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October 30, 2023

Joint Committee on Transportation
Sen. Brendan Crighton, Chair
Rep. William Straus, Chair

SUPPORT H.3314/S.2227
End Debt-Based Driving Restrictions; Remove Economic Roadblocks

"Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor."
– James Baldwin

Dear Chairs Crighton and Straus, and honorable members of the Committee:

The ACLU of Massachusetts strongly supports H.3314/S.2227, *An Act to end debt-based driving restrictions and remove economic roadblocks*. This legislation will eliminate license suspension triggers that are not related to road safety¹ and protect people experiencing economic hardship from a compounding debt cycle. The bill creates electronic reminders to improve fine and fee collection and creates a process for people who cannot afford high fines and fees to request relief from a judge. At the same time, it maintains accountability for people who neither pay nor obtain a waiver by requiring payment before the driver is allowed to renew their license or registration.

Automatically suspending people's licenses for outstanding debts harms working people, perpetuates economic and racial inequity, and costs the state millions. By contrast, reserving license suspensions for actual safety violations is better for public safety, for the residents of Massachusetts, and for our state's resources.

The scale of the problem under current law is enormous: Each year, the RMV suspends hundreds of thousands of driver's licenses — and *the majority have nothing to do with roadway safety*. According to a 2019 RMV memo, over half of these suspensions are for civil infractions, administrative issues, and nonpayment of fines and fees.² In one month in 2019 alone, the RMV suspended nearly 12,000 Massachusetts drivers for non-safety

¹ Examples include nonpayment of parking tickets, indigent counsel fees, and excise taxes; failure to file tax returns; failure to update a mailing address with the RMV within 30 days; and problems processing payments of fines or fees due to checking or credit card failures. Though unrelated to road safety, the legislation would not eliminate nonpayment of child support as a grounds for license suspension, which could be a matter for future consideration.

² Marie Breen and Jamey Tesler, *Memorandum: Preliminary Review of State-to-State Communications and Actions Underway*, July 1, 2019 at 3 (on file with the ACLU of Massachusetts).

reasons. In fact, many Massachusetts license suspension triggers are unrelated to driving at all.³ This legislation would comprehensively address this problem.

Debt-based license suspensions are a modern twist on debtors' prisons

In 1983, the U.S. Supreme Court ruled that debtors' prisons violate the Constitution. Judges cannot lock people up for their poverty and inability to meet unpaid debts.⁴ Yet, after debtors' prisons were declared unconstitutional, the Massachusetts legislature—like many state governments at the time—began imposing driver's license suspensions for failure to pay fines. . This misguided and coercive public policy continues to criminalize poverty.⁵ While people are no longer incarcerated directly for unpaid debts, license suspensions for nonpayment frequently drag people with outstanding debts into the criminal justice system.

Many people need to drive to access essential services, get to work, and take children to school. Therefore, it is common for people with debt-based suspensions to continue to drive despite the risk of further sanction. Nationally, as many as three-fourths of suspended or revoked drivers are estimated to continue driving after losing their license.⁶ However, driving with a suspended license is a *criminal offense* that can result in jail time in Massachusetts. In fact, the second most charged offense in Massachusetts is driving with a suspended license, according to data from the Massachusetts trial courts. In 2019, approximately *one of every seven criminal charges state-wide* was for the offense of driving with an administratively suspended license -- suspensions not based on unsafe driving.

License suspensions ratchet up penalties for poor drivers, compounding harm

Once a motorist's license is suspended, it can be exceedingly difficult to get it back. First the person has to pay the original fine and any associated fees, including penalties for late payment. In addition, the RMV charges a minimum of \$100 to reinstate a license. Meanwhile, an individual who is prohibited from driving may not be able to get to work, causing a disruption in their earnings or outright job loss. For a person who was struggling financially in the first place, the compound economic burden is simply unmanageable, and this keeps many safe drivers from getting back on the road and on track.

³ See, e.g., G.L. c. 62C s. 47B (license, permit, and registration revocation, suspension or nonrenewal for failure to file tax return); G.L. c. 90 s. 20A (license and registration suspension or nonrenewal for failure to pay two parking tickets); G.L. c.90 s. 22G (seven day license suspension for littering); G.L. c. 90 s.26A (license or registration suspension or revocation for failure to update mailing address with RMV within 30 days of change); G.L. c. 90 s. 3 (license and registration revocation for a bounced check or credit card declined when paying RMV fines and fees); G.L. c. 211D s. 2A (license or registration nonrenewal for failure to pay indigent counsel fee).

⁴ *Bearden v. Georgia*, 461 U.S. 660 (1983).

⁵ Allyson Fredericksen and Linnea Lassiter, *Debtors' Prisons Redux: How Legal Loopholes Let Courts Across the Country Criminalize Poverty*, Alliance for a Just Society (Dec. 2015), available at <https://www.prisonlegalnews.org/media/publications/Debtors%20Prisons%20Redux%20-%20How%20Legal%20Loopholes%20Let%20Courts%20Criminalize%20Poverty%2C%20AJS%2C%202015.pdf>

⁶ *Poverty Should Never Determine Who is Free to Drive*, Free to Drive (Sept. 2019) available at <https://freetodrive.org/wp-content/uploads/2019/09/Fact-Sheet-Poverty-Should-Never-Determine-Who-is-Free-to-Drive.pdf>

One of the most egregious debt-based license suspension triggers is failure to pay the indigent counsel fee, a \$150 fee assigned to every defendant with court appointed counsel. This fee is levied only on the poorest residents of the state, people whom the court has deemed indigent based on a means test. When someone fails to pay, they are barred from renewing their license until the fee is paid,⁷ making it impossible for them to legally drive to work, court, medical appointments, and other daily activities.⁸

Some drivers continue to drive because they can't afford for their lives to grind to a halt. But if they are pulled over and criminally charged for operating after an administrative suspension, that compounds their existing financial burden. Most people who face these charges have their cases dismissed with "court costs," and sometimes probation. But this does not mean they get off easy. Court costs can be a few hundred dollars. Plus, having to go to court to deal with criminal charges can also mean a day of missed work and lost wages. (And, of course, if the person is assigned counsel, they will also incur the \$150 indigent counsel fee).

In order to keep or reinstate one's license, one must pay the complete original fine *and all subsequent fees*. If, for instance, someone with a debt-based suspension can afford to pay the fine but not the RMV reinstatement fee, their license remains invalidated until they pay in full. When the financial burden becomes too great, there is simply no way for a person without means to get their license back.

Government policies should aim to lift people out of poverty; instead, in this case, they tighten the screws and make the cycle of poverty and debt inescapable. The bill addresses this problem in two ways. First, it would eliminate the reinstatement fee. Second, it would create a safety valve whereby someone with outstanding fines can request a means-tested reduction or waiver from a court if they receive public benefits, meet the definition of indigency, or earn less than 400% of the U.S. Department of Housing and Urban Development very low-income limit.⁹

Massachusetts can recoup more payments with electronic reminders than with license suspensions

⁷ G.L. c. 211D s. 2A (“(h) The clerk of the court shall, within 60 days of appointment of counsel, report to the department of revenue, the department of transitional assistance and the registry of motor vehicles the amount of any legal counsel fee owed by the person for whom counsel was appointed under this chapter. The department of revenue shall intercept payment of such fee from tax refunds due to persons who owe all or a portion of such fee. The registry of motor vehicles shall not issue or renew a person’s driver’s license or motor vehicle registration for any vehicle subsequently purchased by such person until it receives notification from the clerk of the court that the fee has been collected or worked off in community service.”)

⁸ It should be noted that this punitive consequence of failing to pay for legal services is unique to poor defendants. When people of means stiff their privately-hired attorneys, they do not lose their driver’s license.

⁹ The HUD very low income limit is adjusted annually and is used for determining eligibility for federal housing programs. “HUD develops income limits based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county.” HUD Office of Policy Development and Research, *Income Limits*, available at https://www.huduser.gov/portal/datasets/il.html#2021_faq

Electronic reminders work. For people who can pay the fees they owe, there is ample evidence that simple text message reminders improve collection, resulting in increased government efficiency and cost savings.

One jurisdiction that has shown good results is San Francisco, a leader in eliminating debt-based suspensions. In 2015, the San Francisco Superior Court became the first court in the nation to stop suspending driver's licenses for those who could not pay certain fees. Instead, the city implemented collection practices, such as call and text message reminders, that help debtors stay on top of payments and payment plans.¹⁰ After San Francisco implemented these changes, revenue collection substantially increased. According to a report on the program's first year, average collections per ticket increased by 8.9 percent.¹¹

There is also precedent for the effective use of electronic reminders here in Massachusetts, where the state trial courts implemented a new text messaging system in 2021 to ensure that defendants show up for their court dates and saw appearance rates increase by 3% in the first couple of months.¹² A similar program has been in place in New York City since 2016, where the failure to appear rate improved by a dramatic 13% during the first year.¹³ This translates to roughly 17,000 default warrants that did not need to be issued, saving the court system significant time and expense. Time and again, this simple tool has been proven to work.

The Massachusetts trial court texts are optional and free for the defendant and cost the state mere pennies to send.¹⁴ For RMV fee collection, after initial startup costs the state would spend far less to send electronic payment reminders than to put an individual through the court system. Because driving with a suspended license is the second most charged offense in Massachusetts, electronic reminders will yield substantial financial benefits for the Commonwealth.

Other states are enacting major reforms; Massachusetts should too

Over the last decade, states around the country have begun to grapple with the troubling legacy of debtors' prisons and roll back debt-based license suspension policies to address the criminalization of poverty. Since 2017, twenty-four states and the District of Columbia

¹⁰ The Financial Justice Project of San Francisco, *Driving Toward Justice: Executive Summary*. Available at <https://sfgov.org/financialjustice/reports/driving-toward-justice>.

¹¹ *Id.* at <https://sfgov.org/financialjustice/reports/driving-toward-justice>

¹² See <https://www.mass.gov/news/new-text-messaging-reminder-system-for-court-users-is-now-available-across-the-commonwealth>; See also WCVB, *Massachusetts Pretrial Services launches court date reminder texting service*, Matt Reed. May 12, 2021. Available at: <https://www.wcvb.com/article/massachusetts-pretrial-services-launches-court-date-reminder-texting-system/36408583#>.

¹³ See UChicago Crime Lab & Ideas42, *Using Behavioral Science to Improve the Criminal Justice Outcomes*, Brice Cooke, et al. January 2018. Available at <https://www.ideas42.org/wp-content/uploads/2018/03/Using-Behavioral-Science-to-Improve-Criminal-Justice-Outcomes.pdf>; See also J-PAL North America, *Text message reminders decreased failure to appear in in court in New York City*, using research from Ideas42 and University of Chicago Crime Lab. 2018. <https://www.povertyactionlab.org/evaluation/text-message-reminders-decreased-failure-appear-court-new-york-city>.

¹⁴ WCVB, *Massachusetts Pretrial Services launches court date reminder texting service*, Matt Reed. May 12, 2021. Available at: <https://www.wcvb.com/article/massachusetts-pretrial-services-launches-court-date-reminder-texting-system/36408583#>.

have all enacted legislative reforms to curb the practice of debt-based suspensions for either failure to pay or failure to appear.¹⁵

Several years ago, Massachusetts began to take steps toward reform on related issues. In 2016, the legislature repealed a law imposing an automatic five-year license suspension for most drug crimes. The 2018 Criminal Justice Reform Act included several additional reforms. It ended the automatic suspension of driver's licenses upon the issuance of a default warrant or arrest warrant (G.L. c. 266, § 33) and eliminated license suspension requirements upon conviction of the following offenses: defacement of real or personal property (G.L. c. 266, § 126A), tagging (G.L. c. 266, § 126B), and malicious damage to a motor vehicle or trailer (G.L. c. 266, § 28). It also prohibits license suspensions for non-payment of child support if warning notice went to wrong address (G.L. c. 266, § 81 (amending c. 119A, §16)).

Yet, despite these modest steps, the pervasive practice of suspending licenses for nonpayment of government debt continues at high rates. If more than 100,000 licenses are suspended *every year* for nonpayment or other administrative reasons, we clearly have not solved the problem.

It is time to act. This legislation picks up where prior reforms left off by eliminating a number of remaining license suspension triggers that are unrelated to road safety, including all suspensions for failure to pay fines and fees. License suspensions and criminal charges for operating after suspension should be reserved for those drivers who must be taken off the road because they are a danger to others. No one should end up in the criminal justice system simply because they are too poor to pay a fine or fee.

Inequitable impact: administrative license suspensions hurt rural drivers and poor drivers of color most

Black and Latino people, especially Black and Latino men, are disproportionately likely to experience criminal system involvement because of a debt-based suspension. According to Massachusetts trial court data, Black men are charged with driving with an administratively suspended license at a rate more than four times higher than their population.¹⁶ Black men make up only 3.6% of the population but represent 15.8% of such charges. Latino men are socked with 20.5% of these charges despite comprising just 6.2% of the state population. For comparison, white men represent 35.2% of charges for driving

¹⁵ The following states have full or nearly full reform, and do not suspend, revoke, or prohibit the renewal of driver's licenses for failure to pay: New York, Vermont, Delaware, Virginia, West Virginia, Kentucky, Michigan, Minnesota, Illinois, Georgia, Mississippi, California, Oregon, Montana, Idaho, Wyoming, Colorado, Utah, Nevada, and New Mexico. Several other states have partial or temporary reforms of license suspension, revocation, or renewal practices for failure to pay: Maine, Maryland, Indiana, Arkansas, Texas, Arizona, and Washington. See Free to Drive, Interactive Map on Existing Laws for Failure to Pay. Available at <https://www.freetodrive.org/maps/#page-content>; See also *Reckless Lawmaking: How Debt-Based Driver's License Suspension Laws Impose Harm and Waste Resources*, American Civil Liberties Union 2021 research report, at 4, available at: <https://www.aclu.org/report/reckless-lawmaking-how-debt-based-drivers-license-suspension-laws-impose-harm-and-waste>.

¹⁶ *Massachusetts Trial Court Charges Dashboard*, Massachusetts trial Court Department of Research and Planning (updated September 2021) available at <https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtChargesDashboard/LeadCharges>

with a suspended license in Massachusetts — right on par with their 34.4% of the state population.

Massachusetts data also shows that charges for driving with a suspended license are brought at a higher rate in rural counties.¹⁷ These are communities where the lack of public transportation makes residents even more dependent on driving for work and necessities. In FY20, the trial court in Berkshire County brought 580 charges for driving with an administratively suspended license. This is in contrast to only 227 charges in Suffolk County, which includes Boston and has a population about seven times that of Berkshire. This data further supports the conclusion that people who drive with an administratively suspended license do so out of necessity. Debt-based license suspensions disproportionately burden residents who live in areas of the state without robust public transportation infrastructure.

Bad fiscal policy: debt-based license suspension wastes state resources

The potential cost savings associated with eliminating this burden on the criminal justice system is striking. According to Massachusetts trial court data for FY18-23, driving with a suspended license (G.L. c. 90 § 23) is consistently one of the leading charges in trial court cases each year.¹⁸ This legislation proposes that many of these tens of thousands of annual cases—each of which required administrative notices, court appearances, and in some cases public defenders and jail time—could be eliminated from the criminal process. Each person charged with driving with a suspended license creates work and operational expenses for police, the RMV, district attorneys, public defenders, court clerks, judges, and countless other state actors.

According to figures provided by the Committee for Public Counsel Services (CPCS) to an American Bar Association commission, between FY00 and FY04 the courts assigned counsel in more than 22,000 cases to represent indigent persons charged with operating a motor vehicle after a license or registration was suspended. CPCS estimates decriminalizing driving with a suspended license would have saved them millions of dollars.¹⁹ As a benchmark, the decriminalization of marijuana and two other low-level offenses has saved Massachusetts over \$7 million in the cost of counsel alone.²⁰

¹⁷ *Massachusetts Trial Court Charges Dashboard*, Massachusetts trial Court Department of Research and Planning (updated September 2021) available at

<https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtChargesDashboard/LeadCharges>

¹⁸ These figures exclude charges where the underlying suspension was the result of an OUI or other substance related driving charge or the result of violating the habitual traffic offender statute. See Massachusetts Trial Court, Department of Research and Planning, *Charges Filed in District/Municipal Court by FY*, available at <https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtChargesDashboard/AllCharges>; see also [District Court complaint manual](#).

¹⁹ Boruchowitz, Robert C., *Diverting and Reclassifying Misdemeanors Could Save \$1 Billion Per Year: Reducing the Need for and Cost of Appointed Counsel*, American Constitution Society for Law and Policy at 3-4, December 2010, available at <https://ssrn.com/abstract=1783057>; Report of the Commission to Study the Provision of Counsel to Indigent Persons in Massachusetts, chapter 253 of the Acts of 2004 10 (Apr. 2005), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_rogers_c_mission_report_ma.authcheckdam.pdf. at 10.

²⁰ *Id.*

Studies from other states back up the Massachusetts cost analysis. Georgia estimated its postage costs associated with non-driving related suspensions alone totaled around \$80,000.²¹ A North Carolina study showed the cost of jail time alone wholly undercut that state's efforts to collect money owed that formed the basis of the underlying suspensions.²² One scholar estimates that fully decriminalizing driving on a suspended license nationally could save over \$1 billion dollars.²³ Even simple changes like eliminating license reinstatement fees (which this bill would do), create meaningful savings. These include the elimination of significant postage costs, as well as the cost of employees engaging in the tedious process of sending letters and tracking down drivers who owe government fines and fees.²⁴

Suspending tens of thousands of licenses for non-safety reasons *undermines* road safety

Suspending licenses for reasons unrelated to public safety and enforcing those suspensions siphons resources *away* from public safety -- at enormous cost. This practice endangers all drivers because it increases the number of uninsured drivers, distracts law enforcement officials from tending to legitimate safety violations, and increases the likelihood a driver will leave the scene of an accident.²⁵

The American Association of Motor Vehicle Administrators found in an independent study that suspending driving privileges for non-safety reasons "create[s] a significant strain on budgets and other resources and detract[s] from highway and public safety priorities."²⁶ The sheer scale of suspensions ties up police officers with wasteful roadside stops and prevents them from engaging in activities to keep the community safe.

Conclusion

The Commonwealth's current practice of suspending licenses for non-safety related reasons traps poor residents in a cycle of debt and criminal system involvement. The practice wastes state resources and has no public safety justification. This legislation

²¹ James Craven, *Driver's License Suspension Reform: The Right Road for Michigan*, The Reason Foundation at 13-14 (April 2018), available at <https://reason.org/wp-content/uploads/2018/04/michigan-suspended-drivers-license-reform.pdf>.

²² *Id.*

²³ Boruchowitz, Robert C., *Diverting and Reclassifying Misdemeanors Could Save \$1 Billion Per Year: Reducing the Need for and Cost of Appointed Counsel*, American Constitution Society for Law and Policy at 3-4, December 2010, available at <https://ssrn.com/abstract=1783057>. Typically, one concern with decriminalizing certain offenses is the loss of procedural safeguards that accompany the criminal process. However, since our bill includes new procedural safeguards around inability to pay, we don't expect this to be much of a concern.

²⁴ James Craven, *Driver's License Suspension Reform: The Right Road for Michigan*, The Reason Foundation (April 2018), available at <https://reason.org/wp-content/uploads/2018/04/michigan-suspended-drivers-license-reform.pdf>.

²⁵ Leah Sakala, *Suspending Common Sense in Massachusetts: Driver's License Suspensions for Drug Offenses Unrelated to Driving*, Prison Policy Initiative (May 14, 2014), available at <https://www.prisonpolicy.org/driving/report.html>; American Association of Motor Vehicle Administrators, *Best Practices Guide to Reducing Suspended Drivers* (2013), available at <https://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/>.

²⁶ See American Association of Motor Vehicle Administrators, *Best Practices Guide to Reducing Suspended Drivers* (2013), available at <https://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/>.

proposes several commonsense measures to ensure that safe drivers do not lose their licenses because of poverty and appropriately focus state resources on public safety. At the same time, the legislation improves efficiency of debt collection and maintains accountability for those who can afford to pay their fines and fees.

We urge you to give this legislation a favorable report. Thank you.