetts in recent years [have installed an undisclosed number of cameras across the state](#) that automatically photograph the license plate of each passing vehicle, and compile data, including the location date and time, in a massive database — all without obtaining warrants or court orders.

The practice has raised a host of legal and privacy concerns, along with questions about how the data is used and stored. Plate reader technology has proliferated across the country in recent years, and remains [unregulated](#) in many states, including Massachusetts. Now, the matter is headed for a showdown in the Supreme Judicial Court.

“It’s clearly a very controversial issue facing courts throughout the nation now,” said Martin W. Healy, chief legal counsel of the Massachusetts Bar Association. “You can see people are struggling with this technology and how to allow it to flourish without offending the individual’s right to privacy.”

Late last month, SJC Justice Scott L. Kafker took a rare step in ordering an appeal of a Barnstable County drug trafficking case to go before the court’s full bench. A defendant in the pending criminal case was identified and tracked using plate readers.

Healy said the case will be “precedent-setting,” no matter the outcome. “Eventually, we’ll see this issue addressed by the US Supreme Court.”

Authorities in Massachusetts say they use the plate readers to track either the historical or real-time movements of violent suspects or drug traffickers, for example, or to find missing and abducted people.

“The technology is an important tool in our overall capability to locate vehicles and suspects connected to serious offenses, ranging from potential criminal activity to terrorist threats,” said State Police spokesman David Procopio.

But civil liberties advocates and some lawmakers have raised privacy concerns and questions about the constitutionality of police using the technology. They've also expressed concern over the technology's use by private companies, including car repossession firms and parking lot operators, and the practice of other businesses, such as banks, insurers, and private investigators, buying data from brokers.

Kade Crockford, director of the Technology for Liberty Program at the ACLU of Massachusetts, called the technology "a threat to every person's freedom to go about their daily life without a government official keeping a record of their every movement."

Procopio acknowledged plate readers are in use "throughout" the state but would not say where or how many. He said "case law establishes that appropriate use of [plate reader] technology is constitutional" and that the agency uses the system for law enforcement purposes.

Some are installed at fixed locations, he said. Others are on cruisers or portable equipment.

It's unclear how many agencies use the technology, but 60 municipal, county, and state law enforcement agencies can access and submit data to a statewide database containing troves of information captured by plate readers, according to documents obtained by the Globe through public records requests.

State public safety officials say that data is stored for one year, with older information purged daily. No agencies outside the state have access, officials say.

The Massachusetts Port Authority says it uses the technology at Logan Airport for public safety and security reasons and at airport parking facilities "for business-related purposes," including "locating customer vehicles."

The technology is also deployed on either side of the Bourne and Sagamore bridges — allowing law enforcement to record the plate of every vehicle that drives onto or off Cape Cod.

Those cameras were installed more than three years ago by State Police. Their existence came to light only recently through an opioid trafficking case in Barnstable Superior Court.

The case was the result of a long-term investigation in which police used a mix of historical and real-time plate-reader data captured by the Cape bridge cameras to track and eventually arrest two men after an alleged drug deal. Each man was indicted on felony drug charges.

Defense attorney Paul A. Bogosian argued in court that the way police used the technology violated several laws, including state and federal constitutional protections as well as federal laws surrounding the privacy of electronic communications.

Bogosian said police should have obtained a search warrant or a court order before using the plate reader to track the vehicle of his client, Jason McCarthy, over a prolonged period, similar to legal requirements for cellphone location data. Under a US Supreme Court [ruling](#) in 2018, law enforcement officials now generally need a warrant to collect cellphone location data.

In March, Massachusetts Superior Court Judge Robert Rufo ruled that license plates don't come with the same privacy expectation as cellphone data, and the two sets of bridge cameras don't show the same detailed trail of movements a cellphone might.

Bogosian appealed Rufo's ruling to the SJC.

“It’s Big Brother being able to have information that predicts your location,” Bogosian said in an interview. “They’re able to put together a map and a pattern and predict where you’re going to be on a certain day.”

Cape & Islands District Attorney Michael O’Keefe, whose office is prosecuting the Barnstable case, pointed out that the case involves plate readers at a fixed location.

“This doesn’t allow for someone to get the same information they would from putting a [GPS] device on a car and tracking it everywhere it goes,” O’Keefe said. “We could put an officer at either end of the bridge to do the same thing.”

O’Keefe said he did not know how many plate-reading cameras there are in Massachusetts, but said he doesn’t believe they’re widespread.

Chelsea Police Chief Brian Kyes, president of the Massachusetts Major City Chiefs of Police Association, said local law enforcement began using the technology about a decade ago. He said it’s a valuable tool for protecting the public and he hopes the SJC will allow law enforcement to keep using it.

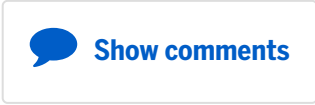
“While privacy concerns should always be considered . . . in this instance those concerns do not outweigh the potential benefits,” Kyes said in an e-mail.

Compounding privacy concerns: The technology — and the humans who use it — can make mistakes.

Massport internal audits in 2017 found cameras at Logan Airport were failing to accurately capture about 40 percent of plates leaving parking facilities. One audit said plans to install “state-of-the-art” cameras should lower the misread rate to about 25 percent.

It’s unclear if new cameras were ever installed. Massport didn’t respond to a request for comment.

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