



Driving on a Suspended Livelihood:

**An analysis of Michigan's
license restoration process**

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May 2025

Safe & Just
Michigan

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Acknowledgements

Safe & Just Michigan (SJM) would like to thank the following individuals and entities, whose efforts in the field and in collecting the data used in this report made this work possible:

- W.K. Kellogg Foundation, whose commitment to supporting the removal of barriers facing justice impacted individuals helped lead to the creation of this report.
- Rubina Mustafa from the Detroit Justice Center, whose knowledge of Michigan's License Restoration process was used in the creation of this report and has advocated for those in need of legal services.
- The Michigan Department of State (commonly referred to as Secretary of State), whose road to restoration clinics have helped thousands of people in restoring their driving privileges.

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Executive Summary

Michigan is designed and built around the car: our cities are sprawling, car-centric, designed for commuters, and connected by highways. So most Michiganders must drive to complete tasks of daily living, and the loss of transportation or the ability to drive can result in the loss of employment, income, and other opportunities. Driver's license policy — especially related to suspension, revocation, and restoration — should reflect this reality and its stakes. Yet in the course of our expungement work, Safe & Just Michigan has heard from numerous people who have gone decades without being able to drive and who believe they will never be able to get their driving privileges restored. These concerns prompted us to take a closer look at the license restoration process, and to produce this report.

In doing so, we learned that Michigan's complicated network of legislative and administrative rules have created a seemingly endless set of legal and financial barriers for those seeking to have their license reinstated. This is backwards and counterproductive: the license restoration process should be simple and focused on the ability to drive safely, not unrelated factors such as the ability to pay fines or the ability to demonstrate attendance at Alcoholics Anonymous (AA) meetings, and unnecessary barriers to restoration should be removed to help people regain their driving privileges.

Based on discussions with various stakeholders and individuals directly impacted by these laws, this report proposes a series of legislative and administrative changes

which we believe will remove unnecessary barriers to license restoration and create a more viable pathway for those seeking to have their driving privileges restored. Some of the proposed changes include:

- Amending current law to require that courts perform an “ability to pay” assessment on any individual who is in danger of having their license suspended due to their failure to pay outstanding court debt.
- Removal and/or modification of statutorily mandated court fees that serve to compound the financial burden that many face when attempting to reinstate their driving privileges.
- Amending Michigan's Administrative Rules to restrict Hearing Officer's discretionary powers when determining whether an individual's license should be restored by the Secretary of State.

If made by the Legislature and Secretary of State's office, these changes will remove barriers to license restoration that are impacting tens of thousands of Michiganders, help more people regain driving privileges, and open up access to new opportunities for employment and participation in community life that will benefit individuals, families, communities, and the State. We strongly encourage lawmakers and the Whitmer administration to do so.

Introduction

Safe & Just Michigan sees removing societal barriers to success faced by justice-impacted individuals as a key component of its efforts to make Michigan safer and more just. This report is our first on the subject of driver's license sanctions and restoration policy, which research with our partners from the Michigan Advocacy Program (MAP) has identified as a key barrier to success for many justice-impacted people in Michigan.

While not recognized as a fundamental right, the ability to drive is an integral component of everyday lives for millions of people in Michigan. Our state is built around having a car, with very limited public transportation outside of a handful of cities. As a result, many activities of daily living — from working, to buying groceries, to healthcare, to childcare,

schooling, and kids activities — require the ability to drive or find a ride. For many justice-impacted individuals, who are already dealing with the burden of having a criminal record, driver's license access, license sanctions, and restoration policy (including fees) can create additional burdens that only serve to further exacerbate their existing transportation challenges.

This report will provide an overview of the driver's license restoration process and the “license for payment” system — including its points system and other license sanctions. It will then provide an overview of recent reforms, and then summarize the policy problems we identified in our research and recommendations on how to address these problems.

Grounds for License Suspension or Restoration in Michigan

Points System

In Michigan, drivers are assessed points on their driving record for certain criminal and civil traffic violations. The accumulation of 12 or more points over a two-year period may also lead to suspension of an individual's license of up to one year¹. In some cases, the Secretary of State has the discretion to also revoke driving privileges upon the assessment of the person's driving record².

Individuals living in urban centers are especially vulnerable to this outcome, because there is a greater likelihood of police contact and accruing more points due to traffic violations.

Individuals who have had their license suspended due to an accumulation of points, are required to do a driver assessment reexamination and will also have to pay a driver's license reinstatement fee before their license suspension can be lifted³.

Moving Violations Involving Alcohol

Operating While Intoxicated (OWI) offenses are one of the leading causes for driving suspensions and revocations in the state of Michigan. As reflected in [Michigan State Police's 2022 Drunk Driving Audit](#), as many as:

- 40.4 percent of all fatal crashes were related to alcohol/drug consumption.
- Operating While Intoxicated offenses resulted in more than 25,000 driver's license sanctions by the Michigan Secretary of State.

As a result of the obvious public safety concerns, individuals face significant criminal and license sanctions if convicted of a Driving Under the Influence (DUI) offense. The revocation of an individual's driver's license is the single most severe license sanction that can be levied upon an individual by the Secretary of State, as it requires the petitioner to overcome a series of legal hurdles before their license can be restored.

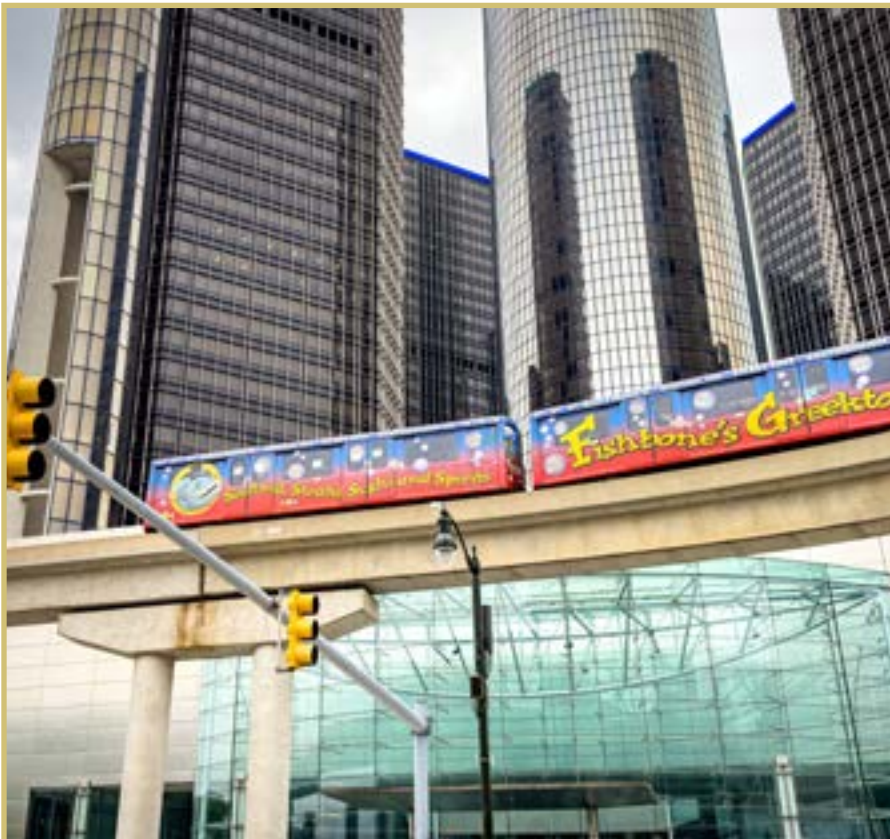
For example, in cases where an individual's license is revoked as a result of multiple DUI offenses within a seven or 10 year period, the Secretary of State can extend their eligibility wait period either an additional one or five years⁴.

Non-Alcohol Related Moving Violations

Under the law, a moving violation is defined as an:

“an act or omission prohibited under this act [Motor Vehicle Code] or a local ordinance substantially corresponding to this act that occurs while a person is operating a motor vehicle, and for which the person is subject to a fine.”

Thus, most offenses under the [Motor Vehicle Code](#) would be considered a moving violation⁵. Even though these types of violations may not necessarily be related to



Michigan is the center of the world's automotive industry and closely identified with car culture. Public transit options, like Detroit's People Mover, are few, presenting challenges for people without a valid driver's license.

¹ MCL 257.320(1)(d)

² MCL 257.320(2)

³ MCL 257.320E

⁴ MCL 257.904(10)

⁵ MCL 257.601b(5)(b)



Failure to Appear for Scheduled Court Date or to Comply with Court Judgment

Failure to pay a court judgment or to appear for a scheduled court hearing tends to be the most common reasons for suspension of driving privileges in the state of Michigan⁷. Presumably done as a means of incentivizing compliance with court orders, Michigan law allows for the automatic suspension of driving privileges if a person either:

- Fails to comply with a court order or judgment (FCJ) within 14 days after notice was issued⁸.
- Fails to appear in court (FAC) within seven days after notice was issued⁹.

According to a report from the Michigan Joint Task Force on Jail and Pretrial Detention, Michigan suspended roughly 358,000 licenses for failure to appear or unpaid fines in 2018.

Child Support License Suspensions

In addition to FCJ/FAC license sanctions, individuals with unpaid child support arrearages also face the prospect of having their license suspended.

Prior to 2021, individuals with two or more months of arrearages were subject to license sanctions¹⁰. However, the legislature amended the law in 2021 to include an “ability to pay” clause¹¹. Unlike other FCJ license sanctions, before an individual’s license can be suspended by the court in child support cases, courts are now required to perform (1) an ability to pay assessment of the individual, and (2) the Friend of the Court (FOC) must determine that no other sanction would be effective to ensure that child support arrearages are paid¹².

While these “ability to pay” assessments are currently limited to child support cases, we hope to see a broader application of this rule to all FCJ cases across the board. This would require an amendment to current law that would require courts to consider whether the individual can afford to pay the judgment before imposing any type of license sanction.

Michigan has nearly 8 million licensed drivers, according to the Federal Highway Administration. The state suspends hundreds of thousands of driver’s licenses a year. For instance, it suspended about 25,000 licenses for drinking-related violations in 2022, and about 358,000 for non-drinking related offenses in 2018.

alcohol or drug consumption, these violations take on an added level of significance when a person is convicted of a moving violation while their license is revoked.

Depending on the length of time of the original wait period, an individual who was convicted of a non-alcohol related moving violation during their wait period, would have their petition eligibility date extended either one or five years from the date of the new conviction. In these cases, individuals are effectively being penalized for violations which aren’t indicative of whether they continue to have a substance abuse problem making them unfit to drive⁶. As seen below, failure to pay fines and court costs associated with these moving violations can also lead to license sanctions as well.

⁶ *Id.*

⁷ MCL 257.321A(1)

⁸ *Id.*

⁹ MCL 257.321A(2)

¹⁰ MCL 552.628

¹¹ *Id.*

¹² *Id.*

License for Payment Restoration Process

While license suspensions can be definite — i.e. for a specific period of time — most are indefinite, meaning the suspension will continue until the driver acts to cure the underlying reason for suspension. In Michigan, the legal basis for the initial license suspension will determine the appropriate legal mechanism through which an individual's license can be restored. Thus, if failure to pay court debt led to the individual's license being suspended then only payment of that debt can restore the individual's driving privileges.

FAC/FCJ violations and alcohol-related moving violations remain the most common reasons for license suspensions and are indefinite until the individual satisfies certain legal requirements.

The Role of Court Debt in Reinstatement

Michigan's license for payment system requires that individuals satisfy outstanding court debt before their driving privileges can be reinstated. As a result, many find themselves in a never ending cycle as they continue to accumulate tickets while driving on suspended licenses and the accrual of more debt diminishes the likelihood of those privileges being reinstated.

Up until 2018, Michigan was considered to be one of the states with the most punitive license for payment systems in the country¹³. While recent reforms have mitigated the punitive impact of the license for payment system, licenses can still be suspended for both traffic and non-traffic criminal justice debt.

Restoring driving privileges suspended as a result of failure to comply with a court judgment/failure to appear in court

Even though the vast majority of moving violations aren't necessarily alcohol related, an FCJ/FAC that is related to a non-alcohol moving violation can lead to indefinite license suspensions until the court notifies the Secretary of State that the individual has:

1. Answered the citation or paid the fine¹⁴.
2. Paid the \$45 Clearance Fee to the court for each citation that led to their license being suspended¹⁵.

The \$45 Clearance Fee is one of many layered fees that is paid to the court¹⁶. This should not be confused with a separate License Reinstatement Fee of \$125 which is also due to the Secretary of State¹⁷.

As constructed, these laws serve to criminalize the people experiencing poverty because it creates legal jeopardy for those who are already facing economic hardships. Those individuals face the prospect of losing their driving privileges along with potential jail time for their failure to comply with a court order.



Michigan Department of State workers prepare to help people with driver license restorations at an event in Detroit in September 2023. Photo courtesy Michigan Secretary of State.

¹³ *Driven by Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt*, Legal Aid Justice Center (2017).

¹⁴ MCL 257.321A(3)(A)

¹⁵ MCL 257.321A(3)(B)

¹⁶ *Id.*

¹⁷ MCL 257.320E(2)

Metro Detroit Case Study

Perhaps there is no greater example of the impact that these laws can have on a group of people than the metro-Detroit area. In addition to being one of the poorest cities in the country, Detroit lacks any type of commuter rail network system connecting it with suburban areas and neighboring counties¹⁸. Additionally, the metropolitan Detroit area has one of the highest auto insurance rates in the entire country, which means that many of its low-income residents are unable to maintain legally mandated auto insurance coverage¹⁹. Since many of the higher paying jobs are located in the suburbs, low-income city residents are forced to drive through multiple jurisdictions for work without valid auto insurance.

As a result, a person driving without the required insurance potentially faces the prospect of receiving traffic tickets from each town or city that he or she travels through within the course of the same day. Each traffic ticket can list multiple charges (e.g., driving with a suspended license, no proof of insurance, no valid registration), and the person is responsible for paying court fines and fees for each of the charges, leading to hundreds of dollars of debt arising out of one traffic stop. If the charge is also classified as a misdemeanor, the person also faces the prospect of jail time. If a charge is classified as a suspendable infraction (e.g., no proof of insurance), failure to pay the court fines for a suspendable infraction will result in an indefinite suspension

of their driving privileges. These driving privileges will only be restored after:

- Payment in full of each fine that resulted in their license being suspended
- Payment of \$45 Clearance Fee for each case that resulted in their license being suspended
- The court notifies the Secretary of State that the Clearance Fee has been paid
- The individual pays the \$125 Driver's License Reinstatement Fee to the Secretary of State²⁰.

Individuals living in urban centers like Detroit are more likely to accumulate traffic tickets, and are therefore less likely to successfully navigate the "license for payment" process because they have more fines and fees to pay. This, in turn, locks them into further cycles of unlawful driving, criminal justice debt, and (potentially) incarceration due to poverty. Indeed, failure to pay fines can potentially lead to jail time if the court holds the person in contempt for failing to pay the judgment and issues a warrant for the person's arrest. Many courts have used the "contempt of court" enforcement mechanism to collect on outstanding court debt.

Additional legislative reform is needed to provide the courts with more flexibility in waiving fines and court costs associated with certain traffic infractions²¹.

¹⁸ *Detroit: The Rise and Fall of a Public Transport System. Economy League (2022)*

¹⁹ See Devito, Lee (2024, Jan, 26). *Michigan still has highest car insurance rates in the nation, according to study. Detroit Metro Times.*

²⁰ MCL 257.320E(2)

²¹ MCL 257.907

DUI Suspensions and the Restoration Process for DUI-Related Suspensions

The Secretary of State has established an administrative process through which an individual's license can be reinstated. Under Michigan law, an individual can petition the Secretary of State to have their license restored after it has been revoked once the applicable wait period has passed²². The length of the wait period is contingent on the amount of DUI convictions that the individual may have accumulated over a given period of time, as well as any additional moving violations that they may have committed during their wait

period²³. The Secretary of State can revoke an individual's driving privileges if they were convicted of:

- Two or more DUI convictions within the last seven years²⁴.
- Three or more DUI convictions within the last 10 years²⁵.

Once revoked, an individual can only apply for reinstatement:

²² MCL 257.303(4)

²³ MCL 257.904(10)

²⁴ MCL 257.303(2)(c); A person's license can be revoked for non-DUI felony convictions as well. See 257.303(2)(a)-(g).

²⁵ MCL 257.303(2)(g)

- One year after the license was revoked or denied²⁶.
- One year after the license was revoked or denied if the person was convicted of two or more DUI offenses within seven years²⁷.
- Five years after the license was revoked or denied if the person was convicted of three or more DUI offenses within 10 years²⁸.

Overcoming Habitual Offender Status & Rule 13 “Clear and Convincing” Standard

Individuals who have had their license revoked must rebut by clear and convincing evidence the legal presumption that they are a “habitual offender.”²⁹

Rule 13 under the Michigan Administrative Code establishes the legal criteria for which the petitioner must satisfy in order to overcome the “habitual offender” presumption³⁰.

Under Rule 13, the petitioner must show by clear and convincing evidence that their substance abuse problem is under control and that they are at a minimal risk to reoffend or engage in past abusive behavior³¹.

Abstinence Clause

In addition to satisfying the requirements listed above, the petitioner must also show by clear and convincing evidence that they have abstained from consuming alcohol or any other controlled substance for anywhere between six to 12 months³². Petitioners can prove their abstinence through their testimony, but the hearing officer will also rely on the findings of the substance use evaluation, 12-panel urinalysis drug screen, and the community support letters that are submitted along with their petition. This comes as an additional hardship to petitioners, as they are required to pay for the substance abuse evaluation and 12-panel urinalysis drug screen.

Furthermore, even if the hearing officer determines that the petitioner has satisfied the requirements under Rule 13, the law only allows the hearing officer to initially grant a restricted license (for a period of time to be determined by the hearing officer) before the officer may consider issuing an unrestricted license³³.

²⁶ MCL 257.303(4)(a)(i)

²⁷ MCL 257.303(4)(a)(ii)

²⁸ MCL 257.303(4)(b)

²⁹ *Id.*

³⁰ Michigan Administrative Code R.257.313 (1)(a)

³¹ *Id.*

³² Michigan Administrative Code R.257.313 (1)(b)

³³ Michigan Administrative Code R.257.313 (1)(h)

³⁴ MCL 257.323(1)

³⁵ MCL 257.323(4)



A man stands for driver's license photo at a Michigan Secretary of State Road to Restoration clinic in Dearborn Heights in August 2024. Photo courtesy Michigan Secretary of State.

Appeal to Circuit Court

In the event that petition is denied by the hearing officer, the petitioner may appeal the decision to the Circuit Court in the county in which they reside within 63 days of the denial order³⁴. The Circuit Court may reverse the decision and order restricted driving privileges to the petitioner upon a showing that the denial order was:

- In violation of the Constitution of the United States, the state Constitution of 1963 or a statute.
- In excess of the Secretary of State's statutory authority or jurisdiction.
- Made upon unlawful procedure resulting in material prejudice to the petitioner.
- Not supported by competent, material and substantial evidence on the whole record.
- Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
- Affected by other substantial and material error of law³⁵.

However, the ability to access the appellate process can be limited to a select few, as the appellate process can be extremely complicated to navigate. Additionally, many of the petitioners whose petitions have been denied by the hearing officer lack the resources to hire an attorney to assist them with appealing the hearing officer's decision.

Recent Legislative Reforms and License Restoration Initiatives

In recent years, the Legislature took some noteworthy steps toward reforming Michigan's license for payment system. Those changes led to the removal of driver responsibility fees and mandatory suspensions for certain offenses.

Removal of Driver Responsibility Fees in 2018

Until 2018, Michigan's license for payment system required individuals to pay a number of different fees, including:

- **Court fines and fees** related to the offense they were convicted of. These court fees vary considerably depending on the type of offense the person was convicted of. The law also allows courts to establish their own fee system, which leads to court fees varying from court to court³⁶. (Still Required)
- A **\$45 Driver's License Clearance Fee** which must be paid to the convicting court for each FCJ/FAC case³⁷. (Still Required).
- A standard **\$125 Reinstatement Fee**, which is paid directly to the Michigan Secretary of State, and can be paid only after the underlying court fees have been paid first and the convicting court has notified the Secretary of State³⁸. (Still Required)

- **Driver's Responsibility Fees**, imposed in 2003, were a requirement until they were repealed in 2018, when any outstanding driver's responsibility fees were waived. Since 2018, individuals are no longer required to pay these fees in order to get their license back. These fees had no connection to the driver's license restoration process and were purely a means through which the state of Michigan could generate additional revenue³⁹. (Repealed, effective Oct. 1, 2018)

The removal of Driver Responsibility Fees in 2018 was certainly a step in the right direction, as it helped ease the financial burden on many. However, since Michigan's license for payment is layered with various fees, the removal of one layer of fees did not completely address the problem.

Enactment of Michigan Joint Task Force's Recommendations in 2021

In 2019, Gov. Gretchen Whitmer established the [Michigan Joint Task force on Jail and Pre-Trial Incarceration](#), which analyzed and identified some of the shortcomings of Michigan's criminal justice system. The task force issued a series of recommendations which led to notable changes to the law in 2021 as well. Those changes included:

- Prohibition on automatic license suspensions for certain offenses unrelated to driving safety.



Michigan's Senate chamber. The Michigan Legislature has taken steps to limit driver's license suspensions, including the repeal of Driver's Responsibility Fees in 2018 and the adoption of several recommendations from the Michigan Joint Task Force on Jail and Pretrial Incarceration report in 2021.

³⁶ MCL 257.321a(3)(a)

³⁷ MCL 257.321a(3)(b)

³⁸ MCL 257.320E

³⁹ Kaffer, Nancy (2017, Nov. 3). "Michigan's driver responsibility fees: A cautionary tale of bad-policy making." *Detroit Free Press*.

- Limitations on the Secretary of State's ability to suspend an individual's driver's license for unpaid child support⁴⁰.
- Broadening police discretion in order to promote alternatives in lieu of an arrest⁴¹.
- Reclassification of certain traffic offenses from misdemeanors to civil infractions. Some of those offenses include:
 - Allowing an Unlicensed Minor to Drive⁴².
 - Failure to Endorse or Deliver Certificate of Title⁴³.
 - Failure to procure Motorcycle Endorsement⁴⁴.

These reforms were much needed, but while this type of incremental change has benefitted some there still remains a need for more substantive changes.

Road to Restoration Clinics

In the wake of these reforms, the Secretary of State began its “[Road to Restoration](#)” initiative in 2021, with the goal of educating individuals currently facing license sanctions on how they can restore their driving privileges. With the help of partners such as the Detroit Justice Center, the Michigan Attorney General's Office and other community organizations, the Secretary of State has hosted over 40 clinics across the state of Michigan and assisted more than 20,000 people in the process. These clinics have assisted individuals in restoring their driving privileges as well as assisted a number of returning citizens in getting their state ID and even registering them to vote⁴⁵.



*An applicant fills out a driver's license test at a Road to Restoration clinic held in Dearborn Heights in August 2024.
Photo courtesy Michigan Secretary of State.*

⁴⁰ MCL 552.628

⁴¹ MCL 764.9C

⁴² MCL 257.325

⁴³ MCL 257.239

⁴⁴ MCL 257.312a

⁴⁵ Eggert, David (2024, May 6). What a driver's license program for prisoners has to do with Michigan's economy. *Crain's Detroit Business*.

Findings & Feedback from the Field

In an attempt to understand the full scale of the issues faced by those directly impacted by these laws, Safe & Just Michigan participated in a number of road to restoration clinics over the past year. These clinics provided us with the opportunity to engage with the individuals directly impacted by these laws, and the organizations that advocate on their behalf. Both groups expressed frustration over the manner in which these laws have been implemented and the overall impact that these laws have had in perpetuating the cycle of poverty.

Much of the frustration is born out of the ease with which an individual's license can be suspended and/or revoked, along with the system's complicated network of rules and regulations, which requires the petitioner to jump through a series of administrative hoops only to later have their request denied by a hearing officer or to face additional driving sanctions due to unpaid court debt.

Discussions with those directly impacted by these rules have revealed the following points of concern.

The Law Criminalizes Poverty

As previously discussed, in most cases, an individual's ability to restore their driving privileges after they were suspended due to a failure to pay a court fine is directly tied to their ability to pay outstanding court fees. This naturally means that people experiencing poverty are less likely to have their sanctions lifted and to continue to drive illegally, leading to further criminal sanctions.

Despite the obvious correlation between payment of court fees and the individual's socioeconomic status, the law doesn't specifically allow for courts to consider the individual's "ability to pay," which implicates the excessive fines clause of both the state and federal constitutions⁴⁶. Additionally, failure to pay court fees may result in a warrant being issued and may ultimately result in jail time, which only serves to further the plight of people living below the poverty line.

Hearing Officer's Overbroad Discretionary Powers

Individuals who have had their license revoked as a result of DUI offenses, which is a very common situation (there are more than 25,000 DUI convictions annually in Michigan), are required to petition the Secretary of State to have their license restored after waiting to be eligible to appeal. Appeals are heard by a hearing officer who makes the final determination on whether driving privileges should be restored. Both petitioners and the attorneys representing

petitioners, have lamented the broad authority given to hearing officers under the Michigan Administrative Code, and the challenging burden petitioners must meet⁴⁷. They believe that this has led to hearing officers abusing their discretion under the law, leading to the denial of a majority of license restoration petitions.

Minor Non-Alcohol Related Moving Violations Impacting Eligibility

Petitioners have also expressed frustration at the fact that minor moving violations unrelated to drinking that occur while their license has been revoked, result in a longer wait period⁴⁸. These wait periods range from one to five years depending on the number of DUI convictions an individual accumulates over a period of time (see discussion below). These types of cases often arise when an individual who relies on a car to go to their job or to take their children to school drives even though their license has been revoked. When they are subsequently convicted for a minor moving violation (e.g., DWLS, No License on Person), this conviction is reported to the Secretary of State and results in an extension of the wait period before they are eligible to apply to have their license restored. Specifically, if the original wait period to file an appeal was one year, then the wait period is extended for one year from the date of the new conviction; or an additional five years, if the original wait period was five years⁴⁹.



A couple seeks help at a Road to Restoration clinic in Escanaba in July 2023. Photo courtesy Michigan Secretary of State.

⁴⁶ MCLS Const. Art. I, § 16

⁴⁷ Michigan Administrative Code R. 257.313

⁴⁸ MCL 257.904(10)

⁴⁹ Id.

Proposed Reforms

The thoughts and concerns expressed by those directly impacted by these laws can help provide us with much needed insight on how these laws can be improved upon moving forward. Ultimately, the current system falls short in its failure to consider the individual's economic circumstances before suspending their license, and in assigning broad discretionary powers to its hearing officers. Thus, targeted reforms aimed at addressing some of the deficiencies within the law are very much needed.

We propose one statutory change, which will need to be made through legislation; one change to court rules; and two changes to administrative rules governing the restoration process. The changes to court rules and administrative rules could be made through legislation or through rulemaking by the Michigan Supreme Court — which administers the court rules — and the Secretary of State's office respectively, which administers the rules for license restoration hearings.

Ability to Pay Assessment

First, an “ability to pay” assessment should occur before the court suspends a person's driver's license for failing to pay any outstanding criminal justice debt. Courts' failure to conduct any type of meaningful “ability to pay” assessment prior to suspending an individual's license remains one of the most persistent issues facing Michigan's license for payment system. This is particularly glaring considering the fact that courts are allowed to consider the defendant's ability to pay other forms of outstanding court debt. For example, Michigan courts are required to conduct an “ability to pay” analysis before sentencing an individual to any type of incarceration in an FCJ case. More specifically, MCR 6.425(E)(3)(a) provides that:

The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order⁵⁰.

As previously discussed, the law was recently amended to allow courts to conduct an “ability to pay” analysis before suspending licenses in child support cases as well⁵¹. In theory, unpaid child support is no different than any other case involving a failure to comply with a court judgment, yet individuals involved in non-child support cases have not been afforded the same level of protection under the law.

⁵⁰ MCR 6.425(D)(3)(a)

⁵¹ MCL 552.628

⁵² MCL 257.321A(3)(b)

⁵³ MCR 6.425(D)(3)(b)

⁵⁴ MCR 6.425(D)(3))

⁵⁵ *Id.*

⁵⁶ *Id.*

Applying the Manifest Hardship Standard to Mitigate the Impact of Court Debt

The \$45 clearance fee presents its own set of challenges, because it is assessed for each FAC/FCJ violation. Thus, individuals who have accumulated multiple FAC/FCJ violations across different courts find themselves owing a considerable amount in clearance fees alone⁵². These clearance fees are separate from both the court fines/fees and the reinstatement fee that is paid to the Secretary of State. In fact, the Secretary of State will not accept payment of the reinstatement fee until the court fines and clearance fee has been paid. Collectively, these fees can weigh heavily on those ordered to pay them.

Nevertheless, the impact of these fees can be mitigated either through amending existing law by removing the \$45 fee provision altogether, or a broader application of the “manifest hardship” rule that allows courts to waive these types of fees in certain cases⁵³. Since certain court fines and fees are statutorily mandated and cannot be waived, failure to pay these fees can often result in the individual's incarceration. However, the law prohibits courts from incarcerating individuals for their failure to pay a court ordered obligation if (1) the individual made a good faith effort to comply with the order and, (2) complying with the order would create a “manifest hardship⁵⁴.” When determining whether manifest hardship is applicable to a particular case, courts will look at the defendant's earning capacity, employment status, their employability, and their overall financial resources among other factors. Upon a showing of “manifest hardship,” courts have the flexibility to explore payment alternatives or to potentially waive some or all of the owed debt⁵⁵. The law allows courts to waive certain court fines and fees upon a showing of “manifest hardship⁵⁶.” Unfortunately, courts have not consistently applied the “manifest hardship” standard to waive clearance fees, and courts do not generally distinguish between the two types of fees since waivable and non-waivable court fees are often lumped together. We recommend that the State Court Administrator's Office take administrative action to ensure that courts apply the “manifest hardship” standard consistently and in the full range cases in which it applies.

Removal/Modification of Habitual Offender Rule

The legal presumption that an individual who has had multiple DUI convictions within a period of time is a habitual offender is also problematic. The law requires the petitioner to rebut the presumption by “clear and convincing evidence,” an extremely stringent standard that treats all petitioners as if they had the same level of risk. For example, the presumption fails to consider the length of time that may have passed since an individual’s last DUI conviction, which weakens the rationale for the presumption over time. As a result, individuals who have gone years without any additional DUI offenses are viewed in the same manner as someone who has had a far more recent DUI conviction. For some perspective, this means that someone who only has two DUI convictions (one DUI in 1992 and another in 1998), would still be considered a “habitual offender” if they tried to restore their license 2025 despite the fact that they may have gone over 25 years without any subsequent DUI convictions⁵⁷.

Removal or modification of the “habitual offender” presumption would provide some relief to petitioners moving forward. A legal recognition that years of sobriety strengthens the petitioner’s claim would present one less barrier that petitioners would have to overcome at their restoration hearing.

Limiting Hearing Officers’ Authority Under Rule 13

Those who have gone through the petition process have lamented the broad discretionary powers afforded to hearing officers under Rule 13. For example, hearing officers often require the petitioner to show some type of involvement in a support group such as Alcoholics Anonymous (AA), even though this isn’t a requirement under the law. While not explicitly listed as a requirement, the lack of AA involvement has consistently been used by hearing officers as a basis to deny petitions. This has proven to be a particular issue for individuals with older convictions who completed an AA program at the time of their last conviction but are no longer enrolled in the program. Since there is a legal presumption that the petitioner is a habitual offender with a substance abuse disorder, the petitioner can often find themselves in an uphill battle to overcome such presumptions, even when their conduct since their last DUI offense shows no evidence of substance abuse.



Advocates call for easier access to driver's license restorations at the "Restore Driver's Licenses for All" rally in Detroit in October 2023.

⁵⁷ MCL 257.303(4)(b)

Conclusion

The whole state benefits when more people have valid driver's licenses. Lack of transportation is a key determinant that impacts residents by limiting access to healthy food and medical care as well as employment or other economic opportunities. Drivers are able to accomplish everyday activities easily and with dignity. Business owners, parents, employees and caregivers can engage in their communities, participate in our state economy more fully and complete everyday tasks without fear of being pulled over by the police. Roads are safer and accidents are resolved more smoothly when more drivers have passed a standardized driving test and are insured.

In addition, auto insurance could be more affordable. When more drivers are insured, everyone's cost of auto insurance decreases. In addition, access to a driver's license means access to amenities and opportunities beyond one's immediate community, including new businesses and higher-paying jobs. It also would mean increased revenue for the local governments and the state of Michigan⁵⁸.

As long as the state continues to view driving as a privilege rather than a necessity to millions of people, that privilege can be easily taken away. Thus, change to both the license for payment and license restoration petition systems will require a fundamental shift in the manner in which the state approaches this issue. When compared to other states with significantly more lenient "license for payment" systems, Michigan has a considerable way to go. While not transformative, the recent reforms in 2018 and 2021 suggest that incremental change can be achieved. In some states, an inability to drive could be mitigated by a robust public transport system. However, many Michigan residents don't have access to such a system. Most of the state of Michigan is comprised of rural areas with a handful of urban centers. As previously discussed, even the state's largest urban center — Metro Detroit — has significant shortcomings in its public transportation system, which forces its residents to balance the need to drive to their job with the possibility of incurring further legal sanctions.

While there have been modest reforms to the state's "license for payment system," the current petition process remains heavily skewed against the petitioner, and will likely remain so without significant legislative changes.



In a state like Michigan with limited public transportation options, having a driver's license is crucial for getting to work, school or completing daily tasks. Reducing hurdles to restoring driver's licenses helps Michigan residents thrive and become reach economic security.

Additionally, the current license restoration petition system too often penalizes individuals out of fear of what they might do if their driving privileges are restored. That fear permeates the entire system to the point that any move to change the law is stifled. While understandable, that fear should not be the driving force behind policy and legislative decision making moving forward. Instead, legitimate public safety concerns should be balanced with the overwhelming need of many to drive. Safe & Just Michigan believes that the proposed reforms discussed in this report help strike a more appropriate balance and will lead to more lawful drivers on the road with less court debt, which in turn will lead to better mobility and safety for Michigan drivers and residents.

⁵⁸ See Simon Marshall-Shah, *State Policy Fellow of the Michigan League for Public Policy, "Taking Our Foot off the Brakes," December 2019.*



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