

Protecting State Driver's License Information

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Background

Currently, 16 states plus the District of Columbia and Puerto Rico have enacted laws making driver's licenses available to eligible state residents **regardless of their immigration status**.¹ Several other states are considering similar policies.

Under the federal REAL ID Act of 2005,² states may issue driver's licenses to applicants who are U.S. citizens, lawfully residing immigrants and/or people who cannot prove that they are authorized to be in the U.S. REAL ID-compliant licenses may be provided only to lawfully residing individuals. States may also issue licenses that do not satisfy REAL ID Act criteria ("non-REAL ID licenses" or "standard licenses") to citizens and immigrants of all statuses, though state laws and rules for obtaining these licenses differ.

States have good reason to ensure that information provided to driver's license agencies **is not made available** to U.S. Department of Homeland Security (DHS) agencies such as U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) for immigration enforcement purposes.³ Many of the state laws authorizing issuance of licenses to residents regardless of their immigration status include provisions limiting affirmative disclosure of department of motor vehicles (DMV) information. But DHS may have independent access to some of that data through means such as electronic networks, or simply by requesting information. State officials may be unaware of how these systems work or of whether their agencies comply with state rules.

This issue brief outlines some steps that states have taken and that advocates can pursue to protect confidential information provided to their DMVs. We provide links to the laws that have been enacted and policies that have been adopted. We do not suggest that these laws and policies are all models for other states. They are generally a result of negotiations or compromises that were achievable in a particular year. Some laws and policies are more comprehensive or stronger than others. Protecting consumer privacy often requires a multi-year strategy, and an imperfect protection may be the first step in the process.

¹ *State Laws Providing Access to Driver's Licenses or Cards, Regardless of Immigration Status* (NILC, Apr. 2020), www.nilc.org/state-laws-providing-dl-access/.

² The REAL ID Act of 2005 requires states to meet certain requirements, including proof of lawful presence in the U.S., for their licenses to be acceptable as identification for certain federal purposes. The act also allows for states to issue licenses that do not comply with REAL ID Act requirements.

³ For an overview of information-sharing mechanisms, see *Untangling the Immigration Enforcement Web: Basic Information for Advocates about Databases and Information-Sharing Among Federal, State, and Local Agencies* (NILC, Sep. 2017), www.nilc.org/untangling-immigration-enforcement-web/.

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To protect drivers' privacy, you will need to understand the mechanisms by which DHS and its component agencies obtain information from driver's license databases

The mechanisms DHS uses to obtain information from driver's license databases differ from state to state. Potential means of obtaining the information include public records act (PRA) requests or having conversations with the DMV or the state attorney general's office.

For a summary of those mechanisms in California, see [How California Driver's License Records Are Shared with the Department of Homeland Security](#), which summarizes the results of PRA requests submitted by the ACLU of Northern California and NILC.⁴

Explore administrative measures and other strategies to limit DHS access to DMV information

A January 2018 [news article](#) revealed that the state of **Washington's** Department of Licensing (DOL), the agency that issues driver's licenses, had been releasing information from driver's license applications and photographs to ICE in response to a simple request.⁵ This occurred despite the Washington governor's sweeping 2017 executive order banning the use of state resources to enforce federal immigration law.⁶ In response to strong advocacy, the state instituted new policies including:

- DOL employees are prohibited from sharing information with ICE in response to either civil immigration enforcement queries or inquiries under 8 USC secs. 1324, 1325, and 1326 (criminal immigration enforcement).⁷ All requests for information from federal immigration agencies go through the governor's office for review. Only requests with judicial warrants are answered.
- A [case-by-case review is now required](#) for law enforcement requests to the DOL License Integrity Unit (LIU) for photos, applications, vehicle titles, and other documents.⁸
- The state terminated ICE's and the CBP Office of Professional Responsibility's access to the state's online Driver and Plate Search (DAPS) database and revised the DAPS

⁴ (Dec. 2018), www.nilc.org/how-calif-dl-records-shared-with-dhs/.

⁵ Nina Shapiro, "Washington State Regularly Gives Drivers' Info to Immigration Authorities; Inslee Orders Temporary Halt," *Seattle Times*, Jan. 11, 2018, <https://www.seattletimes.com/seattle-news/times-watchdog/washington-state-regularly-gives-drivers-info-to-immigration-authorities-inslee-orders-temporary-halt/>.

⁶ Executive Order 17-01: Reaffirming Washington's Commitment to Tolerance, Diversity, and Inclusiveness (Office of the Governor, State of Washington, Feb. 23, 2017), https://www.governor.wa.gov/sites/default/files/xe_order/eo_17-01.pdf.

⁷ 8 USC 1324 prohibits "bringing in and harboring certain aliens"; 8 USC 1325 prohibits "unlawful entry by alien"; and 8 USC 1326 prohibits "reentry of removed aliens."

⁸ Emily Boerger, "DOL Terminates Data Contracts with Federal Immigration Agencies," *Washington State Wire*, MAY 17, 2018, <https://washingtonstatewire.com/dol-terminates-data-contracts-with-federal-immigration-enforcement-units/>.

user agreement to prohibit its use “for purposes of investigating, locating, or apprehending individuals for immigration related violations” (emphasis added).⁹

- The DOL no longer transmits Social Security numbers to the statewide law enforcement telecommunications system, ACCESS (the acronym for “A Centralized Computerized Enforcement Service System”), which is operated by the Washington State Patrol (WSP).
- Law enforcement agencies must enter into a contract with the WSP to use ACCESS. The contract contains a permissible use clause limiting searches to criminal investigations. Users must include a purpose code for each search.
- Driver’s license applicants are **no longer required** to provide their place of birth.¹⁰

The **California** attorney general issued **guidance** implementing the California Values Act’s (SB 54’s) database provisions requiring that all users of the **California Law Enforcement Communications System (CLETS)** agree that they will not use any information for purposes of immigration enforcement, with respect to an individual who does not have a criminal history.¹¹ In addition, all CLETS-subscribing entities must submit Values Act compliance documentation or face termination of access to CLETS.¹² ICE Enforcement and Removal Operations and the Automated Regional Justice Information System in San Diego County have refused to agree to the terms of a new agreement and been have cut off from access to CLETS.¹³

The **Colorado** attorney general issued a guidance to state government agencies restricting the sharing of a wide range of personal identifying information (PII), including place of birth, Social Security or tax identification number, and immigration or citizenship status. This information may be disclosed for active criminal investigations, in response to a

⁹ *Id.*

¹⁰ Jessica Lee, “WA Drivers-License Applications No Longer Ask Where a Person Was Born,” *Seattle Times*, Jan. 26, 2018, <https://www.seattletimes.com/seattle-news/wa-drivers-license-applications-no-longer-ask-where-a-person-was-born/>.

¹¹ Information Bulletin from Xavier Becerra, Attorney General of California, to All Chiefs of Police, Sheriffs, and Executives of California Law Enforcement Agencies, Subject: California Values Act’s Database Guidance (No. 18-10-CJIS, Oct. 1, 2018), https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/18-10-cjis.pdf.

CLETS is a “law enforcement communications network available to all public agencies of law enforcement within the state.” *California Law Enforcement Telecommunications System: Policies, Practices and Procedures (and Statutes)* (Office of the Attorney General, California Dept. of Justice, Mar. 2013), <http://10ba4283a7fbcc3461c6-31fb5188b09660555a4c2fcc1bea63d9.r13.cf1.rackcdn.com/05/1ca4d641b3c87e9cf0589970d4e3c7d5.pdf>,

p. 5. It “connects public safety agencies across the state to criminal histories, driver records, and other databases.” “California Law Enforcement Telecommunications System” (Electronic Frontier Foundation webpage), <https://www.eff.org/cases/california-law-enforcement-telecommunications-system>.

¹² PowerPoint presentation by David Carlsen, CLETS Information Technology Representative, to CLETS Advisory Committee, Subject: Senate Bill 54, the California Values Act (June 26, 2019), <https://www.documentcloud.org/documents/6181659-SB54-Presentation-CAC.html>.

¹³ Saira Hussain, “California DOJ Cuts Off ICE Deportation Officers from State Law Enforcement Database” (Electronic Frontier Foundation, Dec. 18, 2019), <https://www.eff.org/deeplinks/2019/12/california-doj-cuts-ice-deportation-officers-state-law-enforcement-database>.

court order, subpoena, or warrant, as required by federal or state law or rules, and may not be shared solely for federal civil immigration purposes.¹⁴

Litigation may be necessary to accomplish administrative changes limiting DHS access to DMV information in your state

In Vermont, advocates recently settled a lawsuit filed in the local U.S. district court challenging the state DMV's racially discriminatory information-sharing practice and collaboration with federal immigration agents, which primarily targeted Latinx individuals.¹⁵ The settlement includes provisions (1) limiting the information the DMV can collect and prohibiting the DMV from making copies of documents people submit when applying for driver's licenses, (2) requiring the destruction of documents previously obtained, and (3) outlining business protocols that DMV must follow when receiving information requests from federal agencies, to limit the circumstances under which that information may be shared with them.

Take affirmative steps to ensure that unauthorized individuals are not identified or isolated through application procedures or license issuance

- Standard licenses should be available to citizens as well as immigrants regardless of their status.¹⁶
- Application procedures should not discriminate based on the type of license an applicant is seeking. For example, a state could use the same application form for all applicants and could choose not to indicate which documents an applicant used to prove age or identity, the person's eligibility or ineligibility for a Social Security number, or the person's citizenship or immigration status.
- Adopt provisions prohibiting requirements that would compel applicants to admit in writing that they do not have proof of lawful presence in the U.S.¹⁷ or to explain why they are ineligible for a Social Security number.¹⁸
- Adopt provisions that limit the information and documents that must be collected.¹⁹

¹⁴ Guidance to Executive Branch Departments and Agencies on Data Privacy, from Colorado Governor Jared Polis, May 20, 2020, <https://www.documentcloud.org/documents/6923100-POLIS-EXECUTIVE-GUIDANCE.html>. Advocates sought great protections and are concerned that ICE will claim that it is pursuing criminal investigations when its real intent is to carry out civil immigration enforcement. They also fear that the word "solely" leaves too much room for personal information to be shared.

¹⁵ Migrant Justice, et al. v. Nielsen, et al., No. 5:18-cv-00192 (D. Vt., Jan. 15, 2020), www.nilc.org/wp-content/uploads/2020/01/Migrant-Justice-v-Nielsen-settlement-2020-01-15.pdf.

¹⁶ As is the case in California, Maryland, New Jersey, New Mexico, New York, Vermont, and Washington.

¹⁷ See, e.g., New York's A3675B, sec. 5, https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03675&term=2019&Text=Y.

¹⁸ See, e.g., New Jersey's A4743, sec. 5, <https://legiscan.com/NJ/text/A4743/2018>.

¹⁹ *Id.*

- Adopt provisions limiting retention of documents presented in the application process, thus protecting those documents from disclosure.²⁰
- To the extent permissible under the REAL ID Act, minimize the difference in appearance between REAL ID and non-REAL ID or standard licenses.²¹
- Refrain from imposing more burdensome requirements on applicants for non-REAL ID licenses than on applicants for REAL ID licenses.²²

Enact legislation to protect the confidentiality of driver's license information

- Statutory language should protect the confidentiality of documents and information provided in applying for a license.
- Statutory language should limit the disclosure of records that indicate whether a person has a REAL ID or a non-REAL ID license.

Examples of enacted provisions are:

- **California Vehicle Code 12801.9 (j) and (k)** (regarding non-REAL ID licenses):²³
 - (j) Information collected pursuant to this section is not a public record and shall not be disclosed by the department, except as required by law.
 - (k) Documents provided by applicants to prove identity or residency pursuant to this section shall not be disclosed except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order.
- **California Vehicle Code 12800.7(b)** (regarding all licenses):²⁴

Notwithstanding any other law, any document provided by the applicant to the department for purposes of proving the applicant's identity, true, full name, California residency, or that the applicant's presence in the United States is authorized under federal law, is not a public record and may not be disclosed by the department except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order.

²⁰ New York's A3675B, sec. 5 (note 17, above); New Jersey's A4743, sec. 5 (note 18, above).

²¹ New York's A3675B, sec. 5 (note 17, above); Virginia's SB34, sec. 46.2-328.3 B.1. <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB34ER2>.

²² See New Jersey's A4743, sec. 8, <https://legiscan.com/NJ/text/A4743/2018>, which requires the same point total to prove identity for REAL ID and non-REAL ID licenses.

²³ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12801.9&lawCode=VEH.

²⁴ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12800.7&lawCode=VEH.

- Under the New York law:²⁵

Any portion of any record retained by the commissioner in relation to a noncommercial driver's license or learner's permit application or renewal application that contains the photo image or identifies the Social Security number, telephone number, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, the customer identification number associated with a public utilities account medical information or disability information of the holder of, or applicant for, such license or permit is not a public record and shall not be disclosed in response to any request for records except: (a) to the person who is the subject of such records; or (b) where expressly required pursuant to chapter three hundred three of part A of subtitle vi of title forty-nine of the United States code; or (c) where necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article III of the United States constitution, or subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules.

In addition:

The commissioner shall not disclose or otherwise make accessible original documents or copies of documents collected from noncommercial driver's license or learner's permit applicants or renewal applicants to prove identity, age, or fitness [subject to the same exceptions as the preceding section].

- Under Virginia's SB34, sec. 46.2-328.3 C, the Department of Motor Vehicles shall not release proof documents to obtain a driver privilege card, information regarding the type of proof documentation provided, and applications except upon request of the applicant or pursuant to a court order.²⁶
- Statutory language can protect the confidentiality of information regarding an applicant's Social Security number or ineligibility for one. For example:
 - California Vehicle Code sec. 1653.5(f) provides that, "Notwithstanding any other law, information regarding an applicant's social security account number, or ineligibility for a social security number, obtained by the department pursuant to this section, is not a public record and shall not be disclosed by the department except for any of the following purposes"²⁷
 - New Jersey's A4743 sec. 8 protects the confidentiality of information regarding an applicant's Individual Taxpayer Identification Number, Social Security number, or ineligibility for a Social Security number, subject to certain

²⁵ New York's A3675B, sec. 2,

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03675&term=2019&Text=Y.

²⁶ Virginia's SB 34, sec. 46.2-328.3 C, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB34ER2>. Sec. 46.2-328.3 C also sets conditions for the release of information related to issuance of a driver privilege card. These limited conditions reflect law enforcement agencies' open access to driver's license information. Advocates will continue to press for stronger protections.

²⁷ California Vehicle Code sec. 1653.5(f), <https://codes.findlaw.com/ca/vehicle-code/veh-sect-1653-5.html>.

exceptions, including where there is a warrant signed by a state or federal judge, a lawful court order, or a subpoena.²⁸

- Statutory language in some states specifically limits whether DMV information may be used for civil immigration enforcement.
 - Some states have included a restriction on the release of information pertaining to immigration status²⁹ or for purposes related to federal immigration laws.³⁰
 - Washington’s recently enacted **Keep Washington Working** law contains sweeping limits on the state’s entanglement in immigration enforcement, though it contains no specific reference to DMV records.³¹

Limit access to photographs and images

Local, state, and federal law enforcement agencies, including ICE, have long relied on driver’s license databases to obtain information, such as addresses, about drivers and car owners or to obtain driver’s license photos.³² And for many years, the FBI and ICE have asked states to use their face recognition systems to search photos in their DMV databases.³³ Here are some suggestions for how to limit immigration enforcement’s access to residents’ photos and images stored in state databases:

- **Determine whether your state** runs facial recognition searches against photos in DMV databases at the request of ICE or the FBI, or if the federal agencies can conduct their own facial recognition searches against the databases.³⁴ Determine whether your state shares driver’s license photos through automated systems such as **Nlets Photo Sharing** or based on a simple request.³⁵ These searches and photo sharing could be prevented administratively in some states.
- Consider legislation that specifically prohibits your state from running facial recognition searches against photos in the DMV databases at the request of ICE, the

²⁸ New Jersey’s A4743, <https://legiscan.com/NJ/text/A4743/2018>; see also Virginia’s SB34, sec. 2.2-3808.1, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB34ER2>.

²⁹ See, e.g., Nevada’s SB 303, sec. 1, subsection 10, https://www.leg.state.nv.us/Session/77th2013/Bills/SB/SB303_EN.pdf, and Washington, DC’s B20-275, sec. 2(b), <http://dclims1.dccouncil.us/images/00001/20131118115944.pdf>.

³⁰ See, e.g., New Jersey’s A4743, secs. 4 and 8, <https://legiscan.com/NJ/text/A4743/2018>.

³¹ <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5497-S2.SL.pdf>.

³² *Untangling the Immigration Enforcement Web* (NILC, Sep. 2017), www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf, pp. 16-18.

³³ See: *How U.S. Immigration & Customs Enforcement and State Motor Vehicle Departments Share Information* (NILC, May 2016), www.nilc.org/ice-dmvs-share-information/; *Untangling the Immigration Enforcement Web*, note 3, above; and Harrison Rudolph (Ctr. on Privacy & Technology, Georgetown Law School), *ICE Searches of State Driver’s License Databases*, July 8, 2019, <https://medium.com/center-on-privacy-technology/ice-searches-of-state-drivers-license-databases-4891a97d3e19>.

³⁴ Alexis Arnold, “What States Do to Protect Undocumented Immigrants’ Driver’s License Information,” *HuffPost*, July 12, 2019, https://www.huffpost.com/entry/undocumented-immigrants-drivers-license-state-privacy-laws_n_5d2788cae4b0bd7d1e197225.

³⁵ <https://www.nlets.org/our-members/grantmaps?mapid=d26b4e70-934e-11e3-9a61-00155d003202>.

FBI, or other federal agencies or that allows the federal agencies to run their own facial recognition searches against the databases.

- Consider legislation that imposes restrictions on transmission of driver's license photos through automated systems or based on a request from a law enforcement agency — for example, by requiring that photos not be transmitted except if authorized by a judicial warrant or a court order.³⁶

³⁶ See, e.g., New Jersey's A4743, sec. 8, <https://legiscan.com/NJ/text/A4743/2018>.