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January 10, 2022

Joint Committee on Transportation  
Rep. William Straus, Chair

**SUPPORT H.3453/S.2304**  
**END DEBT-BASED LICENSE SUSPENSIONS, WHICH CRIMINALIZE POVERTY**

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

Dear Chairman Straus, Vice Chairs Keenan and Devers, and members of the Committee:

Poverty is a costly tax in Massachusetts. Few systems exemplify this better than what happens when someone cannot afford to pay a government fine — be it for a traffic citation, parking ticket, or littering. Escalating punitive consequences for nonpayment are all too common, and they place disproportionate financial burdens on the poor and perpetuate a cycle of poverty and punishment.

The result is a two-tiered system of punishment: people who have money will simply pay the fine, while those who do not have money face the compounding consequences of nonpayment as their debt increases. For an identical civil violation, people with means pay less in the end—and suffer fewer collateral consequences—than poor people.

Policies that punish a person in debt by suspending their driver’s license perpetuate inequality, entrench poverty, and funnel people into the criminal justice system. They disproportionately harm motorists of color, who are more likely to be stopped because of racial profiling, and rural drivers, who have few public transportation options and are thus more reliant on driving.

The scale of this problem is difficult to comprehend: 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.<sup>1</sup> Indeed, in one month in 2019 alone, the RMV suspended nearly 12,000 Massachusetts drivers for non-safety reasons. That’s because Massachusetts statutes are replete with license suspension triggers that are completely unrelated to driving at all.<sup>2</sup>

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<sup>1</sup> 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).

<sup>2</sup> 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

H.3453 & S.2304, “An Act to Eliminate Debt-Based Incarceration and Suspensions,” would comprehensively address this problem. This legislation will eliminate several license suspension and nonrenewal triggers<sup>3</sup> that are not related to road safety<sup>4</sup>, decriminalize driving with an administratively suspended license, eliminate arbitrarily high reinstatement fees, and create a process for people who cannot afford high fines and fees to request relief from a judge.

### **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.<sup>5</sup> Yet, after debtors’ prisons were declared unconstitutional, the Massachusetts legislature—like many state governments at the time—began imposing driver’s license suspensions as a consequence for failure to pay fines. From their inception, driver’s license suspensions have been used to punish the poor and mimic the deterrent effects of the criminal justice system.

Let’s be clear: this misguided and coercive public policy continues to criminalize poverty.<sup>6</sup> While people may no longer be directly incarcerated for their unpaid debts, license suspensions for nonpayment frequently drag people with outstanding debts into the criminal justice system.

Many people have to drive to access essential needs and services, to get to work, and to take children to school. Therefore, it is common for people with debt-based suspensions to continue to drive. Nationally, as many as three-fourths of suspended or revoked drivers are estimated to continue driving after losing their license.<sup>7</sup> However, driving with a suspended license is a *criminal offense* that can result in jail time in Massachusetts. In fact, the second most commonly 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. (This number is entirely separate from safety-related suspensions resulting from unsafe driving such as habitual traffic offenses or OUIs).

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(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).

<sup>3</sup> Note: this testimony uses the term “suspension” broadly to refer to the process by which the RMV invalidates a license. Many sections of statute addressed by the legislation make little to no distinction between license or registration suspension, revocation, and nonrenewal.

<sup>4</sup> 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.

<sup>5</sup> *Bearden v. Georgia*, 461 U.S. 660 (1983).

<sup>6</sup> 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%20AJ%2C%202015.pdf>

<sup>7</sup> *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>

## **License suspensions ratchet up penalties for poor drivers, compounding harm**

This is how suspending driver's licenses for unpaid debts compounds harm. First, a person is saddled with fines or fees they cannot afford. Additional fines are often levied for failure to pay on time, increasing the person's debt burden. Then, to punish the person for their unpaid debts, the law requires the RMV to suspend their license, which impacts the person's mobility and increases their existing economic hardship.

Once a motorist's license is invalidated, it can be difficult to get it back. First the person has to pay the original fine and any associated fees. In addition, the RMV charges a reinstatement fee of hundreds of dollars. We have heard anecdotally from defense attorneys that the RMV charges \$500 to reinstate a license – a dollar amount that is undoubtedly much higher than any possible administrative cost to the RMV to lift a suspension. This high fee, on top of the fines and fees that triggered the suspension, prevents many safe drivers from getting their licenses back.

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. By definition, 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 the \$150 fee, they are barred from renewing their license until the fee is paid,<sup>8</sup> making it impossible for them to legally drive to work, court, medical appointments, and other daily activities.<sup>9</sup> In addition, new fines and fees, like the license reinstatement fee, quickly stack up, further burying the person in government debt.

Like the RMV reinstatement fee, criminal charges for operating after an administrative suspension compound the financial burden that led to the license suspension in the first place. We have heard from practitioners that 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 as high as 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 if the person is assigned counsel, they will also incur the \$150 indigent counsel fee.

Adding insult to injury, under the current fines enforcement and license suspension scheme, it's all or nothing: 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 \$500 RMV reinstatement fee, their license remains invalidated until they pay the fee. When the financial burden becomes too great, there is simply no way for a person without means to get their license back.

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<sup>8</sup> 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.”)

<sup>9</sup> 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.

The spiraling escalation of costs and harms can be dizzying. 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.<sup>10</sup>

### **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, more than a dozen states — including California, Hawaii, Idaho, Maine, Maryland, Michigan, Mississippi, Montana, New York, Oregon, Texas, Virginia, West Virginia — and the District of Columbia have all enacted legislative reforms to curb the practice of debt-based suspensions for either failure to pay or failure to appear.<sup>11</sup>

Massachusetts, too, has begun to take steps toward reform. 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's 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.<sup>12</sup> In addition, the bill eliminates criminal penalties for operating after suspension where the underlying reason for the license suspension is administrative.

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.

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<sup>10</sup> 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](https://www.huduser.gov/portal/datasets/il.html#2021_faq)

<sup>11</sup> *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>

<sup>12</sup> See H.3453/S.2304 sections 1-4, 7, 8, 13, 15, 22-26.

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

Data suggests that Black and Latino people, especially Black and Latino men, are disproportionately likely to experience criminal system involvement as a result 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.<sup>13</sup> 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 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.<sup>14</sup> These are communities where the lack of public transportation makes residents even more dependent on driving for work and necessities and also makes a suspended license particularly destabilizing. 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**

According to Massachusetts trial court data for FY18-21, driving with a suspended license (ch. 90 § 23) is consistently the leading charge in 11-12% of trial court cases each year.<sup>15</sup> 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. The potential cost savings associated with eliminating this burden on the criminal justice system is striking. 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

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<sup>13</sup> *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>

<sup>14</sup> *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>

<sup>15</sup> 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/profile/drap4687#!/vizhome/MassachusettsTrialCourtChargesDashboard/MassachusettsTrialCourtChargesDashboard>; see also [District Court complaint manual](#).

suspended license would have saved them millions of dollars.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> One scholar estimates that fully decriminalizing driving on a suspended license nationally could save over \$1 billion dollars.<sup>20</sup> 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.<sup>21</sup>

### **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 is not a neutral proposition, because it actually siphons resources *away* from public safety -- at enormous cost. Suspending licenses for non-safety reasons also 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 not have insurance or will leave the scene of an accident.<sup>22</sup>

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

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<sup>16</sup> 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\\_commission\\_report\\_ma.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_rogers_commission_report_ma.authcheckdam.pdf). at 10.

<sup>17</sup> *Id.*

<sup>18</sup> 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>.

<sup>19</sup> *Id.*

<sup>20</sup> 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.

<sup>21</sup> 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>.

<sup>22</sup> 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/>

and other resources and detract[s] from highway and public safety priorities.”<sup>23</sup> The sheer scale of suspensions ties up police officers and prevents them from engaging in activities to keep the community safe. Washington State, which doesn’t suspend licenses for drug crimes or nonpayment, estimated that state troopers alone still spent 70,848 combined hours enforcing operating after suspension laws for other non-driving related suspensions.<sup>24</sup> We can assume that with more license-suspending penalties in Massachusetts, the Commonwealth’s number is higher. These hours are a misuse of resources that serve no public safety function and distract law enforcement from serving the community.<sup>25</sup>

## **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. The legislation before you 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.

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

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<sup>23</sup> 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/>.

<sup>24</sup> 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>.

<sup>25</sup> *Id.* As Washington State Patrol Chief John Batiste told the American Association of Motor Vehicle Administrators: A roadside encounter with a suspended driver is a time-consuming endeavor for officers. Drivers suspended for non-driving reasons represent 39% of all suspended drivers, and are not the threat to the motoring public as other suspended drivers. Reducing law enforcement roadside encounters with suspended drivers by up to 39% would result in significant time savings allowing officers to be available for calls for service and other proactive highway safety activities.