
Whitepaper:

**The Continuing Need for
Driver's License Reform**

January 2007

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CLERUS
SOLUTIONS LLC

About Clerus Solutions, LLC

Clerus Solutions is an organization dedicated to assisting the states and the Federal government with implementing secure identification as called for in the 9/11 Commission Report. Its founder and CEO, Jay Maxwell, has over 25 years experience working with state and federal agencies, specializing in the implementation of nationwide, large-scale information systems that involve the driver license program area. He designed and implemented the National Driver Register's Problem Driver Pointer System (PDPS) while at the National Highway Traffic Safety Administration (NHTSA) in the 1980's. His work at NHTSA was leveraged in the development and implementation of the Commercial Driver License Information System (CDLIS), which Mr. Maxwell managed while at AAMVAnet, Inc., a subsidiary of the American Association of Motor Vehicle Administrators (AAMVA). After September 11, 2001, Mr. Maxwell was put in charge of AAMVA's efforts to develop the best approach to prevent a person from holding more than one license. In that capacity, Mr. Maxwell was a technical advisor to Congressman Sensenbrenner's staff while the Federal Real ID Act of 2005 was being drafted.

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1 Introduction

Terrorists, criminals and problem drivers want to have multiple driver's licenses. We know, based on the conclusions and recommendations of the 9/11 Commission and the results of analyses in states such as North Carolina and Illinois, that these individuals indeed do hold multiple licenses, some under the same name, some under completely different identities. To say the least, these elements of society have proven themselves to be detrimental to the safety, security and welfare of the citizens of this country.

These bad actors have taken advantage of existing technical and procedural intra-state and inter-state vulnerabilities that have existed for years. These vulnerabilities create a medium through which it is relatively easy to steal another person's identity or create a fake one for nefarious purposes. State driver licensing agencies and the Federal government have known about this problem for decades and have been working responsibly as a team to reform the current system.

Federal legislation passed by Congress in 2004 (the Intelligence Reform Bill) and 2005 (the Real ID Act) have catalyzed this necessary reform and have received much publicity. While they are important steps to enable reform, these laws do not promote revolutionary ideas. Rather, they support what have been the next logical steps in a progression of improvements occurring in the United States over several years. Benefits of this reform will be significant, and will include:

- ❖ improved homeland security;
- ❖ improved highway safety;
- ❖ reduction of identity theft and fraud;
- ❖ reduction of benefits fraud; and
- ❖ reduction of voter fraud.

In order to put the current activities into context, it is important to understand events that happened in the past, why we have developed systems to respond to these events, and how the current environment makes driver license reform more important than ever.

2 Preliminary Driver's License Reform

2.1 The Creation of the National Driver Register (NDR) and the Problem Driver Pointer System (PDPS)

It has always been a state right to issue driver licenses to U.S. citizens. Controlling problem drivers has also traditionally been a state responsibility. States discipline problem drivers by revoking, suspending or canceling their licenses (and subsequently their privilege to drive). In the 1950's and early 1960's, a state could discipline a problem driver, but then that same driver could easily obtain a driver's license in another state, essentially avoiding any real sanction.

Because of the interstate nature of this problem, in the early 1960's the federal government established the NDR as a voluntary system that the states could use to verify

if a driver's license applicant held a revoked or suspended license in another state. In the 1960's and 1970's, the states contributed data to the federal government's NDR and made inquiries of that system. During that time, the NDR moved from being paper-based to computer-based, storing both identification and disciplinary information provided by the states.

By the late 1970's, the vast majority of states were participating in the NDR program. However, as the numbers of participating states and the amount of data grew, a basic flaw in the way that the NDR worked became obvious. The NDR was not an on-line system. Rather, it was operated at night, using batch files that were sent to the Federal government in the U.S. Mail. Responses to state inquiries were also sent back to the states via U.S. Mail. Many times, states would not send updates to the NDR in a timely fashion. This much-delayed process caused many errors when the response did not appropriately reflect revocation status as it changed. Consequently, states lost faith in the NDR.

Congress helped remedy this problem by passing the NDR Act of 1982. It required the U.S. Department of Transportation (USDOT) to modernize the NDR – birthing the Problem Driver Pointer System (PDPS). The PDPS vastly improved the ability of driver's license stakeholders to identify drivers with out-of-state revoked or suspended licenses.

With PDPS, USDOT stores limited identification information (name, birth date, Social Security Number, height, weight, eye color, etc.) and a pointer back to the state that disciplined the driver. When an inquiry from a state matches a record in PDPS, USDOT sends the identification information back to the inquiring state and also sends an inquiry to the state that posted the record in PDPS (called the State of Record). The State of Record then sends the details regarding the person's driving history directly to the inquiring state. Importantly, USDOT does not see this information. Using this approach, the inquiring state benefits from up-to-date information directly from the source, while effectively addressing privacy concerns.

A PDPS pilot program was launched in the mid-1980s and by the early 1990's all states were using the modernized

It is important to note that the NDR/PDPS is not a system of licensed drivers. It is a system of names of individuals that have been disciplined by driver licensing agencies. This distinction is important.

Many people believe that the NDR serves the purpose of, or is the best system upon which to build, a solution to ensure that a person has only one license. In fact, NDR/PDPS works in the opposite direction. NDR/PDPS oftentimes contains multiple pointer records for the same person and records posted to PDPS are not necessarily submitted by the licensing state.

For example, if New York suspends a Virginia licensed driver's privilege to drive in New York, New York will post a pointer record to PDPS. If that person subsequently commits a driving offense in Montana and has his Montana driving privileges withdrawn, Montana will also post a pointer record to PDPS. In this example, this person is licensed in Virginia, not New York or Montana, yet PDPS will contain pointer records from New York and Montana and nothing from Virginia.

NDR. Notably, the system is still in use today and is now a mandatory part of state compliance with the Federal Commercial Driver License (CDL) program.

2.2 *The Evolution of the Commercial Driver License Information System (CDLIS)*

In the 1980's, television news programs, such as "60 Minutes", ran exposés about the trucking industry. In particular, they demonstrated how truck drivers would hold multiple driver licenses to spread out their bad driving history across those various licenses. If their driving history had been kept under one license, they would have lost their driving privileges and therefore their jobs. Additionally, because of varying state requirements, in some instances, a truck driver could take a driving test in a VW Beetle and could be qualified to drive an 18-wheeler.

In 1986, Congress enacted the Commercial Motor Vehicle Safety Act (CMVSA), which required, among other things, that the states test a truck driver in the appropriate vehicle and that states work together to limit a truck driver to one license. The law required the development of an information system to limit a truck driver to one license by January 1989 and compliance by all states by April 1992.

Congress assigned to the USDOT/FHWA the responsibility of implementing the program. USDOT quickly determined that state-based working groups should lead the project and develop the details for implementation. The working groups leveraged the lessons learned from the NDR and the design of the PDPS was used as the basis for the information system that became known as CDLIS. As a result, CDLIS was available on time and all states were using the system by the legislated deadline.

The PDPS and CDLIS have notable weaknesses. The identification information used by each is limited to name, birth date and, in cases where data is present, Social Security Number. If a person has obtained multiple licenses under multiple different identities, neither NDR/PDPS nor CDLIS will identify a match.

Notably, the Motor Carrier Safety Improvements Act (MCSIA) of 1999 requires that states send inquiries on all drivers (not just commercial drivers) to CDLIS. This activity is intended to capture situations where a truck driver has obtained one or more non-commercial licenses in addition to a commercial license. Additionally, the NDR/PDPS is searched each time someone applies for a commercial driver license.

3 **The Next Step: Beyond NDR/PDPS & CDLIS**

With PDPS, we have a means, within limits, to identify problem drivers. With CDLIS we have a means, within limits, to prevent truck drivers from having more than one truck driving license. However, as is shown below in Sections 4 and 5, even though PDPS and CDLIS have been in use by all states since the early 1990's, they do not offer an effective mechanism through which to ensure that a person is restricted to one license within the U.S. For this reason, states have, since the mid-1990's, been discussing the need for better personal identifiers and an information system that is similar to CDLIS, but instead pertains to all licensed drivers rather than just truck drivers.

In the late 1990's, states worked collectively to plug the existing loopholes by developing an interstate compact called the Driver License Agreement or DLA. The DLA defines processes and procedures that states should follow to ensure that a person had only one license and that their complete driving history would be associated with that one license. Implicit in that agreement is the need for an information system that pertains to all drivers, as mentioned in the paragraph above.

DLA is ready for state adoption. Being an interstate compact, each state's legislature must vote to participate in it. That process has begun, but is far from complete.

4 Emergence as the De Facto ID Card

The driver's license took on a new, unintended function when states began putting driver photographs on the licenses. Initially, the photo was added to enhance driver licensing and highway safety activities. However, once the documents were issued with photographs, they were available for reference by others, outside of driver licensing and law enforcement agencies, as a way to identify a person. Banks, retailers and others started asking for identification during certain transactions and since people usually carried their licenses with them, the driver's license became the identification of choice. States then started issuing non-driver ID cards, which people began to obtain for various purposes. To be certain, the use of driver's licenses as the de facto identification credential in the U.S. is pervasive and has become part of the fabric of our daily lives.

However, since there was not an effective method through which to vet the identity of an applicant, was not a system with which to limit a person to just one document, and was not a solution to effectively verify that a license or ID document was genuine, bad actors quickly began misusing driver's licenses on a large scale.

Recent studies by states such as North Carolina and Illinois, applying facial recognition technology to their intra-state driver photo databases, have uncovered the scale of this serious problem. In North Carolina, one analysis discovered an individual that had obtained 25 North Carolina driver licenses under 25 different identities. Of particular note, all 25 identities were verified against SSA's Social Security database – indicating this individual had stolen the identities of U.S. citizens from other states. To accomplish this, they simply appropriated the name, birth date and Social Security number of other people. Illinois has had similar cases. Combined, these two states have uncovered tens of thousands of people illegally holding multiple licenses.

5 The Impact of September 11, 2001

Investigations conducted after 9/11 demonstrated that the terrorists had taken advantage of our driver license issuance weaknesses to obtain multiple licenses and ID cards in multiple states. Hani Hanjour had four, Nawaf Al-Hazmi had three, and Khalid Al-Mihdhar, and Jarrah Ziad, had two each. Based on these facts, the 9/11 Commission correctly concluded that

“Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of

identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.”

Although it was embarrassing to state driver licensing agencies that the terrorists had taken advantage of the loopholes in the driver license issuance system, it was not surprising. As is evidenced by the work that the states and Federal government had performed with NDR/PDPS, CDLIS and DLA, the States and USDOT knew that these loopholes existed and they had been working to close them for years.

In response to the events of 9/11, state driver licensing agencies, through their trade association the American Association of Motor Vehicle Administrators (AAMVA), convened a Special Task Force on Identification Security. Their mission was to develop a strategy on enhancing the issuance of secure identification credentials for driver licensing and photo ID purposes, and to develop short- and long-term priorities and actions. The results of the task force are published on the AAMVA web site, www.aamva.org.

The Task Force consisted of individuals who were knowledgeable about the current state of driver's license issuance systems and the importance of managing the privacy rights of the individuals whose records those systems maintain. Responsibly weighing these factors, the Task Force concluded, consistent with the 9/11 Commission, that these loopholes must be closed.¹ The recommendations of the Task Force were then passed to AAMVA's Uniform Identification (UID) Subcommittee Task Groups for implementation. The UID Task Groups examined all aspects of the driver license issuance process from procedures to information technology to privacy. The results of this work, called the DL/ID Security Framework, are also posted on the AAMVA website. It is important to note that this work was completed in 2004.

6 Legislation to Enact Reform: Intelligence Reform and Real ID

In December 2004, the President signed the Intelligence Reform Bill, which, consistent with the 9/11 Commission recommendations, directed the Federal government to set standards for driver license issuance. The bill required a negotiated rulemaking process, where a broad range of stakeholders would be involved in shaping federal rules.

In May 2005, Congress passed the Real ID Act, which repealed the portions of the Intelligence Reform Bill dealing with driver license issuance reform in favor of a more prescriptive approach to the same issue. Real ID did not call for a negotiated rulemaking process.

In October 2006, Congress appropriated \$40 million for Real ID implementation. To date, January 2007, none of that money has been spent. It has been two years since legislation was passed to enact driver license issuance reform and there has been very little progress since that time.

¹ The 9/11 Commission recommended that “The Federal Government should set standards for the issuance of birth certificates and source identification, such as drivers licenses.”

7 Roadblocks to Reform

To be sure, driver's license reform is a complex endeavor, requiring the integration of many disparate systems and interstate and interagency cooperation. While there is a roadmap toward delivering effective and responsible reform, there are several impediments that are unnecessarily delaying solution implementation. These include:

- ❖ a need for effective Federal agency leadership;
- ❖ limited funding to test and deploy solutions;
- ❖ the imposition of unreasonable or unworkable demands on states; and
- ❖ inappropriate instillation of privacy fears to delay responsible reform.

7.1 Need for Effective Federal Agency Leadership

When comparing the progress made to date with Real ID implementation in contrast to the progress made with the CDL program over the same time frame, there is a marked difference.

Nineteen months after the CMVSA of 1986 was passed, USDOT had selected two lead states, Nebraska and New York, and those states had contracts in place with integrators to develop the infrastructure for CDLIS. CDLIS was designed, developed, tested and implemented within 27 months after passage of the Act.

Real ID, on the other hand, is not likely to have progressed beyond an initial pilot during the same time frame, despite the huge body of work done by the states to identify the problems and a plan of action.

7.2 Limited Funding to Test and Deploy Solutions

States will need significant funding to implement driver license issuance reform, be it in the form of Real ID or some other piece of legislation.

DHS and Congress need to develop an approach to accurately determine the level of funding needed. Cost estimates done to date were based on incomplete guidance and therefore may be substantially misleading. Unfortunately, some may use these estimates as an excuse to delay necessary reform.

7.3 Imposition of Unreasonable or Unworkable Demands on States

States know that problems exist with the current system and have been examining ways to address those problems for years. The success of the CDL program should be used as a model for modern day driver license reform. In this case, USDOT worked closely with the states to define the detail of the changes needed to shore up the issuance of truck driving licenses. They saw the states as partners in the effort, and the states responded positively.

The state driver licensing agencies are the experts on this issue. They need to be more involved with DHS in determining a reasonable approach.

7.4 Inappropriate Instillation of Privacy Fears to Delay Responsible Reform

Privacy issues are of great concern to all. We must ensure that any information systems, processes, and procedures that are developed for driver license issuance reform protect the privacy rights of individuals.

In this discussion, it is important to consider the work done to date by the states and Congress to preserve privacy. The Federal Driver's Privacy Protection Act (DPPA) will continue to govern disclosure of state driver data. Also, states have existing privacy laws and policy in place. Both DPPA and state laws and policy should be reviewed regularly to ensure that they are kept current.

When reviewing existing information systems, we should consider the history of the cooperative work performed between state driver licensing agencies and the federal government. In particular, the NDR/PDPS and CDLIS offer good examples. Both systems were developed in response to Federal law, both contain sensitive personal information, both have been used daily by all 51 U.S. driver licensing agencies since the early 1990's and neither has been associated with any breaches of individual privacy.

Driver licensing stakeholders have proven that the states and the federal government can act responsibly with respect to privacy. Critics, on the other hand, have recently leveraged media outlets and fear-based tactics to inappropriately instill doubt in the minds of U.S. citizens. These critics continue to ignore the following three facts.

- ❖ There are significant safety, security and identity protection benefits to driver's licensing issuance reform.
- ❖ Current driver's license issuance systems continue to provide a method through which terrorists and criminals can effectively hide within our open society.
- ❖ Driver license stakeholders have proven that they can and do act responsibly with respect to privacy.

8 Recommendations for Progress

We recommend the following steps be taken to move the program forward:

- ❖ Use the existing FY06 appropriations to fund state-based pilot programs that address the requirements of the Real ID Act.
- ❖ Establish a program office in DHS dedicated to implementing the 9/11 Commission report recommendation to set standards for the issuance of driver's licenses.
- ❖ Require DHS to work openly with states, treating them as partners in this effort.
- ❖ Begin a yearly appropriations process for funding driver license issuance reform so that monies are available when needed, rather than waiting for the DHS plan to be completed.
- ❖ Require DHS to develop an implementation and funding plan for driver license issuance reform.