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DEBT-BASED LICENSE SUSPENSIONS: DRIVERS OF POVERTY AND INCARCERATION

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INTRODUCTION

Driving is a privilege, not a right, in the United States. It is also a privilege that is revoked from millions of Americans, not due to dangerous driving or criminal conduct but because of their failure to pay court-ordered fines, fees and other costs. In fact, every state in the United States imposes debt-based license suspension.¹ While the practice was designed to incentivize people to pay their debts and have their licenses restored, lack of transportation only exacerbates an individual's inability to maintain stable employment and fulfill financial obligations. Further, the practice of debt-based suspension disproportionately impacts low-income individuals and people of color.² Without access to reliable and affordable transportation, people

1. Priya Sarathy Jones, "22 States in 5 Years: Bipartisan Lawmakers Coalesce Behind Curbing Debt-Based Driving Restrictions," Fines & Fees Justice Center, Aug. 13, 2021. <https://finesandfeesjusticecenter.org/2021/08/13/22-states-in-5-years-bipartisan-lawmakers-coalesce-behind-curbing-debt-based-driving-restrictions>.

2. Wilson Center for Science and Justice, "2021 Driving Injustice: Consequences and Disparities in North Carolina Criminal Legal and Traffic Debt," Duke Law, 2021. <https://wcsj.law.duke.edu/wp-content/uploads/2021/09/Driving-Injustice-Report.pdf>.

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are forced to choose between driving on a suspended license or failing to secure or maintain the work they need to pay fines. Minor debts become major financial obligations when left unaddressed, which ensnares well-meaning people in a cycle of poverty, joblessness or legal violations due to a suspended license.

The practice of license suspension is particularly burdensome for individuals who are facing legal proceedings. For many, a situation emerges where they face the threat of punishment for failing to appear for court-ordered appointments, but lack the ability to drive to said appointments due to license suspension. This is especially common in rural areas that lack robust public transportation systems. Because criminal penalties fall disproportionately on racial and ethnic minorities, as well people in lower socioeconomic groups, the burden of debt-based license suspensions presents yet another barrier to success for individuals attempting to resolve their court-ordered responsibilities.

Debt-based license suspensions are simply another tool in the judicial system's arsenal of policies that disproportionately punish poor people and people of color. The policy encourages rather than discourages noncompliance because of the sheer impossibility of existing in a modern world without access to dependable and affordable transportation. The inefficiency of the policy's ability to recoup court costs and the negative impact on public safety has prompted lawmakers, advocacy organizations, law enforcement groups and researchers on both sides of the aisle to push for an end to debt-based driver's license suspensions with S. 998, the Driving for Opportunity Act of 2021.³

Given the disproportionate burden license-for-payment systems place on indigent individuals, racial minorities and justice-involved persons, it is the purpose of this policy paper to evaluate the extent to which these systems are used; the

3. S. 998, Driving for Opportunity Act of 2021, 117th Congress. <https://www.congress.gov/bill/117th-congress/senate-bill/998>.

degree to which the practice unduly harms individuals, families and communities; and the impact of enforcement on incarceration and recidivism rates. This assessment will also include the identification of alternative methods of transportation and existing programs designed to overcome the challenge of transportation with a suspended license. This paper suggests improved policies for debt collection and for providing more effective methods of transportation to individuals subjected to a license suspension.

NATURE AND SCOPE OF THE PROBLEM

In the United States, reliable transportation is necessary for basic survival. In fact, in *Bell v. Burson* (1971), the U.S. Supreme Court noted that “research has consistently found that having a valid driver’s license can be crucial to individuals’ ability to maintain a job, pursue educational opportunities, and care for families.”⁴ For those reasons, some due process protections are required when an individual’s privileges are subject to suspension. While a driver’s license can be suspended as a result of a criminal conviction for a driving-related offense like reckless driving, vehicular homicide or driving under the influence, as well as for certain drug convictions, approximately 90 percent of licenses are suspended for non-driving-related reasons.⁵

Today, an estimated 11 million Americans have had their driving privileges suspended for nonpayment of fines and fees, thereby jeopardizing their ability to provide for themselves and their families.⁶ Forty-three states and the District of Columbia compel an individual to resolve their court debt by suspending their driver’s license, often indefinitely.⁷ Most states are not required to determine a person’s ability to pay, and many impose the license suspension as a mandatory consequence of unaddressed government debt.⁸

Despite the policy’s lack of efficacy, the use of debt-driven license suspensions is so popular that it has been dubbed, “the most valuable tool available to the municipal courts for inducing payment on past due accounts.”⁹ Because driver’s

licenses are issued at the state level and states rarely collect debt data, it is difficult to accurately assess how much money is owed. However, researchers estimate that tens of billions of dollars are owed in court-imposed fines and fees across the nation, which compromises employment, housing, public assistance and voting rights if an individual is unable to pay.¹⁰ The inability to pay results in substantial amounts of uncollected government debt. For example, in California, there is approximately \$10 billion in uncollected, court-ordered debt.¹¹ The policy’s inability to collect debt or curb the act of continuing to drive while subjected to a license suspension has prompted a bipartisan effort from more than 22 states, the District of Columbia and the federal government to reform or ban the practice of suspending driver’s licenses for the collection of government debt.¹²

DEGREES OF HARM TO THE INDIVIDUAL, FAMILY AND COMMUNITY

Beyond the basic inability to get to work, school, grocery stores or worship services, research shows that the practice of suspending driving privileges for non-traffic-related purposes produces a cascade of social harms for the individual, the economy and the police and courts responsible for enforcing violations.¹³ For example, many occupations require a driver’s license as a condition of employment.¹⁴ So individuals who do not possess a valid driver’s license are often unemployed or underemployed, thereby reducing their ability to satisfy repayment and contribute to the general economy. In one study, 80 percent of survey respondents indicated that they lacked access to or were unqualified for employment because of a suspended license; 42 percent of respondents in a New Jersey sample reported that they lost a job after their license was suspended; and 88 percent of those who were able to secure a new job reported a loss of income.¹⁵ Unemployment and underemployment translate to fewer dollars returning to the general community, which depresses local economies.¹⁶

4. *Bell v. Burson*, 402 U.S. 535, United States Supreme Court, May 24, 1971.

5. Emma B. Sartin et al., “Impacts of Non-Driving Related License Suspensions on Quality of Life: a Qualitative Study,” *Applied Research in Quality of Life* (Jan. 6, 2022), pp. 1-17. <https://doi.org/10.1007/s11482-021-10027-7>.

6. “Sens. Coons, Wicker Re-Introduce the Driving for Opportunity Act,” Free to Drive, March 25, 2021. <https://www.freetodrive.org/2021/03/25/sens-coons-wicker-re-introduce-the-driving-for-opportunity-act/#page-content>.

7. Dana DiFillippo, “The poverty penalty: Should states suspend driver’s licenses for court scofflaws?,” *WHYY*, Nov. 27, 2017. <https://whyy.org/articles/poverty-penalty-states-suspend-drivers-licenses-court-scofflaws>.

8. Danielle Conley and Ariel Levinson-Waldman, “Discriminatory Driver’s License Suspension Schemes,” American Constitution Society, March 2019. <https://www.acslaw.org/wp-content/uploads/2019/03/License-Suspension-Issue-Brief-Final.pdf>.

9. ACLU Research Report, “Reckless Lawmaking: How Debt-Based Driver’s License Suspension Laws Impose Harm and Waste Resources,” American Civil Liberties Union, 2021. https://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf.

10. Wilson Center for Science and Justice. <https://wcsj.law.duke.edu/wp-content/uploads/2021/09/Driving-Injustice-Report.pdf>.

11. Jessica Eaglin, “Driver’s License Suspensions Perpetuate the Challenges of Criminal Justice Debt,” Brennan Center for Justice, April 30, 2015. <https://www.brennancenter.org/our-work/analysis-opinion/drivers-license-suspensions-perpetuate-challenges-criminal-justice-debt>.

12. Jones. <https://finesandfeesjusticecenter.org/2021/08/13/22-states-in-5-years-bipartisan-lawmakers-coalesce-behind-curbng-debt-based-driving-restriction>.

13. See, e.g., ACLU Research Report. https://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf.

14. Conley and Levinson-Waldman. <https://www.acslaw.org/wp-content/uploads/2019/03/License-Suspension-Issue-Brief-Final.pdf>.

15. “The Fiscal Impact of Debt-Based Driver’s License Suspensions,” Civil Rights Corps, last accessed March 30, 2022. <https://civilrightscorps.org/wp-content/uploads/2021/10/7QZT9ZsRTT6YYwglCeYQ.pdf>.

16. *Ibid.*

In addition to negatively impacting employment, earning potential and the local economy, debt-based suspension produces long-term disruptions on individual and familial stability. People remain in a perpetual state of punishment that impacts nearly every facet of their lives. In a qualitative review of the impact of non-driving-related license suspensions on an individual's quality of life, researchers found that people with a suspended license experience isolation, loss of autonomy in the completion of daily activities, health issues (mental health and substance abuse) and compromised social and community relationships.¹⁷ These concerns, along with the fiscal and social costs, are fully articulated in a report by the American Civil Liberties Union (ACLU).¹⁸ Decreased functionality under the physical and emotional load of being unable to drive displaces the burden from the individual to their family, friends, health care providers and the community.

IMPACT ON LAW ENFORCEMENT, INCARCERATION AND PUBLIC SAFETY

The substantial burden of having a suspended license, particularly in rural areas that lack public transportation or reliable alternatives, drives people into the criminal justice system and reduces public safety. Research from multiple respected research institutions among others, provide ample evidence that the high cost of enforcing license suspensions comes at the expense of the individual, the local economy and the safety of the community.¹⁹

According to one report, almost half of the sample group of those with suspended licenses were arrested at least once for failure to pay or for failure to appear in court: "amounts of the original fines and fees ranged from \$30 to \$800. After accounting for the additional fines and fees and increased insurance premiums the total amounts owed ranged from \$200 to \$9,000."²⁰ Continued violations of driving under suspension increase the penalties while also exacerbating the barriers to reconciling the original and subsequent debt. This results in a vicious cycle of wasted law enforcement and court resources and unnecessary incarceration.

The time spent enforcing non-traffic-related suspensions, including filing paperwork, awaiting a tow, transporting an individual to jail and appearing in court is time lost on performing critically needed public safety and traffic-enforce-

ment functions.²¹ A 2018 study found that cities that relied on law enforcement for debt-collection-related revenue generation had lower rates of violent and property crime clearance.²² Prioritizing court debt collection over more serious matters compromises public safety by allowing offenders to remain at large and capable of continued criminal activity.

Enforcement of license suspensions and the collection of government debt also increase opportunities for dangerous interactions between police and the community. Officers are easily able to determine if a driver has a suspended license or unpaid fines and fees by using a license plate reader, which increases police contacts solely for the purpose of debt collection.²³ At best, these contacts result in additional fees; at worst, they result in violent encounters, as was the case for Daunte Wright and Michael Dial, whose unpaid fines cost them their lives.²⁴ The heightened concern over volatile pretextual car stops for secondary law violations has prompted some police departments to ban the practice.²⁵

In addition to the aforementioned negative impacts on individuals, communities and law enforcement agencies, critics of debt-based license suspensions assert that the practice may be functioning in ways that "perpetuates systemic racism and classism."²⁶ Various civil rights groups argue that the policy penalizes poverty, making the practice the subject of constitutional debate. Specifically, the ACLU asserts that "the system of fines and fees is inextricably linked to over-policing, criminalization, and mass incarceration."²⁷ In 2015, the U.S. Department of Justice Civil Rights Division urged state and local authorities to stop using license suspensions as a debt collection tool because of the harm the policy and practice causes to individuals and families.²⁸ Further, the Ferguson Report found that the practice of enforcing violations for driving under suspension was viewed as a revenue generator for the local police department, resulting in racial biases and community distrust.²⁹ Another recent report notes

17. Sartin et al. <https://link.springer.com/article/10.1007/s11482-021-10027-7>.

18. ACLU Research Report. https://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf.

19. Joshua Aiken, "Reinstating Common Sense: How driver's license suspensions for drug offenses unrelated to driving are falling out of favor," Prison Policy Initiative, Dec. 12, 2016. <https://www.prisonpolicy.org/driving/national.html>.

20. ACLU Research Report, p. 19. https://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf.

21. Rebecca Goldstein et al., "Exploitative Revenues, Law Enforcement, and the Quality of Government Service," *Urban Affairs Review* 56:1 (2020), pp. 5-31. <https://journals.sagepub.com/doi/pdf/10.1177/1078087418791775>.

22. Ibid.

23. Michelle Borbon, "New ACLU Report Finds Debt-Based Driver's License Suspension Laws Impose Harm and Waste Resources," American Civil Liberties Union, April 27, 2021. <https://www.aclu.org/news/criminal-law-reform/new-aclu-report-finds-debt-based-drivers-license-suspension-laws-impose-harm-and-waste-resources>.

24. Ibid.

25. Ibid.

26. ACLU Research Report. https://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf.

27. Ibid., p. 10.

28. Civil Rights Division, "Investigation of the Ferguson Police Department," United States Department of Justice, March 4, 2015. https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

29. Ibid.

that this lack of trust is a major driver of gun violence in the United States.³⁰

IMPACT ON REENTRY AND RECIDIVISM

It is clear that debt-based license suspensions generate persistent challenges to employment and to the economic and social life of otherwise law-abiding citizens. But, for the roughly 4.35 million adults on probation, parole or community supervision and for the millions of people facing criminal charges, the practice is a double-edged sword that could position them to face incarceration whether complying with the license suspension or not.³¹

Because of this dual threat of incarceration, transportation has been identified as a major barrier to successful reentry. In a meta-synthesis of transportation-related barriers, researchers found that reentrants often rely on social supports and public transportation to connect them with rehabilitative services and appointments with probation and parole officers, but these transportation alternatives are often unreliable, inconsistent or unavailable in rural areas.³²

Transportation barriers disproportionately impact women and racial and ethnic minorities. In a review of 11 transportation-barrier studies, African Americans were overrepresented, constituting 68 percent of those impacted, while 27 percent of the study participants identified as white.³³ Respondents indicated that transportation inefficiency threatened their ability to meet their obligations, was too costly and exacerbated vulnerabilities for women. Even when public transit is available, women report feeling unsafe using public transportation at night, especially those who do shift work.³⁴ From this lens, it is unsurprising that 75 percent of people who have a debt-based license suspension continue to drive.³⁵

Individuals who continue to drive on a suspended license are frequently known to local law enforcement, making them a target for over-policing. This results in an endless

cycle of escalating consequences and the pervasive threat of incarceration for driving while suspended (often to comply with court-ordered responsibilities) or noncompliance with court obligations at the expense of abiding by the license suspension.

The ability of probation and parole officers to add nonpayment of costs to a host of other technical allegations of noncompliance, like failure to report as directed, failure to attend treatment and failure to maintain stable employment—all of which may be attributed to a lack of transportation and inability to pay—presents a stronger case for supervision revocation and a return to jail.³⁶ In fact, the strongest predictor of recidivism is poverty.³⁷ Advocates for reform contend that these technical violations of community supervision are driving mass incarceration in local jails.³⁸ Because people found in violation are frequently sanctioned with jail time, which is more expensive and more disruptive to future compliance than community-based alternatives, lawmakers and justice professionals are increasingly pushing for the passage of S. 998, the Driving for Opportunity Act of 2021, which would provide grants to states that do not suspend, revoke or refuse to renew a person's driver's license based on their failure to pay a civil or criminal fine or fee.³⁹ The proposed legislation, which enjoys bipartisan support, rightfully recognizes that debt-based license suspensions make it exceedingly difficult, if not wholly impossible, for individuals to comply with both the license suspension and court-ordered obligations.

EFFORTS TO REDUCE TRANSPORTATION BARRIERS

Key findings from a recent report indicate that debt-based license suspensions are costly and inefficient in generating revenue.⁴⁰ Moreover, they reduce people's access to rehabilitative services and they do not improve public safety. Recommendations for reducing transportation-related barriers include increasing and altering existing public transportation options, particularly in rural areas.⁴¹ Given the cost and

30. Abené Clayton, "Distrust of police is major driver of US gun violence, report warns," *The Guardian*, Jan. 21, 2020. <https://www.theguardian.com/us-news/2020/jan/21/police-gun-violence-trust-report>.

31. Barbara Oudekerk and Danielle Kaebel, "Probation and Parole in the United States, 2019," Bureau of Justice Statistics, July 2021. <https://bjs.ojp.gov/sites/g/files/xyck-uh236/files/media/document/ppus19.pdf>.

32. Anne Nordberg et al., "Transportation Barriers to Successful Reentry among Returning Citizens: A Qualitative Interpretive Meta-synthesis," *The Prison Journal* 10:4 (July 2 2021), pp. 488-506. <https://journals.sagepub.com/doi/abs/10.1177/00328855211029894>.

33. Ania McDonnell, "Addressing Gender Disparities in Transportation," The Gender Policy Report, July 24, 2019. <https://genderpolicyreport.umn.edu/addressing-gender-disparities-in-transportation>.

34. *Ibid.*

35. American Association of Motor Vehicle Administrators, "Best Practices Guide to Reducing Suspended Drivers," Fines & Fees Justice Center, Feb. 20, 2013. <https://finesandfeesjusticecenter.org/articles/best-practices-guide-to-reducing-suspended-drivers>.

36. Sharon Brett et al., "Paying on Probation: How Financial Sanctions Intersect with Probation to Target, Trap, and Punish People Who Cannot Pay," Criminal Justice Policy Program, Harvard Law School, June 2020, pp. 32-33. https://mcusercontent.com/f65678cd73457d0cbde864d05/files/f05e951e-60a9-404e-b5cc-13c065b2a630/Paying_on_Probation_report_FINAL.pdf.

37. "Recidivism and Reentry," Prison Policy Initiative, last accessed March 29, 2022. https://www.prisonpolicy.org/research/recidivism_and_reentry.

38. Alex Roth et al., "The Perils of Probation: How Supervision Contributes to Jail Populations," Safety Justice Challenge, Vera Institute of Justice, October 2021, p. 1. <https://www.vera.org/downloads/publications/the-perils-of-probation.pdf>.

39. S. 998, Driving for Opportunity Act of 2021. <https://www.congress.gov/bill/117th-congress/senate-bill/998/text>.

40. Matthew Menendez and Lauren-Brooke Eisen, "The Steep Cost of Criminal Justice Fees and Fines," Brennan Center for Justice, Nov. 21, 2019. <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

41. Nordberg et al. <https://journals.sagepub.com/ez.lib.ijay.cuny.edu/doi/pdf/10.1177/00328855211029894>.

time needed to invest in more robust public transit systems, a more expedient approach includes community-supported ride-share services.⁴² To this end, Uber and Lyft have partnered with community-based health organizations to offer transportation to medical appointments at a fraction of the cost of a taxi.⁴³ A review of the use of ride-shares to overcome transportation barriers to non-emergency medical appointments found that this option might fill transportation gaps, but, because ride-shares are more available in urban areas, it is difficult to tell if the needs of more rural individuals are being met.⁴⁴ More importantly, the discounted rate is currently only available for non-emergency medical appointments, which does not address the needs of people who require transportation to work, school, probation and parole appointments, or rehabilitative programming.

Increasing and altering safe, reliable routes of public transportation and ride-share opportunities is a complex, time-consuming and costly endeavor. When considering the billions of dollars owed in government fines and fees and the policy's lack of efficacy in collecting debt, a more expedient approach would be to discontinue the practice of suspending driver's licenses to compel court payments or to significantly modify the processes by which the fines and fees are levied.

POLICY IMPLICATIONS

Reformers of debt-based license-suspension programs advocate for a number of policy changes to curtail the use of license suspensions to collect government debt. Interviewees from one study support repealing penalties for inability to pay; alternative payment and penalty options; improved processes for debt collection and license restoration; and the consideration of income and individual circumstances when imposing penalties.⁴⁵ One research center advocates for the elimination of state and local court-imposed fees; a state requirement that courts consider ability to pay when imposing fines; the discontinuation of jailing people for nonpayment; ending license suspensions for nonpayment of criminal fines and fees; improved data automation practices; and the passage of state laws purging outstanding court-ordered debt that is unlikely to be paid.⁴⁶ To this end, S. 998, the Driving for Opportunity Act of 2021, authorizes the Department

of Justice to offer grants to states that discontinue the practice of suspending, revoking or refusing to renew a driver's license based on the individual's inability to pay a civil or criminal fee.⁴⁷

To defray the costs of policy reform, the federal grant will cover the state costs of restoring licenses that have been suspended for unpaid debt and maximizing the number of individuals that are eligible to have their driving privileges reinstated. The proposed legislation will also aid individuals living in areas where public transportation is limited. Lastly, the bill will ease the burden on states operating under state and local laws authorizing the use of license suspension, revocation or refusal to renew a debt-based license or vehicle registration during the three-year period ending on the date of grant application or grant receipt.

CONCLUSION

All 50 states currently have legislation that allows driving privileges to be suspended, revoked or not renewed for non-payment of fines and fees.⁴⁸ The penalty is not tied to public safety, nor are the financial penalties determined by one's ability to pay. Given the importance of having a valid driver's license to maintain stable employment and earn the wages that are needed to satisfy all court-ordered obligations, including debt repayment, laws that permit local, state and federal courts to suspend driving privileges are counterintuitive. Further, for an estimated 11 million adults who have had their driving privileges taken away in an effort to collect tens of billions of dollars of government-owned debt, these policies are ineffective and increase rates of incarceration and recidivism, which decreases public safety.⁴⁹ This practice criminalizes poverty and disproportionately impacts racial and ethnic minorities.

In addition to adversely affecting individuals, the enforcement of license suspensions detracts from police time, and the cyclical process of increasing financial penalties and imposing incarceration for noncompliance is not an effective use of the judicial system. Increased citizen-police interactions can also increase violent outcomes and endanger police and civilian lives.

There are a number of other policy recommendations that could improve the collection of government debt, including calculating the ability to pay when imposing financial penalties and setting reasonable payment plans. Courts could

42. Ibid.

43. Jaime Rosenberg, "Uber, Lyft Launch Efforts to Eliminate Transportation Barriers to Healthcare," *The American Journal of Managed Care*, March 6, 2018. <https://www.ajmc.com/view/uber-lyft-launch-efforts-to-eliminate-transportation-barriers-to-healthcare>.

44. Laura Fraade-Blanan et al., "Going to the Doctor: Rideshare as Nonemergency Medical Transportation," Rand Corporation, 2021. https://www.rand.org/pubs/research_reports/RRA1019-1.html.

45. ACLU Research Report. https://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf.

46. Menendez and Eisen. <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

47. S. 998, Driving for Opportunity Act of 2021. <https://www.congress.gov/bill/117th-congress/senate-bill/998/text>.

48. "Sens. Coons, Wicker Re-Introduce the Driving for Opportunity Act." <https://www.freetodrive.org/2021/03/25/sens-coons-wicker-re-introduce-the-driving-for-opportunity-act/#page-content>.

49. Ibid.

repeal license suspensions to compel payment, forgive outstanding debt or discontinue the use of fines and fees altogether. In short, the established policies and practices have proven ineffective, and alternative strategies should be pursued.

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