

*Michigan: Auto State or  
State of Suspension?*



# Michigan: Auto State or State of Suspension?

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*Traffic offenses accounted for a large percentage of incarcerations in Michigan. Reform legislation is not only reducing the burden on jails and courts but also helping offenders to keep their lives on track.*

## Michigan: Auto State or State of Suspension?

Ensuring that punishments are right-sized and appropriate is the next frontier for trial courts. Judge Derek Meinecke said this in 2019 when addressing the pervasive issue of driver's license suspensions as a means of punishment in Michigan, as well as a catalyst for other problems in the criminal justice system. He was referencing a state law prohibiting driving on a suspended license that applied the same charge and punishment no matter the reason why a driver's license was suspended—be it for a matter of safety, such as drinking and driving or fleeing from police, or for simply not paying a traffic ticket on time.

Even in the “Auto State,” courts have not typically seen driving offenses as important, says Judge Meinecke. In 2016 he developed “Operation Drive,” a program that looks for different ways to address these issues and helps individuals restore their licenses. In addition, he aimed to enlist more local courts in adopting a regional approach with local prosecutors and law enforcement to visit local high schools to educate teens and to reach out to state legislators to change the laws.

Judge Meinecke's response to the previous one-size-fits-all approach aptly represents the spirit of Michigan's transformation in recent years from a state that had experienced a vicious cycle of quick and frequent license suspensions, which resulted in problems such as jail overcrowding, to a national model for meaningful criminal justice reforms.

Judge Meinecke might not have realized it in 2019, but his foresight about right-sizing punishments came at the perfect time. That same year, the Michigan Supreme Court helped lead a statewide effort to address jail overcrowding. In less than 40 years, the number of people held in Michigan's county jails nearly tripled.<sup>1</sup> This growth was not driven by an increase in crime. Crime rates have dropped to 50-year lows. In fact, the tripling of Michigan's jail population went largely unnoticed by state lawmakers because no data set existed to answer these questions: Who is in Michigan's county jails? For how long? And why?

Alleviating jails became a shared bipartisan priority in 2019, prompting state and local leaders to create the Michigan Joint Task Force on Jail and Pretrial Incarceration. The task force, led by Lt. Gov. Garlin Gilchrist II and former Chief Justice Bridget McCormack, was charged with analyzing jail populations across the state and developing legislative recommendations for consideration in 2020.

The Pew Charitable Trusts provided critical technical assistance collecting and analyzing data for this first-of-its-kind task force charged with determining who was entering Michigan's jails, their duration, and for what reasons. The goal was to recommend policy changes to safely reduce jail populations and for those recommendations to be enacted into law.

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1 U.S. Department of Justice, Bureau of Justice Statistics, Census of Jails and Annual Survey of Jails. Online at <https://perma.cc/34US-SBPS>.

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What the task force found was startling. Data showed that traffic offenses accounted for half of all criminal court cases in 2018 and driving without a valid license was the third most common reason for incarceration in Michigan (see Figure 1).<sup>2</sup>

**Figure 1: Top 10 Offenses, Most Serious Charge at Jail Admission**

Jail admissions were comprised of a wide range of offenses:
1. Operating Under the Influence (OUI)
2. Assault
3. Driving Without Valid License
4. Theft
5. Probation/Parole Violation
6. Possession or Use of Controlled Substance
7. Obstruction of Justice
8. Other Person Offense
9. Domestic Violence
10. Delivery or Manufacture of Controlled Substance

**Source:** Michigan Joint Task Force on Jail and Pretrial Incarceration, "Report and Recommendations," January 10, 2020, "Sample of Jails, 2016-2018"; "Jail Data" in "Data Sources and Methods."

Two driving offenses unrelated to safety, failure to appear and failure to pay fines and fees, accounted for nearly 360,000 license suspensions annually.<sup>3</sup> The consequences of this practice included the burden on police agencies, use of limited public safety resources, and most importantly, the human cost in lost jobs, homelessness, and stress on families who lost the ability to drive to school, daycare, or the doctor.

Some Michigan traffic violations, such as careless driving and speeding, were civil infractions, meaning they are against the law and punishable with fines, but did not themselves directly lead to arrest or jail.<sup>4</sup> Other traffic violations were criminal offenses eligible for arrest and jail, including common charges like driving without insurance or driving with a suspended license. Even excluding operating under the influence, these criminal traffic offenses accounted for six of the top ten most common charges handled by courts.<sup>5</sup>

Since the release of the task force report, COVID-19 created an increased urgency to reduce incarcerated populations. Jails have limited capacity to accommodate social distancing, and individuals detained or working in jails have a heightened risk of exposure to the novel coronavirus. In addition, counties spent nearly \$480 million taxpayer dollars each year on operating their jails<sup>6</sup> some of which could be reallocated to support community-based treatment alternatives and other efforts.

2 See also, "Criminal Cases Disposed in Court, 2018," and "Sample of Jails, 2016-2018," in Michigan Joint Task Force on Jail and Pretrial Incarceration, "Report and Recommendations," January 10, 2020.

3 See [Free to Drive](#), also online at <https://perma.cc/A9TG-PJFQ>.

4 Civil infractions can indirectly lead to arrest or jail if an individual does not appear in court, fully pay fines or fees, or meet any other court conditions.

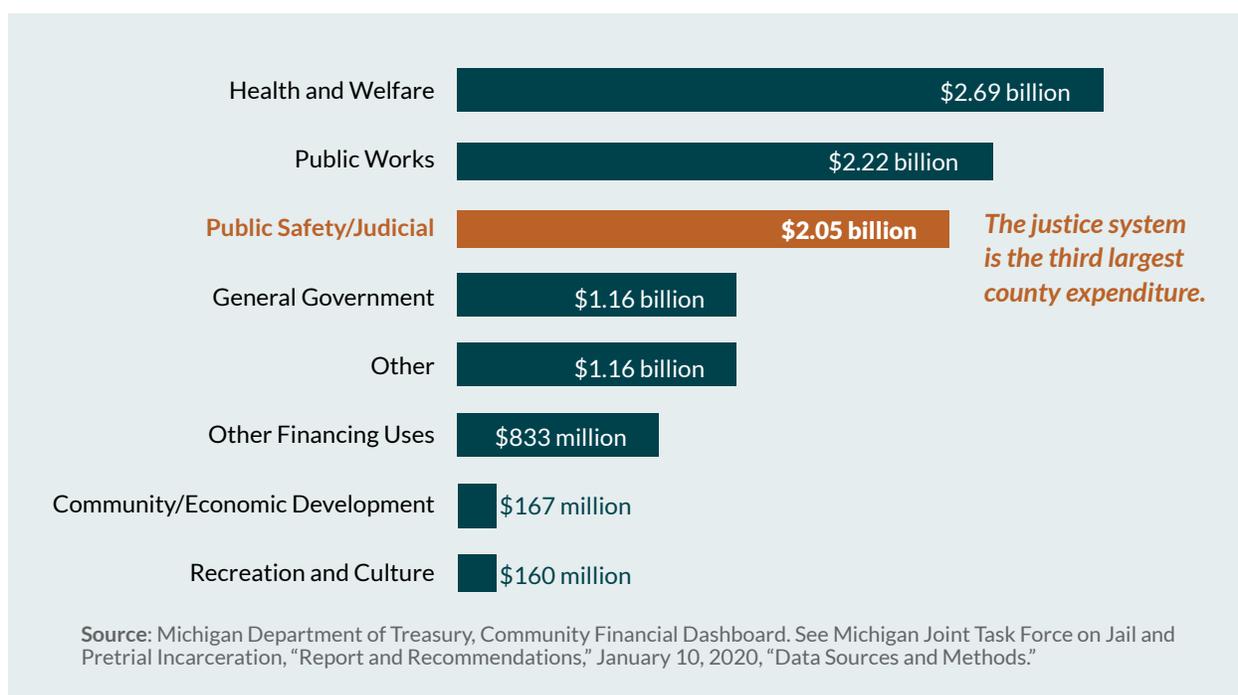
5 "Criminal Cases Disposed in Court, 2018," in Michigan Joint Task Force, *supra* n. 2.

6 Michigan Department of Treasury, [Community Financial Dashboard](#).

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There was also a wide range in the length of jail stays. Thirty-six percent of those jailed for driving without a valid license stayed in jail for two days or more, and 5 percent stayed longer than a month.<sup>7</sup> Jails accounted for roughly 25 percent of county-level spending on public safety and justice systems, including law enforcement, courts, and other judicial or public safety spending, which together were the third largest county-level expenditure behind health care and public works (see Figure 2).<sup>8</sup>

**Figure 2: Michigan County Budget Spending by Subcategory, 2017**



After completing research and public hearings, the task force submitted a list of 20 policy recommendations to the legislature in 2020. At the top of that list was reducing the number of driver's license suspensions. State law allowed a driver's license to be suspended for a wide range of noncriminal behaviors. The task force heard testimony across the state about the domino effect of a suspended license and from law enforcement professionals who see these individuals using up limited public safety resources. To reduce jail admissions for driving with a suspended license and remove barriers to workforce reentry, the task force recommended that licenses should only be suspended or revoked when the holder has been convicted of an offense directly related to driving safety.

<sup>7</sup> See "Sample of jails 2016-18," *supra* n. 2.

<sup>8</sup> See Michigan Department of Treasury, *supra* n. 6.

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The Michigan Joint Task Force on Jail and Pretrial Incarceration specifically recommended:

- Elimination of suspension and revocation of driver's licenses as a possible sanction except for conviction of specific moving offenses directly related to driving safety, such as reckless driving, operating while intoxicated, and fleeing and eluding an officer.
- License suspension or revocation should never be allowed for failure to comply with a court judgment, including failure to appear and failure to pay fines and fees.
- Confiscation of driver's licenses as a condition of pretrial release should be prohibited except in cases where license suspension would be an allowable sanction upon conviction.
- Reinstatement fees should be waived, and a straightforward process created for immediate reinstatement of licenses suspended for reasons that are no longer eligible.

Collectively, the bills that came out of these recommendations and introduced by legislative partners on the task force and other legislative leaders sought to expand the use of jail alternatives and reserve jail for public safety risks. The bills aimed to eliminate driver's license suspensions and criminal penalties for some traffic offenses; expand officer discretion to use appearance tickets instead of custodial arrests; use probation, fines, and community service as sentences for low-level crimes; and limit jail time for those who violate the rules of supervision. In December 2020, the 20 bills were carried by a diverse group of Republican and Democratic state senators and representatives, passing with overwhelming support. On January 4, 2021, the governor signed them into law. The laws are summarized according to topic.

### ***Decriminalization and Civil Infractions***

To reduce jail admissions, the reforms amended several sections of the Michigan Vehicle Code to reclassify certain traffic misdemeanors as civil infractions.

### ***Driver's License Suspensions***

Before the reforms, driving with a suspended license was the third-most-common charge for jail time in Michigan. In addition, driver's licenses could be suspended for criminal convictions not related to unsafe driving, failure to appear in court, and failure to pay or comply with a judgment. The reforms limit the circumstances under which a driver's license can be suspended and required the secretary of state (SOS) to reinstate those licenses that were previously suspended for ineligible reasons.

Mandatory minimum jail sentences were previously required upon conviction for certain criminal offenses. Under the reforms, some mandatory jail requirements were eliminated, and others became waivable in the Public Health Code, Michigan Vehicle Code, and others. While jail is no longer required for these offenses, jail sentences can still be imposed at the court's discretion.

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Following enactment of the new laws, the governor created the Jail Reform Advisory Council (JRAC) to permanently replace the task force and implement measures outlined in the new laws. The JRAC met virtually throughout 2021 and 2022 to oversee the implementation of the 2020 jail reforms. The reforms are a comprehensive series of laws that span the entire justice system. The JRAC engaged various justice system stakeholders and provided guidance and assistance in implementing the reforms. Since the JRAC was not established until April 2021, many stakeholders undertook significant efforts and preparations that contributed to the successful implementation of the reforms, and their efforts continue.

The State Court Administrative Office was able to conduct additional analysis on nonserious misdemeanor sentences to look at those sentences based on a range of different factors. When looking at common vehicle-related nonserious misdemeanor cases, the most common offenses were:

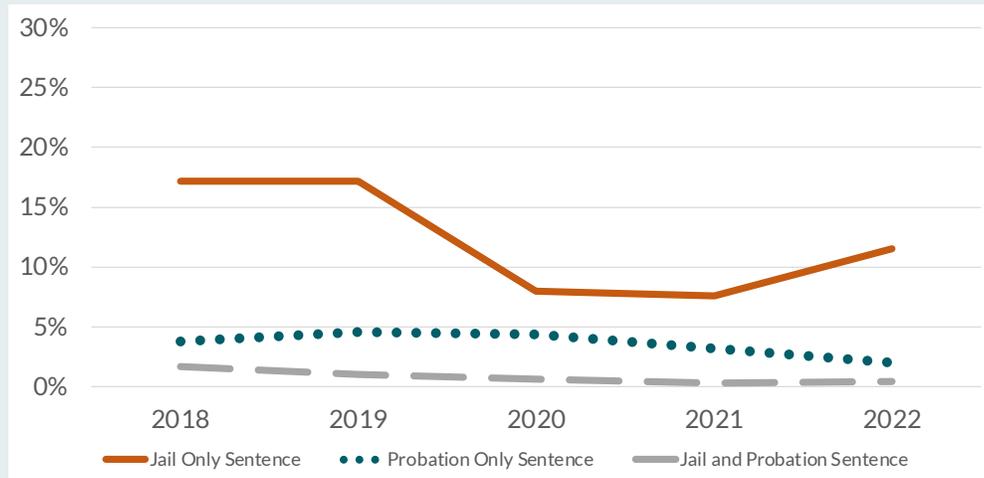
- operating without a license on person;
- operating while license suspended, revoked, or denied;
- having no license or multiple licenses;
- owner permitting another to violate the motor vehicle code; and
- license plate—unlawful use.

The data showed a dramatic decline in jail-only sentences in 2020 and 2021 and an increase in 2022, which is consistent with the overall sentencing trends (see Figure 3). In 2022 probation-only sentences for that same population decreased to their lowest point from 2018 to 2022, which seems to indicate that the reforms have helped reduce the use of probation sentences for license-related, nonserious misdemeanants. Jail and probation combined sentences for license-related, nonserious misdemeanants showed a slight decrease from 2018 to 2022. Again, while the data suggest a successful impact of the reforms, the effects of the COVID-19 pandemic on lodging practices must be considered as well.

While overall trends in the data appear to show some success for the reforms, limited data and possible effects of the COVID-19 pandemic make it difficult to establish a clear causal relationship. One challenge is the lack of district court probation data, and while the Judicial Data Warehouse (JDW) gathers sentencing data, there are no data-reporting requirements for probation. Therefore, there is no data set that will allow the JRAC to examine early discharge from probation as it relates to misdemeanors. Future examination of trends of the available data will help to distinguish between impacts of the reforms in contrast to those of pandemic-related practices.

The SOS has completed three separate data analyses since the implementation of the clean slate laws, which analyzed how many drivers were affected by the Clean Slate to Drive laws and to what degree. Preliminary data showed that after two rounds of review by staff at the SOS, changes were made to the driving records of a total of 348,893 Michigan residents.

**Figure 3: Common License-Related Misdemeanor Offense Types by Year**



This figure captures trends over time for sentencing types of license-related, non-serious misdemeanants from 2018 to 2022.

Year During 4/1-9/30	Jail Only Sentence	Probation Only Sentence	Jail and Probation Sentence
2018	17.2%	3.8%	1.7%
2019	17.2%	4.6%	1.0%
2020	8.0%	4.4%	0.6%
2021	7.6%	3.2%	0.3%
2022	11.5%	2.0%	0.4%

After those changes were made, a total of 154,326 Michigan residents were eligible to hold a driver’s license and an additional 194,567 residents remained ineligible due to other infractions still on their records as of January 2022.

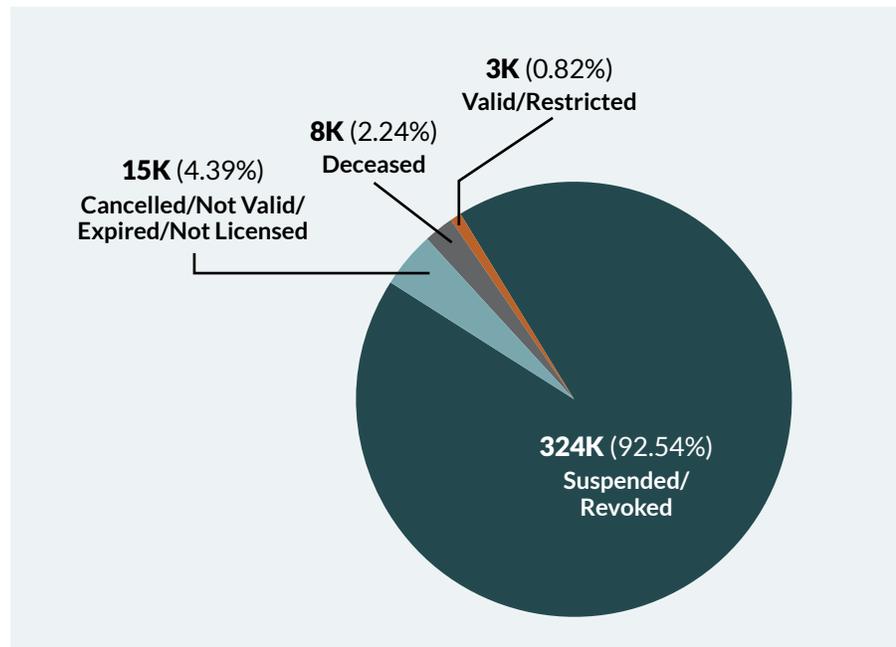
In total, the following actions were taken by SOS in accordance with the Clean Slate to Drive reforms in October 2021:

- 744,814 Failure to Appear in Court (FAC) suspensions ceased;
- 703,566 Failure to Comply with Judgment (FCJ) suspensions ceased;
- 10,124 FCPV/FCDV (Parking Holds) cleared;
- 57,172 Controlled Substance (drug crime) sanctions cleared;
- 5,531 Minor in Possession (MIP) sanctions cleared; and
- 9,459 Converted/Other sanctions cleared.

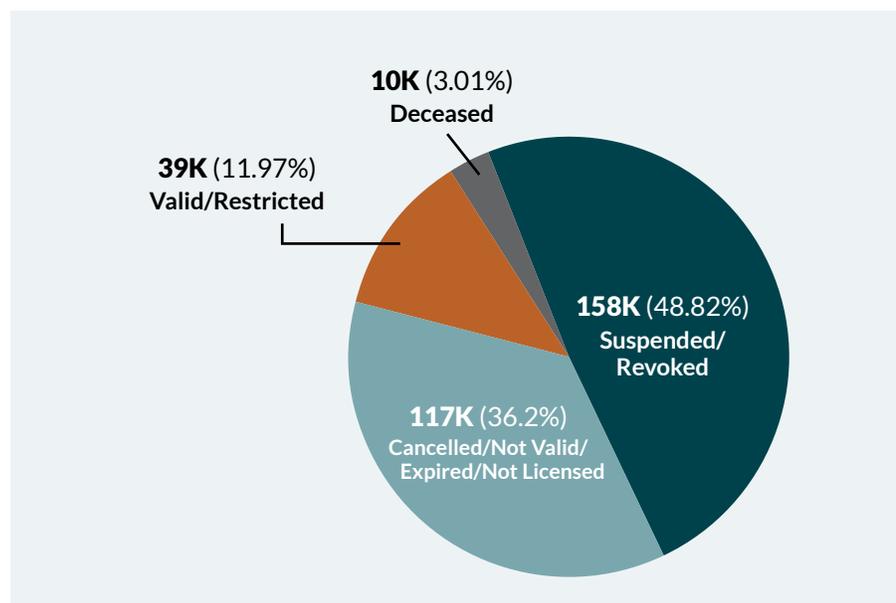
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Updated data provided by SOS gives a clearer picture of the full impact of the clean slate reforms. As of September 30, 2021, one day before the Clean Slate to Drive reforms becoming effective, 323,812 Michigan drivers had an active sanction (suspension or revocation) that prevented them from obtaining a license. As of September 30, 2022, one year later, that number has decreased by roughly 51 percent, leaving only 158,088 drivers with a suspension or revocation as depicted by the figures 4 and 5 below.

**Figure 4:**  
Driver Status,  
Sept. 30, 2021  
(Total Population  
of Clean Slate  
Drivers)



**Figure 5:**  
Driver Status,  
Sept. 30, 2022  
(Population of  
Suspended/  
Revoked on  
Sept. 30, 2021)



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Since the laws were enacted, Judge Meinecke says that the jail reforms have removed many of the barriers to licensure in the courts. For instance, Operation Drive helped to restore 83 licenses in 2020, and after the reforms took effect, the program restored 199 driver's licenses in 2021 and 233 in 2022. According to Judge Meinecke, however, root problems still exist that create other barriers to getting a license and end up leaving (mostly poorer) people behind, such as a lack of training programs, lack of public funding for driver education, and lack of access to reliable vehicles to get the required number of practice hours.

"Anecdotally speaking, things have gotten easier. The new laws have reduced the number of traffic tickets resulting in suspensions," he explained. "But other barriers still exist, so we still have a need to do what we do—educating, guiding, and helping people get their driver's licenses and improve their quality of life."

In the 41B District Court in Clinton Township, Court Administrator/Magistrate James McGrail points out that although license suspension reforms were largely beneficial, they were not without bumps in the road. An error in the system only lifted a small percentage of suspensions at first, as opposed to the promised automatic changes. Although this error was fixed within a month, it did cause a tremendous amount of confusion for court staff, defendants, and the SOS, says McGrail.

He also notes that court finances were adversely affected by the reforms. Previously, driver's license suspensions compelled people to pay their tickets on time. But after October 1, 2021, 41B District Court saw a decrease of \$700,000 in payments collected, according to McGrail.

"Trial courts are funded by local funding units, rather than the state, so these large decreases are very difficult to absorb," he explained.

Still, McGrail is pleased with the reforms overall. "They have enabled defendants who are not a danger to the public to maintain their licenses and still be productive members of society."

Through its strong vision and comprehensive efforts, Michigan has positioned itself as a national leader in reforming our criminal justice system to be more fair, effective, transparent, and accountable. We are building a justice system that makes us all safer and stronger.