DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

PRESIDENT
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SUFFOLK COUNTY

District Attorney Raymond A. Tierney's Testimony
Legislative Office Building – Hearing Room B
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NYS Assembly Standing Committee on Consumer Affairs and Protection
NYS Assembly Standing Committee on Governmental Operations
NYS Assembly Standing Committee on Local Governments

I urge you to preserve law enforcement's ability to use automatic license plate reader (ALPR) systems as critical tools in the investigation, prosecution, and prevention of crime. Despite the considerable public discourse recently regarding ALPRs such as Flock, these systems are not new, nor are they experimental. ALPR technology has been used by law enforcement for decades, preventing and solving thousands of crimes nationwide, and protecting countless victims. Instead of bowing to the media and public scrutiny and framing the issue before us as whether law enforcement should have access to ALPR systems at all, I instead ask you to only consider how this technology can be used responsibly, with appropriate safeguards, accountability, and oversight in place to minimize misuse.

As District Attorney of Suffolk County and the President of the District Attorneys Association of the State of New York (DAASNY), I want to begin by stating that that responsibility rests largely with us. We all recognize that New Yorkers have legitimate questions about privacy and data retention of ALPRS, and that there is a potential for misuse of this technology. While those concerns deserve serious consideration, it is important to understand exactly what these systems do, and do not do, and are properly understood before sweeping legislative changes are considered that would have serious impacts on public safety.

ALPRs capture still images of vehicles traveling on certain public roadways. They do not record video and are not placed on private streets. They capture information that any residential or commercial surveillance video, or a person standing on a street corner could observe: a vehicle's make, model, color, license plate, and other distinguishing characteristics of that vehicle. Most importantly, ALPRs don't use facial recognition. They don't tell you who is driving the vehicle, or who is seated as a passenger in the vehicle. Law enforcement would only be able to determine who the vehicle is registered to, based on the photo captured of the license plate. As license plates are required by law to be publicly displayed precisely so that vehicles can be identified by the public and law enforcement alike, ALPRs simply make it possible for investigators to determine such information more efficiently than an officer standing on a sidewalk and manually recording license plates of vehicles that drove past. It would obviously be an extraordinarily inefficient use of police resources, but the underlying observation would be no different. Technology simply makes that process faster and more effective.

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To illustrate the practical value of this technology, I want to briefly highlight examples of its real world uses in virtually every category of criminal and non-criminal investigations. Police agencies establish alerts for stolen vehicles, stolen license plates, vehicles associated with wanted individuals, and vehicles connected to missing persons. These alerts have helped locate missing seniors reported through Silver Alerts, as well as children reported missing through Amber Alerts. Thus, ALPR technology also serves an important officer-safety function. Before approaching a vehicle during a traffic stop, officers may be alerted by these systems of the possibility that they may be approaching an individual wanted for murder or another violent crime, rather than a grandmother on her way home from the grocery store. That information can make the difference between a routine traffic encounter and a dangerous or deadly one and may prevent unnecessary police stops of similar vehicles to those described as involved in a crime.

In the last five years alone, Suffolk County law enforcement has apprehended multiple murder defendants during traffic stops because ALPR technology assisted in identifying the location of their registered vehicles – including working with other jurisdictions when those vehicles are used by the defendants to flee the county or the state. ALPR technology also helped identify the vehicle of a scammer who defrauded a senior citizen of $30,000. Law enforcement was quickly able to find that vehicle using ALPR data, stop it, and recover the senior citizen's money as it was still in the scammer's vehicle. Earlier this year, communities across Long Island experienced a rash of thefts from the blue USPS collection mailboxes located outside post offices. Using ALPR technology, law enforcement agencies worked together to identify and apprehend the crew that was traveling from New York City to steal mail.

Additionally, earlier this year, a Guatemalan national was charged with raping a five-year-old child. ALPR technology helped investigators reconstruct his movements during the time that he spent with the child on the date of the crime. In numerous other investigations such as children victimized by individuals that they met online, the victim's description of a perpetrator's vehicle, such as "a light blue pickup truck," has provided law enforcement with a meaningful lead to search nearby ALPRs that can assist in identifying all of the light blue pickup trucks that were in the area of the crime when it occurred. But the examples don't end there. I can continue to provide hundreds of examples of how ALPR information has been used for over two decades to solve some of the most serious and dangerous crimes including but not limited to fatal hit and runs, hate crimes, and large-scale drug distribution conspiracies. However, the theme is clear: crime happens first, and law enforcement's use of ALPRs comes after.

While participating law enforcement agencies have direct access to ALPR data, my office, just like all other District Attorney Offices within the state, does not. We can only request certain data from ALPR systems from those participating law enforcement agencies. Prosecutors, much like most investigators, do not sit around looking through photos captured by ALPRs in the hope of discovering a crime. We use ALPR data to investigate a crime that has or is occurring, develop evidence in real

time or from historical date regarding a vehicle which may be involved in the crime, and then, if needed, locate that vehicle in order to find a defendant or secure evidence. That distinction is fundamental to understanding how responsible law enforcement uses this technology.

While we should never assume that technology is incapable of being abused, there have only been an extremely small number of cases documenting such in the many years it has been used. Despite this, my office and Suffolk County law enforcement agencies have established meaningful safeguards to combat potential misuse, that should be considered by this legislature to be implemented on a statewide level. For example, access to ALPR searches by the Suffolk County Police Department are highly restrictive and limited to sworn members of the Criminal Intelligence, Homicide, and Major Case units. Regular patrol officers and detectives not assigned to these highly specialized units do not have the ability to independently search ALPR systems, but must instead contact Criminal Intelligence to request one. Then, every ALPR search must be connected to an active criminal investigation. When conducting or requesting to conduct a search for information from an ALPR system, investigators are required to enter a complaint number that can be verified by administrators and supervisors to ensure that the underlying investigation is active. Additionally, each search must have a documented investigative purpose. The investigator must identify the reason for the search, which is also available for review by administrators and supervisors to ensure that the search is an appropriate investigative action. Investigators are also prohibited from requesting large-scale or nationwide searches of ALPR systems unless there is a legitimate reason to believe the criminal conduct extends beyond the tri-state area. All searches of ALPR systems within our jurisdiction are regularly audited twice per month, further scrutinizing investigators for what searches they are conducting, why they are conducting them, and to monitor any repeated searches involving the same license plates. Lastly, our Suffolk law enforcement agencies severely limit information sharing of ALPR data. We do not share our data with federal agencies or private companies.

The safeguards described above are not mere policy statements. They are real operational requirements currently in place designed to create accountability, establish an audit trail, and prevent searches for personal or unauthorized purposes. If an individual with access to these systems searches for a significant other, spouse, neighbor, or anyone else for a personal reason, that individual should expect to be prosecuted. District Attorney offices' Public Corruption Units, the Attorney General, and the Inspector General all exist to ensure that the power entrusted to public officials and law enforcement officers is never used for personal gain or improper purposes. We take that responsibility seriously.

I also want you to consider the extensive experience that all law enforcement agencies have of managing and protecting sensitive or confidential data that is much more intrusive than photos of vehicles and their license plates. Consider just a fraction of the information law enforcement is entrusted to routinely handle: homicide crime scene photos and autopsy reports, child sexual abuse images and videos, medical records of victims containing private medical data, Social Security numbers, and private banking records. This is just a glimpse of the types of evidence

that law enforcement officers deal with daily. These materials contain far more personal and potentially damaging information than a photo of a particular vehicle driving on a public roadway. Additionally, all law enforcement agencies have developed policies, training, access restrictions, and oversight mechanisms to protect and manage that information. The same should be done for ALPRs.

We have all become accustomed to technology that collects information about our everyday lives. Cell phones, websites, and social media companies collect significant amounts of your private data daily (our searches, purchases, locations, communications, and interests) and sell it to others for profit. Where is the outrage there? That massive data collection of private citizens is no comparison to the extremely limited information captured by ALPRs. By no means am I suggesting that we should accept unlimited surveillance of our lives. All I ask is that you evaluate law enforcement's investigative technology fairly and proportionately, rather than treating ALPRs as though they are the equivalent of surveilling the private contents of someone's cellphone.

To sum up, the ultimate measure of any public policy decision should be whether it makes our communities safer while protecting the rights of our citizens. We believe the responsible use of ALPR technology accomplishes both. Cases are being solved using this technology. Missing seniors and children are being located. Murder suspects are being apprehended. Seniors are recovering stolen money from scammers. Mail theft rings are being thwarted. Officers are safer during traffic stops. I ask that you not eliminate law enforcement's ability to use such critical data while criminals increasingly use even more advanced technology to commit crimes, conceal their identities, and evade the law. Instead, implement common sense safeguards by requiring accountability and appropriate oversight. Trust that District Attorneys, the Attorney General, and Inspector General will investigate and prosecute anyone who abuses their position of authority by misusing their access to ALPR systems.

Thank you for your consideration, and for your commitment to public safety.