



WASHTENAW COUNTY

OFFICE OF THE PROSECUTING ATTORNEY

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POLICY DIRECTIVE 2021-10: POLICY REGARDING DRIVER'S LICENSE-RELATED OFFENSES

I. Introduction and Background

For many Michiganders, cars are a functional necessity of life. Lack of access to an automobile can make it exceedingly difficult for Michiganders to go to work, take their children to school, or access medical care. In many parts of the state, public transit is simply not an option. Regional public transit in southeast Michigan is consistently ranked the “worst” in America.¹ And the lack of public transit imposes real human costs. One high-profile example is James Robertson, who gained national prominence in 2015 after the *Detroit Free Press* highlighted his 21-mile daily walk to work—a commute that was forced upon him due to gaps in public transportation, and his inability to afford a car.²

Yet despite automobiles' centrality to life in Michigan, the State of Michigan currently makes it difficult for many Michiganders to lawfully drive. For one, Michigan currently forbids undocumented persons from obtaining driver's licenses. Prior to 2007, Michigan did not require proof of immigration status to obtain a license, and a 1995 Michigan Attorney General opinion provided that driver's licenses could not be denied on the basis of immigration status.³ In 2007, however, then-Attorney General Mike Cox issued a new opinion that barred the issuance of licenses to non-citizens.⁴ The Legislature subsequently changed the operative state laws to limit Michigan driver's licenses to those who are “authorized by federal law” to be in the United States.⁵

As things stand, then, many undocumented persons are unable to obtain a driver's license in Michigan. And it will take an act of the Legislature to change that state of affairs.⁶

¹ See Henry Grabar, *Can America's Worst Transit System Be Saved*, Slate (June 7, 2016), available at <https://slate.com/business/2016/06/detroit-has-americas-worst-transit-system-could-the-regional-transit-master-plan-save-it.html>.

² Bill Laitner, *Heart and Sole: Detroiter Walks 21 Miles in Work Commute*, The Detroit Free Press (Jan. 31, 2015), available at <https://www.freep.com/story/news/local/michigan/oakland/2015/01/31/detroit-commuting-troy-rochester-hills-smart-ddot-ubs-banker-woodward-buses-transit/22660785/>.

³ Michigan Immigrant Rights Center, *Immigrants and Michigan Driver's Licenses: Past, Present, and Future* (Oct. 2018), available at <https://michiganimmigrant.org/sites/default/files/MI-DLenglish-12-18-2018.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ It is worth emphasizing, moreover, that Michigan is increasingly out of step with many of its sister states in this regard. Fifteen states—from Utah to New Mexico to Pennsylvania to California—have enacted laws allowing undocumented persons to obtain driver's licenses. National Conference of State Legislatures, *States Offering Driver's Licenses to Immigrants* (Feb. 6, 2020), available at <https://www.ncsl.org/research/immigration/states->

But Michigan’s onerous restrictions on driving are not limited to undocumented persons. Under Michigan law, a driver’s license can be suspended as a result of a failure to pay traffic tickets, or to appear in court following a traffic ticket.⁷ Functionally, then, a person’s driving privileges can be revoked because they cannot afford to pay a fine, because they are unable to attend a court hearing, or because of simple human forgetfulness. Suspension of a license, of course, makes it unlawful for a person to drive in Michigan. But it does not change the functional need that many Michiganders have to drive a car—to get to work, to transport children, and to obtain the necessities of life.

Compounding matters, the act of driving without a valid license is criminalized in Michigan.⁸ Like so much in our criminal-justice system, that criminalization creates a vicious feedback loop between poverty and criminal consequences. A great many people in Michigan have their licenses suspended simply because they cannot afford to pay their traffic tickets. Once their license is suspended, however, they are subject to criminal sanctions, including mandatory court costs, fines, and fees. What is more, a criminal record can interfere with a person’s ability to secure or maintain employment, or to obtain stable housing. In many cases, then, the criminalization of driving without a valid license exacerbates the financial conditions that resulted in a person’s license being suspended in the first instance.

And for decades, overincarceration in Michigan has been driven largely by traffic offenses. According to Governor Whitmer’s Joint Taskforce on Jail and Pretrial Incarceration, “[t]raffic violations make up ½ of all criminal cases” in Michigan.⁹ “Driving without a valid license,” moreover, is “the third most common reason for jail admission” in Michigan.¹⁰

Those statewide statistics are reflected here in Washtenaw County. According to a preliminary analysis by the ACLU of Michigan, driving without a valid license was the *most common* reason people are booked into the Washtenaw County jail pretrial as of 2018.¹¹ And the criminal consequences associated with driving without a valid license are not borne equally. In Washtenaw County, “[d]riving without a valid license was a more common reason for jail admission among [B]lack people compared to white people.”¹²

Change, however, is on the horizon. The Michigan Legislature has recently amended the law, such that driver’s licenses will no longer be suspended for failure to pay traffic tickets, for

offering-driver-s-licenses-to-immigrants.aspx. Providing undocumented people licenses gives them access to road training, and removes the fear that they could be deported if caught driving without a license. Predictably, then, states that have extended driver’s license privileges to undocumented persons have seen safer roads, “a reduction in hit-and-run crashes and a steep decline in the number of people found guilty of unlicensed driving.” Chris Burrell, *Licensed Undocumented Immigrants May Lead To Safer Roads*, Connecticut Finds, Morning Edition (May 24, 2019), available at <https://www.npr.org/2019/05/24/719959760/licensed-undocumented-immigrants-may-lead-to-safer-roads-connecticut-finds>.

⁷ MCL 257.907(11).

⁸ MCL 257.904

⁹ Michigan Joint Task Force on Jail & Pretrial Incarceration, Report & Recommendations (Jan. 10, 2020) (“Joint Task Force Report”) at 10.

¹⁰ *Id.* at 3.

¹¹ ACLU Smart Justice Michigan, *Washtenaw County Statistics: Preliminary Findings* at 1 (July 10, 2019).

¹² *Id.* at 8

failure to appear for court appearances, and for moving violations that do not demonstrate a danger to the public.¹³ Those changes—which take effect on October 1, 2021—were enacted after the bipartisan Michigan Joint Task Force on Jail and Pretrial Incarceration urged legal changes that will eliminate the suspension and revocation of licenses “for actions unrelated to safe driving.”¹⁴ The Washtenaw County Prosecutor’s Office applauds these changes, and expects that, as time moves on, there will be far fewer people caught up in the criminal legal system as a result.

Yet, as outlined above, these laws will not take effect until later this year. And even then, there will still be drivers who come into the criminal legal system because their licenses were suspended—prior to the law’s enactment—for reasons unrelated to safe driving. The criminal charges that may accrue as a result of those charges can further trap people in a cycle of poverty and desperation. And it would be arbitrary to continue imposing such charges when change is just around the corner.

The Washtenaw County Prosecutor’s Office is well-aware that there are real and significant reasons that licenses are required as a precondition to drive. A driver’s license ensures that a person has passed a road test, and that they are fit to drive. At the same time, the Prosecutor’s Office cannot ignore the real and cascading harms that have resulted from harsh criminal penalties attached to the act of driving without a valid license.

Accordingly, as set forth in further detail below, it will be the policy of the Prosecutor’s Office to avoid, wherever possible, criminal charges that stem from the act of driving without a license *when the underlying reason for those prospective charges was disconnected from public safety*. The Prosecutor’s Office will, however, continue to charge cases in which public safety is implicated. These include cases in which a driver’s license was suspended because a person previously operated a motor vehicle under the influence of drugs or alcohol, and cases in which a person willfully opted not to obtain or maintain a valid driver’s license.

II. Policy Directive

1. Driving Without a Valid License: The Washtenaw County Prosecutor’s Office will avoid filing or pursuing criminal charges related to driving without a valid license where the underlying reason for the suspended license was not related to safe driving concerns. For purposes of this policy, “driving without a valid license” includes (1) driving with a suspended license, as well as (2) driving without a license where a person has not obtained one. Specifically:

(a) **Charging:** At the charging phase, if a warrant is requested for driving without a valid license, the Assistant Prosecuting Attorney (APA) responsible for the warrant determination will make best efforts to ascertain the underlying reason a person lacked a valid license, including looking up information about a person’s driving record, and the reason for suspension. If it is apparent that the reason for the lack of a valid license was

¹³ See 2020 Mich. Legis. Serv. P.A. 382 (H.B. 5853); 2020 Mich. Legis. Serv. P.A. 376 (H.B. 5846).

¹⁴ Joint Task Force Report at 4.

(1) suspension for non-payment of fines, costs or fees, (2) suspension for non-appearance at a court proceeding, or (3) the would-be defendant's immigration status, the APA will not file criminal charges. The APA may decline to charge outright, or may instead seek to have the officer who issued the ticket amend it to reflect only a civil infraction, such as an infraction for violating MCL 257.676b ("impeding traffic").

(b) Post-Charging Dismissal or Reduction: If a charge is filed for driving with a suspended license, and an APA becomes aware (through defense counsel or otherwise) that the reason for the lack of a valid license was (1) suspension for non-payment of fines, costs or fees, (2) suspension for non-appearance at a court proceeding, or (3) the would-be defendant's immigration status, the APA will not pursue those criminal charges. The APA may dismiss the case outright, or may instead drop the charges to a civil infraction, such as an infraction for violating MCL 257.676b ("impeding traffic").

(c) Willful Disregard for Licensing Requirements: Nothing in this Policy should be read to preclude APAs from filing or pursuing charges for driving without a valid license where there is reason to believe that the would-be defendant who is eligible for a driver's license made a willful decision not to obtain one. A United States citizen, for example, who has previously been cited for driving without a license, but continues to opt not to obtain one, may be charged under this Policy for driving without a valid license.

(d) Willful Disregard for Traffic Violations: Nothing in this Policy should be read to preclude APAs from filing or pursuing charges for driving without a valid license where there is reason to believe that the would-be defendant is willfully shirking an obligation to pay traffic tickets, or to appear in court on a traffic ticket. For example: A suspended driver's license that stems from a *repeated* failure to pay traffic fines, when it appears that the would-be defendant is able to pay, may be sufficient reason under this Policy to charge a would-be defendant for driving with a suspended license.

(e) History of Dangerous Driving: Nothing in this Policy should be read to preclude APAs from filing or pursuing charges for driving without a valid license where there is reason to believe that the would-be defendant's lack of a license stems from a history of dangerous driving. That a person has obtained moving violations in the past does not qualify as a "history of dangerous driving" under this subsection. Rather, "dangerous driving" means, among other things, that a person has a demonstrated history of reckless driving, driving under the influence of alcohol or a controlled substance, or has previously committed moving violations resulting in injury or death of another. This is not an exclusive list. A history of, e.g., driving 30+ miles per hour over the speed limit in a residential neighborhood, multiple high-speed citations in a very short time, and so forth may lead a reasonable APA to conclude, in their discretion, that a person has a history of dangerous driving.

(e) Driving Without a Valid License Causing Injury or Death: Charges under MCL 257.904(4) or (5) require the approval of the Warrant Review Supervisor, the Chief Assistant Prosecuting Attorney, or the Prosecuting Attorney. While the decision whether

or not to charge is on a case-by-case basis, it is the policy of the Prosecutor's Office that felony charges will not be authorized if the sole or primary reason for a person's lack of a license is poverty.

2. Foreign Driver's Licenses: In general, it is lawful for a person to drive in the State of Michigan with a valid driver's license from another country.¹⁵ Accordingly, the Prosecutor's Office should generally not file any charges related to the lack of a valid driver's license where the would-be defendant possessed a valid foreign driver's license. Any charges related to the lack of a valid driver's license should be immediately dismissed if the defendant provides evidence that they had a valid foreign driver's license.

3. Non-Conforming Foreign Licenses: In some circumstances, a driver may be in technical violation of Michigan law even if they possess a foreign driver's license. For example, a foreign driver's license may recently have expired, or the driver's license may be issued by a country that is not a party to the relevant treaties permitting their use of a license on Michigan roads.¹⁶ Such a license is referred to as a "non-conforming foreign license."

In cases where driver possessed a non-conforming foreign license, APAs generally should not file criminal charges related to the lack of a valid driver's licenses. Any charges related to the lack of a valid driver's license should be immediately dismissed if the defendant provides evidence that they had a non-conforming foreign license. Exceptions to this general rule should be considered only in circumstances involving a demonstrable risk to public safety, and must be approved by the Warrant Review Supervisor, the Chief Assistant Prosecuting Attorney, or the Prosecuting Attorney.

4. Operating Under the Influence: Nothing in this Policy should be interpreted to prohibit charges relating to operating a motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of a controlled substance. Such charges may be filed if they are supported by the evidence and in the interests of justice.

5. Affirmative Assistance in License Restoration: The Prosecutor's Office will inform defendants and defense counsel of this policy, and the willingness to dismiss charges if a violation is cured or if the reason for the violation is due to poverty or immigration status. APAs should provide reasonable assistance to courts, defense counsel, and *pro se* litigants in their efforts to clear their driving records and restore their licenses.

6. Forensic Processing and Confiscation: Nothing in this Policy shall be interpreted to prohibit or discourage the forensic processing, or confiscation and destruction, of any contraband seized as a result of any law enforcement action.

7. Other Charges Not Covered By This Policy: Nothing in this Policy shall be interpreted to prohibit or discourage the filing of charges that are not covered by this Policy.

¹⁵ See *People v. Acosta-Baustista*, 296 Mich. App. 404 (2012).

¹⁶ Those treaties include the 1949 Road Traffic Convention, and the 1943 Inter-American Automotive Traffic Convention.

For example: if a would-be defendant is stopped, lacks a valid license, and an officer conducts a lawful search of an automobile and discovers a weapon that links the would-be defendant to a homicide, the Prosecutor's Office may, consistent with this Policy, file homicide charges if the evidence dictates.

8. Charges Should Be Supported by Evidence and in the Interests of Justice: Nothing in this Policy shall be interpreted to mandate or encourage the filing of charges that are not covered by this Policy. If an APA believes that filing charges other than those covered by this Policy are not supported by the evidence, or are not in the interest of justice, the APA should not file those charges.

9. No Substantive Rights Created: This Policy is an exercise of discretion by the Washtenaw County Prosecuting Attorney's Office. Nothing in this Policy purports to affect the legality or propriety of any law enforcement officer's actions. Nothing in this Policy shall be interpreted to create substantive or enforceable rights.

10. Exceptions: Requests for deviations from this Policy shall be made in writing, and require the approval of the Chief Assistant Prosecuting Attorney or the Prosecuting Attorney. A deviation from this Policy will be granted only in exceptional circumstances, and where public safety requires that deviation.



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