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TESTIMONY 2013

H.B. 104

Dear Members of the Committee,

Thank you for allowing me the opportunity to testify in favor of H.B. 104, which will address Texas' failed Driver Responsibility Program. This program has raised costs on counties, the State, and Texas families, while resulting in more unlicensed and uninsured drivers on Texas roads.

#### ORIGIN OF PROGRAM AND UNSUCCESSFUL OUTCOMES

Texas' Driver Responsibility Program (DRP) was created in 2003 to encourage more responsible driving and help fill a \$10 billion budget shortfall. Half of funding raised through the program goes towards repaying Texas trauma hospitals, which absorb hundreds of millions of dollars in uncompensated healthcare costs every year.

**Logistics:** The DRP requires drivers convicted of a certain number of low-level traffic offenses, or specific higher-level driving offenses, to pay an annual surcharge to maintain their drivers' licenses. The surcharge varies based on the number or type of offenses committed over the preceding 3 years; in some instances, individuals are required to pay the surcharge for 3 consecutive years, at amounts of \$1,000 or higher. Failure to pay the surcharge – assessed on top of court fines and criminal penalties – results in automatic license suspension.<sup>1</sup>

**Failures:** Despite its good intentions, the DRP has failed on every front. In fact, the program's failures are of such magnitude that former State Representative Mike Krusee, the original author of the bill creating the program, has now called it "a mistake," saying it is "past time to either revise or repeal the program."<sup>2</sup>

- **Extremely low collection rate.** Many DRP violators are unable to pay assessed surcharges. As a result, the DRP has **generated less than half of the revenue anticipated**. As of the end of fiscal year 2012, under 40% of the surcharges assessed since the program's inception had been collected,<sup>3</sup> despite changes made to the program during the 2009 and 2011 legislative sessions to induce more Texans to pay overdue surcharges.<sup>4</sup>
- **Failure to improve driver responsibility.** While overall traffic fatalities have decreased somewhat in recent years, data indicate that the DRP has **failed to change driver behavior as it relates to a significant traffic-related offense: drunk driving**. Since 2003 when the program was created, the percentage of fatal automobile crashes in Texas that involve alcohol increased from 26% to 34%.<sup>5</sup> Similarly, the percentage of traffic fatalities involving alcohol increased from 27% to 34% during that time.<sup>6</sup>
- **More unlicensed and uninsured drivers on Texas roads.** Unable to pay the surcharges (on top of criminal penalties and court fines), **nearly 1.3 million drivers now have invalid licenses**.<sup>7</sup> Since a valid driver's license is a requirement to purchase liability insurance, many of those drivers may no longer be able to insure their vehicles. As such, the program has likely increased the number of uninsured motorists on Texas roads – as well as increasing the cost of accidents with drivers lacking liability insurance.<sup>8</sup>
- **Greater case backlogs and undue county costs.** In the past three years, the DRP resulted in an additional 403,517 convictions for Driving While License Invalid,<sup>9</sup> **creating a new class of "criminals" and clogging court dockets**.<sup>10</sup> Similarly, individuals with DWI offenses are declining plea deals and choosing to go to trial in hopes of acquittal and avoiding crushing surcharges – leading to skyrocketing DWI caseloads for Texas courts. At the current statewide case disposition rates, it would take 16 years to dispose of the backlog.<sup>11</sup>

*Continued on reverse.*

The DRP also increases counties' jail costs. Because most drivers continue to drive despite defaulting on their surcharges, many of those drivers wind up in county jails due to accumulated, unpaid traffic tickets and/or for driving with a suspended license.<sup>12</sup> This puts more pressure on already crowded jails and, again, needlessly fills court dockets with petty cases, in turn increasing the financial burden on counties.

- **Fewer DWI convictions, and fewer opportunities for treatment.** In efforts to avoid exorbitant surcharges, more DWI cases are being prosecuted as reckless driving or other, lesser offenses.<sup>13</sup> In fact, DWI conviction rates declined 10% between 2003 and 2011,<sup>14</sup> which means that, in 2011 alone, **an additional 7,000 Texas drivers that were arrested and charged with a DWI were never convicted due to decreasing conviction rates. This makes Texans less safe** because many programs proven to change drivers' behavior and reduce DWI recidivism are typically required as a condition for probation, a common penalty for a first-time DWI conviction.<sup>15</sup>
- **Economic blow to Texas households and the workforce.** Survey data indicate that low-income drivers are more likely to lose their jobs, are less likely to find a new job, and are less able to afford increased insurance premiums after having their drivers' licenses suspended for unpaid surcharges.<sup>16</sup> As such, **DRP surcharges may be posing a substantial and disproportionate financial hardship on low-income drivers, increasing unemployment and the public costs associated with it, and hindering the ability of men and women to meet familial obligations.**
- **Double Jeopardy.** Many Texans consider the DRP a kind of backdoor double jeopardy.<sup>17</sup> Levying an administrative penalty on top of a criminal one for the same offense violates the spirit of the constitutional protection against double jeopardy. So, in addition to being ineffective and unfair, **the DRP represents a significant expansion of state power at the expense of individual liberty.**

#### **COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT H.B. 104 BY REPRESENTATIVES LARRY GONZALES, LON BURNAM, ALMA ALLEN, AND SYLVESTER TURNER**

- **H.B. 104 repeals Texas' Driver Responsibility Program.** It is long overdue that the State stop burdening Texas counties and families with programs that cause more harm than good.

#### **ALTERNATIVE FUNDING SOURCES FOR TEXAS TRAUMA HOSPITALS**

Given the DRP's multiple failures, Texas must seek out better ways to fund trauma centers. Below are a few options that lawmakers could consider to generate sufficient revenue to replace most of the funds that hospitals currently receive from the DRP:

- » Raise the cigarette tax by approximately \$0.15 per pack.<sup>18</sup>
- » Close a loophole to ensure that all cigarette manufacturers pay fees to the State of Texas for the sale of their product in Texas.
- » Increase the beer tax by approximately \$0.06 per six-pack (to a \$0.164 total rate per six-pack).<sup>19</sup>
- » Expand the hours or days during which alcohol may be sold in Texas.
- » Levy an approximate 1% tax on carbonated soft drinks.<sup>20</sup>
- » Draw down the existing fund balance in the "Designated Trauma Facility & Emergency Medical Services Account," which contains sufficient funds to maintain disbursements to trauma hospitals at their current levels through 2019.

For more comprehensive information on Texas' Driver Responsibility Program, see the Texas Criminal Justice Coalition's report, *The Driver Responsibility Program: A Texas-Sized Failure (2013)*.

## Citations

<sup>1</sup> Texas Transportation Code, Chapter 708. Also see <http://www.txdps.state.tx.us/DriverLicense/drp.htm>.

<sup>2</sup> "Critics: Law puts drivers on road to ruin," *Houston Chronicle*, March 21, 2010. Online at: <http://www.chron.com/disp/story.mpl//metropolitan/6922979.html>.

<sup>3</sup> Texas Department of Public Safety, email to State Rep. Sylvester Turner. *Data available upon request*.

<sup>4</sup> *Ibid.*

<sup>5</sup> "DUI (Alcohol) Crashes and Injuries by County (2003 - 2011)," prepared by the Texas Department of Transportation. Online at: [http://www.txdot.gov/txdot\\_library/drivers\\_vehicles/publications/crash\\_statistics/default.htm](http://www.txdot.gov/txdot_library/drivers_vehicles/publications/crash_statistics/default.htm).

<sup>6</sup> *Ibid.*

<sup>7</sup> Texas Department of Public Safety (DPS), email to State Rep. Sylvester Turner. *Data available upon request*.

<sup>8</sup> In 2000, a federal study analyzed costs from auto accidents, including medical costs, property damage, etc., attributing \$230.6 billion in costs to 16.4 million auto accidents nationwide, at an average cost of \$14,061 per accident.<sup>8</sup> Adjusting for inflation, that's \$18,748 in 2012 dollars. Multiplying that figure by the number of estimated crashes with surcharge-owing drivers in Texas, the DRP could be costing Texans \$300 million per year in uncovered damages from crashes, with uninsured motorists unable to obtain or keep insurance simply because those drivers could not or would not pay punitive drivers' license surcharges.

<sup>9</sup> Texas DPS, email to State Rep. Sylvester Turner. *Data available upon request*.

<sup>10</sup> Terrence Stutz, "Texas' steep surcharges for driving violations clog courts, increase DWI dismissals, ex-judge tells panel," *The Dallas Morning News*, April 27, 2010. Online at: <http://www.dallasnews.com/news/politics/texas-legislature/headlines/20100427-Texas-steep-surcharges-for-driving-8326.ece>.

<sup>11</sup> Judge David Hodges (Judicial Resource Liaison), Texas Center for the Judiciary, oral testimony before the Senate Committee on Criminal Jurisprudence, July 8, 2010. See Senate Committee's Interim Report, pp. 22-23. Online at: <http://www.senate.state.tx.us/75r/senate/commit/c590/c590.interimReport81.pdf>.

<sup>12</sup> Brandi Grissom, "Many Texans lose licenses in driver points program," *El Paso Times*, August 19, 2007.

<sup>13</sup> Judge David Hodges' oral testimony before the Senate Committee on Criminal Jurisprudence.

<sup>14</sup> Texas DPS, email to State Rep. Sylvester Turner. *Data available upon request*.

<sup>15</sup> See, for example, Victor E. Flango and Fred Cheesman, "When Should Judges Use Alcohol Monitoring as a Sentencing Option in DWI Cases?" *Court Review*, no. 44.

<sup>16</sup> Motor Vehicles Affordability and Fairness Task Force Final Report, February 2006. Online at: [http://www.state.nj.us/mvc/pdf/About/AFTF\\_final\\_02.pdf](http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf).

<sup>17</sup> John Henry, "Texas drunken driving surcharges meet economic reality," *Fort Worth Star Telegram*, December 6, 2010. Online at: <http://www.mcclatchydc.com/2010/12/06/v-print/104791/texas-drunken-driving-surcharges.html>. See also Brandi Grissom, "Rep. Berman files bill to end DPS surcharges," *Texas Tribune*, November 18, 2010. Online at:

<http://www.texastribune.org/texas-local-news/driver-responsibility-program/rep-berman-files-bill-to-end-dps-surcharges/>

<sup>18</sup> Figure estimated based on the fiscal note for HB1810 (2011). Online at:

<http://www.legis.state.tx.us/tlodocs/82R/fiscalnotes/pdf/HB01810I.pdf#navpanes=0>. Note that the suggested cigarette tax increase would not replace revenue lost to the General Revenue Fund if the DRP were abolished.

<sup>19</sup> "Taxing Sin," Center for Public Policy Priorities, January 14, 2009. Online at: <http://library.cppp.org/files/7/SinTaxes.pdf>. Based on the Comptroller's estimate for 2012 beer consumption in Texas, raising the beer tax by \$3.50 per barrel (or 16.4 cents per six-pack) would generate approximately \$66 million in revenues. *Data available upon request*.

<sup>20</sup> According *Beverage Digest*, national carbonated soft drink sales totaled \$75.7 billion in 2011. Assuming roughly equal per capita consumption, Texas consumption in that year was approximately \$6.3 billion. So a 1% tax on soda sales would generate approximately \$63 million per year. See "Soda Consumption Down Again, Revenues Up," *United Press International*, April 2, 2012. Online at: [http://www.upi.com/Business\\_News/2012/04/02/Soda-consumption-down-again-revenues-up/UPI-32701333344089/](http://www.upi.com/Business_News/2012/04/02/Soda-consumption-down-again-revenues-up/UPI-32701333344089/)