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The Potholes of Offender-Funded Driving Diversion: How Minnesota’s Driving Diversion Program Fails the People It Is Supposed to Help

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The burden of paying for the United States’ justice system has shifted from the collective responsibility of taxpayers to the people facing prosecution.¹ States and municipalities hope to close revenue shortfalls resulting from tax cuts by increasing fines and fees for low-level offenses.² Some states have enlisted for-profit companies to collect unpaid court fines and fees through pay-only probation, essentially creating criminal justice debt collectors.³ Minnesota has implemented a new model for criminal justice debt collection: pay-only diversion. Minnesota legislators see pay-only diversion run by for-profit companies as a system where everyone wins: the program enrollee pays off criminal justice debts through an payment plan, prosecutors reduce caseloads by funneling misdemeanor offenders into a diversion program, the for-profit business makes money, and the state saves money and collects outstanding fines and fees.⁴ But

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1. PETER EDELMAN, NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA, at xv (2017) (originating in tax cuts in the Reagan era and the continued political expediency of reducing taxes, revenue gaps in state governments lead to criminal justice budget cuts and the shift of the cost to “the ‘users’ of the courts, including those least equipped to pay” through increased fees and fines).

2. *Id.* at xvi.

3. Neil L. Sobol, *Fighting Fines & Fees: Borrowing from Consumer Law to Combat Criminal Justice Debt Abuses*, 88 U. COLO. L. REV. 841, 858 (2017); CHRIS ALBIN-LACKEY, HUMAN RIGHTS WATCH, PROFITING FROM PROBATION: AMERICA’S “OFFENDER-FUNDED” PROBATION INDUSTRY 1 (Arvind Ganesan et al. eds., 2014), https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf.

4. See *Driver’s License Reinstatement Diversion Pilot Program Created for Individuals Charged with Driving Without a Valid License: Hearing on H.F. 589*

in reality, pay-only diversion greatly burdens program enrollees who are hit with hefty program fees, remain trapped in the criminal justice system, and rarely see any of the promised program benefits, such as license reinstatement.⁵ Furthermore, abusive collection tactics are rampant: private companies operate diversion programs with little to no state oversight. As a result, these programs prioritize profits above all else.⁶

In Minnesota, the Driving Diversion Program (“DDP”) is designed to help people who have racked up exorbitant fines and fees for driving with revoked or suspended licenses.⁷ DDP, run by the for-profit probation company Diversion Solutions, LLC, is completely offender-funded, costing the state and participating counties and cities nothing.⁸ Minnesota legislators are now looking to expand DDP statewide.⁹ However, the pilot program’s success has been overstated.¹⁰ While the intentions behind DDP are good, the program falls short due to a lack of accountability and a mismatch between private incentives and public goals.

Part I of this Note provides background on national trends in criminal justice, including the decriminalization of misdemeanors, increases in fines and fees in an offender-funded criminal justice system, privatized pay-only probation and diversion, and driver’s license suspension and revocation for non-driving-related behaviors

Before the H. Public Safety Policy & Oversight Comm., 2009 Leg., 86th Sess. (Minn. 2009) [hereinafter *Oversight Committee Hearing*] (statement of John Choi, Ramsey Cty. Att’y); Oversight Committee Hearing (statement of Kori Land, City Att’y for South St. Paul, West St. Paul, & Inver Grove Heights).

5. EDELMAN, *supra* note 1, at 11; Randy Furst, *Data Shows Driver’s License Reinstatement Program Is Less Successful Than Company Claims*, STAR TRIB. (May 21, 2017), <http://www.startribune.com/data-shows-driver-s-license-reinstatement-program-is-less-successful-than-company-claims/423247683/>.

6. Carl Takei, *From Mass Incarceration to Mass Control, and Back Again: How Bipartisan Criminal Justice Reform May Lead to a For-Profit Nightmare*, 20 U. PA. J.L. & SOC. CHANGE 125, 154 (2017).

7. SAINT PAUL CITY ATTORNEY’S OFFICE, DULUTH CITY ATTORNEY’S OFFICE, & MINNEAPOLIS CITY ATTORNEY’S OFFICE, 2017 LEGISLATIVE REPORT FOR LICENSE REINSTATEMENT DIVERSION PILOT PROGRAM PURSUANT TO LAWS OF MINNESOTA 2009, CH. 59, ART. 3, § 4, at 4 (2017), <https://www.leg.state.mn.us/docs/2017/mandated/170267.pdf> [hereinafter 2017 Legislative Report].

8. *Oversight Committee Hearing*, *supra* note 4 (statement of John Choi, Ramsey Cty. Att’y).

9. Bill Salisbury, *Unpaid Traffic Tickets—Debt Trap for the Poor—in MN Legislators’ Sights*, PIONEER PRESS (Mar. 31, 2017), <http://www.twincities.com/2017/03/31/mn-legislature-unpaid-traffic-tickets-debt-trap/>.

10. Furst, *supra* note 5.

and offenses. Part II analyzes DDP's originating legislation, program creation, and its operation. Part III examines DDP's problems and abuses and argues that these abuses stem from the mismatch between private incentives and public goals and a lack of accountability and oversight. Part III also provides recommendations to the Minnesota Legislature and suggests better methods to reduce citations for driving without a valid license and accountability provisions that should be enacted if DDP becomes permanent and statewide as intended.

I. Background on National Trends

Minnesota's Driving Diversion Program was born from a series of trends in state criminal justice systems: the decriminalization of misdemeanors, the shift to an offender-funded system, the use of pay-only probation outsourced to for-profit companies, and the use of driver's license suspension as a civil penalty.¹¹ These trends have had unintended consequences that harm the United States' poorest populations.

A. Decriminalizing Misdemeanors

Constituting 80% of state court dockets, misdemeanor offenses have grown at significant rates.¹² One reason for the growth is the net-widening effect that results from decriminalizing misdemeanors.¹³ In dealing with low-level offenders, courts have moved away from imprisonment toward greater reliance on fines and probation.¹⁴ States see decriminalization as an opportunity for "immense savings in the costs of prosecution, incarceration, and

11. 2017 Legislative Report, *supra* note 7, at 4–5; EDELMAN, *supra* note 1; Sobol, *supra* note 3.

12. *America's Massive Misdemeanor System Deepens Inequality*, EQUAL JUST. INITIATIVE (Jan. 9, 2019), <https://eji.org/news/americas-massive-misdemeanor-system-deepens-inequality>.

13. Sobol, *supra* note 3, at 859–60. *See also* Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611, 630 (2014) (studying increases in misdemeanor arrests in New York City and finding that the number of misdemeanor arrests almost doubled between 1993 and 2010); Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277, 281 (2011) (citing a study that found the volume of misdemeanor cases nationwide rose from five to more than ten million between 1972 and 2006).

14. Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055, 1059 (2015); Sobol, *supra* note 3, at 860.

defense counsel.”¹⁵ Decriminalization of misdemeanors provides courts with flexibility to require probation and/or payment of a fine when sentencing low-level offenders in cases where jail time seems like an excessive response.¹⁶ However, misdemeanor decriminalization¹⁷ has created “a more streamlined process and provid[es] fewer procedural protections than jailable offenses,” including the right to counsel.¹⁸ As a result, “decriminalization has led to a net-widening effect as municipalities have expanded coverage and imposed” fines and fees on more people.¹⁹ Decriminalizing misdemeanors into fine-only offenses may help individuals who can afford the fines or fees escape the criminal justice system and avoid incarceration.²⁰ Some offenders may benefit if they are able to attend incarceration-alternative treatment programs.²¹ This approach, however, leaves indigent defendants ensnared in the system in an unending debt trap.²²

B. The Shift to an Offender-Funded Criminal Justice System Through Ballooning Fines and Fees

Decades of tax cuts have left local governments scrambling to cut spending and find alternative forms of revenue.²³ Many states and municipalities have turned to fines and fees in order to fund

15. Natapoff, *supra* note 14, at 1072.

16. ALBIN-LACKEY, *supra* note 3, at 12.

17. Natapoff, *supra* note 14, at 1057 (“[I]n the misdemeanor context ‘decriminalization’ does not mean ‘legalization’ . . . it typically reduces penalties, mainly incarceration, for conduct that remains illegal and forbidden.”).

18. Sobol, *supra* note 3, at 858.

19. Sobol, *supra* note 3, at 858; Natapoff, *supra* note 14, at 1055 (adding that the shift to probation and fines for misdemeanor offenses has had distributive implications: poor and disadvantaged defendants, for whom fines and supervision are especially burdensome, get caught in a cycle of never-ending criminal justice debt, supervision, and possibly jail while well-resourced offenders are permitted to exit the process with relative ease).

20. Sobol, *supra* note 3, at 877.

21. Sobol, *supra* note 3, at 877.

22. Sobol, *supra* note 3, at 877.

23. Edelman, *supra* note 1, at xv; Sobol, *supra* note 3, at 859. See U.S. DEPT OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2–3 (2015), <https://perma.cc/2BK4-5AC2> (reporting findings from the investigation of the Ferguson Police Department following the fatal shooting Michael Brown (an unarmed black teenager) that showed there was a focus on generating revenue in police practices and that “the court primarily use[s] its judicial authority as the means to compel the payment of fines and fees that advance the City’s financial interests.”).

their criminal justice systems.²⁴ Some cities “incentivized by their own budget goals and shortfalls, encourage local police to increase the number of citations in order to drive up revenue,” with municipal courts acting as the “mechanism for collection.”²⁵ In the U.S. over ten million individuals are estimated to have criminal justice debt, over \$50 billion and growing.²⁶ When defendants cannot pay their criminal justice debt,²⁷ they may face more fines, fees, extended probation, civil penalties (such as driver license suspension), or jail.²⁸

In 1983, the Supreme Court held that it is unconstitutional to jail an indigent person for failure to pay a fine if that person made “sufficient bona fide efforts to acquire the resources to do so”²⁹ and that “the court must consider alternative measures of punishment other than imprisonment.”³⁰ Despite this ruling, people in many states who cannot pay off their accumulating criminal justice debt often find themselves jailed for low-level, fine-only offenses for no reason other than nonpayment of those fines and court costs.³¹ Fortunately, in Minnesota, arrest warrants are not issued for failure to pay fines; however, failure to pay can result in license suspension.³²

24. Natapoff, *supra* note 14, at 14.

25. Whitney Bennis & Blake Strode, *Debtors' Prison in 21st-Century America*, ATLANTIC (Feb. 23, 2016), <https://www.theatlantic.com/business/archive/2016/02/debtors-prison/462378/>.

26. Sobol, *supra* note 3, at 855.

27. Criminal justice debt refers to the amassing of fees and fines from all stages of the criminal process including pre-conviction, sentencing, incarceration, and post-release supervision. Sobol, *supra* note 3, at 841–42; Lauren-Brooke Eisen & Jessica Eaglin, *Poverty, Incarceration, and Criminal Justice Debt*, TALK POVERTY (Dec. 2, 2014), <https://talkpoverty.org/2014/12/02/criminal-justice-debt/>.

28. Eisen & Eaglin, *supra* note 27.

29. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

30. *Id.* at 661 (adding that the state is justified in using imprisonment as a sanction to enforce collection when a probationer who has the means to pay willfully refuses to pay a fine or restitution).

31. See Torie Atkinson, Note, *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors' Prisons*, 51 HARV. C.R.-C.L. L. REV. 189, 217–25 (2016) (adding that criminal justice debt has some of the same effects as consumer credit debt, including: “poor credit, feelings of shame and emotional distress, and an increased risk of losing transportation, housing, work, and good health” in addition to state actions that may include “license suspension, loss of community services and government benefits,” and potentially the issuance of arrest warrants).

32. 2017 Legislative Report, *supra* note 7, at 4.

C. Privatizing Criminal Justice Debt Collection

When the criminal justice system becomes a source of revenue, extraction of that revenue is an important goal of the criminal process.³³ To eliminate operation costs entirely, municipalities and states privatize criminal justice debt collection, which allows for-profit companies to collect debt free of cost to the taxpayers by passing off the hefty price to the offender.³⁴ Pay-only probation is used for low-level offenders who face fines and fees totaling an amount beyond their ability to pay immediately.³⁵ Offenders who can pay off their fines and fees entirely are able to close the cases against them and avoid supervision.³⁶ Offenders who cannot pay their fines and court costs are sentenced to probation where the sole substantive condition is making regular and timely payments as part of a long-term payment plan.³⁷ Probation officers do not supervise such offenders; instead, they “collect money, and . . . use the credible threat of incarceration to coerce offenders into paying down their fines along with their probation fees.”³⁸ Offender-funded pay-only probation, often contracted out to for-profit private probation companies, means that in addition to paying off their criminal justice debt, probationers are required to “pay for the ‘privilege’ of being put on probation” by way of supervision fees.³⁹ When municipalities outsource pay-only probation to private, for-profit companies, the companies operate with little oversight and “often employ aggressive intimidation tactics to coerce repayment.”⁴⁰

Privatized diversion has emerged as a new revenue-generation and debt-collection tactic.⁴¹ Diversion differs significantly from

33. Natapoff, *supra* note 14, at 1100.
Natapoff, *supra* note 14, at 1100.

35. ALBIN-LACKEY, *supra* note 3, at 25–26.

36. ALBIN-LACKEY, *supra* note 3, at 25.

37. ALBIN-LACKEY, *supra* note 3, at 26.

38. ALBIN-LACKEY, *supra* note 3, at 26; Neil Sobol, *Charging the Poor: Criminal Justice Debt and Modern Day Debtor’s Prisons*, 75 MD. L. REV. 486, 518–19 (2016) (“Defendants unable to pay fines upfront are subject to additional fees and remain in the system, even though they pose no threat to society and their underlying offenses, such as traffic violations, typically do not require incarceration.”).

39. ALBIN-LACKEY, *supra* note 3, at 26.

40. Atkinson, *supra* note 31, at 206.

41. Shaila Dewan & Andrew W. Lehren, *After a Crime, the Price of a Second Chance*, N.Y. TIMES (Dec. 12, 2016), <https://www.nytimes.com/2016/12/12/us/crime-criminal-justice-reform-diversion.html>.

probation. Probation is the “suspension of sentence by the court,” meaning an offender on probation will remain in the community through the duration of the sentence, unless that offender engages in conduct that violates the conditions of probation, in which case the sentence would be carried out.⁴² Probation typically is imposed after a finding of guilt.⁴³ Diversion, though, happens beforehand and instead of suspending a jail sentence, suspends criminal prosecution of the offense “subject to the defendant’s consent to treatment, rehabilitation, restitution, or other noncriminal or nonpunitive alternatives.”⁴⁴ Diversion is meant “to relieve overburdened courts and crowded jails, and to spare low-risk offenders from the devastating consequences of a criminal record.”⁴⁵ In many jurisdictions, however, it has become a source of revenue collection.⁴⁶ Diversion is typically privatized and offender-funded; therefore, it may come at a cost that is out of reach for many low-income offenders.⁴⁷ As a result, some low-income offenders do not get the option of diversion or are terminated from diversion for failure to pay and then subjected to the original charge.⁴⁸

D. *Withdrawing Driving Privileges for Social Non-Conformance Offenses*

Each year across the United States, an increasing number of drivers are suspended or revoked for non-driving related reasons following “significant increase[s] in legislated social non-conformance suspensions.”⁴⁹ Social non-conformance suspensions

42. Lewis Diana, *What Is Probation?*, 51 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 189, 190 (1960).

43. Daniel E. Feld, Annotation, *State Court’s Power to Place Defendant on Probation Without Imposition of Sentence*, 56 A.L.R. 3d 932, § 2[a] at 935 (1974).

44. Debra T. Landis, *Pretrial Diversion: Statute or Court Rule Authorizing Suspension or Dismissal of Criminal Prosecution on Defendant’s Consent to Noncriminal Alternative*, 4 A.L.R. 4th 147, 1[a] at 150 (1981) (“Pretrial diversionary programs are premised on the belief that it is not always necessary, and in fact, may often be detrimental, to pursue formal courtroom prosecution for every criminal violation.”).

45. See Dewan & Lehren, *supra* note 41.

46. See Dewan & Lehren, *supra* note 41.

47. See Dewan & Lehren, *supra* note 41. (“Some prosecutors said fees were necessary to cover programs’ costs. In other cases, defendants were used as piggy banks.”).

48. See Dewan & Lehren, *supra* note 41.

49. Suspended/Revoked Working Group, *Best Practices Guide to Reducing Suspended Drivers*, AM. ASS’N MOTOR VEHICLE ADMINS., 5 (Feb. 2013), <https://www>

“have no relationship to an individual’s ability to drive, their moving violation history, or any other factors related to the operation of a motor vehicle.”⁵⁰ The rationale behind social non-conformance suspensions is that it “provides effective, sustainable motivation to encourage individuals to comply with court ordered or legislated mandates to avoid suspension”; however, this lacks empirical support.⁵¹ When people lose driving privileges for non-driving related reasons, evidence suggest that those people take the suspension less seriously.⁵² At least 75% of people who have had their driving privileges withdrawn continue to drive.⁵³ Penalizing social non-conformance through license suspension and revocation creates significant burdens on courts, prosecutors, motor vehicle agencies, and law enforcement.⁵⁴ Additionally, such penalties “require[] the driver licensing authority to operate outside of their core mission of ensuring highway safety.”⁵⁵

License suspensions disproportionately affect low-income communities, especially low-income communities of color.⁵⁶ First, when failure to pay a traffic fine results in license suspension, “poor people get their licenses suspended much more often than those with means, as they don’t have the cash to pay.”⁵⁷ These penalties make “driver’s licensing about whether you can pay a fine based on middle-class incomes, not because of how well you drive.”⁵⁸ The issue is compounded for low-income people of color who are pulled over by law enforcement more often than are Whites.⁵⁹

.aamva.org/workarea/downloadasset.aspx?id=3723 [hereinafter AAMVA].

50. *Id.*

52. Joseph Shapiro, *Can't Pay Your Fines? Your License Could Be Taken*, NPR (Dec. 29, 2014), <https://www.npr.org/2014/12/29/372691960/cant-pay-your-fines-you-r-license-could-be-taken>.

53. *Id.*

54. 2017 Legislative Report, *supra* note 7, at 4; AAMVA, *supra* note 49, at 12.

55. AAMVA, *supra* note 49, at 22.

56. Joshua Aiken, *Reinstating Common Sense: How Driver’s License Suspensions for Drug Offenses Unrelated to Driving Are Falling out of Favor*, PRISON POLY INITIATIVE (Dec. 12, 2016), <https://www.prisonpolicy.org/driving/national.html>; Alana Semuels, *No Driver’s License, No Job*, ATLANTIC (Jul. 15, 2016), <https://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/>.

57. Semules, *supra* note 56.

58. Semules, *supra* note 56 (quoting Nichole Yunk-Todd).

59. Elizabeth Davis et al., *Contacts Between Police and the Public, 2015*, OFFICE OF JUSTICE PROGRAMS 4 (Oct. 2018), <https://www.bjs.gov/content/pub/pdf/cpp15.pdf>; David Montgomery, *Data Dive: Racial Disparities in Minnesota Traffic Stops*, PIONEER PRESS (Jul. 8, 2016), <https://www.twincities.com/2016/07/08/data-dive-raci>.

Those who lose their driving privileges face many adverse employment effects.⁶⁰ New Jersey’s Motor Vehicles Affordability and Fairness Task Force conducted a study on the impact of non-driving related license suspensions.⁶¹ The Task Force discovered that license suspensions negatively affected respondents across all income levels and age groups: 42% reported job loss after suspension, 45% reported an inability to find employment after suspension, and 58% stated that suspension negatively impacted job performance.⁶² Low-income drivers fared far worse.⁶³ Among low-income respondents, the Task Force found that 64% were not able to keep a job after suspension; 51% reported an inability to find employment after suspension; and 66% indicated that the suspension negatively affected job performance.⁶⁴ Additionally, among low-income respondents, 65% indicated that they were unable to pay increased insurance costs; 64% experienced other costs related to suspension; and 90% of those who experienced other costs were not able to pay those costs.⁶⁵ Many unlicensed drivers continue to drive which can lead to longer suspensions and more fines and fees.⁶⁶ Without a valid license—a requirement for many jobs—people struggle to find well-paying jobs or maintain employment without reliable transportation.⁶⁷ As a result, low-income, unlicensed drivers often become trapped in this cycle.⁶⁸

II. Overview of Minnesota’s Driving Diversion Program

After recognizing the cyclical problems low-income, unlicensed drivers in Minnesota were facing, the State Legislature created a pilot relicensing program that has become known as the Driving Diversion Program.

al-disparities-in-minnesota-traffic-stops/.

60. Semules, *supra* note 56.

61. See ALAN M. VOORHEES ET AL., MOTOR VEHICLES AFFORDABILITY & FAIRNESS TASK FORCE: FINAL REPORT (2006), <https://dspace.njstatelib.org/xmlui/bitstream/handle/10929/21212/a9392006a.pdf?sequence=1&isAllowed=y>.

62. *Id.* at 38.

63. *Id.*

64. *Id.*

65. *Id.*

66. See *Oversight Committee Hearing*, *supra* note 4 (statement of Kori Land, City Att’y for South St. Paul, West St. Paul, and Inver Grove Heights); Shapiro, *supra* note 52.

67. 2017 Legislative Report, *supra* note 7, at 8.

68. *Oversight Committee Hearing*, *supra* note 4 (statement of Kori Land).

A. *Minnesota's Unlicensed Drivers Problem*

In Minnesota, an estimated 700,000 people are driving after the state has withdrawn their driving privileges.⁶⁹ While many drivers are suspended or revoked for driving-related offenses (such as driving under the influence, careless or reckless driving, or repetitive speeding),⁷⁰ many have lost driving privileges for social non-conformance offenses including suspensions for failing to pay child support, failing to appear in court, or failing to pay a traffic fine or parking ticket.⁷¹ Though an initial violation may not carry potential jail time, if the driver fails to pay the fine, gets suspended as a result of nonpayment, and continues to drive after the suspension, they may face up to 90 days in jail, a \$1,000 fine, or both in addition to a reinstatement fee and a longer suspension.⁷² Driving after suspension (“DAS”) or driving after revocation (“DAR”)⁷³ are payable misdemeanor offenses,⁷⁴ meaning they “can be disposed of by paying a fine rather than appearing in court.”⁷⁵ Payment of a fine constitutes a guilty plea.⁷⁶ Upon pleading guilty to DAS or DAR—either by paying fines out of court or appearing in court—defendants face the additional consequence of further license suspension.⁷⁷ This creates a “revolving door” for many offenders.⁷⁸ After paying the fines and fees of the first offense, the license is further suspended; therefore, if the re-suspended person continues to drive they risk more misdemeanor charges and more fines and fees.⁷⁹ Many drivers with suspended or revoked licenses struggle to get reinstated because they have substantial

69. 2017 Legislative Report, *supra* note 7, at 4.

70. MINN. STAT. § 171.18.

71. *See* 2017 Legislative Report, *supra* note 7, at 5; AAMVA, *supra* note 49, at 12.

72. *See* 2017 Legislative Report, *supra* note 7, at 4.

73. MINN. STAT. § 171.24 Subd. 1–4.

74. *2017 State Payable List Traffic/Criminal*, MINN. JUD. BRANCH (2017) http://mncourts.gov/mncourtsgov/media/scao_library/Statewide%20Payables/2017-Traffic-Criminal-Payables-Lists.pdf.

75. Max A. Keller, “Payable” Offenses, BENCH & B. MINN. (Oct. 15, 2012), <http://mnbenchbar.com/2012/10/payable-offenses/>.

76. MINN. R. CRIM. P. 23.03 subd. 3.

77. MINN. R. 7409.2200, subpart 4.

78. *Oversight Committee Hearing*, *supra* note 4 (statement of Kori Land).

79. *Oversight Committee Hearing*, *supra* note 4 (statement of Kori Land) (“[I]f they simply pay the citation; they get suspended again. And they continue to drive because they continue to need to get to work, or get to pick up the kids, or get groceries.”).

outstanding fines and fees, payment of which is required for reinstatement.⁸⁰

B. The Legislature's Solution: The Driving Diversion Program

Minnesota created the DDP to help people who have suspended driving privileges by allowing them to drive while they pay off their criminal justice debt over a period of time.⁸¹ The legislature recognized that license suspension dramatically affects low-income drivers who cannot afford to stop driving, particularly those of color.⁸² Diversion Solutions reported that Black participants make up 54% of DDP's participants compared to 33% White participants, and 6% Hispanic.⁸³ According to the U.S. Census Bureau, Minnesota's racial demographics are approximately 85% White, 6.2% Black, and 5.2% Hispanic.⁸⁴

In 2009, the Minnesota Legislature created the license reinstatement pilot program for a few selected cities.⁸⁵ Subsequent legislation extended the program in 2010, 2011, and 2013.⁸⁶ Pursuant to the law, participating cities “may establish a license reinstatement diversion pilot program” in which drivers charged with DAS or DAR who have not yet pleaded guilty may be issued a “diversion driver's license” while participating in the diversion program and after paying a license reinstatement fee.⁸⁷ Program participants are required to “(1) successfully attend and complete, at the individual's expense, educational classes that provide . . . information on drivers' licensure; (2) pay . . . all required fees, fines, and charges . . .; (3) comply with all traffic laws; and (4) demonstrate compliance with vehicle insurance

80. 2017 Legislative Report, *supra* note 7, at 8.

81. 2017 Legislative Report, *supra* note 7, at 4–5.

82. *See* Salisbury, *supra* note 9.

83. According to Scott Adkisson, Diversion Solutions CEO, these percentages are from class instructors visually surveying the participants attending the DDP class. Telephone Interview with Scott Adkisson, CEO, Diversion Solutions, LLC (Jan. 2, 2018).

84. *QuickFacts: Minnesota*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/MN> (last visited Feb. 14, 2019).

85. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4.

86. 2017 Legislative Report, *supra* note 7, at 4.

87. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4.

requirements.”⁸⁸ The statute also states that a participant’s enrollment in the diversion program may terminate if the program’s “third-party administrator” finds that the individual is “no longer satisfying the conditions of the diversion. . .[or]. . .is guilty of a moving traffic violation or failure to provide vehicle insurance.”⁸⁹

The statute requires a biennial report from “the commissioner of public safety and each eligible city that participates in the diversion program . . . concerning the results of the program.”⁹⁰ The report must contain the following information: (1) recidivism rates; (2) the number of unlicensed drivers continuing to drive; (3) the amounts cities, counties, and the state have collected through the payment of fees and fines; (4) educational support the program provides participants; (5) the program’s total number of participants and the number of participants that have been terminated; and (6) recommendations for necessary legislative changes.⁹¹

Diversion Solutions, LLC (“Diversion Solutions”) developed and administers DDP and has been the only company to contract with participating cities and counties during the pilot program.⁹² The legislation allows participating cities or counties to contract with other third-party administrators, but Diversion Solutions is the primary vendor in the market.⁹³ A driver with a DAS or DAR citation may hear about the program from the officer who gave them the citation, from the prosecutor at their first court appearance, or from a non-profit support group.⁹⁴ When a driver contacts Diversion Solutions to request admission into the program, Diversion Solutions consults with Minnesota’s Department of Public Safety, the Department of Vehicle Services, and the prosecutor to determine whether the driver is eligible to participate.⁹⁵ Participants must attend a class on driving laws and the program’s

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. 2017 Legislative Report, *supra* note 7, at 6, 19.

93. Furst, *supra* note 5.

94. 2017 Legislative Report, *supra* note 7, at 6.

95. Drivers are ineligible to participate in DDP for numerous reasons including if they have outstanding warrants, owe child support, have a “revoked” license status due to a DWI offense, have an invalid license in another state, and if they do not have an open citation in a participating city or county. 2017 Legislative Report, *supra* note 7, at 6, 9.

requirements.⁹⁶ Participants must also provide proof of valid insurance, pay a license reinstatement fee, and take a written and driving test to receive a valid driver's license.⁹⁷ From that point on, as long as the participant remains in good standing with the DDP, a notation will appear in the participant's driving record alerting law enforcement "that the individual is a 'Participant in Diversion Pilot Program' and thus subject to all of the conditions of the DDP and Minnesota Laws."⁹⁸ Diversion Solutions creates a payment plan, lasting no longer than eighteen months, for each participant.⁹⁹ This payment plan includes Diversion Solutions' \$350 service fee.¹⁰⁰

The statute states that "the original charge against the individual . . . may be reinstated against an individual whose participation in the diversion program terminates" for failure to "satisfy[] the conditions of the diversion."¹⁰¹ One of the conditions of diversion is to make payments according to the payment plan designed by Diversion Solutions.¹⁰² Therefore, if a DDP participant is unable to keep up on monthly payments, that participant faces the re-withdrawal of their license and is subject to the original DAS or DAR charge with a potential sentence of up to a \$1,000 fine and 90 days in jail.

III. Analysis of DDP's Privatized Pay-Only Diversion Model and How That Model Leads to Abuses

For-profit, pay-only diversion is a flawed model that puts profits and cutting costs above quality performance. The public goal behind DDP—reducing the number of unlicensed drivers on the road¹⁰³—does not fit with how the third-party, for-profit company is incentivized, therefore leading to poor quality of service, unmet promises, and abusive practices.

Holding offenders accountable is a top priority, but Diversion Solutions and other for-profit diversion companies should also be held accountable. The Minnesota legislature could enact several

96. 2017 Legislative Report, *supra* note 7, at 6, 9.

97. 2017 Legislative Report, *supra* note 7, at 6, 9.

98. 2017 Legislative Report, *supra* note 7, at 6, 9.

99. 2017 Legislative Report, *supra* note 7, at 6.

100. 2017 Legislative Report, *supra* note 7, at 6.

101. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4.

102. 2017 Legislative Report, *supra* note 7, at 6.

103. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4.

accountability measures that may help reduce DDP's third-party administrator abuses. Additionally, alternative solutions for reducing the number of people driving on revoked or suspended licenses exist and should be explored.

A. *DDP Is Privatized, Pay-Only Diversion*

DDP is a type of pay-only diversion program. Failure to comply with the conditions of DDP, including the failure to make payments, maintain valid car insurance, or attend a class, does not immediately result in the issuance of an arrest warrant—a possible result for a probation violation—however, terminated DDP participants lose their driving privileges again and face the original DAS or DAR charge.¹⁰⁴ DDP allows counties and municipalities to push thousands of low-level offenders out of the courtroom and into the hands of for-profit companies.¹⁰⁵

DDP is completely offender-funded and gives private companies unregulated power to determine how and how much offenders pay for their service.¹⁰⁶ Currently, participants enrolled in DDP pay Diversion Solutions \$350 as part of their payment plan, though the statute sets no limit on how much third-party administrators can charge offenders for their services.¹⁰⁷ The statute also grants third-party administrators the power to determine what fees are to be paid, whether third-party administrators can charge additional fees for late payments, and whether third-party administrators can increase fees for participants with longer payment plans.¹⁰⁸ Diversion Solutions collects this program fee first once participants begin making payments according to their payment plan.¹⁰⁹ According to Diversion Solutions' CEO Scott Adkisson, neither DPS, the prosecutor, nor Diversion Solutions have an evaluation process to determine whether an offender can afford to pay before a

104. *Id.*

105. 2017 Legislative Report, *supra* note 7, at 6.

106. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4; 2017 Legislative Report, *supra* note 7, at 8.

107. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws., ch. 59 art. 3 § 4.

108. 2017 Legislative Report, *supra* note 7, at 8.

109. Payment of the reinstatement fee must be made upfront, but it is typically paid directly to DPS. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4; Interview with Scott Adkisson, *supra* note 83.

participant is admitted into the program.¹¹⁰ Without a pre-admittance financial evaluation, some participants are admitted even though they are unlikely to complete the program because of a lack of financial resources or stable income. Once admitted, these participants face termination for failure to pay after a few months of making payments.

Compounding the issue, the first monthly payments all go toward Diversion Solutions' \$350 program fee rather than towards participants' criminal justice debt.¹¹¹ For example, if a person who owes \$1,000 in unpaid fines and fees begins making \$100 monthly payments but fails to continue making scheduled payments after the first five months, the participant will still owe \$850 in criminal justice debt though they have paid \$500 while in DDP. Diversion Solutions is incentivized to enroll as many participants as possible even if a participant likely will not be able to complete diversion—either from failing to make consistent payments or their inability to get insurance—because Diversion Solutions' revenue depends on its ability to collect money from participants. Without increased accountability, oversight, and a removal of the profit-incentivizing framework, DDP—whether run by Diversion Solutions or a different third-party administrator—will have an incentive to put profits over quality performance, and participants will be the ones who pay.

B. *DDP's Problems and Abuses*

Diversion Solutions, no stranger to abusive collection tactics,¹¹² violates DDP's enabling legislation by accepting payments prior to a participant's proof of insurance, keeping participants enrolled despite disqualifying moving violations, misrepresenting DDP's success, and failing to provide an adequate educational component.¹¹³ The aim of the program was to end the

110. Interview with Scott Adkisson, *supra* note 83.

111. Interview with Scott Adkisson, *supra* note 83.

112. See Randy Furst, *Diversion Firm Owner Chosen by County Attorney Associated with Past Sanctions*, STAR TRIB. (Apr. 21, 2017), <http://www.startribune.com/diversion-firm-owner-chosen-by-county-attorney-associated-with-past-sanctions/420095933/> (“[C]ompanies Adkisson has been involved in were sanctioned by the state Department of Commerce and Attorney General for operating without a license and misrepresenting themselves as law enforcement or a prosecutor while improperly collecting fees.”).

113. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4.

“revolving door”¹¹⁴ and shut down a system that criminalized poverty.¹¹⁵ In reality, the revolving door is stuck shut, trapping poor offenders in a program that does not deliver on its promises.

i. Accepting payments from uninsured individuals

One of the most serious abuses Diversion Solutions engages in is accepting payment from participants prior to receiving proof of insurance.¹¹⁶ It is a requirement that all participants acquire insurance to participate in the program.¹¹⁷ Many participants are low-income,¹¹⁸ and experience difficulty finding auto insurance that they can afford.¹¹⁹ Participants in DDP cannot acquire a valid license status without that insurance, yet Diversion Solutions reportedly accepts payments from uninsured individuals who should not be in the program.¹²⁰ As a private company, Diversion Solutions is solely motivated by profits—they cannot make money unless they get people into the program and on a payment plan—therefore, the company has no incentive to terminate drivers from the program upon finding that they are not insured. Abuse of the insurance requirement is foreseeable when DDP’s third-party administrator operates without oversight.

ii. Not terminating participants who commit subsequent moving violations

DDP’s enabling legislation states that a participant who “is guilty of a moving traffic violation” will be terminated from DDP.¹²¹ When asked in a phone interview what happens if someone enrolled in the program gets a speeding ticket, Scott Adkisson, Diversion Solution’s CEO, said that he tells participants that if they get a traffic ticket to go pay it—they will not be terminated from the

114. *Oversight Committee Hearing*, *supra* note 4 (statement of Kori Land).

115. *Hearing on H.F. 1670 Before the Pub. Safety and Sec. Policy and Fin. Comm.*, 2017 Leg., 90th Sess. (Minn. 2017) (statement of Rep. Zerwas).

116. Furst, *supra* note 5.

117. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4.

118. 2017 Legislative Report, *supra* note 7, at 8.

119. Furst, *supra* note 5; Jennifer Bjorhus, *If You’re Poor, You’ll Pay More for Car Insurance*, *Study Finds*, STAR TRIB. (June 27, 2016), <http://www.startribune.com/report-low-income-drivers-pay-59-percent-more-for-car-insurance/384565011/>.

120. Furst, *supra* note 5.

121. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4.

program.¹²² This directly contradicts the express language of the Minnesota law that created the program.¹²³ Without oversight, Diversion Solutions is incentivized to keep participants in the program so they can collect the entirety of each individual's \$350 program fee, and additionally inflate their purported success.

iii. Misrepresenting DDP's success

DDP is required by law to release a biannual report "concerning the results of the program" including "recidivism rates for participants . . . and the number of participants who have terminated from the pilot program."¹²⁴ If Diversion Solutions is violating the statute by keeping participants in the program who should have been terminated because of subsequent moving violations, data for recidivism rates and termination rates may not be accurate.¹²⁵

Additionally, Diversion Solutions claims DDP has an 82% success rate, counting participants who are "graduated, active or waiting."¹²⁶ Data from the Department of Public Safety reveals that "only 223 of the 27,308 drivers who applied to the program successfully completed it—a rate of less than 1 percent."¹²⁷ This suggests that most drivers "end up in an endless cycle of making payments to the company without getting their full driving privileges back."¹²⁸

The number of drivers who became valid through DDP has also been called into question. The company touts on its website that "[s]ince 2009, the program has had over 12,000 participants

122. Interview with Scott Adkisson, *supra* note 83.

123. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4; Furst, *supra* note 5 ("A 2016 DPS review of the program found Diversion Solutions continued to accept payments from participants even though subsequent tickets disqualified them from the program.").

124. License Reinstatement Diversion Pilot Program, 2009 Minn. Laws, ch. 59 art. 3 § 4.

125. Furst, *supra* note 5 ("Diversion Solutions said just 6 percent of those in the program reoffend, but DVS records indicate a much higher recidivism rate," according to a memo by Liam Powell, who supervises the driver's license reinstatement program in DPS' Driver and Vehicle Services division.").

126. Furst, *supra* note 5.

127. Furst, *supra* note 5; 2017 Legislative Report, *supra* note 7, at 9 (reporting that from 2009 through 2016 over 23,494 individuals applied for DDP and 13,374 were accepted to participate and 10,120 were rejected).

128. Furst, *supra* note 5

legally reinstated.”¹²⁹ Department of Public Safety data, however, indicates only 4,589 drivers have become valid through the program.¹³⁰ A full audit of the program is required to determine DDP’s actual success.

iv. Failing to provide an adequate educational component

The 2017 Legislative Report states that DDP participants are required “to attend a 4 hour educational course” on the program’s requirements in addition to educational lessons on “[w]hy there are laws, 36 laws that they must absolutely know and how to become a responsible neighbor.”¹³¹ The actual class is at most an hour and a half, and most of that time is spent going over the participants’ contracts.¹³² The only educational aspect of the class consisted of a brief eight-minute video on basic driver education.¹³³ Diversion Solutions is not incentivized to make sure drivers are equipped with the requisite knowledge of highway safety. Classes therefore focus on what they are incentivized to make sure participants understand: payment.

C. *DDP’s Merits*

While in many ways DDP fails to meet the goals of well-intended policy-makers, prosecutors, and criminal justice advocates, it could be argued that it is worth keeping, despite its flaws. Drivers in DDP get the opportunity to avoid convictions, settle criminal justice debts, and drive confidently with valid licenses. DDP, as a form of pay-only diversion, does not wield the threat of jail to coerce payment, which has been reported in abusive pay-only probation programs.¹³⁴ Not only does DDP cost taxpayers nothing, but the program helps the state “recover[] significant outstanding fine and fee revenue that would otherwise remain uncollected.”¹³⁵ Additionally, there are unintended benefits of DDP

129. Diversion Solutions, *Driver’s License Reinstatement Program: For Participant*, <https://diversionsolutions.net/participants/drivers-license-reinstatement-program/> (last visited Mar. 25, 2019).

130. Furst, *supra* note 5.

131. 2017 Legislative Report, *supra* note 7, at 7.

132. Scott Adkisson, CEO, Diversion Solutions, LLC, Address at the Driving Diversion Program Class (Jan. 4, 2018).

133. *Id.*

134. ALBIN-LACKEY, *supra* note 3, at 25–27.

135. 2017 Legislative Report, *supra* note 7, at 11.

including “[p]aid citations in non-participating jurisdictions; [v]oluntary clearance of active arrest warrants; [d]isposition of dormant DAS/DAR citations; Department of Revenue collection fees; [s]atisfaction of outstanding judgments; and [p]ayment of child support arrears.”¹³⁶ DDP has not been without success stories.¹³⁷

DDP supporters may argue that the private pay-only diversion model is significantly better than alternative solutions: no program at all or a state-run program. Without any program in place, unlicensed drivers will continue to accumulate DAS/DAR charges and struggle to pay the accruing fines and fees without the ability to drive. A state-run program may not be as effective at collecting criminal justice debt as private companies. Additionally, the cost of a state-run program will likely be harder to justify to taxpayers than a zero-tax-dollar private program. However, the merits of the private pay-only diversion model are marred by Diversion Solutions’ rampant abuses, and its ineffectiveness for many of Minnesota’s lowest income drivers. With payment as the sole substantive requirement of diversion and nonpayment resulting in prosecution, diversion and its promises are a privilege out of reach for the poor.¹³⁸

D. Recommendations

One of the Legislature’s intentions in creating DDP was to collect criminal justice debt through the most cost-effective method: privatization.¹³⁹ The recent reports of abuse—most notably that Diversion Solutions accepts payments before confirming that the driver is insured—illustrate that privatizing the license reinstatement program with no regulatory oversight or accountability leaves participants vulnerable to greedy collection tactics. Many of the stated goals of DDP are steeped in benevolence, such as providing a solution for drivers who cannot afford to pay

136. 2017 Legislative Report, *supra* note 7, at 10.

137. *See* Salisbury, *supra* note 9.

138. *See* Dewan & Lehren, *supra* note 41 (reporting on how diversion “can be revoked for failure to pay, or never even offered to defendants deemed too poor to afford it” leading to dramatic inequalities).

139. 2017 Legislative Report, *supra* note 7, at 6, 10. *See also* Pub. Safety & Sec. Policy & Fin. Comm., 2017 Leg., 90th Sess. (Minn. 2017) (statement by Rep. Zerwas) (“You can’t lose out on what we are not collecting and that is what we are facing right now . . . we’ve brought in \$6.6 million since 2010 . . . that is \$1.3 million a year in fines and fees that otherwise would not be collected if there wasn’t a payment plan allowing these people to get to work.”).

finer and fees and ensuring public safety.¹⁴⁰ However, as long as third-party administrators are allowed to operate with no oversight or accountability, the criminal justice debt-collection function of the program will trump any of the more altruistic intentions of the program.

In order to balance the interests of providing a cost-effective solution that does not put profits above quality performance, the Minnesota Legislature must enact several accountability measures before expanding DDP statewide. The current statute authorizing the pilot program not only enables the aforementioned abuses, but also leaves the door open to further corruption. If Minnesota hopes to create a functioning DDP, it has two options. It could put protections in place to keep third-party administrators like Diversion Solutions accountable. Else, it must fundamentally change and become a program within the Department of Public Safety. The very need for the program may be dramatically reduced and some of its goals achieved by eliminating social non-conformance suspensions and reducing fines and fees.

i. Necessary accountability and oversight measures for a statewide DDP

The legislation that authorized the creation of DDP as a pilot program provides few requirements for third-party administrators. If the Minnesota Legislature wants to expand the program statewide,¹⁴¹ the statute must have specific requirements for third-party administrators that ensure program fee structures and payment plans are fair and not overly burdensome for participants. However, as seen with Diversion Solutions' failure to meet the statutorily required educational components without consequences, compliance with statutory requirements must be ensured with proper oversight and accountability measures.

140. Pub. Safety & Sec. Policy & Fin. Comm., 2017 Leg., 90th Sess. (Minn. 2017) (statement by Mary Ellen Heng, Minneapolis Deputy City Att'y, Crim. Div.) ("We want people to be driving legally with valid insurance in the event that they should have an accident . . . We want programs to hold people accountable while also being fair to their circumstances."); Salisbury, *supra* note 9 ("Poor people are disproportionately affected by driver's license suspensions, [Rep. Zerwas] said. 'We're criminalizing poverty.'").

141. Legislation seeking to make DDP a statewide program was introduced in the 2017 session. Though the bill failed to be made into law, it had bipartisan support and could potentially be reintroduced in upcoming sessions. License Reinstatement Diversion Program, H.F. 1671, 90th Leg. § 171.2405 (2017).

Human Rights Watch has made recommendations to states that contract with for-profit probation companies.¹⁴² Many of these recommendations are appropriate for DDP. If the Minnesota legislature seeks to make DDP a statewide program and continue to contract with private diversion companies to run it, the legislature should enact accountability provisions that include the creation of an oversight committee sufficiently staffed with professionals capable of conducting thorough investigations, unannounced inspections, and compliance reviews.¹⁴³ This oversight committee would be responsible for collecting and publishing data on how much money third-party administrators collect in fees from DDP participants; how many participants are terminated from DDP and for what cause; and, how many participants and former participants re-offend and/or become re-suspended.

Ideally, the legislature would move away from an offender-funded model and prohibit third-party administrators from collecting program fees.¹⁴⁴ Program fees discriminate against low-income offenders by making diversion accessible only to those who can afford to pay for the benefit of avoiding prosecution. Additionally, program fees incentivize private diversion companies to enroll ineligible participants.¹⁴⁵ However, simply replacing program fees with a fixed price contract may produce a low-bid race to the bottom with companies employing reductionist methods to offer the least expensive program.¹⁴⁶ The only way to remove program fees and ensure quality service to participants would be to run the program internally in the Department of Public Safety with professionally trained staff who are not incentivized by profits but by making Minnesota's roadways safer.

ii. Remove the causes

Legislators should take aim at the root causes that cause individuals to fail to pay fines and fees, lose their licenses for failing

142. ALBIN-LACKEY, *supra* note 3, at 7.

143. *See* ALBIN-LACKEY, *supra* note 3, at 7.

144. *See* ALBIN-LACKEY, *supra* note 3, at 7.

145. *See* Furst, *supra* note 5.

146. *E.g.* Margaret Lemos, *Civil Challenges to the Use of Low-Bid Contracts for Indigent Defense*, 75 N.Y.U. L. REV. 1808 (2000) (describing the challenges of ensuring quality when counties employ low-bid contract systems for indigent defense).

to pay, and accumulate low-level criminal charges and criminal justice debt.

Legislators should remove mandated suspension of driving privileges for individuals who commit non-highway safety violations.¹⁴⁷ These social non-conformance suspensions waste the time and resources of police officers, courts, prosecutors, and motor vehicle agencies and do not serve a public safety purpose. Police officers' time spent issuing citations to suspended drivers "takes valuable time and resources away from other traffic and public safety efforts."¹⁴⁸ Besides burdening courts and prosecutors with a surplus of low-level, non-violent offenses, the additional DAS and DAR cases that result from non-driving related reasons require motor vehicle agencies to "operate outside of their core mission of ensuring highway safety."¹⁴⁹

Using license suspensions as a means of forcing criminal justice debt payment is especially counterproductive. When Minnesota Representative Zerwas, chief sponsor of a 2017 bill that sought to expand DDP statewide, was asked by Representative Hilstrom whether they should consider not suspending licenses for failure to pay, he responded, "without that penalty, you wouldn't get compliance."¹⁵⁰ However, with 75% of suspended drivers continuing to drive, license suspensions are clearly an ineffective method of compliance.¹⁵¹ Indeed, the practice defies logic, because "you're not going to increase the likelihood that they can pay it by taking away their driver's license."¹⁵²

As discussed in Part I.D, license suspensions disproportionately affect poor communities and communities of

147. This possible solution is already gaining interest. Jessie Van Berkel, *License Suspensions a "Catch-22" Some Lawmakers Aim to Fix*, STAR TRIB. (Apr. 5, 2018), http://www.startribune.com/license-suspensions-a-catch-22-some-lawmakers-aim-to-fix/478913373/?om_rid=2492076489&om_mid=78329289 ("A measure now under consideration [by the Minnesota legislature] would prohibit the punishment of suspending someone's driver's license because they did not pay a traffic or parking ticket.").

148. AAMVA, *supra* note 49, at 13.

149. AAMVA, *supra* note 49, at 22.

150. Pub. Safety & Sec. Policy & Fin. Comm., 2017 Leg., 90th Sess. (Minn. 2017) (statement by Rep. Zerwas).

151. AAMVA, *supra* note 49, at 4.

152. *Tell Me More: Reconsidering Driver's License Suspensions as Punishment*, NPR (Mar. 10, 2014), <https://www.npr.org/2014/03/10/288587071/reconsidering-drivers-license-suspensions-as-punishment> (quoting Mike Riggs).

color.¹⁵³ DDP attempts to provide a solution that helps low-income suspended drivers, but DDP, as an offender-funded program operated by a private company with little oversight, often ends up contributing to the burdens facing participants by making them pay more and entangling them in the criminal justice system for much longer. Payment plans have the potential to help low-income drivers pay off fines and fees, but such plans should be made available before suspension is a threat. If a driver gets a speeding ticket and needs the time or the opportunity to pay it off in installments, the court—not a private company—should accommodate that need. This is possible without charging more through supervision fees, program fees, and interest, or by threatening suspension, late fees, or jail, or implementing other government-imposed penalties¹⁵⁴ for failure to make payments. Minnesota should move away from an offender-funded, revenue-generating criminal justice system. Legislators should reduce fines and eliminate mandatory surcharges.¹⁵⁵ Additionally, offenders should have options to satisfy fines online and convert fines to community service.

Conclusion

Minnesota's Driving Diversion Program attempts to help low-income suspended drivers get valid licenses, pay off their criminal justice system debt, and avoid prosecution for driving after suspension. Several trends in criminal justice contributed to the creation of DDP including the decriminalization of misdemeanors, the shift to an offender-funded system, the use of pay-only probation and diversion outsourced to for-profit companies, and non-driving related license suspensions.

While not without merit, DDP has not fulfilled the vision of its creators and supporters. Diversion Solutions, the for-profit company that administers DDP, has violated the program's

153. Aiken, *supra* note 56.

154. Nonpayment of traffic fines would not be immune to any indirect consequences, such as affecting credit scores. Stacey Tisdale, *Real Money Matters: Unpaid Parking Tickets Can Lead to Lower Credit Score*, ALJAZEERA AM. (Oct. 17, 2017), <http://america.aljazeera.com/watch/shows/real-money-with-alivelshi/Real-Money-Blog/2013/10/17/credit-trivia.html>.

155. MINN. STAT. § 357.021, subd. 6(a) (2018) (“[T]he court shall impose and the court administrator shall collect a \$75 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense, other than a violation of a law or ordinance relating to vehicle parking, for which there shall be a \$12 surcharge.”).

enabling legislation by accepting payments prior to a participant's proof of insurance, keeping participants enrolled despite disqualifying moving violations, misrepresenting DDP's success, and failing to provide an adequate educational component. These abuses illustrate that for-profit, pay-only diversion is a flawed model that puts cost-cutting and profits above quality performance. The public goal behind DDP—reducing the number of unlicensed drivers on the road—does not fit with how the third-party, for-profit company is incentivized, therefore leading to poor quality of service, unmet promises, and abusive practices.

The Minnesota Legislature should enact accountability measures that will help reduce DDP's third-party administrator abuses such as an effective oversight committee and ideally the removal of program fees. The Legislature also should consider addressing the reasons that create and perpetuate the need for DDP—the burden of criminal justice debt heaped upon unlicensed drivers who cannot afford to stop driving. Policy changes that meet this goal include limiting suspensions as a possible sanction for only bad driving conduct and moving away from an offender-funded system by reducing fines, making fines easier to pay, and eliminating mandatory surcharges.