



**TEXAS CRIMINAL
JUSTICE COALITION**

**WRITTEN TESTIMONY
ON TEXAS' DRIVER RESPONSIBILITY PROGRAM**

**SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR
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REGARDING INTERIM CHARGE 3

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TEXAS CRIMINAL JUSTICE COALITION

The Texas Criminal Justice Coalition is committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

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Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director for the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to provide testimony in regards to Texas' Driver Responsibility Program, and on important reforms that can make Texas roads safer while reducing financial burdens on the public.

BACKGROUND

Created in 2003 as a revenue generator and originally pitched as protecting public safety, Texas' Driver Responsibility Surcharge has failed at every goal set for it. In Texas, 6% of drivers presently owe the surcharge, according to the vendor in charge of collections, and 1.2 million drivers have failed to pay. More than 60% of assessed surcharges go unpaid.

Seven years after implementation, Texas' rate of uninsured drivers remains one of the highest in the nation at 22%. And it is not just Texas: New Jersey and other states on whose programs Texas' was modeled have essentially similar results. Rather than encouraging drivers to remain licensed and insured, the program has stripped licenses from more than a million Texans, making it impossible for them to buy insurance. That includes many drunk drivers, who have the highest surcharges.

The Driver Responsibility Program (DRP) is a failed concept on many levels. We believe the surcharge should be abolished during the 82nd Texas Legislature, and that other budget cuts or additional revenue sources should be identified to replace funding for trauma center hospitals. If the Legislature chooses to retain the program, changes are necessary to make state law better fit with recently propagated agency rules, to reduce the financial burden on low-income drivers, and to reduce (instead of increase) the number of licensed and insured drivers on Texas roads.

PROBLEMS

Bipartisan Consensus on Program Flaws

The problems with the DRP program are well-known, and even many of the usual "tough on crime" advocates recognize the program is doing more harm than good. Legislators from both parties have taken initial steps toward mitigating some of these problems. In 2007, Senate Finance Committee Chairman Steve Ogden carried SB 1723, authorizing the Department of Public Safety to create Indigency, Amnesty and Incentive programs aimed at reducing the burden on surcharge-owing drivers. In 2009, state Rep. Sylvester Turner won passage of an amendment to make an indigency program mandatory and to allow judges to waive fees for those with incomes below 125% of poverty starting in 2011.

Critics of the DRP have arisen from across the political spectrum. Williamson County District Attorney John Bradley has called it "taxation masquerading as a public safety initiative."¹ But even that assessment may give the program too much credit. It has produced only a fraction of the revenue projected and spawned a vast array of unintended consequences, from boosting the number of unlicensed, uninsured drivers on the road to extraordinary financial hardships for low-income drivers, many of whom lose their jobs after their driver's license is revoked.

What's more, there appears to be little public-safety benefit from the draconian assessments. A spokesman for Mothers Against Drunk Driving recently told the *Houston Chronicle* that, "We can't point to anything that says that law has caused a decline in alcohol-related fatalities. We're not going to go nuts if the Legislature decides they want to repeal it." Even former state Rep. Mike Krusee, the original author of the legislation that created the surcharge, has said, "My feeling right now is we definitely made a mistake – that it's overly punitive ... I think it's past time to either revise or repeal the program."²

Confusion Reigns

Because the DRP is a civil surcharge that is technically unrelated to criminal charges, many people do not realize they owe the Driver Responsibility surcharge at the time they pay their tickets. When Texas' surcharge was created in 2003, Sen. Jeff Wentworth offered an amendment on the Senate floor late in the session which would have required notice about surcharge provisions at the time defendants go to court or pay their traffic fines.³ The Senate's unfortunate decision to table Wentworth's amendment haunts the program to this day, as people on whom the surcharge is assessed frequently think they have already cleared up the charges in question. Some drivers even believe the request for additional money on a ticket they have already paid is a scam. Confusion reigns surrounding all aspects of the program, and tougher collection methods have been tried but failed.

Economic Harms Outweigh Benefits

At a recent Texas Senate Criminal Justice Committee meeting, Sen. Kel Seliger asked a question that applies particularly well to the Driver Responsibility Program: "When do the people of the state of Texas pay more for the commission of the crime than the person who committed it?" The DRP costs Texans more than the state gains from additional revenue. As described more fully below, it reduces employment, increases costs from crashes involving uninsured motorists, and increases jail and court costs, thus placing an additional burden on counties.

– Reducing Employment and Economic Growth

The economic harm from this program far outdistances the revenue it generates.

Though the program never met expectations, failing to collect nearly 2/3 of assessments, surcharges remain a significant revenue source. But no one should lose sight of the fact that these surcharges pale in comparison to state revenues generated from property and sales taxes. Creating jobs and expanding the tax base must be the long-term engine for getting out of the current economic slump. For that reason, the state has a strong self interest in ensuring that employed, low-income Texans are able to pay off outstanding surcharges and keep their jobs.

The effect of surcharges on low-income drivers have been studied in detail in states with laws similar to Texas, and they have been found to reduce overall employment levels. A 2006 survey from the New Jersey Motor Vehicles Affordability and Fairness Task Force examined the surcharge's impact on drivers with licenses suspended due to their own Driver Responsibility Program, which levies the same license surcharges as the Texas DRP.⁴ According to that survey, among persons with suspended licenses whose annual income was under \$30,000: (1) 64% were

unable to maintain their prior employment following a license suspension; (2) only 51% of persons who lost their job following a license suspension were able to find a new employment; (3) 66% reported that their license suspension negatively affected their job performance; and (4) 90% indicated that they were unable to pay costs that were related to their suspended driving privileges. In addition, of those who were able to find a new job following a license suspension-related dismissal, 88% reported a reduction in income.

That makes Driver Responsibility surcharges a major cause of job loss, significantly exacerbating the current economic downturn. Roughly 1.2 million Texas drivers have lost their licenses because they defaulted on DRP surcharge debts. No doubt a significant number make less than \$30,000 per year.

– ***Increasing Costs to the Public from Uninsured Drivers***

The 1.2 million Texas drivers who have lost their licenses over surcharges cannot buy insurance until their fees are paid, but large numbers (if not virtually all) of them continue to drive.

Particularly problematic, DWI defendants who lose their license and insurance may also continue to drive, and if they harm someone the DRP makes it less likely they will have insurance to cover the damages. Since drunk drivers have the highest surcharges, they are also most likely to fail to pay and thus end up unlicensed and uninsured. Despite claims to the contrary at the time it was passed, the surcharge has resulted in *more* uninsured drunks on Texas roads, rather than reducing their number.

In 2007, there were 6,024,000 crashes⁵ in the United States and 205,741,845 licensed drivers,⁶ giving us an overall accident rate of 2.93%. If we assume those 1.2 million surcharge debtors who lost their licenses (and therefore became ineligible to purchase insurance) continued to drive, and that they crash at the same rate as other drivers, then by reducing the number of insured drivers, drivers who lost their license through the DRP are involved in approximately 35,160 accidents per year.⁷ If DRP drivers were the responsible party in half of those accidents (a conservative estimate, as drivers with bad driving histories could be more likely to be at fault), then the DRP would be responsible for an additional 17,580 accidents per year in which the party at fault is not insured.

How much do those crashes cost Texans in uncompensated damages? It is possible to estimate. 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.⁸ Adjusting for inflation, that's \$16,777 in 2007 dollars. Multiplying that figure by the number of estimated crashes caused involving surcharge owing drivers, we get an estimated \$294,939,660 in costs from crashes in Texas caused by uninsured drivers.

Add in lost premium income to insurers, not to mention lost Department of Public Safety (DPS) fees from the more than 200,000 fewer driver license renewals each year (roughly \$4.8 million annually), and nearly every facet of the Driver Responsibility Program is bleeding red ink – for the state and for average Texans – because of an array of unintended but now well-understood consequences from the program's ill-conceived design.

Harms to Public Safety

The Driver Responsibility Program harms public safety more than it helps it by increasing the number of unlicensed, uninsured drivers on the road – particularly drivers with DWI records – and by forcing counties to waste valuable resources locking up individuals who do not pose a threat to public safety but merely cannot afford the surcharge.

The DRP surcharge harms public safety in several significant ways:

– *Higher Rates of Unlicensed, Uninsured Drivers*

The 1.2 million drivers who lost their driver licenses because of the DRP and have not been able to get them reinstated cannot purchase insurance without a valid license. That means those drivers cannot insure their vehicles even if they wanted to do so, including drunk drivers who arguably are at greatest risk of causing damage to others. So high DRP surcharges force drivers of modest means – not just the poverty-stricken but even working class folks – to drive uninsured if they cannot pay both their surcharges and ongoing insurance premiums. Such situations are not the exception, but the general rule, with 2/3 of surcharges owed routinely going unpaid.

– *Jails Needlessly Filled with Individuals Convicted of Petty Offenses*

Because nearly everyone continues to drive despite defaulting on the surcharge, the Driver Responsibility Program has generated more than a million unlicensed, uninsured drivers who then frequently accumulate more tickets – a process that feeds on itself until the amounts owed can easily rise beyond average person's ability to pay. Eventually, many of those drivers wind up spending time in county jails because everyone with a defaulted surcharge who is still on the road is guilty of driving with a suspended license. After the US Supreme Court's ruling in *Atwater v. Lago Vista*, Texas police officers can legally arrest drivers and take them to jail just on that charge alone,⁹ but more frequently they end up in jail when accumulated tickets go to warrant. Since the surcharges are too high for most people to pay, these Class C misdemeanors accumulate until the driver is arrested at a traffic stop or during a warrant roundup, inevitably putting more pressure on often-already overcrowded local jails and needlessly filling up court dockets with petty cases.

Ironically, there is no evidence that license suspensions influence criminal behavior. The Texas Center for the Judiciary has recommended that the state do away with administrative license suspensions altogether, except those required in federal law,¹⁰ to keep these cases out of the courts and jails, and to maximize the number of licensed and insured drivers. We concur with that opinion. The Driver Responsibility Program far and away is responsible for the lion's share of administrative license revocations, and eliminating that aspect of the program would go a long way towards rectifying its most problematic aspects.

Abolition is Best Option

The DRP has made Texas roads less safe. Policy-makers should abolish the program. It is creating more harm than benefit, and it is rife with negative, unintended consequences. If, however, the 82nd

Texas Legislature chooses to continue this program, it should build on recent work done during the interim by the Public Safety Commission to modify the most harmful aspects of the DRP.

Impact of Proposed New DPS Rules

The Department of Public Safety proposed new rules to the DRP program on August 6, which established Indigence, Amnesty and Incentive programs (though the Incentive program will not be immediately implemented). We want to highlight in particular the excellent work by appointed members of the Public Safety Commission, who insisted on pushing forward with new rules despite initial reluctance among DPS staff. Public Safety Commissioners went out of their way to inform themselves on the subject and have demonstrated a genuine commitment throughout the process to ensuring these problems did not fall through the cracks.

The new rules were authorized in 2007 by SB 1723, legislation authored by Sen. Steve Ogden. The proposed rule would allow indigent clients (below 125% of poverty), as well as drivers who have defaulted on DRP payments in the past, to pay the lower of 10% of surcharges owed or \$250 to eliminate their past surcharge debt. In the case of the Amnesty program, DPS estimates an additional \$18 million will be generated because, by definition, defaulted drivers were not paying anything at all.

The proposed rules are a tremendous step forward – particularly the Amnesty program, which could raise millions in revenue and potentially enable hundreds of thousands of drivers to become licensed, insured, and street legal. Historically, according to Rebekah Hibbs at DPS, most defaulted drivers who pay off their fees do so between February and April each year when people receive their tax refunds,¹¹ so ideally the program should be implemented in time to hit that window in 2011.

DPS' proposed Amnesty rules take a straightforward approach, giving defaulted drivers in all circumstances and income levels the option to hit the reset button to get a fresh start. That is particularly important because of the rampant confusion surrounding the program described earlier, and the inability of judges under current law to reduce or waive the surcharge. At root, the state bears significant responsibility for creating and perpetuating an illogical, unworkable program. Given that history, an across-the-board Amnesty is the fairest possible approach.

Other program recommendations are as follows:

– *Indigence Program Needs Tweaking*

DPS' proposed Indigence program is also a big improvement over the status quo, but attorneys at the Texas Fair Defense Project (who we understand are submitting separate, more detailed testimony on this subject) have identified a glitch involving the interaction of new rules with state law, which deserves legislators' attention.

Rep. Turner's amendment to the DPS Sunset bill takes effect in September 2011 and will require judges to waive surcharges in cases where defendants are indigent. Because the proposed rules fail to waive surcharges for indigent drivers, there is a risk going forward that drivers might choose to seek relief through the courts instead of DPS' administrative program. That would be an unnecessary waste of time for the courts and could easily be rectified by DPS waiving

surcharges for indigents to match the legislatively mandated relief that courts will be giving. However, if DPS does not decide to waive surcharges for indigent drivers, the Legislature will have to reconcile these parallel programs both in the courts and at the agency to avoid overburdening county court judges.

– ***Do Not Delay Incentive Program***

Proposed DPS rules outline an Incentive program, as authorized by the Legislature, that would allow drivers assessed the surcharge to make a one-time lump sum payment (at a 30-50% discount) rather than pay the surcharge over three years. However, according to the rules published August 6 in the Texas Register, “Due to the estimated fiscal impact, the incentive program is not implemented with the adoption of the rule but will be implemented at the department’s discretion.”¹²

Estimates of significant financial losses from an incentive program are likely overstated. After all, many people make their first payment but do not complete them in the out years. It is possible that by getting 50-70% up front, the state would generate even more revenue (though it would be impossible to say without testing in the field). And since DPS will finally (rightly) help out drivers who defaulted in these proposed rules, it would be a shame not to also do something that benefits those who played by the rules.

If DPS fails implement the Incentive program along with Amnesty and Indigence programs in the proposed rules, the Legislature could require the agency to implement it, just like Rep. Turner’s amendment required implementation of an Indigence program. Obviously, we would prefer the DRP were abolished altogether. But if the Legislature chooses a different course, it should at least insist that these programs designed to mitigate the DRP’s worst attributes are fully implemented.

Focus on Public Safety Goals

Many of the DRP’s problems stem from its conflicting goals of improving road safety and maximizing revenue from what, in 2003, was considered a novel source. We believe the goal of the DRP program should be to maximize the number of licensed and insured drivers on the road – though in practice, it has radically reduced their number in pursuit of revenue that never materialized. When more than 60% of surcharges go unpaid, it makes little sense to put off reforms like waiving surcharges for indigents or implementing an Incentive program because it might reduce revenue more. The state is already foregoing most of the promised income, not to mention enduring an increasingly unacceptable array of negative unintended consequences. At this point in our history, fixing the program is more important than trying to squeeze more money from it.

SOLUTIONS THAT WILL CREATE REAL OPPORTUNITIES FOR TRUE DRIVER RESPONSIBILITY

- **Abolish the Driver Responsibility Surcharge.** This is a failed program that has generated only a fraction of promised revenue, hurt the economy, and made Texas roads less safe.

However, if the Legislature chooses not to end the program, they can still address its biggest problems if they do the following:

- **Waive Surcharges for Indigents.** If DPS' Indigence rules pass as proposed, the Legislature will need to reconcile them with the court-based indigence program mandated to begin in 2011. If relief under both programs is not the same, drivers may flock to the courts to have their surcharges waived, rather than pay \$250 through the administrative process, which will needlessly clog the courts for a task the agency could easily handle. We believe that surcharges for indigent drivers should be waived across the board.
- **Mandate Implementation of the Incentive Program.** Require DPS to implement the "Incentive" program described in their recently proposed rules.
- **Eliminate Administrative License Suspensions.** There is no evidence that license suspensions reduce crime – and the unintended consequences from so many unlicensed, uninsured drivers are too harsh to bear.
- **Empower Judges to Reduce or Waive Surcharges.** Beginning in 2011, state law will require judges to waive surcharges for indigent drivers with incomes below 125% of the federal poverty level, but not for other drivers who owe the surcharge. In their everyday work, however, judges generally have more authority to set fines and fees at manageable levels – or waive them altogether – for an individual defendant. They should also be able to do so for the surcharge.

* * *

I appreciate the opportunity to testify before this Committee and to offer our organization's ideas about this important issue. We hope that the Committee will strongly consider our policy recommendations, which can improve safety on Texas roads while reducing unnecessary financial burdens on the public.

Notes

¹ TDCAA User Forum, 9/20/06. Online at: <http://tdcaa.infopop.net/4/OpenTopic?a=tpc&s=347098965&f=157098965&m=9191047631&r=9281031731#9281031731>.

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

³ Floor Amendment 21, Third Reading, CS HB 3588, Senate Journal pp. 2963-2964. Online at: <http://www.journals.senate.state.tx.us/sjrn1/78r/pdf/sj05-28-f.pdf>.

⁴ 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.

⁵ NHTSA, "2008 Traffic Safety Annual Assessment – Highlights," June 2009. Online at: <http://www-nrd.nhtsa.dot.gov/Pubs/811172.pdf>.

⁶ US Department of Transportation, Federal Highway Administration, "Highway Statistics 2007, Licensed Drivers by Sex and Ratio to Population – 2007." Online at: <http://www.fhwa.dot.gov/policyinformation/statistics/2007/dl1c.cfm>.

⁷ To be clear, the same number of accidents would occur, according to this analysis, but 17,580 more of them have an uninsured driver as the responsible party.

⁸ US Department of Transportation, National Highway Traffic Safety Administration, "The Economic Impact of Motor Vehicle Crashes 2000," 2002. Online at: <http://www-nrd.nhtsa.dot.gov/Pubs/809446.PDF>.

⁹ Supreme Court of the United States, *ATWATER V. LAGO VISTA* (99-1408) 532 U.S. 318 (2001) 195 F.3d 242, affirmed.

¹⁰ Testimony to the Texas Senate Criminal Justice Committee by David Hodges, Judicial Liaison, Texas Center for the Judiciary, July 8, 2010.

¹¹ Author's notes. Comments by Ms. Hibbs at DPS working group on proposed Driver Responsibility rules, May 17, 2010.

¹² Proposed Driver Responsibility Program rules, 37 TAC §15.163, Texas Register, Aug. 6, 2010.