DAVID CRAIG

STATE REPRESENTATIVE

Senate Committee on Economic Development and Local Government
Public Hearing, January 16, 2014
Senate Bill 433 Testimony
Representative David Craig, 83rd Assembly District

Chairman Gudex and Members of the Committee:

We authored this legislation to address the small, but growing problem of government overstepping its authority and pressing small businesses to release private customer data.

Municipal officials in a number of communities in our state are asking local taverns to "voluntarily" employ ID scanners at their place of business. The officials request that these taverns scan the IDs of customers who enter the establishment, then periodically retrieve the scanners to obtain a list of all the clients the tavern has served. While the original intent of the scanners was to verify age (for this purpose many taverns use their own ID scanners), this technology is now being used to provide law enforcement with much more information on those being scanned. Law enforcement can use this tactic as a "fishing expedition" to try and catch anyone they may have an interest in. While some may argue that any additional criminal apprehensions resulting from these dragnet scans are beneficial, the collateral damage is twofold:

1) Innocent citizens who patronize these targeted establishments are having their personal information and whereabouts tracked by law enforcement, and;
2) Taverns that have been coerced into using these scanners are suffering a loss of customers to other taverns that law enforcement hasn't targeted.

Several newspapers have published articles this year further detailing this problem (I have attached those stories for your review). The stories explain the effect on some of our state's small businesses and the violation of privacy rights occurring against citizens that have done nothing wrong.

This bill does not prevent or discourage taverns from utilizing their own scanners to continue to verify valid IDs and the legal drinking age of their patrons. It simply stops local governments from providing these scanners directly to taverns for the purpose of the mass collection of personal information.

Thank you for your time.

COMMENTARY

ID scanners open door too widely to police

Count Frank Schadt among those of us who believe government — and not just the federal government — is taking extreme liberties with our liberties.

Schadt owns OB's Brauhaus, a successful restaurant and bar in Appleton, where police have developed a habit of asking local establishments to use police-issued scanners to collect information on patrons.

At least some bars now scan every person who

MIKE NICHOLS
FOR THE POST-CRESCENT

comes in on certain weekend nights — proof that the program is about a lot more than deterring underage drinking or finding probation violators or those being sought on criminal warrants. At the end of the

night, the bars return the scanners to police, along with all the information about who showed up to have a beer or, God forbid, a shot with their buddies.

Police say the program is entirely voluntary. The bars don't have to participate — just like Google doesn't always have to comply with government requests for information and just like AT&T doesn't always have to allow federal agents to siphon information about its customers absent a warrant.

But, of course, the last thing most ordinary Americans dependent on government for licensing and protection want to do is fail to comply with a government request — whether the government has good reason to make the request or not.

"A police officer tells you to stop your vehicle and you don't stop," says Schadt, "you know what is going to happen."

Of the 8,500 bar patrons

Nichols

scanned in Appleton bars last year, according to a story in The Post-Crescent, 241 were found to be on probation and weren't supposed to be there. Already this year, police have reportedly caught 53 people with active arrest warrants. Some of the bar owners, at least, seem to appreciate the opportunity to keep certain people out.

Schadt, the thing is, doesn't see it as an opportunity. He doesn't like it — and it's a sure bet a lot of his customers — regardless of whether they have an old unpaid speeding ticket or a completely and totally clean record for police to peruse — don't like it either. Still, he complies.

"We do it," he said, "because we don't want

any problems from the police."

Schadt is not an American citizen. He's a legal German immigrant who says he has not been able to secure American citizenship.

Schadt thinks the program is basically targeting people violating probation, which appears true and just goes to show how tough it is to stop such broad-based information-gathering from metamorphosing beyond acceptable parameters.

But that's not the only kind of morphing we have to worry about. It's almost impossible to know when government requests morph into subtle warrantless government coercion that puts business owners in a tough situation with their customers. The evidence: at least one blogger has urged a boycott of any place that agrees to use

the scanners.

Police deny there's any sort of coercion here.

"If he doesn't want to participate, don't participate," said Sgt. Dave Lund, a spokesman for the Appleton Police Department, adding there would be no ramifications.

You'd hope not. But Schadt suggests it isn't that easy.

The police here "know I am not a fan. I do it because they ask me to," he said, noting that he's not a citizen and doesn't feel he can object. "I am the last person to open my mouth. I just follow the rules. That is all I do. I think it is not right."

No — if the scanners are used for anything beyond the stated purposes — it's not. Unfortunately, once allowed, there's little chance of limiting it to those alone.

— Mike Nichols: mrnichols@wi.rr.com

Has 'Big Brother' arrived? Police use ID scanner at bars to nab criminals, but civil liberties raise concerns (story, video)

Written by Nick Penzenstadler Gannett Wisconsin Media Investigative Team
Jun. 1, 2013 |

fdlreporter.com

Appleton police are using cutting-edge scanner technology to keep convicted criminals out of some of the city's most popular bars, but civil libertarians are crying foul over a practice that could spread to other communities.

While authorities claim the innovative strategy of checking bar patrons with an ID scanner is making the community safer, the process is raising red flags among some people, who say it amounts to an invasion of privacy.

"The technology doesn't give any particular thought to privacy concerns since everybody who enters gets scanned," said Chris Ahmuty, executive director of the American Civil Liberties Union of Wisconsin. "It could be a hardened felon on parole, an attorney from a law firm on College Avenue or a 21-year-old Lawrence (University) student. There's no distinguishing between who gets targeted, and that's a problem."

The crime-fighting tool, which has the blessing of several Appleton bar owners, is designed to act as a clever dragnet to identify bar patrons who violate their probation by entering the clubs, or those who are being sought on criminal warrants. Police agencies from Milwaukee to Wausau are interested in following Appleton's lead.

Critics say the scanners also allow business owners and police to snoop on the bar-hopping tendencies of thousands of law-abiding residents, and walk a fine line along the Fourth Amendment regulations against unlawful search.

Appleton police officer Adam Nagel said there is nothing nefarious about the scanner enforcement program.

"This originated as a way to check fake IDs, but we saw potential for what else we could do with it," Nagel said. "We found the probation and warrant aspect was strong. You're not only deterring underagers, but preventing convicted criminals from causing problems downtown."

The program has targeted Appleton's largest and highest-capacity bars — Luna Lounge, Anduzzi's, OB's Brauhaus — and will soon expand to Mill Creek, Speakeasy Ultra Lounge and other bars throughout the city, Nagel said.

In 2012, 8,500 bar patrons were scanned when they entered various establishments. Of those, 241 people were found to be on court-ordered probation and prohibited from patronizing bars. Already this year, Appleton police have run 5,400 names and found that 125 were on probation and 53 had active arrest warrants.

How it works

Appleton's police department owns two ID scanners that had hardly been used until Nagel piloted the program last year. He loans them to the downtown bars for use on busy weekends.

Bouncers like Thomas O'Neill at Anduzzi's scan each patron that comes through the door — sometimes as many as 1,000 per night. The hand-held device flashes the person's age — or reports an error if the ID is phony.

"A lot of bars have fights and issues and it's not worth having that in here," O'Neill said on a recent busy Friday. "It's to the point now that people on probation know what the scanner is and won't come in. We're here to protect the bartenders."

Bartenders can lose their licenses and face stiff penalties for serving underage patrons. A bill making its way through the Legislature would allow those same bartenders to sue underage patrons for up to $1,000 for sneaking into taverns.

At the end of the night the bouncers return the ID scanners — along with a treasure trove of personal information — to Appleton police.

Police officials check each individual against a list of people on probation or who are wanted for various criminal offenses. That filtered list is forwarded to probation and parole agents with the state Department of Corrections.

Agents then contact the "clients" and determine if they violated the terms of their supervision by entering a bar. Interviews, urine tests and witness statements also are part of the process. If violations are proven, jail time or revocation of probation can result.

Nagel insists police are only interested in targeting offenders, and all the personal data is kept secure in police custody. He said bars have the option to use the scanners and erase the data before returning them.

"We're not being Big Brother with this system. We're giving it to bars as an opportunity to make the bar atmosphere as good as possible," Nagel said. "We're not checking into anything else. We're focused on the probation and parole violators, warrants and underage drinkers."

Concerns emerge

Despite assurances by police, the program dances a fine line with both the Fourth Amendment regulations about search and the Fifth Amendment's direction on self-incrimination, said Ahmuty of the ACLU.

"It's troubling because the bars are in effect acting as agents of the state, and if that's true, you have to have particularized, reasonable suspicion for someone to give up this information," Ahmuty said. "I'd imagine most people don't understand where this data is going. The police can't go on a fishing expedition with this huge dragnet."

Ahmuty compared the program to sobriety checkpoints set up to deter drunken driving, which are unlawful in Wisconsin.

Nagel said that since the bars voluntarily provide information collected at the door, the police aren't violating any constitutional concerns.

Mike Rudolph, an Appleton-based criminal defense attorney, said the system is similar to police scanning license plates of all cars parked downtown.

"It's perfectly legal, if you can get the bars to do the probation agents' job," Rudolph said. "I'm a bit surprised the bars would participate, but I think it's an economics issue that they need to consider, and they seem to think it's OK."

ID scanners are useful for bustingunderage drinkers, but this new strategy is a stretch, said Scott Stenger, spokesman for Tavern League of Wisconsin, which represents more than 5,000 bars and restaurants.

"I think most people over 21 that have done nothing wrong would be uncomfortable with providing all this information to police," Stenger said. "It doesn't seem very targeted. Checking all 300 people that enter a bar in a night seems to be painting with an awfully broad stroke."

Department of Transportation officials said anything printed on the front of identificationcards is stored within the barcode on the back.

Each state has slowly created rules about collecting and sharing the driver's license data, said Charles Cagliostro, president of Tokenworks, a New York-based producer of the technology.

"Marketing is usually a tertiary use of the scanners, but in New York we had a district attorney go after a club owner for sending postcards to clients," Cagliostro said. "Typically, police don't have the right to obtain the lists without a court order."

ID scanners that are now available as iPhone attachments can tell club owners revealing information about patrons' ages, male-female ratio and hometowns.

Program could expand

For large bars in Green Bay, ID scanners are mandatory although not used in the same way that Appleton police use them, said Green Bay police Capt. Jim Runge, who supervises that city's downtown entertainment district.

"If there's a disturbance outside a bar, we can usually go look at their scanning records to see who they were with and what bar they were in," Runge said. "The probationers shouldn't be in those bars, so this is a good idea. We don't do it, but that's not to say we won't in the future."

In Sheboygan, police already have a network of 52 bars in a "Tavern Safety Coalition" that have vowed to keep out habitual trouble makers.

"If you're evicted from one of those bars, you're evicted from all of them," said Sheboygan police Capt. Steve Cobb. "We don't have the capability yet to integrate that system into the scanners, but maybe that's something on the horizon."

In Wausau, Police Chief Jeff Hardel said he'd be interested in testing the system since individuals on probation often have alcohol abuse problems and end up in bars. He said the police can check scanner logs to find out which cards were used.

"Oftentimes when we're in contact with an underager they don't want to admit to using an older brother's ID and we can check exactly when they swiped in and what they used," Hardel said.

In Milwaukee, police Capt. Stephen Basting oversees the 311 taverns in the city's downtown and east side. He said the Appleton technique would be floated with superiors.

"The scanners have become very popular, and they can be useful for us," Basting said. "My hip-hop club owners have state-of-the-art hand-held scanners that also take a picture of the person and log it into the system. On occasion, if we're looking for a Mr. X, he can help us track them down."

The scanners were introduced in Madison years ago, but lost traction after negative reaction from bar owners and students, said Lt. Dave McCaw, who supervises the city's State Street district.

"This is Madison," McCaw said flatly. "They couldn't get past the Big Brother aspect."

— Nick Penzenstadler: 920-996-7226, or npenzenstadler@postcrescent.com; on Twitter @npenzenstadler

Tavern League of Wisconsin

To: Chairman Gudex, and Members of the Senate Committee on Economic
            Development and Local Government
From: Pete Madland, Executive Director of the Tavern League of Wisconsin
Date: January 16, 2014
Re: Support of Senate Bill 433

The Tavern League of Wisconsin strongly supports SB 433, which would prohibit municipalities from providing alcohol beverage retailers with identification scanners in order to obtain personal information from unsuspecting patrons.

Our members strongly support taking every prudent measure to ensure underage persons are not allowed on licensed premises, including the use of ID scanners. Municipalities should not, however, put license holders in the awkward position of collecting the personal data of their customers on municipal provided ID scanners without their knowledge.

Over the last year, a few cities throughout the state have started programs utilizing ID scanners. In the City of Appleton, law enforcement provide tavern owners with an ID scanner and request every patron who enters the establishment be scanned. After a few nights, the police return to collect their ID scanner and all the data on it. As our customers become aware of this practice, many have decided not to frequent establishments with municipal provided ID scanners because they do not want their personal information provided to local governing bodies. Such information could also be subject to the state's open records law.

By scanning all patrons, it is clear the scanners aren't used just to identify underage drinkers and fake IDs, and law enforcement makes it no secret that they use the devices to collect additional data on our patrons. A private business should not be put in the position of having to actively mine data of all their patrons for law enforcement. It is the wrong approach and in the end jeopardizes our relationship with our patrons. We have always been cooperative with law enforcement on any ongoing investigation which business owned scanners can be of assistance and we will continue that practice of cooperation.

Senate Bill 433 is carefully crafted to prevent the unnecessary use of ID scanners by local law enforcement, while at the same time allowing taverns to use these devices as intended, to verify the age of their patrons.

The TLW would appreciate your support of SB 433.

Drink Responsibly.
Drive **Responsibly.**