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INTERIM TESTIMONY 2014
Texas House Homeland Security and Public Safety Committee

Texas Driver Responsibility Program

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony on interim charge 4, *Review the Driver Responsibility Program and consider methods for overall improvement of the program*. While the Texas Criminal Justice Coalition has long sought abolishment of Texas' Driver Responsibility Program, we offer alternatives below that will help to reduce the burden on Texas drivers and local courts.

Texas' Driver Responsibility Program has failed abysmally from any and every perspective.

Sixty percent of surcharges assessed under the Driver Responsibility Program (DRP) go unpaid.¹ The DRP not only failed to diminish the proportion of unlicensed and uninsured drivers on the road, it dramatically increased their number.² It has harmed the economy, preventing workers without driver's licenses from finding employment³ and increasing the number of accidents involving uninsured motorists. Rather than create disincentives for drunk driving, it reduced the proportion of DWI arrests that result in convictions.⁴ And it even only partly fulfills its promise to pay for uncompensated care at trauma hospitals: Instead of spending surcharge money as originally intended, the Legislature withheld tens of millions from hospitals to certify the budget.⁵

In 2013, the Texas Criminal Justice Coalition published a detailed report documenting the DRP's numerous failures, which at this point are well known to the committee.⁶ **We have long taken the position that the Texas Legislature should abolish the DRP and find alternative sources of revenue to subsidize trauma hospitals.**⁷ We still believe that would be the best public policy for Texas and urge the committee to summon the political courage to take that step.

Based on your past deliberations, however, we understand the Committee's hesitation to recommend elimination of the surcharge program until alternative funding for trauma hospitals can be identified. Even so, there are incremental steps Texas could take to mitigate the harms caused by the DRP. Today we want to focus on those more modest reforms, keeping in mind that, in the long-term, the program should be completely abolished.

Until then, there are several things that Texas could do shy of abolition that would improve the status quo:

Order DPS to create a real Amnesty program and employ more resources to publicize it.

The Legislature ordered the Texas Department of Public Safety (DPS) to create an Amnesty program. Instead, the agency implemented just one Amnesty period (in 2011) and failed to adequately publicize it, relying on unpaid publicity from the mainstream media that was spotty and unfocused. Even so, about 14 percent of eligible drivers – nearly 100,000 out of 700,000 – took advantage of the lower payments to clear their records and regain their driver's licenses. The Legislature should direct DPS to create a program with regular, biennial Amnesty periods and invest resources into notifying eligible drivers by mail and phone.

Lower all surcharge amounts and apply them for only one year instead of three.

The current surcharge structure is confusing and poorly understood by those to whom it applies. Many drivers do not understand why they would be charged a separate, civil surcharge on top of tickets they have already paid, much less why they must continue paying three years hence for tickets they may not even distinctly recall. Most surcharges are not collected because they are too expensive and levied for too long following the tickets that trigger them. By reducing surcharge totals and focusing collection on a single year instead of stretching it out over time, payment rates would increase and some of the DRP's most onerous features would be substantially mitigated.

Make the No Insurance, No Drivers License, and Driving While License Invalid surcharges part of the point system, leaving DWI as the only conviction-based surcharge.

Texas should make it easier, not harder, for people to get and keep a license and insurance if they are safe drivers. Driving with no insurance, without a license, or with an expired license should not automatically incur these surcharges because they become a significant financial barrier to driving legally. They are more akin to the type of moving violations that do not accrue surcharges unless drivers accumulate several of them under the point system. Short of abolition, the surcharge should be focused more tightly on drunk drivers and people who accumulate multiple moving violations over time. Lesser offenses that do not in and of themselves endanger the public should not incur automatic surcharges.

Include notice about surcharges on citations for affected offenses, and require courts to provide information about surcharges and reduction programs at the time of conviction.

Right now, many people do not find out they owe a surcharge until DPS sends them a post-conviction letter. When the surcharge first passed in 2003, then-state Senator Jeff Wentworth tried to add language on the Senate floor to ensure drivers were notified up front when pleading guilty to a traffic offense that would incur one, but the amendment was rejected. Such notification would prevent much confusion about the program, which for many drivers seems redundant and counterintuitive.

Develop a "tiered settlement" program to collect lower amounts on older surcharges.

The Legislature should recognize that it has created an untenable economic situation for some drivers and create a means for them to resolve old debts. Many surcharges on the books date from as long as a decade ago and the likelihood drivers will ever pay in full is small. Drivers who owe thousands in old, defaulted surcharges may just give up hope that they can ever get out from under this debt. Settling those old debts for lower amounts would allow drivers to regain their licenses and obtain insurance, whereas right now many if not most simply drive without legal sanction.

Allow surcharges to be discharged in bankruptcy proceedings.

The court case disallowing surcharges to be discharged through bankruptcy proceedings – *Holder v. State of Texas* – premised its decision on the notion that surcharges are similar to criminal fines, which cannot be eliminated through bankruptcy. But surcharges are actually civil, not criminal, fees charged to drivers *in addition to* criminal fines and penalties. Allowing surcharges to be reduced or eliminated via bankruptcy proceedings would mitigate the amount of bad debt on the books and potentially facilitate partial payment of old debt.

Allow drivers to apply for occupational licenses through an online portal without having to hire an attorney.

Drivers who have lost their licenses due to surcharges are eligible for occupational licenses, but private attorneys may charge thousands of dollars to process their applications. In most cases, if those drivers had thousands of dollars at their disposal they would simply pay their surcharges. The Legislature should streamline this process by requiring DPS to facilitate such applications online without having to retain counsel.

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The Texas Criminal Justice Coalition hesitates to suggest reforms that might make the Driver Responsibility surcharge sustainable, even temporarily, because the program is fundamentally unfair and suffers from deep, abiding flaws. The Legislature should eliminate it entirely and pay for trauma hospitals out of general fund revenue or some other source. If the State will not take that step, though, these suggestions would mitigate some of the worst harms, and we encourage you to seriously consider them.

References

¹ "Reform sought in Texas ticket surcharge program," *El Paso Times*, Sept. 22, 2013. "Since its inception in 2003, the Driver Responsibility Program has collected only \$1.14 billion of the \$2.85 billion of the charges it levied."

² Texas Department of Public Safety, 2013 email to State Rep. Sylvester Turner. Data available upon request. More than 2 million people have lost their drivers licenses as a result of unpaid surcharges, with around 1.3 million licenses currently suspended for lack of payment.

³ The New Jersey Motor Vehicles Affordability and Fairness Task Force published a report in 2006 on their surcharge program, after which Texas' Driver Responsibility surcharge was modeled. (See: http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf) They found that, of 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 new employment; (3) 66% reported that their license suspension negatively affected their job performance; and (4) 90% of persons whose license was suspended within this income bracket 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.

⁴ Texas Senate Criminal Justice Committee Interim Report, Dec. 15, 2010, pp. 22-23. According to Judge David Hodges, Judicial Liaison for the Texas Center for the Judiciary, "Since imposing these surcharges: Conviction rates have decreased every year; in 2005, 99,501 DWI arrest resulted in 63,132 convictions. In 2009, 102,309 DWI arrest resulted in 44,777 convictions. Dismissal rates have increased every year; DWI cases are prosecuted as reckless driving, obstruction of highway, and public intoxication, in order to avoid the civil penalty."

⁵ "Interactive: Billions of dedicated funds unspent," *The Texas Tribune*, Dec. 6, 2012.

<http://www.texastribune.org/library/data/dedicated-revenue-funds-list/>

⁶ *Wrong Way for Texas: The Driver Responsibility Program, A Texas-Size Failure*, February 2013.

<http://texasdriverresponsibilityprogram.com/wp-content/uploads/2014/04/Driver-Responsibility-Program.pdf>

⁷ In our 2013 report, we suggested Texas could make up the money with an additional \$0.15 per pack tax on cigarettes, a \$0.06 per six-pack tax on beer, or a one percent tax on carbonated soda. Also, because the Legislature has withheld surcharge money from trauma centers to certify the budget, the state could continue to make payments to hospitals from the "Designated Trauma Facility & Emergency Medical Services Account" at current rates and not run out of money through 2021.