Trends in State Courts

Fines, Fees, and Bail Practices: Challenges and Opportunities
Rethinking Driver’s License Suspensions for Nonpayment of Fines and Fees

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States are considering new approaches to mitigate the individual and public costs of license suspensions tied to a driver’s failure to pay fines, fees, and surcharges from traffic or criminal cases. Approaches include relicensing programs, enhanced procedural protections, and elimination of suspensions for nonpayment.

Millions of individuals across the United States are unable to drive legally because they have failed to pay fines, fees, and surcharges assessed in traffic or criminal cases.1 The negative economic and fiscal effects of driver’s license suspensions often are highly disproportionate to the dollar amounts of fines and fees owed.

Legislators, judges, and court administrators across the country are increasingly aware of the costs driver’s license suspensions impose on court systems, families, and taxpayers. Several jurisdictions are investing in programs that help people regain their driving privileges and reconsidering the circumstances in which driver’s license suspension is authorized. Recent litigation challenging driver’s license suspension practices in three states also has highlighted problems with some current suspension practices and spurred procedural reforms.

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1 States vary in whether they classify traffic violations as civil infractions or as criminal-misdemeanor offenses. Both states that classify traffic violations as civil infractions and states that classify traffic violations as criminal offenses require or allow for the suspension of driver’s licenses for nonpayment of fines and fees related to traffic violations. This article refers to “traffic cases” without regard to how those cases are classified in state law.
Overview of State Driver’s License Suspension Policies

Judges and motor-vehicle agencies suspend driver’s licenses for a variety of reasons. States initially authorized driver’s license suspensions to protect public safety on their roads by removing dangerous drivers from the road, changing driver behavior, and punishing unsafe drivers. Traffic-safety suspensions typically are imposed when an individual commits a specific traffic-related offense, such as driving while intoxicated, or accumulates points assessed for multiple moving violations.

Over time, states have expanded the use of driver’s license suspensions beyond traffic safety. Many now use suspensions to punish and deter various criminal or otherwise socially undesirable behaviors unrelated to driving. For example, all states suspend driver’s licenses when parents fail to pay child support. Twelve states suspend driver’s licenses when individuals are convicted of drug offenses. Judges in Wisconsin suspend driver’s licenses individuals are convicted of curfew or disorderly conduct violations, and Florida suspends licenses for truancy. A 2015 Vermont legislative report identified 74 nontraffic offenses that triggered driver’s license suspensions under state law.

A third category of driver’s license suspensions consists of suspensions for nonpayment of fines, fees, and other costs related to traffic or criminal convictions. These suspensions are not a direct penalty for the underlying behavior, but instead operate in addition to those direct penalties and aim to encourage and coerce compliance with financial penalties imposed for that behavior.

Driver’s license suspensions for nonpayment of traffic or criminal financial penalties fall into three subcategories. First, most states require or authorize the suspension of driver’s licenses for nonpayment of fines and fees assessed in traffic cases. Second, some states suspend driver’s licenses for nonpayment of fines and fees in nontraffic criminal cases. Finally, a small number of states, including New Jersey and Texas, assess surcharges in addition to fines and fees for traffic offenses. In states with surcharge programs, failure to pay surcharges results in driver’s license suspension.

Suspensions for Nonpayment of Fines, Fees, and Surcharges

Fines, fees, and surcharges even imposed for a relatively minor traffic offense often total hundreds of dollars, and drivers who owe financial assessments in multiple cases quickly accumulate thousands of dollars in court debt. While some individuals may willfully refuse to pay their debts when they can afford to do so, there are many people who face driver’s license suspension for failure to pay fines, fees, and surcharges they cannot afford.

Because the total amount owed by a single individual can be so large, it is not only the poorest individuals who cannot afford to pay. Millions of people across the country have driver’s licenses that are suspended for failure to pay fines, fees, and surcharges imposed in traffic or criminal cases.

In Texas alone, 1.8 million people have licenses suspended for failure to pay judicial costs, including almost 1.4 million people that have failed to pay traffic surcharges. Over 4 million Californians, representing 17 percent of the state’s adult population, have licenses suspended for failure to appear/pay in traffic cases. In Virginia, almost 1 million drivers have licenses suspended for nonpayment. Approximately 60 percent of driver’s license suspensions in both Wisconsin and Vermont are for nonpayment of court debt.
Suspensions for fines, fees, and surcharges in traffic or criminal cases differ from other types of driver’s license suspensions in some important ways. For example, driver’s license suspensions imposed as a direct penalty for traffic or criminal offenses generally last only for a specific, limited time. In contrast, most suspensions for nonpayment are indefinite and end only when the suspended driver complies with payment orders.

Most states that suspend driver’s licenses for nonpayment also do not extend occupational or other restricted licenses to drivers who lose their licenses for this reason, even when restricted licenses are available for other types of suspensions. In other states that do not prohibit the issuance of restricted licenses in cases of suspension for nonpayment, narrow eligibility criteria nevertheless exclude many low-income drivers. For example, in Virginia, suspended drivers who need a license to search for and obtain employment cannot receive a restricted license because they are unemployed.

Costs of Driver’s License Suspensions

Consequences for Individuals and Families

In many parts of the United States, it is difficult for individuals to maintain employment if they cannot drive. Eighty-six percent of Americans drive to work. Even when people can reach work sites without a car, many jobs require a valid driver’s license. Employers screen candidates for driver’s licenses when jobs involve driving on-site or require frequent travel between different locations, but even when those conditions do not apply, some employers view having a valid driver’s license as an indicator of reliability.

A study of New Jersey drivers documented the stark employment consequences of license suspension. Almost 45 percent of suspended drivers lost their jobs when their license was suspended, and 45 percent of drivers who lost their jobs could not find another job while their licenses were suspended. Even when suspended drivers found another job, over 85 percent reported a decrease in income.

Suspended drivers who can take public transportation to work still may need a car to take their children to school or family members to doctors’ appointments. Housing applications often require a copy of the applicant’s driver’s license. These consequences undermine the economic stability of drivers with nonpayment suspensions and damage entire families.

The financial and familial consequences of license suspension are so severe that 75 percent of drivers continue to drive after a suspension, which in turn exposes them to criminal prosecution and additional financial penalties.

All 50 states treat driving with a suspended license as an offense more serious than a standard traffic violation, and in most states it is a misdemeanor offense punishable by imprisonment. Although the severity with which states punish driving with a suspended license originated in a period when most suspensions were directly triggered by traffic violations, state criminal laws generally do not treat drivers differently based on the reason for their suspensions. Low-income drivers whose licenses are suspended because they cannot afford to pay fines and fees are at risk of being arrested, detained before conviction, and punished just as severely as drunk drivers whose licenses have been suspended to protect public safety.
Public Costs

The employment consequences faced by millions of drivers suspended for nonpayment impact the entire economy. Nonpayment suspensions, and the driving-with-a-suspended-license offenses that follow those suspensions, also impose costs on law enforcement, courts, and corrections agencies that impact government budgets and public safety.

When law enforcement officers book an individual with a nonpayment suspension for driving without a license, it diverts officers from other public safety priorities. In Washington, state police estimated that each driving-with-a-suspended-license arrest occupies nine hours of officer time that could be dedicated to offenses that present public safety risks.

As driving-with-a-suspended-license cases proceed through the courts, they consume limited judicial, prosecutorial, and defense resources. For example, suspensions for nonpayment of traffic surcharges produced over 400,000 new driving-with-a-suspended-license criminal filings in Texas state courts over a three-year period.

Arrests for driving with a suspended license also put pressure on local corrections budgets and contribute to jail overcrowding. A study of jail admissions in five Texas counties documented that 6 percent to almost 20 percent of admissions were for driver’s license offenses.

Legal Constraints on Suspensions for Nonpayment

Another potential cost of nonpayment suspensions is exposure to litigation. Lawsuits filed in California, Tennessee, and Virginia in 2016 and 2017 challenge nonpayment suspension practices in those jurisdictions on behalf of individuals whose licenses are indefinitely suspended for nonpayment of fines and fees they cannot afford.

All three challenges share some common claims. They argue that license suspensions for nonpayment are unconstitutional when a driver does not willfully refuse to pay but, rather, is unable to pay.
Additionally, they assert that state suspension practices violate the due-process clause of the U.S. Constitution because they do not provide the driver notice of and an opportunity to be heard on the key issue of ability to pay.

The Department of Justice filed a Statement of Interest on behalf of the United States in the Virginia case, *Stinnie v. Holcomb*. In that filing, the DOJ cited case law, including *Bell v. Burson*, 402 U.S. 535 (1971), holding that drivers have a protected interest in maintaining their driving privileges, and that interest cannot be taken away without due process. The DOJ agreed with the plaintiffs that courts must provide notice and an opportunity to be heard before suspending a license for nonpayment; must inquire into whether the failure to pay was willful or the result of inability to pay; and may not suspend driver's licenses when a driver is unable to pay.

*Stinnie* was dismissed on jurisdictional grounds in March 2017. However, in dismissing the case, the district court recognized the circularity of suspensions for nonpayment: “Because [Mr. Stinnie] cannot pay the fees, his license is suspended, but because his license is suspended he cannot pay the fees” (Memorandum Opinion, *Stinnie v. Holcomb*).

Cases challenging suspensions for nonpayment remain pending in California and Tennessee.

### Spokane County Relicensing Program

The Office of the City Prosecuting Attorney in Spokane, Washington, has a relicensing program that provides eligible participants with the opportunity to waive collection fees, combine all traffic-fine payments from participating jurisdictions into a manageable monthly amount, and have all participating jurisdictions release holds on license reinstatement.


### Rethinking Suspensions for Nonpayment

States and local entities across the country are taking steps to reduce the costs driver's license suspensions impose on their communities and their courts. Other ideas to reduce the costs of suspensions are under review.

#### Relicensing Programs

Local jurisdictions from Seattle to Miami have created or partnered with relicensing programs to reduce the number of unlicensed drivers. Relicensing programs often operate as a component of diversion programs for driving-with-a-suspended-license cases, but also may exist as temporary amnesty programs. Relicensing programs are particularly useful in cases involving nonpayment, when suspensions are indefinite and relicensing will not automatically occur after a specified amount of time.

Relicensing programs help drivers navigate requirements for reinstatement. These programs can be effective, but not all suspended drivers are eligible, particularly those drivers who are unable to make any payments toward their court debts. Relicensing programs are complicated because drivers often owe debt across multiple jurisdictions, only some of which may be participating in a relicensing program. Relicensing programs also require funding for staff and operations. Jurisdictions justify these expenses as allowing them to avoid future expenditures for repeat offenses of driving with a suspended license.

#### Enhanced Procedural Protections

Virginia and California, two states targeted in recent litigation, have adopted new procedural rules to protect low-income drivers facing suspension for nonpayment. In November 2016, the Virginia Supreme Court adopted a court rule requiring judges to consider ability to pay when assessing fines and fees. California has made it easier for drivers to access courts to assert inability to pay.

These enhanced procedural protections are improvements but do not address all the issues raised in the legal cases and will not eliminate...
license suspensions for drivers who are unable to pay. For example, California’s new court access rules do not address notice claims and do not require judges to grant realistic payment plans or other alternatives to drivers who cannot afford to pay fines and fees in full.

A barrier to effective procedural reform is the limited menu of options available when drivers cannot afford to pay fines, fees, and surcharges up front. Most common alternatives to immediate payment in full still involve payment—sometimes in a reduced amount but more often the full amount over a limited time period. These alternatives remain inaccessible to very low-income drivers or drivers with large amounts of court debt.

Eliminating Suspensions for Nonpayment

Certain analysts have recommended eliminating driver’s license suspensions for nonpayment of fines, fees, and surcharges in traffic and criminal cases. Some states are considering this approach. Missouri reinstated all driver’s licenses suspended strictly for failure to pay, and legislation filed in California would prohibit future suspensions for nonpayment.

Eliminating nonpayment suspensions would de-link suspensions from drivers’ income levels. It also would improve the economic prospects of drivers who owe debts to the courts, and thus their ability to pay those debts.

However, some states resist this approach because they believe that the threat of suspension is an effective tool for increasing compliance with court orders and collections.

While there is some evidence that the threat of suspension may result in increased compliance in child-support cases, there are important differences between nonpayment of child support and nonpayment of court debt. Unlike court debt, the amount of child support is tailored to parental income at the front end, so there are greater procedural protections and greater reason to believe that parents can pay what they owe.
Studies also have shown that court debt remains pending for longer periods of time after license suspension than does child-support debt, suggesting that suspension is less effective at increasing collection of court debts.

Other states have eliminated suspensions for nonpayment of debt arising from nontraffic criminal cases, while retaining suspension for nonpayment of traffic fines and fees. The states in this category include Washington and Vermont. The rationale for this middle-ground approach is that driver’s license suspensions should be limited to reasons that are directly related to driving and road safety, but that suspensions that coerce compliance with financial penalties in traffic cases preserve the deterrent value of those penalties and serve a legitimate driving-safety purpose.

It should be noted that the DOJ rejects this reasoning for retaining driver’s license suspensions for nonpayment in traffic cases, as do some state legislative reports. In a March 2016 “Dear Colleague” letter, the DOJ stated that license suspensions for nonpayment of any type of debt are a debt-collection tool, and distinguished them from suspensions imposed for traffic violations to protect public safety.

**Conclusion**

States may suspend licenses as a direct penalty for traffic offenses and, thus, promote traffic safety. These traffic-safety suspensions exist independently from suspensions for failure to pay traffic fines, fees, and surcharges, and can be imposed without exposing millions of drivers to the threat of suspension for nonpayment of financial penalties they are unable to pay.

If states are unwilling to eliminate all suspensions for nonpayment, they can adopt policies that go farther than relicensing programs and enhanced procedural protections to mitigate the consequences of nonpayment suspensions. These policies should include limiting nonpayment suspensions to a specified period of months and making restricted licenses available in cases of suspension for nonpayment. Jurisdictions also may want to consider ordering limited suspensions that automatically allow for restricted-driving privileges without the need for legal intervention in individual cases, as well as reclassifying violations for driving with a suspended license to a lesser, non-jail-eligible offense when nonpayment is the underlying cause of the suspension.

**References**


**Legal Cases**


