

**WRONG WAY: WHY LABELING YOUNG DRIVERS
PRESENTS A MISGUIDED APPROACH IN THE
IMPROVEMENT OF GRADUATED DRIVER'S LICENSE
PROGRAMS**

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ABSTRACT

Graduated Driver's License programs – licensing processes whereby new drivers are granted driving privileges in progressively less restrictive stages – have proven very effective in curtailing motor vehicle accidents involving young drivers. However, identifying teen drivers subject to the restrictions of Graduated License Laws has been a constant hurdle in law enforcement's efforts. Without being able to identify such drivers with relative ease, the ultimate life-saving potential of these laws becomes hindered and law enforcement officers are forced to identify vehicles in other ways that may border on profiling. To address this situation, New Jersey has become the first state in the country to require young drivers subject to the laws to display a highly visible driver identification decal on their vehicles. Yet, such decals have raised concerns beyond what these laws initially anticipated and have caused waves of protest and noncompliance over fears of teen targeting, predatory attacks, and increased profiling. This Note analyzes the law's implementation and suggests ways it may be improved to address these issues while emphasizing the importance of including the public's mode of risk assessment in the regulatory process. This Note also seeks to inform other states of ways to improve their Graduated Driver's License programs to avoid the same dilemmas and legislative pitfalls that have plagued the enactment of this law in New Jersey.

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INTRODUCTION

The privilege to drive is often one of the most cherished milestones in the life of a teenager. This event allows a teenager to acquire a more meaningful sense of independence and can open the door to many new opportunities and positive experiences. It may allow a teen to start working, meet friends with greater convenience, or even partly break free from parental dependence. Teens may now have the ability to explore other parts of the country and visit new places. For some young adults, it even sparks a curiosity to learn more about automobiles and to develop mechanical skills. With this momentous occasion, however, come great risks and the need to learn responsibility.

While many of the experiences associated with this privilege can be positive, there is a caveat: a teen's risk of death or serious injury in a motor vehicle collision will always linger in the background. The number one killer of teenagers across the United States is motor vehicle collisions.¹ Teenage drivers are disproportionately represented in vehicular crashes and are up to three times more likely to

1. *Teen Drivers: Fact Sheet*, CTR. FOR DISEASE CONTROL & PREVENTION (Oct. 2, 2012), http://www.cdc.gov/motorvehiclesafety/teen_drivers/teendrivers_factsheet.html.

experience fatal crashes than adult drivers with greater experience.² While this statistical picture may appear grim, there is hope for a solution: research indicates that many of these deaths and injuries are preventable.³ As a result, state legislatures across the country have implemented “Graduated Driver’s License” (GDL) programs in an effort to provide better training for inexperienced drivers and to reduce motor vehicle collisions involving teens.⁴

GDL programs provide a means for teenagers to acquire driving experience progressively in a set number of stages within controlled settings before they are granted fully independent driving privileges.⁵ These programs are founded upon the idea that slowly introducing teens into driving, with supervision and minimal distraction, will better prepare them to drive safely when they become fully licensed. Research has indicated that some of the most comprehensive GDL programs have been able to reduce fatal crashes among sixteen-year-olds by as much as 38%.⁶ Presently, every state across the country employs some form of a graduated driver’s licensing program.⁷

While empirical research has shown that these programs are generally effective in reducing motor vehicle accidents and fatalities involving teenagers,⁸ one state in particular—New Jersey—was still not satisfied with its program’s results, and sought ways to improve the program’s effectiveness.⁹ The state’s response was driven in part

2. *Id.*

3. *See id.*

4. *See* discussion *infra* Part I.A for a more detailed explanation of how these programs work.

5. *See* SUSAN P. BAKER, LI-HUI CHEN & GUOHUA LI, AAA FOUND. FOR TRAFFIC SAFETY, NATIONWIDE REVIEW OF GRADUATED DRIVER LICENSING 9 (Feb. 2007), available at <http://www.aaafoundation.org/pdf/NationwideReviewOfGDL.pdf>; *see also* *Teen Drivers: Fact Sheet*, *supra* note 1 (“Graduated Driver Licensing (GDL) Systems are designed to delay full licensure while allowing teens to get their initial driving experience under low-risk conditions.”).

6. BAKER, CHEN & LI, *supra* note 5, at 12.

7. *See* ARTHUR GOODWIN ET AL., NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., COUNTERMEASURES THAT WORK: A HIGHWAY SAFETY COUNTERMEASURE GUIDE FOR STATE HIGHWAY SAFETY OFFICES, 255 (Apr. 2013), available at <http://www.nhtsa.gov/staticfiles/nti/pdf/811727.pdf>.

8. *See* BAKER, CHEN, & LI, *supra* note 5, at 9; GOODWIN, *supra* note 7, at 255–56.

9. *See* 39:3-13.2a *Legislative History Checklist: Governor’s Message on Signing*, N.J. ST. LAW LIBR. 22-23 (Apr. 15, 2009), <http://repo.njstatelib.org/xmlui/bitstream/handle/10929.1/3052/L2009c37.pdf?sequence=1&isAllowed=y> [hereinafter *Governor’s Message on Signing*]. This act was put in place to improve the GDL’s effectiveness.

by what was seen as a “tide of teen driver crashes,” which led to the death of sixty teenage drivers in 2007.¹⁰

The New Jersey legislature responded to what it saw as a weakness in its program: law enforcement officers often had great difficulty in identifying vehicles that were subject to GDL restrictions. Thus, the legislature decided to require a “GDL identifier” by passing what has become known as “Kyleigh’s Law.”¹¹ The law requires all probationary drivers under the age of twenty-one in the state of New Jersey to affix two bright red, reflective decals on both license plates of their vehicles, signaling to law enforcement that the driver is under twenty-one years of age and is subject to GDL requirements.¹²

Public reaction to Kyleigh’s Law across New Jersey has been uniformly inhospitable, resulting in widespread non-compliance.¹³ The law engendered opposition from over two-thirds of parents, who cited concerns ranging from the risk of predators targeting marked vehicles to concerns of profiling by police officers and other drivers.¹⁴ While such risks have yet to be fully explored and addressed,¹⁵ they have nonetheless erected huge barriers to the government’s efforts to solicit compliance with this law.

10. *Id.* at 22.

11. See N.J. STAT. ANN. §§ 39:3-13, :3-13.2a(a), :3-13.4(f) (West 2010); see also 39:3-13.2a *Legislative History Checklist: Final Text of Bill*, N.J. ST. LAW LIBR. 3-13 (Nov. 13, 2008), <http://repo.njstatelib.org/xmlui/bitstream/handle/10929.1/3052/L2009c37.pdf?sequence=1&isAllowed=y>.

12. See §§ 39:3-13, :3-13.2a(a), :3-13.4(f).

13. See Anne T. McCartt et al., *New Jersey’s License Plate Decal Requirement for Graduated Driver Licenses: Attitudes of Parents and Teenagers, Observed Decal Use, and Citations For Teenage Driving Violations*, 14 TRAFFIC INJ. PREVENTION 244, 249 (2013) [hereinafter McCartt et al., *Attitudes*]; Anne T. McCartt & Allan F. Williams, *Views of New Jersey Teenagers About Their State’s Policies for Beginning Drivers*, 48 J. SAFETY RES. 1, 4 (2014).

14. McCartt et al., *Attitudes*, *supra* note 13, at 249.

15. New Jersey Governor Chris Christie commissioned the State Attorney General to investigate into the possibility of criminal activity associated with Kyleigh’s Law approximately six months after the law’s enactment. The interim report had to be conducted via a manual survey due to an absence of uniform automated data systems. The report only uncovered one potentially serious incident in which a teenage girl was stopped by a man posing as a police officer who noted the decals on her license plate. Although the girl was not harmed, the incident bespeaks of the exact types of fears that the public associates with this requirement. Notably, this study only encompassed data within one year after the enactment of the law, and a lack of uniform computerized records may have hindered the scope of this assessment. Also noteworthy is the fact that this report only examined police records, which would exclude any potential incidents that were not reported to police. See N.J. DIV. OF CRIMINAL JUSTICE, *KYLEIGH’S LAW INTERIM REPORT* (Apr. 2011), available at <http://www.nj.gov/lps/library/Kyleighs-Law-Interim-Report-April-2011.pdf> [hereinafter *KYLEIGH’S LAW INTERIM REPORT*].

The significance of this regulatory saga and the resulting dilemmas are not confined to the borders of New Jersey. The policy concerns inherent in young driver labeling laws and the noncompliance issues will continue to impact drivers across the country as other states begin to reevaluate their own GDL programs. New Jersey has set itself apart as a pioneer in implementing progressive reforms that promote driver safety.¹⁶ Although New Jersey has taken the first step in this endeavor, it is not the only state to have considered this provision. Other states have considered laws such as this, including Connecticut,¹⁷ New York, and Rhode Island.¹⁸ Furthermore, a group of Senators has even proposed adopting a federal GDL program that would enact uniform standards across the country.¹⁹ Although such an idea has yet to come to fruition, these developments indicate that this regulatory landscape is ripe for continued expan-

16. See Allen F. Williams et al., *Evaluation of New Jersey's Graduated Driver Licensing Program*, 11 TRAFFIC INJ. PREVENTION 1, 2 (2010) ("New Jersey's combination of licensing policies for young drivers is a model for the nation."); Leah Knapp, *Teen Driving: A State-by-State Look at Death Rates of Teen Passengers and Drivers*, ERIESENSE.COM (Sep. 21, 2013), <http://www.eriesense.com/teen-driving-deaths/#> (finding that New Jersey ranked third in the country among the states with the lowest death rate of teen drivers); McCartt et al., *Attitudes*, *supra* note 13, at 245 ("New Jersey has been a leader among U.S. states in terms of teenage licensing laws.").

17. See generally BRENDAN CAMPBELL, ET AL., GOVERNOR'S TEEN SAFE DRIVING TASK FORCE LEGISLATIVE SUBCOMM., LONG-TERM PROPOSALS, FOR DISCUSSION BY FULL TASK FORCE FOR REPORT BY JUNE 1, 2008 (Jan. 9, 2008), available at <http://www.ct.gov/teendriving/lib/teendriving/longtermlegrec.pdf> (discussing Connecticut's consideration of laws similar to New Jersey's laws). Although Connecticut's Governor's Teen Safe Driving Task Force considered imposing a requirement for sixteen- and seventeen-year-olds to display a visible windshield sticker on their vehicles, this proposal was ultimately rejected by a subcommittee out of concerns of making teens "vulnerable from a safety standpoint." GOVERNOR'S TASK FORCE ON TEEN SAFE DRIVING SUBCOMM. ON PARENT AND PUBLIC AWARENESS, MINUTES FOR MARCH 14, 2008 MEETING 6 (Mar. 14, 2008), available at <http://www.ct.gov/teendriving/lib/teendriving/meetingminutes/minutes-public-parental031408.pdf>. Notably, the Safe Driving Task Force rejected this proposal after first obtaining public input, which signaled opposition to the proposed law. Ultimately, however, this committee recommended further investigation into a technological solution that would allow for law enforcement identification of vehicles without exposing a teen driver's age to the public. See ROBERT M. WARD & J. ROBERT GALVIN, DEP'T OF MOTOR VEHICLES, REPORT OF THE GOVERNOR'S TASK FORCE ON TEEN SAFE DRIVING 22 (May 30, 2008), available at <http://www.ct.gov/teendriving/lib/teendriving/finalreport/taskforcefinal-5-30-08.pdf>.

18. See Kate Zernike, *Youth Driving Laws Limit Even the Double Date*, N.Y. TIMES (Aug. 13, 2012), <http://www.nytimes.com/2012/08/14/nyregion/teenage-driving-laws-stiffened-in-many-states.html> (noting that bills requiring teens to display decals much like the ones imposed by Kyleigh's Law are pending in New York and Rhode Island).

19. See Larry Copeland, *National Standards Sought for Teen Drivers*, USA TODAY (May 4, 2010), http://usatoday30.usatoday.com/news/nation/2010-05-03-teen-drivers_N.htm.

sion. In the process, other states may look to New Jersey's model as they reevaluate the effectiveness of their own programs.²⁰

This Note argues that Kyleigh's Law is an ineffective means to enhance the enforcement of the New Jersey GDL program requirements. Requiring young probationary drivers to place a highly visible decal on their vehicles exposes them to a higher risk of targeting and criminal victimization.²¹ Even if the legislature does not find these risks compelling, the resultant fear of this potential exposure has resulted in such disobedience that the law ultimately falls short of the lives that it could save if greater compliance were achieved.²² While the concern for providing better means for law enforcement to identify GDL license holders for enforcement purposes is legitimate, the legislature should respond to the concerns of its constituents and seek other means to accomplish this goal.

Part I.A of this Note recounts the background of GDL laws and the steps the New Jersey legislature took to implement Kyleigh's Law. Next, Part I.B explores the relevant scope of Kyleigh's Law in order to construct a better understanding of whom the law impacts and what the stakes are for these individuals. Part I.C examines the public's objections to Kyleigh's Law and discusses the effect this has had on achieving the law's objectives.

Part II.A discusses regulatory theory and, more specifically, what aspects of the process make regulation more effective, and why public obedience is so crucial in the successful operation of a democratic society. Part II.B applies these theories to the New Jersey legislature's regulatory process. Next, Part II.C investigates whether the risks that have plagued the public's perception of Kyleigh's Law are grounded in empirical data or if they are merely the result of informational heuristics. Part II.C concludes by applying these inquiries to the law at hand to demonstrate the law's shortcomings and why it rests on an untenable approach.

Finally, Part III proposes solutions to the dilemmas stemming from this law and any potential drawbacks of alternative approaches. Part III.A discusses whether the courts may hold a solution to problems stemming from this law. Part III.B concludes by investi-

20. See NEW JERSEY TEEN DRIVER STUDY COMM'N, RECOMMENDATION REPORT 19 (Mar. 2008), available at http://www.nj.gov/oag/hts/downloads/TDSC_Report_web.pdf [hereinafter RECOMMENDATION REPORT] ("[E]very state is concerned about enforcement of their GDL laws and is watching to see how New Jersey will address this problem.").

21. See discussion *infra* Part II.C (examining Crime Victimization Survey Data).

22. See McCartt & Williams, *supra* note 13, at 4.

gating whether recent advances in technology may hold an answer that would satisfy both the public's and the government's expectations.

I. BACKGROUND OF GDL PROGRAMS AND THE SCOPE OF KYLEIGH'S LAW

A. Retracing the Legislature's Steps Leading to the Law's Enactment

Understanding the full scope and applicability of GDL programs and Kyleigh's Law is crucial to understanding the arguments for and against such a regulatory scheme. Common among most GDL programs are provisions that institute restricted learning phases of driving that gradually lead into increased independence and ultimately full licensing.²³ The typical GDL program involves three phases of driving privileges that increase with each new level: the first stage usually consists of a learner's permit, followed by a provisional license, and ends with full licensure.²⁴ During the permit phase, a teen may only drive with another fully licensed adult present in the vehicle.²⁵ After completing a specified number of hours with a learner's permit, teens may then become eligible to earn a provisional driver's license with which the teen may drive independently, subject to some restrictions.²⁶ During both the learner's permit phase and the provisional license phase, most states regulate activities that have been found to contribute to teenage motor vehicle accidents: driving with more than one passenger, lack of seat belt usage, driving late at night, and using wireless communication devices.²⁷ Police officers enforce these provisions and infractions may result in fines or delays in obtaining a full license.²⁸

While a GDL program with many of these features had already been implemented in New Jersey, lawmakers in the densely populated state felt they needed to find ways to make its program more

23. See GOODWIN ET AL., *supra* note 7, at 6-8.

24. *Id.* at 6-8.

25. *Id.* at 6-8.

26. See *id.* at 6-10.

27. See *id.* at 6-14 (noting that over three-quarters of all states utilize nighttime restrictions and passenger limits, and more than half of all states employ bans on cell phone usage in their GDL programs).

28. See, e.g., N.J. STAT. ANN. § 39:3-13.8 (West 2010); see also GOODWIN ET AL., *supra* note 7, at 6-23.

effective and responsive to the disproportionate number of motor vehicle accidents involving teens.²⁹ As a result, New Jersey funded a Teen Driver Study Commission which set out to examine the state of teen driving, evaluate the effectiveness of its GDL program, and recommend changes to further address teenage motor vehicle accidents.³⁰

In March 2008, the Commission released its report, providing for a number of recommendations to the state's GDL program.³¹ Most of the Commission's recommendations sought to strengthen existing regulations while others introduced new proposals to respond to specific problems. One of these challenges concerned the enforcement of GDL provisions: police officers often struggle to identify which vehicles are subject to curfews and passenger restrictions short of actually pulling individuals over and inquiring.³² The Commission described this problem as "the single most vexing issue for those responsible for administering and enforcing GDL laws."³³ Coupled with perceived weaknesses and haphazard administration of then-existing sanctions,³⁴ the inability to adequately identify violators posed a high bar to promoting compliance, hindering the safety benefits of the laws.³⁵

Responding to this pervasive deficiency, the Commission sought to implement a change that no other state in the country has yet decided to try: a requirement for provisional drivers to affix "GDL identifiers" to their vehicles, signaling their provisional status to law enforcement (and presumably anyone else who sees the identifiers).³⁶ The Commission noted that other jurisdictions such as British Columbia, Australia, and Norway have imposed such a requirement where it was thought to provide a variety of benefits.³⁷ While the

29. *Governor's Message on Signing*, *supra* note 9, at 22–23.

30. *See generally* RECOMMENDATION REPORT, *supra* note 20.

31. *See id.*

32. *See id.* at 19; *see also* GOODWIN ET AL., *supra* note 7, at 6–23.

33. RECOMMENDATION REPORT, *supra* note 20, at 19.

34. *See id.* at 16–17.

35. *See id.* at 19–20.

36. *Id.*

37. *Id.* at 19 (noting that benefits from these laws could include not only better enforcement, but also increased caution from other drivers' awareness of the youth's novice status, as well as less risk-taking by teens who know their provisional status is on display). The Commission also pointed out that it "found no evidence in other countries of identifiers being used by predators to target teens." *Id.* Although this finding is not contested, the differences between the densely populated state of New Jersey and these aforementioned countries should

Teen Driver Study Commission's proposal for the identifier would have predicated this requirement on provisional driving status,³⁸ the law as enacted makes a distinction based on age group rather than driving experience.³⁹ In other words, the mandate to display a decal only applies to younger provisional license holders as opposed to all novice drivers equally.

After adopting the Commission's recommendations, the New Jersey legislature passed Kyleigh's Law and former Governor Jon S. Corzine signed the bill into law on April 15, 2009;⁴⁰ the law officially took effect on May 1, 2010.⁴¹ The New Jersey legislature enacted the law in memory of a New Jersey teenager, Kyleigh D'Alessio, who was killed in the passenger seat of a vehicle driven by another provisional license holder who was violating GDL passenger re-

be noted. Norway's population density ranks at about sixteen people per square kilometer. *Population Density (People per Sq. Km) in Norway*, TRADING ECON., <http://www.tradingeconomics.com/norway/population-density-people-per-sq-km-wb-data.html> (last visited Sept. 11, 2014). The Canadian province of British Columbia is slightly less densely populated at 4.8 people per square kilometer. *Focus on Geography Series, 2011 Census: Province of British Columbia*, STATISTICS CANADA, <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/fogs-spg/Facts-pr-eng.cfm?Lang=Eng&GC=59> (last modified Apr. 17, 2014). Australia is the least densely populated at 2.91 people per square kilometer. *Population Density (People per Sq. Km) in Australia*, TRADING ECON., <http://www.tradingeconomics.com/australia/population-density-people-per-sq-km-wb-data.html> (last visited Sept. 11, 2014). By stark contrast, New Jersey is the most densely populated state in the Union, with a whopping 459 people per square kilometer, more than twenty-eight times as densely populated as Norway. *New Jersey Population 2014*, WORLD POPULATION REV. (Mar. 15, 2014), <http://worldpopulationreview.com/states/new-jersey-population/>. Although the Commission's findings about these other countries may be correct, these demographic dissimilarities give pause about whether such a public policy scheme may be transposed domestically with the same absence of negative consequences.

38. See RECOMMENDATION REPORT, *supra* note 20, at 19-20.

39. Raymond P. Martinez, *Motor Vehicle Advisory: Graduated Driver License Decals*, N.J. MOTOR VEHICLE COMM'N (Apr. 26, 2010), <http://www.state.nj.us/mvc/pdf/About/advisories/advisory-2010-002.pdf>.

40. *Governor's Message on Signing*, *supra* note 9, at 1, 22.

41. N.J. STAT. ANN. §§ 39:3-13, :3-13.2a(a), :3-13.4(f) (West 2010). The political background of this law's passage is relevant to the regulatory climate: Democratic Governor Jon S. Corzine passed this law a year before he left office. See *New Jersey Governor Jon Corzine*, NAT'L GOVERNOR'S ASS'N, http://www.nga.org/cms/home/governors/past-governors-bios/page_new_jersey/col2-content/main-content-list/title_corzine_jon.html (last visited Sept. 11, 2014). The law would not actually take effect, however, until after Republican Governor Chris Christie took office in January 19, 2010. See *Governor Christie*, ST. N.J. GOVERNOR CHRIS CHRISTIE, <http://www.state.nj.us/governor/admin/about/> (last visited Sept. 11, 2014). This is important from an accountability standpoint, as the public's political check on its elected leader becomes weakened when one of the individuals responsible for enacting the law is no longer in office at the time the law takes effect.

strictions.⁴² The law applies to all drivers at all stages of the GDL program, including special permit holders, examination permit holders, and probationary license holders.⁴³ The statutory language provides, in pertinent part:

The chief administrator shall provide the holder of a probationary license with two removable, transferable, highly visible, reflective decals indicating that the driver of the vehicle may be the holder of a probationary license. . . . The decals shall be displayed in a manner prescribed by the chief administrator . . . and shall be clearly visible to law enforcement officers. The holder of a probationary license shall not operate a vehicle unless the decals are displayed. The decal shall be removed once the driver's probationary license period has ended.⁴⁴

The Chief Administrator of the New Jersey Motor Vehicle Commission was responsible for implementing this new statutory provision, designing the decals, and determining their placement on vehicles.⁴⁵ While the Teen Driver Study Commission's proposal for the identifier would have predicated this requirement on provisional driving status,⁴⁶ the law as construed by the Motor Vehicle Commission makes a distinction based on age group rather than driving experience.⁴⁷ Thus, the requirement to display these decals applies only to individuals under twenty-one years of age rather than to all new drivers.⁴⁸ Although the Motor Vehicle Commission's interpreta-

42. 39:3-13.2a *Legislative History Checklist: Senate Transportation Committee Statement*, N.J. ST. LAW LIBR. 16 (Nov. 13, 2008), <http://repo.njstatelib.org/xmlui/bitstream/handle/10929.1/3052/L2009c37.pdf?sequence=1&isAllowed=y>. Kyleigh D'Alessio was a sixteen-year-old athlete and high school student. *Id.* On December 21, 2006, she was riding in a vehicle driven by a seventeen-year-old in possession of a provisional driver's license. NAT'L SAFETY COUNCIL, *Kyleigh's Story*, HELPING PARENTS KEEP TEENS SAFE BEHIND THE WHEEL (Sept. 4, 2012), <http://teensafedriving.org/blog/kyleighs-story/>. She was one of three passengers in the vehicle, two more than allowed by GDL restrictions. *Id.* The driver lost control of the vehicle, leaving the roadway and eventually crashing into a tree, killing Kyleigh. *Id.* The law was named in Kyleigh's memory, as her mother has worked to improve GDL laws to prevent vehicular accidents like the one that killed her daughter. *Id.*

43. §§ 39:3-13, :3-13.2a(a), :3-13.4(f). The boundaries of the legal distinctions between these various types of provisional drivers will be discussed in Part I.B *infra*.

44. § 39:3-13.4(f). This quoted language is taken from the statute referring to probationary license holders, but the language for special learner's permit holders and examination permit holders is practically identical. *Cf.* §§ 39:3-13, :3-13.2a(a).

45. *See* §§ 39:3-13, :3-13.2a(a), :3-13.4(f).

46. RECOMMENDATION REPORT, *supra* note 20, at 19-20.

47. *See* Martinez, *supra* note 39.

48. *Id.*

tion of this law was not subject to notice-and-comment processes,⁴⁹ the different licensing requirements for individuals over twenty-one years of age may shed light on this regulatory choice: new drivers over twenty-one have a shortened permit period and do not have to adhere to the nighttime curfew and passenger restrictions that constrain younger drivers.⁵⁰

Kyleigh's Law modifies each of the statutes that delineate the three sequential phases of New Jersey's GDL program.⁵¹ The penalties for the violation of the foregoing provisions impose a fine of one hundred dollars for violation of any of the GDL requirements, including:

[1] supervision requirements for permit holders; [2] passenger restrictions; [3] hours of operation; [4] seat belt requirements; [5] hand-held or hands-free interactive wireless communication device use restrictions; [6] any other violation of the conditions of a permit or probationary license as the chief administrator may designate; or [7] decal requirements.⁵²

49. *See id.* According to the Motor Vehicle Commission's website, the Commission's April 26, 2010 implementation of Kyleigh's Law constituted a "Law Enforcement Advisory" and not a "Rulemaking Proposal." *See Law Enforcement Advisories*, N.J. MOTOR VEHICLE COMM'N, <http://www.state.nj.us/mvc/About/advisory.htm> (last updated Sept. 2, 2014). Because this advisory did not constitute a proposed rulemaking, the agency's interpretation was not subject to notice and comment; only proposed rulemakings are required to undergo this process. *See generally* N.J. STAT. ANN. § 52:14B-4(a)(1), (a)(3) (West 2008) ("Prior to the adoption, amendment, or repeal of any rule, except as may be otherwise provided, the agency shall . . . [g]ive at least 30 days' notice of its intended action . . . [and] [a]fford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing."); *Metromedia, Inc. v. Dir., Div. of Taxation*, 478 A.2d 742, 751 (N.J. 1984) (listing "relevant factors [that] can, either singly or in combination, determine in a given case whether the essential agency action must be rendered through rule-making or adjudication."); *In re N.J.A.C. 7:1B-1.1 et seq.*, 67 A.3d 621, 641 (N.J. Super. Ct. App. Div. 2013) ("Where the APA does not require rulemaking, an agency may act informally.").

50. *See* §§ 39:3-13, :3-13.2a(a), :3-13.4(b).

51. §§ 39:3-13, :3-13.2a(a), :3-13.4(f). At the same time that the New Jersey legislature enacted Kyleigh's Law to modify the State's GDL program, the New Jersey legislature also enacted other substantive modifications to this program, including lengthening the nighttime driving prohibition for probationary drivers from 12:01am-5:00am to 11:01pm-5:00am and providing for one-person passenger requirements, regardless of familial affiliation. *See* Act of Apr. 15, 2009, ch. 38, Pub. L. 2009, 11 (2009) (amending and supplementing statutory law concerning driver's permits and licenses). The laws provided an exception for dependents and supervising parents. *Id.* Other modifications mandate seat belt use for all occupants of the probationary driver's vehicle and ban all forms of wireless communication devices, including hands-free devices. *See id.* at 11-12. Although these latter provisions are not being contested, they provide context for assessing the validity of the decal requirement's purported effectiveness.

52. N.J. STAT. ANN. § 39:3-13.8 (West 2010).

With the law's background in mind, this Note will next describe who exactly is subject to these laws in order to give a better understanding of what part of the population this new requirement affects the most.

B. Examining the Scope of Kyleigh's Law and Whom It Affects

The decal requirement promulgated by Kyleigh's Law applies uniformly to special permit holders, examination permit holders, and probationary license holders.⁵³ The scope of these three licensing provisions will be explained in turn. Individuals who have attained at least sixteen years of age may obtain special learner's permits if they satisfy the following requirements⁵⁴:

Any person to whom a special learner's permit has been issued pursuant to section 1 of P.L.1950, c. 127 (C.39:3-13.1), upon successful completion of a State approved written examination, eye examination, and an approved minimum six-hour behind-the-wheel driving course, shall be entitled to retain the special learner's permit in his own possession.⁵⁵

Individuals over seventeen years of age who have not completed a behind-the-wheel driving course are eligible to obtain an examination permit.⁵⁶ Like special permit holders, examination permit holders may drive only when accompanied by a licensed driver over twenty-one years old who has at least three years of driving experience.⁵⁷ The special permit holder must accrue six months of driving experience before becoming eligible to obtain a probationary license.⁵⁸ However, much different provisions apply to individuals over age twenty-one.⁵⁹ Novice drivers over twenty-one need only acquire three months of supervised behind-the-wheel experience before they may obtain a provisional license.⁶⁰ Further, novice drivers

53. See §§ 39:3-13, :3-13.2a(a), :3-13.4(f).

54. § 39:3-13.1.

55. § 39:3-13.2a. Special permit holders are not allowed to operate a motor vehicle unless they are accompanied by an adult over the age of twenty-one with at least three years of driving experience. *Id.* A special permit holder must attain at least six months of behind-the-wheel experience before he or she is eligible to obtain a probationary license. § 39:3-13.4(a).

56. § 39:3-13.

57. *Id.*

58. *See id.*

59. *See id.*

60. *Id.*

over twenty-one must only follow the seat belt requirements and wireless communication restrictions, but not the decal requirements, passenger restrictions, or curfew.⁶¹

The probationary license is the last step in the GDL process, and is the only stage that grants independent driving privileges without the need for adult supervision.⁶² A special permit holder is eligible to obtain a probationary license after “attaining the age of 17 years, . . . completion of six months’ driving experience with a validated special learner’s permit, . . . and . . . upon passing the road test pursuant to R.S.39:3-10.”⁶³ An examination permit holder may become eligible after completing six months of supervised driving and upon passing the road test.⁶⁴ Although granted independent driving privileges, a probationary license holder less than twenty-one years of age must still adhere to the same passenger and curfew restrictions as a permit holder.⁶⁵ Once the probationary license holder has accumulated one full year of individual driving experience, he or she is eligible for a full, unrestricted driver’s license.⁶⁶

While the statutory text provides some insight into who this law covers, looking at statistical data provides a fuller picture. According to data from May 2010—the month the New Jersey legislature enacted Kyleigh’s Law—there were approximately at least 147,000 probationary license holders between the ages of seventeen and twenty in the state.⁶⁷ Data from 2006 indicates that drivers between

61. *Id.* Although the legislative history of the law does not shed much light on the differential treatment of drivers over twenty-one, the Teen Driver Study Commission’s Report may partly explain the differential treatment. The report notes that its target audience, sixteen- to twenty-year-olds “annually account for more than three quarters of the state’s new drivers.” RECOMMENDATION REPORT, *supra* note 20, at 1.

62. See N.J. STAT. ANN. § 39:3-13.4 (West 2010).

63. § 39:3-13.4(a).

64. § 39:3-13.

65. § 39:3-13.4(b), (c), (f).

66. See *The Young Adult Road*, N.J. MOTOR VEHICLE COMM’N, <http://www.state.nj.us/mvc/Licenses/YoungAdult.htm> (last updated May 7, 2014).

67. See Allison E. Curry et al., *Graduated Driver Licensing Decal Law: Effect on Young Probationary Drivers*, 44 AM. J. PREVENTIVE MED. 1, 3–4 (2013) (referencing data from the text and Figure 1 of the study that tracked the number of probationary license holders during the months before and after Kyleigh’s Law’s enactment). The approximate number of probationary license holders from May 2010 was calculated by adding the number of seventeen-year-old probationary license holders (approximately 65,000), to the number of eighteen- to twenty-year-old probationary license holders who were eligible to obtain a basic license (56,825), to the number of eighteen- to twenty-year-old probationary license holders not yet eligible to obtain a basic license (Figure 1 indicates at least 25,000). See *id.* at 3–4.

the ages of seventeen and twenty represent only 5% of all licensed drivers in New Jersey.⁶⁸

The crash statistics for all drivers under twenty years old in the state reveal why the legislature felt the need to act.⁶⁹ Although this section of the population is small, it is disproportionately represented in vehicular crashes: approximately 16% of all licensed young people in New Jersey (including both probationary and fully licensed drivers between seventeen and twenty years of age) were involved in vehicular crashes in 2006, a rate nearly double that of all drivers.⁷⁰ Thus, the need to promulgate stricter provisions in the GDL law discussed above seems justified. Yet, while the government may have had a sound reason to regulate young drivers, the question remains: are its chosen means reasonable?

C. *The Public Outcry and Long-Term Policy Implications*

As previously noted, Kyleigh's Law met with fierce opposition from the public.⁷¹ The Insurance Institute for Highway Safety (IIHS) conducted a study between 2010 and 2011 to assess the attitudes of parents and teenagers regarding the new decal requirement.⁷² According to the study, the main source of disapproval of this law arose from the perceived dangers of young teens being publicly labeled by their age groups.⁷³ Specifically, parents objected to the law out of concerns that their teens would be targeted or profiled.⁷⁴ Public opinions measured before and after implementation of the law noted that dissenting opinions actually increased after the law's enactment, with parents citing the increased risk of predatory attacks,

68. See RECOMMENDATION REPORT, *supra* note 20, at 8 n.17.

69. See *id.* at 8.

70. *Id.*

71. See generally McCartt et al., *Attitudes*, *supra* note 13; McCartt & Williams, *supra* note 13; see also John Cichowski, *Road Warrior: Report Rekindles Debate Over Teen Decal*, NORTHJERSEY.COM (Oct. 28, 2012, 9:11 AM), <http://northjersey.com/news/road-warrior-another-battle-in-the-decal-war-1.519682> (discussing widespread complaints from parents and teenagers as well as an attempt to repeal the law through a telephone and Internet campaign); John Froomjian, *Decals for Cars with Young Drivers Not Popular with Parents or Kids*, PRESS ATLANTIC CITY (Aug. 6, 2012), http://www.pressofatlanticcity.com/news/breaking/decals-for-cars-with-young-drivers-not-popular-with-parents/article_bbdaedb4-d906-11e0-9c29-001cc4c03286.html?mode=jqm (highlighting the public's mistrust of Kyleigh's Law as well as a State Assemblyman's attempts to repeal it).

72. See generally McCartt et al., *Attitudes*, *supra* note 13.

73. See *id.* at 249–51.

74. *Id.* at 249.

the drawing of negative attention to their teens, and the targeting of their teens by police or other drivers.⁷⁵ Parents, however, were not the only dissenters; teens also vehemently oppose this law – 90% of probationary license holders who were subject to the decal requirement in 2011 disapproved.⁷⁶

This widespread opposition of those directly subject to the law, coupled with parental disapproval, has resulted in a wave of non-compliance permeating this regulatory landscape.⁷⁷ According to self-reported data, only 46% of probationary license holders' parents reported that their teens actually used the decals consistently.⁷⁸ For those who did not use the decals, nine out of ten parents approved of their teens' noncompliance, citing the concerns of targeting and profiling.⁷⁹ Likewise, teen self-reported usage was also low, as was observed usage at a number of surveyed high schools.⁸⁰ A follow-up study conducted in 2012 and 2013 by the IIHS analyzed the views of New Jersey residents between seventeen and nineteen years old regarding these licensing policies.⁸¹ Unsurprisingly, three quarters of survey respondents disapproved of the decal requirements and self-reported usage was little more than 40%.⁸² The opposition to the law has even generated internet movements, including Facebook pages and online petitions to repeal the law.⁸³ The public's fears and the burdens it perceives, real or not, have a strong impact on how this law can ultimately function and deliver its intended results.

In the midst of the uproar surrounding Kyleigh's Law, a study emerged examining the law's effectiveness.⁸⁴ Researchers concluded that the addition of the decal requirement as an enforcement aid had prevented over 1,500 crashes since the law's inception.⁸⁵ The news of

75. *Id.*

76. *Id.*

77. *See id.* at 251–52.

78. *Id.* at 251.

79. *Id.*

80. *Id.* at 252–54.

81. *See generally* McCartt & Williams, *supra* note 13.

82. *Id.* at 4.

83. *See* Victoria St. Martin, N.J. *Teens Refuse to Use Red Decal Stickers Required by Kyleigh's Law*, NJ.COM (May 5, 2010, 5:30 AM), http://www.nj.com/news/index.ssf/2010/05/nj_teens_refuse_to_use_decal_s.html; *see also* Cichowski, *supra* note 71.

84. *See generally* Curry et al., *supra* note 67.

85. *Id.* at 4–5 (“[I]t was estimated that police-reported crash involvement of 846 male and 778 female New Jersey probationary drivers was prevented in the first year after the law’s implementation.”).

this report refueled the still-hot embers of a public outcry against the law and reinvigorated the debate.⁸⁶ While this study indicates that the legislature may have improved its GDL program,⁸⁷ it does not measure the law's cost on the individuals subject to this law — costs that have been borne as anxiety, mistrust, and exposure. Furthermore, the widespread noncompliance this law has generated unquestionably undermines its potential long-term effectiveness.⁸⁸ While the law may have succeeded initially to reduce teen crashes, one can only wonder to what extent Kyleigh's Law could achieve even greater safety if the public was not so loathe to obey its commands.

Understanding the social context surrounding this law is important to grasping the arguments for and against such a regulatory regime. Although the effort to identify young drivers may be characterized as a "labeling law" or a "scarlet letter," it is unique in its own right among this class of laws. Unlike other types of labeling laws that seek to induce disdain and humiliation for criminal conduct,⁸⁹ Kyleigh's Law operates in the realm of prevention and enforcement rather than punishment. In effect, the law attempts to create a label for young drivers that acts as both a tracking device for law enforcement and a means of increasing compliance with restrictions that lead to fewer young driver crashes.⁹⁰ As stated earlier, New Jersey's reason for regulating is not being questioned, nor should it be. If the maximum potential of these goals is realized, it could save even more lives and could alter young driver behavior in a way that would lead to safer roads for all New Jersey citizens. Whether the means chosen are justified will form the basis of the remaining discussion. This question will remain in the background

86. See Cichowski, *supra* note 71.

87. See Curry et al., *supra* note 67, at 4 ("Overall, the rate of GDL citations increased 14% in the year after the law's implementation . . .").

88. See McCartt et al., *Attitudes*, *supra* note 13, at 257 ("[A]lthough it appears that the decal requirement has increased enforcement of graduated licensing restrictions, the requirement does not seem to have achieved the ultimate goal of increased compliance with the restrictions.").

89. See, e.g., *Special License Plates for Drunk Driving Offenders: Summaries of Current Special License Plate Laws*, NAT'L CONF. ST. LEGIS. (updated Feb. 2014), <http://www.ncsl.org/research/transportation/special-plates-for-drunk-driving-offenders.aspx> (citing Ohio's law requiring drivers who have been convicted of driving under the influence of alcohol to display license plates bearing red and yellow colors that appear much different than typical license plates in the state).

90. See RECOMMENDATION REPORT, *supra* note 20, at 19–20.

as New Jersey struggles to address a disobedient class of constituents and as other states begin to consider whether this type of law is consistent with their public policy goals and with the administration of an effective and accountable government.

II. MAKING THE CASE FOR PUBLIC INPUT IN THE REGULATORY PROCESS

A. What Makes Regulation Effective?

Regulation may take a variety of forms and is often designed to correct particular needs, deficiencies, imbalances, externalities, or adverse behavior impacting the public welfare.⁹¹ New Jersey's GDL program is a law meant to control public behavior—more specifically, driving behavior. The legislature has chosen to regulate this behavior by creating a scheme involving licensing, which is governed by set standards, and enforced through fines and other penalties. Putting new drivers through this year-and-a-half process is intended to beneficially alter drivers' behavior to protect teens from themselves and to protect the public at large. Kyleigh's Law fits into this regulatory puzzle as the piece that enhances the enforcement aspect of the law and may also indirectly alter driver behavior through awareness of public exposure via the red decal.

In the context of addressing how to correct a problem, a state must make the threshold determination of whether it needs to take action. This much-discussed question about when regulation is appropriate, although important, is not this Note's focus. Instead, this Note questions the *means* New Jersey has chosen to provide safer roads and reduce vehicular fatalities for young drivers. Addressing this question requires an examination of the literature that has identified particularly effective characteristics of regulation and how these characteristics play a role in the administration of a successful regulatory framework.

Regulation is, in essence, a governmental response intended to mitigate the risks that prevent society from functioning at an ideal

91. See STEPHEN G. BREYER ET AL., ADMINISTRATIVE LAW AND REGULATORY POLICY: PROBLEMS, TEXTS, AND CASES 3–11 (Cass R. Sunstein ed., 6th ed. 2006) (citing traditional reasons for the implementation of regulation, including: the correction of market failures, the need to control monopolies, the need to compensate for lack of information, collective action problems, remedying disadvantage and caste, and protecting individuals from their own irresponsibility).

state through the adoption of laws and rules that control behavior.⁹² Risk plays a crucial role in the effectiveness of regulation: the government's chosen means of managing risks and the information it uses to assess these risks often form the basis by which the public may judge the government's chosen plan.⁹³ A mismatch in valuations, however, may produce a regulation that is disfavored and contrary to the public's expectations. This may occur because of lapses in the information used to evaluate certain hazards and because regulators and the public have a tendency to assess risks through different processes.⁹⁴

To be effective, the legislature should enact regulation through a process that takes heed of two intertwined concepts: public trust and public participation.⁹⁵ Richard Pildes and Cass Sunstein argue that trust is integral in the regulatory process and functions in three distinct ways. "First, levels of trust shape public knowledge about risk. Second, levels of trust influence the ability of regulators to communicate effectively about risk. Finally, public trust is critical to public acceptance of regulatory proposals for dealing with risk."⁹⁶ Public trust of government information is crucial because "[p]ublic perceptions of risk are filtered through judgments about the trustworthiness of the authorities charged with responsibility for managing those risks, and about the benefits of activities that produce risk."⁹⁷ When this trust is absent from the equation, however, the public may look elsewhere to obtain information and will not rely on sources of official data, ultimately causing divergence between the conclusions at which regulators and the public may arrive.⁹⁸

This divide in public perception of threats often stems not only from mistrust in information, but also from the unique means by

92. See LISA HEINZERLING & MARK V. TUSHNET, *THE REGULATORY AND ADMINISTRATIVE STATE: MATERIALS, CASES, COMMENTS 1* (Richard E. Lang et al. eds., 2006).

93. See Chauncey Starr, *Risk Management, Assessment, and Acceptability*, 5 *RISK ANALYSIS* 97, 98 (1987) (arguing that "acceptance of any risk is more dependent on public confidence in risk management than on the quantitative estimates of risk . . .").

94. See Richard H. Pildes & Cass R. Sunstein, *Reinventing the Regulatory State*, 62 *U. CHI. L. REV.* 1, 42 (1995).

95. See generally *id.* at 33, 40, 58-64 (arguing the conflicts arising in the course of regulation often stem from public mistrust of expert risk assessment and of political bureaucracies generally and that public participation in the regulatory process may help to remedy such conflicts).

96. *Id.* at 40.

97. *Id.*

98. *Id.* at 41.

which regulatory authorities and the public assess risk.⁹⁹ Cost-benefit analysis is often championed as the regulatory method of choice for assessing the net benefits to be obtained from a particular regulation.¹⁰⁰ It seeks to quantify known hazards and benefits in a way that allows for regulators to justify cost-effective regulation based on hard, visible data.¹⁰¹ This means converting risks, damages, and soft values into an equation consisting of monetary figures so that costs and benefits of regulatory decisions can be compared in a numerical fashion.¹⁰² This analysis, however, differs greatly from the ways the public typically assesses liabilities and may often lead to divergent or untenable conclusions.¹⁰³

The public, on the other hand, assesses dangers by relying on particular values and beliefs, which a traditional cost-benefit analysis cannot accurately represent.¹⁰⁴ This different mode of risk assessment should not be misinterpreted as necessarily resulting from misunderstanding or distorted thinking,¹⁰⁵ rather, laypeople's assessments of risk are often context-based and based on "softer" values incapable of quantification. The most important focal points of this evaluation include:

- (1) the catastrophic nature of the risk;
- (2) *whether the risk is uncontrollable*;
- (3) whether the risk involves irretrievable or permanent losses;
- (4) the social conditions under which a particular risk is generated and managed . . .
- (5) how equitably distributed the danger is or how concentrated on *iden-*

99. *Id.* at 42.

100. See HEINZERLING & TUSHNET, *supra* note 92, at 494 ("Critics of regulation often point to cost-benefit analysis as the solution to regulatory failure."); Lester B. Lave, *Benefit-Cost Analysis: Do the Benefits Exceed the Costs?*, in RISKS, COSTS, AND LIVES SAVED: GETTING BETTER RESULTS FROM REGULATION 104, 104-06 (Robert W. Hahn, ed. 1996) (citing thirteen attributes of cost-benefit analysis which make it a valuable tool for assessing regulation).

101. Frank Ackerman & Lisa Heinzerling, *Pricing the Priceless: Cost-Benefit Analysis of Environmental Protection*, 150 U. PA. L. REV. 1553, 1557 (2002).

102. See *id.* at 1557-58.

103. See *id.* at 1568 ("Cost-benefit analysis assumes the existence of generic, acontextual risk and thereby ignores the contextual information that determines the manner in which many people, in practice, think about real risks to real people.").

104. See Lave, *supra* note 100, at 117 ("Some items have a value in commerce that is quite different from their personal value. . . . Often, wisdom calls for stating the benefits and costs in multidimensional terms, not in dollars."); see also PILDES & SUNSTEIN, *supra* note 94, at 46 ("A common complaint was that [cost-benefit analysis] was biased against the benefits of regulation, since these tend to be 'soft variables' not easily quantified.").

105. See PILDES & SUNSTEIN, *supra* note 94, at 56 (acknowledging that although confusion or informational heuristics may play a role in the public's divergent perceptions of risk, this is not the case in many situations).

tifiable, innocent, or traditionally disadvantaged victims, which ties to both notions of community and moral ideals; (6) how well understood the risk process in question is . . . (7) whether the risk would be faced by future generations; and (8) how familiar the risk is.¹⁰⁶

The conclusion to be drawn from these divergent risk assessment processes is that if regulation is to be effective, “then democratic policy should recognize the relevant contextual differences.”¹⁰⁷ The net effect of disregarding such perceptions may lead to untenable results:

[T]o the extent that [cost-benefit analysis] contains a contestable conception of rationality and value—one that experts favor but that is often at odds with more widely shared . . . conceptions of rationality—it *becomes a means of suppressing competing understandings of both reason and value, and of selecting an approach that cannot easily be shown to be superior in principle.*¹⁰⁸

While cost-benefit analysis need not be displaced altogether, the decisive framework should at least consider the qualitative aspects of the public’s risk evaluation to provide a more complete picture of the risk.¹⁰⁹ Allowing the regulatory process to incorporate the public’s concerns into a cost-benefit analysis facilitates greater trust and compliance; providing some form of meaningful participation in the process increases accountability and understanding among the citizenry.¹¹⁰

Informational heuristics and incomplete data distorting the public’s perception in regard to a particular risk are legitimate concerns in the law-making context; however, there are ways of parsing whether the public’s conclusions rest upon such misinformation or upon legitimate value judgments.¹¹¹ In light of these considerations,

106. *Id.* at 57 (emphasis added).

107. *Id.* at 58–59.

108. *Id.* at 52 (emphasis added).

109. See Ackerman & Heinzerling, *supra* note 101, at 1567–68.

110. Pildes & Sunstein, *supra* note 94, at 63; see also Ackerman & Heinzerling, *supra* note 101, at 1576 (arguing that strict cost-benefit analysis, which ignores citizens’ judgments and assessments, diminishes transparency and objectivity in the legislative process).

111. Pildes & Sunstein, *supra* note 94, at 63. Pildes and Sunstein urge that public participation in the regulatory process is essential to understanding why lay assessments of risk may be different from expert valuations. *Id.* (“This participation should take the form of informed deliberation about regulatory means and goals. Only after policymakers understand the rea-

the most effective regulation should create an environment of trust and compliance by *involving* the public in the deliberation process, so as to give credence to their values and judgments where they are the product of legitimate contextual risk assessment.¹¹² In other words, this process should embrace the fundamental principle that “policy involving risk should be seen as a political process to be informed by expert judgment and analysis, rather than as a technocratic process in which citizens are entitled to participate at best sporadically.”¹¹³

Although facilitating public involvement is the first critical step in promulgating effective regulation, notions of justice further require the legislature to give equal consideration to all viewpoints in the decision-making process.¹¹⁴ Legal philosopher H.L.A. Hart argues in his book *The Concept of Law* that the decision-making process of the legislature figures strongly into the public’s perception of the justness of the laws.¹¹⁵ He notes that “it is . . . clear that a choice, made without prior consideration of the interests of all sections of the community would be open to criticism as merely partisan and unjust.”¹¹⁶ He goes on to propose a solution to avoid such an outcome: “It would, however, be rescued from *this* imputation if the claims of all had been impartially considered before legislation, even though in the result the claims of one section were subordinated to those of others.”¹¹⁷ It is not so important that the legislature distributes the same benefits among all classes of society, but rather, that the legislature gives equal credence to each class’s unique concerns.¹¹⁸

Hart’s observations tie in prominently with Pildes and Sunstein’s suggested regulatory model. Involvement from all members of society in the legislative process will facilitate not only greater public trust in the legislature’s choice, but also a greater perception of a law’s justness. If the process used to produce a policy was not car-

sons behind these differences can they know whether the reasons rest on factual errors or value conflicts . . .”).

112. See Henry S. Richardson, *The Stupidity of the Cost-Benefit Standard*, 29 J. LEGAL STUD. 971, 986–89 (2000) (describing the way people’s numerous methods of deliberation allow for more intelligent decision making and how strict cost-benefit analysis is incapable of incorporating these alternative modes of assessment).

113. Pildes & Sunstein, *supra* note 94, at 63.

114. H.L.A. HART, *THE CONCEPT OF LAW* 167 (Paul Craig ed., 3d ed. 2012).

115. See *id.*

116. *Id.*

117. *Id.* (emphasis added).

118. See *id.*

ried out in a way that satisfied the public's notions of equal representation and fairness, what reason would the public have for giving high regard to the legislature's ultimate decision? Allowing the public to incorporate its unique mode of risk assessment in shaping public policies would foster a better understanding of and compliance with legislative enactments. Without these essential elements, laws will fall far short of the public benefits they were designed to achieve. It is with these ideas in mind that we must now confront the analysis of the legislature's decision-making process with respect to Kyleigh's Law.

B. Analyzing What Went Wrong in the Legislature

Although one must recognize that not *every* legislative enactment may be able to account for the kind of public participation in regulatory deliberations Pildes and Sunstein propose, these theories nonetheless underscore the importance of making every effort to account for the public's view whenever it is feasible and reasonable to do so. Unfortunately, in the case of Kyleigh's Law, it appears that the legislature did not adequately account for the public's input regarding the law's creation. The legislature adopted the law upon the recommendation of the Teen Driver Study Commission,¹¹⁹ which did not attempt a public survey or try to gauge the public's reaction to a young driver labeling law.¹²⁰ Notably, one of the previously mentioned states considering a statutory provision much like Kyleigh's Law to enhance its GDL program—Connecticut—rejected this proposal during the planning stages of the legislative process after employing public opinion surveys at subcommittee meetings.¹²¹ For much of the same reasons that New Jersey constituents protested the law, Connecticut citizens informed their elected representatives that such a law would meet fierce opposition.¹²²

There is no indication that the New Jersey legislature took such steps before it decided to adopt the Teen Driver Study Commis-

119. See RECOMMENDATION REPORT, *supra* note 20, at 19–20.

120. The Commission, to the contrary, heard testimony from police officers regarding the difficulty of enforcing GDL provisions, but heard no testimony from the public who would be subject to abiding by this law. *Id.* at 20.

121. See WARD & GALVIN, *supra* note 17, at 22 and accompanying text.

122. *Id.* at 22.

sion's recommendation regarding the decals.¹²³ Even after the law was passed, much of the administrative matters concerning the law's implementation were delegated to the New Jersey Motor Vehicle Commission ("NJMVC").¹²⁴ Although the text of Kyleigh's Law as adopted by the legislature contains no provision restricting the application of the decals by age group, the NJMVC construed the statutes as embodying this distinction.¹²⁵ The agency, however, did not do so through a formal rulemaking, which would have provided for notice and comment processes.¹²⁶ Notice and comment, despite not giving the public any sort of veto over the proposed regulation, would have at least given notice to the government of the impending public opposition and provided a means for the public to air its views and suggest alternative means of action. Instead, the agency merely set forth a "Motor Vehicle Advisory" declaring how and to whom the law would apply, effectively removing from any sort of involvement or deliberation the people who would be most affected by this new regulatory scheme.¹²⁷

Thus, in the case of Kyleigh's Law, the public's views were largely ignored during the promulgation of this new regulatory regime. One may argue, however, that the public's views are based on availability heuristics or misunderstandings of crime and that the public understanding of the risks accompanying the decal law is mistaken. Yet, the current lack of data indicating that this law has led to an increased risk of predatory attacks does not necessarily lead to the conclusion that no such risk is present.¹²⁸ Furthermore, as discussed above, the public's prioritization of this risk as being higher than the risk of motor vehicle accidents is not necessarily based upon misinformation. Rather, the public's assessment may be founded on legitimate contextual methods of assessing risk that in-

123. See 39:3-13.2a *Legislative History Checklist*, N.J. ST. LAW LIBR. (Sept. 1, 2009), <http://repo.njstatelib.org/xmlui/bitstream/handle/10929.1/3052/L2009c37.pdf>.

124. See N.J. STAT. ANN. §§ 39:3-13, :3-13.2a(a), :3-13.4(f) (West 2010) ("The chief administrator shall provide the holder . . . with two removable, transferable, highly visible, reflective decals The decals shall be designed by the chief administrator").

125. See Martinez, *supra* note 39 ("The use of decals applies to the following drivers: Only those *under the age of 21* who possess a: Special Learner's Permit, Examination Permit, Probationary License (formerly known as Provisional).") (emphasis added).

126. See sources cited *supra* note 49 and accompanying text.

127. See Martinez, *supra* note 39.

128. See KYLEIGH'S LAW INTERIM REPORT, *supra* note 15.

corporate cultural norms and values that cannot be empirically quantified.¹²⁹

Much of the controversy evolving out of Kyleigh's Law stems from fears parents and teenagers have about the potential exposure young drivers face from displaying highly visible identification decals on the vehicles they drive.¹³⁰ Are these fears rational? What are their bases? Are young people really at a greater risk of being targeted because of these decals or are these merely misconceptions promulgated by distorted perceptions of crime depicted in the media? While these questions cannot all be fully answered due to a lack of complete statistical data, exploring these issues and the relevant statistics on criminal victimization may shed some light on the legitimacy of these perceived risks and help inform the necessary discussion in which the legislature failed to engage the public.

C. Actual Risk, Public Misconception, or Something Else?

Before exploring the data on criminal victimization, our inquiry must be narrowed to the very heart of the public's objections against Kyleigh's Law, namely, the prevalence of violent crime against young people *committed by strangers*. It must first be noted that although most violent criminal acts take place between people who know each other, a significant portion of violent victimizations are committed by strangers—38% of all nonfatal violent crime, in fact.¹³¹

As a foundational matter, young people—children—constitute the most criminally victimized segment of society.¹³² The National Crime Victimization Survey (NCVS), the “most highly regarded

129. Pildes & Sunstein, *supra* note 94, at 57 (noting that such contextual modes of evaluation include: “(1) the *catastrophic nature* of the risk; (2) whether the risk is uncontrollable; (3) whether the risk involves *irretrievable or permanent losses*; . . . [and] (5) how equitably distributed the danger is or how concentrated on *identifiable, innocent, or traditionally disadvantaged victims . . .*”) (emphasis added).

130. See Froomjian, *supra* note 71.

131. ERIKA HARRELL, U.S. DEP'T OF JUSTICE, VIOLENT VICTIMIZATION COMMITTED BY STRANGERS, 1993–2010 1 (Dec. 2012), available at <http://www.bjs.gov/content/pub/pdf/vvcs9310.pdf>. According to 2010 data, approximately 62% of all nonfatal violent acts in the United States were committed by people known to the victim. *Id.* Yet for purposes of this analysis, we are concerned with crime occurring between strangers, a less common instance of crime, but still significant nonetheless. See *id.*

132. DAVID FINKELHOR, CHILDHOOD VICTIMIZATION: VIOLENCE, CRIME, AND ABUSE IN THE LIVES OF YOUNG PEOPLE 3 (2008).

source of crime-victimization information in the United States,”¹³³ confirms that young people in the age groups of twelve to seventeen and eighteen to twenty-four had the highest rates of violent victimization by strangers among all age groups from 1993 to 2010.¹³⁴ Persons eighteen to twenty-four years old are the most highly victimized group with twelve- to seventeen-year-olds following closely behind.¹³⁵ Out of all violent crimes committed by strangers, the most prevalent was robbery, accounting for *more than half* of all robberies in the country for the period of 2005 to 2010.¹³⁶ Aggravated assault by strangers came close behind, accounting for about 42% of all aggravated assaults.¹³⁷

Although statistics portray prevalent violence against strangers, they only make up part of the story. These numbers are presented not to prove that the decals required by Kyleigh’s Law *will* result in more criminal victimizations of young teen drivers or even that they *might*. Rather, the point of discussing these statistics is to demonstrate that the fears parents have regarding the vulnerability of their teens are not completely baseless; in fact, the statistical crime data confirms the vulnerability of young people, indicating that teens are at the highest risk of being victimized by a stranger than any other age group in the population.¹³⁸ The fact that parents are averse to any type of device or requirement that has the potential to exacerbate this risk should be respected: the statistics demonstrate that young teens’ perceived vulnerabilities are not merely grounded in heuristics or cognitive bias.¹³⁹ Furthermore, such tensions should be seen as perfectly rational given the way in which laypeople assess and prioritize risk.¹⁴⁰ That such a risk is to be borne by those who are typically viewed as innocent and that such a risk cannot be easily

133. *Id.* The NCVS is promulgated by the Bureau of Justice Statistics, a branch of the U.S. Department of Justice. The NCVS is regarded for its ability to capture information related to crimes that are not reported to police, thus providing a broader and more complete picture of national crime trends than aggregated police reports. The Survey “collects information on nonfatal crimes against persons age 12 or older reported and not reported to the police from a nationally representative sample of U.S. households. Because the NCVS is based on interviews with victims, it does not measure homicide.” HARRELL, *supra* note 131, at 2.

134. *See* HARRELL, *supra* note 131, at 3.

135. *Id.*

136. *Id.* at 2.

137. *Id.*

138. *See* FINKELHOR, *supra* note 132, at 3; *see also* HARRELL, *supra* note 131, at 3.

139. *See* FINKELHOR, *supra* note 132, at 3.

140. *See* discussion *supra* Parts II.A–B.

mitigated make the threat more severe in the eyes of the general public.¹⁴¹ Although at the forefront of these tensions is the risk of teenage drivers getting into car accidents from failing to follow GDL protocol, the law must also respond in a way that accounts for the less tangible, but very real, burdens to which teens and parents have been subjected.

Young people's potential to be victimized represents one factor in assessing the rationality of the public's perceptions. However, another factor is the effect of a decal on exposing teens to a greater risk of vulnerability. The issue of whether GDL decals have the potential to increase targeting of teens or risk of criminal victimization has yet to be fully explored. However, an important event in this nation's history has the potential to shed light on whether the fear of a driver-labeling device can be rational.

During 1993, a rash of murders and carjackings took place in Florida.¹⁴² Many foreign tourists were the targets of robberies and attempted robberies resulting in eight deaths and numerous break-ins.¹⁴³ Tourists typically drove rental vehicles to travel around the state.¹⁴⁴ At the time, rental companies usually had their vehicles marked with the company's name, or were donned with license plates using a "Y" or a "Z" to designate that the vehicle was a rental vehicle.¹⁴⁵ The state created a tourism task force on crime to investigate this rash of violence and theft and to make recommendations to reduce the incidents of crime against the state's foreign visitors.¹⁴⁶ Florida police pointed to the clear markings on rental vehicles as creating targets for would-be criminals who were aware of the particular vulnerabilities of tourists.¹⁴⁷ Among other suggestions rec-

141. See Pildes & Sunstein, *supra* note 94, at 57.

142. See Larry Rohter, *Tourist Is Killed in Florida Despite Taking Precautions*, N.Y. TIMES (Sept. 9, 1993), <http://www.nytimes.com/1993/09/09/us/tourist-is-killed-in-florida-despite-taking-precautions.html> (stating that eight foreign tourists had been killed in South Florida in robberies or robbery attempts).

143. *Id.*

144. See Bob Lamendola, *Brutal Killing of German Tourist Alarms Miami*, ORLANDO SENTINEL (Apr. 5, 1993), http://articles.orlandosentinel.com/1993-04-05/news/9304050079_1_meller-german-tourist-miami (explaining that thugs targeting tourists were using rental car tags to "scout their victims").

145. *Id.*

146. See Rohter, *supra* note 142.

147. See Mike Clary & Tamara Jones, *Germany Warns Travelers Who Plan to Visit Florida: Tourism: Recent Murders Prompt First Such Advisory for a U.S. Area. State Scrambles to Provide Protection*, L.A. TIMES (Apr. 7, 1993), <http://articles.latimes.com/1993-04-07/news/>

ommended by the task force, the Florida state legislature implemented a law to remove all identifying decals, stickers, or advertising that marked vehicles as rentals.¹⁴⁸

Although many factors were at play leading to this concentrated rash of crime, the Florida legislature's response of banning all identifying markings on such vehicles cannot be seen as wholly insignificant. This story, describing the risks associated with vehicle labeling, and the NCVS data demonstrate that the New Jersey public's concerns regarding Kyleigh's Law are not wholly unfounded and create a reasonable basis for further investigation. While the situation in Florida is not perfectly analogous, it nonetheless points to a plausible connection between vehicle labeling and criminal targeting. The legislature should have addressed, studied, and surveyed the potential risks of publicly labeling a vulnerable class of constituents before deploying a law that would exacerbate these types of apprehensions.

By excluding the public from the legislative process without so much as conducting a survey and subsequently expecting prompt obedience, the legislature diminished people's trust in the regulatory process.¹⁴⁹ Noncompliance and mistrust of new data demonstrating the law's effectiveness should come as no surprise when the legislature thrusts upon its constituents a law that embodies the types of risks that ordinary people consider intolerable.¹⁵⁰ The risk's catastrophic nature, its inability to be controlled, the fact that it may lead to irretrievable loss, and the fact that the risk may be concentrated on innocent victims are all factors that influence the way people perceive and categorize risks arising from the obligation to display this decal on their children's vehicles.¹⁵¹ Law enforcement cannot typically control or prevent targeting, profiling, and predatory acts by strangers. Further, such acts or encounters certainly have the propensity to lead to catastrophic losses. Earlier examination of

mn-20203_1_florida-tourism ("To thieves, the special plates are known as 'Rob me' tags, Miami police say.").

148. See FLA. STAT. § 320.0601 (2005). The law provides that, "A rental car company may not rent in this state any for-hire vehicle, other than vehicles designed to transport cargo, that has affixed to its exterior any bumper stickers, insignias, or advertising that identifies the vehicle as a rental vehicle." *Id.*; see also Rohter, *supra* note 142.

149. *C.f.* Pildes & Sunstein, *supra* note 94, at 41 ("Where this trust is lacking, communities turn to outside sources of information about risk and remain highly skeptical of official sources.").

150. See Cichowski, *supra* note 71.

151. See Pildes & Sunstein, *supra* note 94, at 57.

NCVS data also makes clear that young people, who are the most criminally victimized group in society, disproportionately bear such a risk.¹⁵² Most people are unwilling to accept a course of action where the actual risk of these events could be amplified by a legal obligation and concentrated on vulnerable and innocent youth.¹⁵³

The government's failure to take these considerations into account in its own analysis only makes the decal requirement that much more self-defeating and subject to defiance. Such vehement opposition and noncompliance are not trivial in the greater context of American democracy. Civil disobedience may be injurious to a politically accountable democratic regime.¹⁵⁴ Defying laws that are considered to be unjust flies in the face of the processes provided to the public in a democratically accountable government and rejects the paradigm of majority rule.¹⁵⁵ Not only does it run counter to the fundamental ideals that have allowed our country and way of life to prosper, but it may also have the effect of drastically undermining public policies if practiced on a large enough scale.¹⁵⁶ This latter proposition has special poignancy here. The New Jersey legislature has clearly delineated the policy reasons behind its law: preserving the lives of teens and preventing motor vehicle collisions. Unfortunately, pervasive noncompliance subverts this underlying goal and pulls the law short of its full potential to reduce the more easily quantifiable—and arguably more salient—risk of motor vehicle accidents, which continue to claim the lives of young people at a disproportionate rate.

III. FINDING THE OPTIMAL SOLUTION TO A REGULATORY DILEMMA

A. Looking to the Courts for a Remedy

From the above discussion, it is clear what is in place: a law aimed at protecting youth, implemented through the act of identification

152. See FINKELHOR, *supra* note 132, at 3.

153. See McCartt et al., *Attitudes*, *supra* note 13, at 249 (finding approximately 75% of parents of teenagers with their learner's permit and 90% of teenagers with a probationary license disapproved of the GDL decals post-implementation).

154. See Steven R. Schlesinger, *Civil Disobedience: The Problem of Selective Obedience to Law*, 3 HASTINGS CONST. L.Q. 947, 948 (1976).

155. See *id.* at 948, n.6.

156. See *id.* at 954 (arguing that the very structure of a democratic government is undermined when individuals resort to civil disobedience to protest against undesirable laws rather than take advantage of the avenues in representative democracy that provide redress).

labeling. Although the research has demonstrated that the law has its merits,¹⁵⁷ it is not without costs. The public has borne these costs through anxiety, fear, and mistrust.¹⁵⁸ The failure of the government to take into account the views of the governed in its regulatory calculus has led to noncompliance that cuts short the true life-saving potential of this measure.¹⁵⁹

Usually when a law produces untoward results, a natural response is to challenge the law in court, hoping to strike down the undesired law in whole or in part on the basis that it violates some other higher command or constitutional guarantee. Yet, in this situation, that process has already been exhausted. Two New Jersey mothers, on behalf of their children, brought a lawsuit challenging Kyleigh's Law, alleging constitutional violations and expectations of privacy.¹⁶⁰ The New Jersey Supreme Court upheld the law against every attack that was launched at it.¹⁶¹ The court found no equal protection violation (under the state or federal constitution), no violation of the federal Driver's Privacy Protection Act, and no violation of the Fourth Amendment to the United States Constitution.¹⁶² While dissidents of Kyleigh's Law must have been disappointed in the court's decision, this disappointment is misplaced. The point is that the court could not possibly provide the proper remedy in this situation. The problem with the implementation of Kyleigh's Law was not the legislature's failure to adhere to a higher constitutional or federal command, but rather its failure to seek guidance and in-

157. See Curry et al., *supra* note 67, at 4 (examining the decal law's mitigating effect on car crash rates).

158. See Alex Koroknay-Palicz, *New Jersey's Kyleigh's Law Puts a Bullseye on Youth*, HUFFINGTON POST (May 25, 2011, 4:20 PM), http://www.huffingtonpost.com/alex-koroknaypalicz/new-jerseys-kyleighs-law_b_557382.html ("Because of the concerns over the dangerousness and discriminatory implications of this law it has attracted a storm of criticism . . .").

159. See *id.*

160. See Trautmann *ex rel.* Trautmann v. Christie, 48 A.3d 1005, 1007 (N.J. 2012).

161. See *id.* at 1006-08.

162. *Id.* at 1007-08. The New Jersey Supreme Court found that the disclosure of a driver's age group did not constitute "highly restricted personal information" within the meaning of the federal Driver's Privacy Protection Act. *Id.* at 1007. The court also held that the statute withstood rational basis review under the federal equal protection clause, noting that the statute did not target a suspect class. *Id.* The court also dismissed the Fourth Amendment claim, noting that young drivers subject to the law "have no reasonable expectation of privacy in their age group, because a driver's age group can generally be determined by his or her physical appearance, which is routinely exposed to public view." *Id.* at 1008.

volvement from the people that it serves. The New Jersey Supreme Court properly observed that:

The policy arguments for and against Chapter 37 are not for this Court to consider, but are properly made before the Legislature. It is not our province to determine the wisdom of this statute, or to weigh its value to police officers in enforcing *N.J.S.A. 39:3-13* against any safety concerns that are raised by the decal requirement. Those arguments may be made before the Legislature, but they have no impact on the Court's analysis today.¹⁶³

A statement found in the New Jersey Appellate Division's opinion, which was affirmed by the New Jersey Supreme Court, also made apparent the fact that courts are not the appropriate venue for advancing policy changes.¹⁶⁴ In rejecting the notion that disclosure of one's age group violated the federal Driver's Privacy Protection Act, the Appellate Division went a bit further in its argument, crossing the threshold into the territory of empirical crime data: "Setting aside that there is nothing obvious to us about persons between sixteen and twenty-one that makes them peculiarly vulnerable to criminal acts, knowledge of vulnerability, unlike knowledge that identifies an individual or where the individual may be reached, does not facilitate crimes."¹⁶⁵ As noted from the previous discussion of the NCVS data, there is clearly a reason to believe that sixteen- to twenty-one-year-olds may be particularly susceptible to criminal victimization,¹⁶⁶ yet, the court—unaided by experts, surveys, or other empirical guidance—does not make this connection. These reasons are exactly why the legislature is best equipped to deal with resolving the regulatory debacle that has been created and why such questions are not the province of courts.

B. Finding a Solution Through Technological Innovation

If the New Jersey legislature decides to revisit Kyleigh's Law, there are a few options it may take to modify the decal requirement so as to satisfy the concerns of citizens while still realizing the law's

163. *Id.* at 1009.

164. *Trautmann ex rel. Trautmann v. Christie*, 15 A.3d 22, 29 (N.J. Super. Ct. App. Div. 2011), *aff'd*, 48 A.3d 1005 (N.J. 2012).

165. *Id.* at 27.

166. See FINKELHOR, *supra* note 132, at 3; see also HARRELL, *supra* note 131, at 3.

original intended purpose. Identifying youth who are subject to GDL requirements without needlessly broadcasting their age group to other members of the public may be accomplished in one of two ways. First, the legislature could amend its laws to require labeling for all novice drivers, regardless of age, and amend the licensing process to make this change meaningful.¹⁶⁷ This solution would eliminate the age distinction and many of the public's privacy concerns regarding age group. However, the downside of this approach is that although it would label all new probationary drivers, young people would likely be disproportionately affected.¹⁶⁸ Thus, there is the potential that such a route may still exacerbate some of the risks outlined above that the public has objected to.

Alternatively, the physical labeling requirement could be dropped altogether and replaced with a scheme employing new technology. Police stations across the state could upgrade onboard computer databases in police cruisers with software that identifies GDL status by inputting license plate data. Instead of manually keying in the data, police officers could capture the data through small, maneuverable cameras with license plate recognition technology, allowing instant cross-referencing.¹⁶⁹ This technology is mobile, compact, and targeted for law enforcement use.¹⁷⁰ The license plate recognition software captures an image of a driver's license plate.¹⁷¹ The software then

167. This solution would emulate the original plans enacted in other countries on which Kyleigh's Law was originally modeled. Jurisdictions such as Australia and British Columbia differentiate display plates based on level of driving experience rather than age. See RECOMMENDATION REPORT, *supra* note 20, at 19. This particular solution was also advocated by New Jersey Assemblyman Robert Schroeder, who points out that such a scheme may be more effective because it identifies a driver only based on experience rather than age group:

For example, all novice drivers in Canada must display an 'N' sign in the rear of the vehicle. Other countries use a 'P' license plate for 'probationary' or 'L' for Learning. None of these restrictions are related to the age of the driver. The identifiers simply indicate that the person behind the wheel is a new driver.

Douglas Ashinsky, *Amend Kyleigh's Law: Eliminate "Teen Decals" for Provisional Drivers*, THE-ALTERNATIVEPRESS.COM (Aug. 28, 2010, 11:32 AM), <http://thealternativepress.com/articles/amend-kyleighs-law-eliminate-teen-decals-for>.

168. See RECOMMENDATION REPORT, *supra* note 20, at 1 (indicating that three-quarters of new drivers are under twenty-one years of age).

169. See, e.g., *License Plate Recognition*, GENETEC, <http://www.genetec.com/solutions/industries/law-enforcement> (last visited Sept. 12, 2014); *Automatic License Plate Recognition*, MOTOROLA SOLUTIONS 1, [http://www.motorolasolutions.com/web/Business/Products/Software%20and%20Applications/Public%20Sector%20Applications/Video%20Applications/Automatic%20License%20Plate%20Recognition%20\(ALPR\)/_Documents/Static%20Files/Motorola_ALPR_Solution_Brief.pdf](http://www.motorolasolutions.com/web/Business/Products/Software%20and%20Applications/Public%20Sector%20Applications/Video%20Applications/Automatic%20License%20Plate%20Recognition%20(ALPR)/_Documents/Static%20Files/Motorola_ALPR_Solution_Brief.pdf) (last visited Sept. 30, 2014).

170. See *Automatic License Plate Recognition*, *supra* note 169, at 4.

171. *Id.* at 1.

recognizes the numerical and alphabetical characters and translates this into input data for onboard databases.¹⁷² Thus, information about those subject to GDL requirements could be linked to the license plates of all vehicles the teen intends to use during his or her probationary driving period. This solution would allow law enforcement to identify the drivers who are in violation of the GDL requirements without needlessly broadcasting the age group of the driver to other members of the public. Donna Trautmann, the New Jersey parent who challenged Kyleigh's Law in the state's highest court, also advocated for this particular solution.¹⁷³

This type of technology accounts for one solution, and has already been deployed in other jurisdictions for purposes of keeping tabs on crime.¹⁷⁴ Yet, the devices are not without concerns. The ACLU has recently voiced objections that such plate readers are a violation of drivers' privacy, pointing out that the data stored from these scanners may be held indefinitely.¹⁷⁵ Although these concerns are legitimate, they must also be taken in relative stride with Kyleigh's Law's alleged privacy violations resulting from the public display of a driver's age group with the license plate decal. Although privacy concerns may be inherent in the use of this new technology, they likely do not present the same apprehensions that the current scheme has already created and may present the lesser of two evils.

Perhaps even more promising as a solution is another currently utilized device: Radio Frequency Identification (RFID) technology. This technology uses passive radio transponders,¹⁷⁶ similar to the technology used at tollbooths for electronic toll collection, which could notify police officers whether a vehicle is subject to GDL re-

172. See *id.* at 3.

173. See Brad Schnure, *In the News: Can Technology Replace Teen Driver Decals?*, SENATOR JENNIFER BECK (Aug. 8, 2012), <http://www.senatenj.com/index.php/email/email-beck/in-the-news-can-technology-replace-teen-driver-decals/12303>; see generally Trautmann *ex rel.* Trautmann v. Christie, 48 A.3d 1005 (N.J. 2012).

174. See, e.g., Jonathan Oosting, *Proposal Would Regulate License Plate Readers in Michigan, Limit Data Stored by Police Agencies*, MLIVE.COM (Sept. 9, 2013, 5:50 PM), http://www.mlive.com/politics/index.ssf/2013/09/proposal_would_regulate_licens.html.

175. See Michael Martinez, *ACLU Raises Privacy Concerns About Police Technology Tracking Drivers*, CNN.COM (July 18, 2013, 9:10 AM), <http://www.cnn.com/2013/07/17/us/aclu-license-plates-readers/>; see also Oosting, *supra* note 174.

176. A transponder is "a device that receives a radio signal and sends out a signal in response and that is used especially to show the location of something . . ." *Transponder Definition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/transponder> (last visited Sept. 13, 2014).

quirements.¹⁷⁷ A current manufacturer of RFID products claims that its solution uses “affordable sticker tags,” which have no need for batteries.¹⁷⁸ This “transponder or ‘tag’ . . . communicates through 3M’s antenna to a reader controller card which identifies the tag and transfers the information to the host management system.”¹⁷⁹ This technology could be discreetly installed behind the license plates of cars to which the teen driver is registered, concealing its existence from the broader public.¹⁸⁰ Police officers could then install RFID readers inside police cruisers that would pick up the signals of radio frequency transponders installed in teens’ license plates, notifying officers of those vehicles subject to GDL requirements.¹⁸¹ Although the full details of implementing this device have yet to be completely ironed out, it represents a highly plausible alternative to public labeling that could allow officers to quickly identify vehicles subject to GDL restrictions—vastly increasing the effectiveness of enforcement—without compromising safety and privacy concerns of parents and their teens.

CONCLUSION

In theory, driver-labeling laws in the GDL context may serve to bolster existing programs and address the problem of officer enforcement. Yet, when such laws fail to take into account legitimate public perceptions of risk, they cannot be expected to achieve their

177. See, e.g., *RFID Technology*, 3M, http://solutions.3m.com/wps/portal/3M/en_US/NA_Motor_Vehicle_Services_Systems/Motor_Vehicle_Industry_Solutions/3m-motor-vehicle-services-systems-innovation/3m-motor-vehicle-services-systems-technology/rfid-technology/ (last visited Sept. 13, 2014) (“Automatic Vehicle identification is descriptive of an integrated, total solution utilizing radio frequency identification (RFID) technology to electronically identify vehicles and validate the identity, status, and authenticity of vehicle data for a specific application.”).

178. *Id.*

179. *Id.*

180. Recent advances in RFID technology indicate that passive transponders may be installed behind or inside of metal license plates without any interruption in radio signal readability and allow for vehicle identification even at high speeds. See Dieter Uckelmann and Dennis Brandwein, *RFID License Plates: A Successful In-Metal RFID Application*, *RFID JOURNAL* (Feb. 27, 2012), <http://www.rfidjournal.com/articles/view?9214/>.

181. Existing products such as the 3M Mobile Handheld Toll RFID Reader 5156 and 3M Hand Held UHF System 3280 indicate that ultra-high frequency readers (UHF) are actually available in mobile and handheld configurations, possibly allowing for RFID technology to be implemented in a vehicle setting. See, e.g., *3M RFID Readers & Tags*, 3M, http://solutions.3m.com/wps/portal/3M/en_US/NA_Motor_Vehicle_Services_Systems/Motor_Vehicle_Industry_Solutions/product_catalog/rfid-access-control-system/rfid-readers/ (last visited Sept. 13, 2014).

full potential when implemented in the real world. If we take a step back and realize that the utmost goal is protecting young drivers from *all* of the dangers they may face on the roadway, a law's calculus must at least take all plausible sources of risk into account. And without the participation of the public, whose methods of assessing risk will ultimately come to bear when it comes to procuring compliance with the law, the legislature must respect such modes of evaluation, or no progress will be made. The implementation of Kyleigh's Law without public participation is a clear example of how the lawmaking process can fail and lead to widespread non-compliance when lay methods of risk assessment are swept aside and new regimes are thrust upon a populace who sees a lawful command as creating more hazards than it is meant to subdue. Whether the legislature will respond to such concerns has yet to be seen. Until then, the essential connection between the New Jersey government and its people will continue to become more tenuous.