

Mackinac Center for Public Policy

Issues and Ideas Forum

“Pump the Brakes: Michigan Should Rethink Driver's License Suspensions”

Speakers:

**James Craven,
Acting Director of Criminal Justice Reform,
Reason Foundation**

**Evan Carter,
Reporter,
Michigan Capitol Confidential**

**Kim Buddin-Crawford,
Policy Counsel,
ACLU of Michigan**

**Introduction and Moderator:
Kahryn A. Riley,
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KAHRYN A. RILEY: Good afternoon, everyone. Are you all set? Yeah, good. OK. We're going to go ahead and get started. Thank you all for coming out today. I hope you're enjoying your lunch.

We're going to talk about a really interesting topic today related to Michigan roads, right, who's allowed to drive on them and the policies related to some of that, some of the collateral consequences when people lose their license to drive.

Just a couple things before we begin. I want to extend a thank you to Auto-Owners Insurance for sponsoring this event and making it possible.

I'm about to introduce our panelists, and then we'll allow them to address you on their various aspects of the issue. But just one minor housekeeping thing: When that portion of the program has completed, we'll move into Q&A. And the way that we do Q&A at these is to ask everyone to write their question on a card that you'll find in the middle of your table, and when it's time for Q&A I will have my colleague Holly circulate. She'll pick up your question cards and bring them to me, and I will read them into the microphone so that people who are watching the Web stream can hear the question.

So, with that, I just want to take – just briefly introduce our speakers. We have an august panel to present to you today, but just in the interest of time we'll keep it brief.

James Craven is acting director of criminal justice at the libertarian Reason Foundation in New York. And he actually wrote the paper that is really kind of at the heart of the discussion today, "Driver's License Suspension Reform: The Right Road for Michigan." This is available for free on Reason's website and I would encourage you to download it. It's about 20 pages long, but it's chock-full of great information and charts and tables to give you a great primer of this issue overall.

Also joining us from the Mackinac Center's Capitol Confidential News Service, my colleague Evan Carter. Capitol Confidential covered the Michigan bad driver tax, so he'll be talking about some of the implications of this tax and how, although it has been repealed, we're still facing some negative unintended consequences.

And finally, from ACLU, Policy Counsel Kim Buddin-Crawford. And she'll be talking to us – talking to us about the bipartisan nature of this issue and giving us a little bit of an overview from the other side of the aisle.

So, with that, please join me in welcoming our panelists. (Applause.)

So, James, I'm going to go sit down, but – (laughter) – I would like you to give us a pretty thorough overview of the paper that you wrote for us. Tell us what's going on in Michigan, what changes we can make to do better. And then, when you're through, I'll have Evan kind of go over one example of what happens when we tax people related to driving and

suspend their licenses for issues that are unrelated to traffic. And then we'll end with Kim. Thank you.

JAMES CRAVEN: Thank you, Kahryn.

Thank you, everyone, for being here. I will be presenting on the aforementioned policy brief "Driver's License Suspension Reform: The Right Road for Michigan." I like the title so much I used it twice.

I imagine if you're here you probably have some inkling about how important this issue is. But if you talk to most people about it – you know, about driver's license suspensions – most people assume that it's something that either doesn't happen very often or only happens to people who are very bad drivers. And neither of those assumptions are true.

In 2010 Michigan suspended nearly half a million driver's licenses for all different kinds of reasons, but 95 percent of those suspensions had nothing to do with traffic safety crimes. I'd like to say that that number has probably gone down since then, but in 2012 Michigan passed a law saying that they would suspend the driver's license of anybody who has three or more unpaid parking tickets, so I imagine the number has only gone up.

With all that said, let's take a look. Why does Michigan suspend driver's licenses? Well, it turns out there's actually a whole lot of different reasons, so many reasons that you probably can't see all of them on this screen. In the interest of brevity and making these large enough that we can focus on them, I'm going to break down the most suspect reasons why licenses get suspended and the ones that lead to the most suspensions per year.

So, number one, failure to pay child support. When I was an attorney I actually did sit in on some child support hearings, and I can understand maybe how they came up with this idea. It's really hard to get people to pay child support, so maybe somebody thought, well, why don't we try suspending their license and maybe they'll pay then. It seems maybe like a good idea until they actually tried it. It turns out it's a terrible idea. Once somebody gets their license suspended, they definitely can't pay their child support. And they might even lose their job, which is going to make it even harder. They're going to end up with fines and fees that they've got to pay. We're going to break in – break down those fines and fees a little bit later, but they've got to pay that court debt now too. So it actually really hampers getting child support paid.

Drug offenses, not including driving under impairment. Really want to emphasize that second part. Drug offenses not including DUI made up way more – about 7,000 more suspensions – than DUI offenses did. These are things like, you know, somebody getting caught in, like a stop-and-frisk with, like, a bag of marijuana. Those kind of offenses actually have a pretty interesting history. In 1991 the United States federal government told all the states while they didn't have to suspend people's driver's licenses for doing drug offenses, they would withhold highway funding from any state that didn't suspend driver's licenses for drug offenses. And almost every state did voluntarily decide to suspend licenses for these kinds of offenses. Eventually the federal government changed their mind, and you know, they said, you know, you

don't have to do this anymore, at which point most states have backed off this policy. Michigan is in a minority of states that continue to do this. About 5 percent of all suspensions come from these kind of offenses.

These next two make up the vast majority, together, of all license suspensions. The first one, failure to appear. I'm a little more sympathetic to clients who fail to appear for offenses, having been a criminal defense attorney. These people sometimes live hours away. They often – our letters that we send to them letting them know their court date were always returned to my office because the date on file at the courthouse was incorrect. These failure to appears, of course, if you do suspend somebody's driver's license for failing to appear in court, they are probably no more likely to get their next time because if they drive they could be charged with driving while license suspended. This is the other big one, failure to pay court-imposed fines on time. Again, hundreds of thousands of suspensions for these two.

As with child support, once they get their license suspended they are very likely to lose their job. It's very hard for them to earn the money to pay these fines. And until they pay, if you do get your license suspended for failure to pay court-imposed fines, you are not going to be able to get that license back until you do pay those fines. So you've got kind of a debt burden that you have to get rid of to be able to drive.

You may be wondering, if you're not going to suspend licenses for these debts, like, how are you – how are you planning on getting the money back? And honestly, I think almost any other solution would be better because driver's license suspension directly hurts your ability to get that money back. But, you know, if you can't think of anything else, garnish wages. Don't do it on a single paycheck. Do it on a payment plan so you're not putting them out of house and home. But, you know, hold a hearing, and if they don't show up judgment will be entered against them. You can just get the money back directly. If they're not employed, you can even garnish unemployment benefits. Almost any other solution would be better than suspending their driver's license. It doesn't get the money back; it makes it even harder to get the money back.

Special mention, by the way, of these driver responsibility fees. These are phasing out in Michigan, but it is still the case right now that if you drive without a license you will be hit, in addition to the normal penalties for that crime, with a \$500 mandatory civil fee. That's a civil judgment, it's unavoidable, and until you pay that you can't get your license back. It really adds to the debt burden. This penalty was originally set at \$1,000. The reason I bring this up even though it's phasing out is not only just because it's still around for a few more years, but I very strongly feel that the people who had their license suspended for nonpayment should really get their license reinstated as soon as possible so they have an opportunity to get back to work and be able to earn the money that they need to pay off these debts.

Again, all of these are unrelated to traffic safety. That's what they all have in common.

So you probably picked this up. License suspensions hurt everybody, but they especially hurt the poor. I mentioned earlier that a lot of people lose their jobs when their licenses are suspended. The New Jersey Department of Transportation actually did a study specifically to see what happened to people after their license was suspended. Forty-two percent ended up

losing their jobs. Only half of them were able to find work, and most of those people were making less than before. The other half couldn't find work at all. And I would suspect that the situation in Michigan might be even worse just because the hurdles to get back your license in Michigan are much higher.

Take a look at some of the costs that get imposed on people when their licenses are suspended if they fail to pay those back – they fail to pay promptly, you know, you're going to see that the cost burden in order to get your license back quickly gets very, very high. So, to begin with these, blocks each represent around \$50.

The original traffic citation, most traffic citations are about \$150.

If you – if you get this, you can often be charged an additional infraction fee. It's a fee that goes along with traffic offenses. So that's (\$250).

There's a mandatory justice system assessment fee of \$40.

There's a late fee that gets imposed after you have failed to pay these after a certain amount of time.

After that there's also – in addition to a late fee, there is a special misdemeanor for nonpayment. It's a nonpayment misdemeanor. It's about a \$100 fine.

There's a driver's license clearance fee. This is the fee that you need to pay to get your driver's license back.

And the, if you kept driving anyway, you probably got caught. Police have scanners in their vehicles that scan licenses automatically, and they'll pull you over when they see that, you know, you're not supposed to be driving. Five hundred dollars on a first offense is how much the court can charge here, \$1,000 – up to \$1,000 on the second offense. If this happened to you a couple years ago, you'd be charged an extra \$1,000 – mandatory \$1,000 – for driver responsibility fees. Silver lining: that number's only \$500 today. Still egregiously high.

By the way, these last two you might have thought that the driver's license clearance fee paid for getting your license back. But if you're caught driving while license suspended, they throw on this license reinstatement fee that is also necessary.

Altogether, the total amount here – and this did happen - \$2,118. This actually went to district court. Somebody got caught for a non-moving violation – it was like a minor traffic violation – ended up with thousands of dollars that she had to pay to get her license back. The federal district court actually enjoined Michigan from continuing to suspend licenses based on failure to pay fees because they were just so shocked by this. That injunction has currently been pulled back as the Court of Appeals is, you know, gearing up to look at the case. But, I mean, it just kind of gives you an idea of sort of how crazy this problem can get.

Suspending licenses for offenses unrelated to traffic safety does not improve traffic safety; stunning conclusion that took thousands of hours of research. I would love to just leave this slide the way it is and let it speak for itself, but it's actually even worse than that. The thing is, is that all the hours police spend enforcing driving while license suspended laws could have been spent doing anything else. They pull these people over. I forgot to mention this before. In addition to all those costs, if you're caught driving while license suspended and you're by yourself, your car is going to get towed because they're not going to let you just drive home. So police are out there, they've got to write these citations, pull people over, and sometimes they've got to get their car impounded too. It takes quite a lot of time.

And, in fact, Washington state took the time to calculate just for their state troopers – just for their state troopers, over 70,000 hours were spent doing driving while license suspended things just for the non-traffic-safety stuff, just for the kind of stuff I'm talking about. Seventy thousand hours. Well, Michigan has a bigger population than Washington. But not only that, Washington was never suspending licenses for drug crimes or – big one – nonpayment of fines and fees. So if I were just making like a ballpark estimate, I would guess the hours that Michigan state troopers spend on this are double what you're seeing here. This is a lot of time that police could be spending doing things related to public safety.

If there were – and I know that there's not – if there were a particularly evil person in the crowd today, they might have been looking at that animation earlier and being like, wow, we're raising a lot of money from poor people. But you're not. You actually lose a ton of money trying to enforce these crimes. The thing is, in addition to all those police hours, you've got district attorneys, public defenders too. Driving while license suspended carries serious jail time on a second offense. These guys get assigned counsel for that. Court clerks, judges, all these state actors are involved in this, and that's probably not even the big cost.

The big cost is jail time. I looked this up. Oakland County put their number for jail time at about \$105 a day. I checked that number before I went with it. I found a study by Vera Institute. They looked at 20 different states and 30 different counties in those states. They found jail time to be about \$128 a day on average, which is very high. So I went with the – I went with the very – the more conservative number because it was actually from Michigan. But, you know, you had something like 1,300 driving while license suspended offenders serving jail time in 2016. Multiply that out, it's more than \$100,000 for every day one of these people – these offenders do spend in jail, and most people do spend some jail time.

This is costing Michigan a ton of money and it's keeping people who, you know, would like to be going to work away from getting to their jobs. It's hurting the poor. It's hurting the state.

So what's the solution to these problems? I laid out a lot of different solutions for this in my policy brief, but I really just want to focus on two right here. Those are, one, the big takeaway from this presentation, limit driver's license suspensions to traffic-safety-related crimes. You would cut down the number of suspension(s) by hundreds of thousands a year, 95 percent less license suspensions. That's people who are going to be able to drive to work; they're people who are going to be able to, you know, find better employment; and people who

are going to be able to pay off any of their debts to the state or through child support or what have you.

And the second thing that I would recommend very strongly is to restore licenses to people who haven't paid their fines or fees. This is a cost-free way to get these people back on track. It doesn't cost anything to restore these people their licenses. And if they were just getting their license suspended for fines and fees, you really want them to be able to drive if they're ever going to be able to pay off those debts.

Guys, here's my contact information. If any of you are interested in this issue and want to reach out, you have questions about it, I'd be happy to answer them. Even if you just forget, geez, where did that guy say his policy brief was, you can send me an email and I'd be happy to send it to you.

Really appreciate all of you listening today. And, yeah, thank you very much.
(Applause.)

EVAN CARTER: That was pretty good. Now I got to follow it up.

All right. So, as James explained and Kim will get into later, suspending someone's license for a non-driving-related issue can have serious consequences that weren't necessarily the intended consequences of the lawmakers who introduced them. In many cases, if someone can't drive they risk losing their job. And in Michigan, driver's license suspensions have been all too common in recent years.

To steal from the promotion for this event and from James, in 2010 Michigan suspended over 475,000 licenses. That's one for every 15 drivers, with over 95 percent of those suspensions coming from offenses unrelated to driving.

One of the major factors causing people to have their license suspended for non-driving-related issues in Michigan is the driver responsibility fee, and that's what I'll be focusing on. As of March 1st, Governor Rick Snyder signed legislation that proclaimed the end of the state's driver responsibility fees by forgiving all driver responsibility fees that are currently outstanding and no longer issuing them on October 1st. But even while the so-called bad driver tax is being wound down in Michigan, it provides a really good example of the negative consequences of policies that result in drivers having their licenses suspended for reasons that have nothing to do with reckless driving or some similar related violation.

The Driver Responsibility Act was signed into law by former Governor Jennifer Granholm in 2003. As writers for CAPCON and other groups would argue, though, this bill had more to do with revenue than it did with responsibility. How would someone think this law is about revenue, you may ask? When a driver didn't pay the fee, their driver's license was suspended automatically.

For those who aren't aware of what the driver responsibility fee is, let me give you a brief definition. It's an annual \$100 fee on individuals who accumulate seven or more points on their

driving record within a two-year period. For each additional point, that's an additional \$50 that's assessed. Higher fees are assessed for certain very serious driving infractions: manslaughter, drunk driving, fleeing police. The proposed fees go to the state's general fund and at the time the legislation passed were expected to generate approximately \$70 million a year. That's an important figure. Under this Act, the state of Michigan penalizes failure to pay by revoking your license.

A practical example of the bill in action would be this. If you're caught driving your car without insurance, the law dictates that you pay \$1,000 over a two-year period. Don't have cash? Sorry, your license is suspended. And it will cost you the amount of the fee you didn't pay, a late fee, and an \$145 reinstatement fee to get it back. And James also mentioned a \$500 civil fee. So you add all those things together, that's very, very expensive. Currently there are 280,000 residents with a suspended license due to unpaid driver responsibility fees, according to Michigan's secretary of state.

The bad driver tax has a greater effect on urban areas and rural areas, and has had a particularly outsized effect on the state's largest city. In June 2017 more than 70,000 motorists in Detroit owed the state about \$114 million in fees, according to a report in Crain's Detroit Business. To give some context, at the times – at the time of the Crain's report, the state estimated that about 317,000 drivers statewide owed driver responsibility fees, meaning that Detroit made up 22 percent of the fees owed while at the same time they make up about 7 percent of the state's population.

Driver responsibility fees also heavily affect drivers in urban centers such as Flint, Saginaw, and Grand Rapids. Between 2004 and 2010, the state collected about \$603 million in driver responsibility fees while only collecting at a rate of about 50 percent. So that means they only collected from half the people. And this is according to Michigan's Senate Fiscal Agency. Remember, if you didn't pay, your license was suspended.

In a CAPCON commentary from February 15th of this year, the Mackinac Center's senior legal legislative analyst, Jack McHugh, who's in our audience today, wrote that when driver responsibility fees were originally being discussed in 2003, quote, "supporters gave lip service to the notion that this was about traffic safety, but everyone knew it was really a revenue grab." End quote.

The executive director of the National Motorists Association, James Walker, also testified that the legislation was meant – was not meant, excuse me, to promote public safety as some claimed, but was instead a revenue generator. Walker gave an example of a similar law that was passed and then quickly repealed in Virginia in 2007 because the state faced a very strong and immediate backlash.

Driver responsibility fees have also faced a lot of criticism from judges. In a written testimony submitted to the House's Michigan Competitiveness Committee on October 11th of 2017, retired Circuit Court Judge William Buhl stated that the number of people fleeing police and failing to stop at accidents went up dramatically – 26 percent – in the years following the passage of the law; that is, 2005 to 2007. Buhl also said that driving with a suspended license

has become much more prevalent because of the increased number of people driving with a suspended license due to unpaid driver responsibility fees. Quote, “The fee is helping destroy the credibility of the enforcement of the motor vehicle code in Michigan,” end quote, Buhl’s statement read.

District Court Judge William Kelly also delivered a testimony on the harms of driver responsibility fees. The judge said that in October 2017 he saw a homeless man with a family of five who owed \$7,000 in driver responsibility fees. He would have either had to pay \$331 a month to clear the fees off his record or driver illegally. That same month the judge described meeting a mother of four who lived in a motel and had two driver responsibility fees on her record. He described the fees this way. Quote: “The driver responsibility fee is a tax on the poorest people in the state. It is a second punishment for the same offense. It is very costly to local units of government and it has nothing to do with traffic safety. The driver responsibility fees are another example of the negative consequences that can result from policies that require the state to suspend driver’s licenses for reasons not directly related to driving.” (Applause.)

KIM BUDDIN-CRAWFORD: Oh, I’m short. (Lowers microphone.) OK.

Good afternoon. My name is Kimberly Buddin. I am the policy council at the ACLU of Michigan.

So I wanted to talk a little bit about some of the constitutionality and some of the lawsuits that are happening around driver license suspensions, as well as how this really is a bipartisan issue, and how the Michigan legislature and why the Michigan legislature can and should come together.

So, as was mentioned, hundreds of thousands of people are getting their license suspended every year for things that are unrelated to traffic safety, but also for the essential fact that they are too poor. And I just want that to sink in, the fact that we are taking away something that is genuinely a privilege and that the state of Michigan does have the authority to regulate, but in Michigan the ability to drive is also something that is a necessity for supporting both yourself and your families. And there are several jobs that often also require you to have a valid driver’s license in order even just to apply for the job. So we’re taking away the livelihood of people to not only get to their current employment, but the possibility of individuals getting future employment as well.

So I wanted to talk about a particular lawsuit that is going on right now that Equal Justice Under the Law and the Sugar Law Center actually brought just last year, and that lawsuit is called Fowler v. Johnson. And I wanted to tell you a little bit about the two key plaintiffs in that lawsuit so you can understand and get a real understanding, although Evan did a really good job about explaining some of the stories and how this really impacts people’s lives.

So the first plaintiff in that lawsuit is Adrian Fowler, and she is a young woman with a 3-year-old daughter who has been unable to find really good employment. She lives in the inner city of Detroit and is unable to venture outside of the city to get employment elsewhere. She works part-time as a security officer. She makes \$700 a month and has to support both her and

her 3-year-old daughter. She had I believe it was three or four unpaid traffic citations, and so her license was suspended. One day when she was at work, her daughter got unexpectedly ill. She had a really high fever. So Ms. Fowler drove home and was speeding to get home to her child. She was pulled over by an officer and the officer recognized that it was an emergency, so he didn't write her a traffic citation for speeding. But he did write her a ticket for driving with a suspended license.

That ticket was \$600. Remember, she makes \$700 a month. So for some of us in this room, coming up with a few hundred dollars isn't that big of a deal. We take care of it, we move on with our lives. But for Ms. Fowler, that was an entire month's rent. That is an entire month's groceries. That was child care. That was gas for her vehicle. That was medical needs. Something she was unable to make.

So she went to court. And she showed up to court, which is what a lot of people don't do. She went to her court and she told the judge I cannot pay that; I don't have the money. She explained her situation. And the judge said, too bad; if you don't pay it in three weeks, a warrant will be issued for your arrest. That's fundamentally unfair.

The other individual is Kitia Harris. And Kitia Harris also has an 8-year-old daughter, single mom with an 8-year-old daughter. She has been unable to work since 2014 for incurable physical disability. She's been on disability and gets about \$1,200 a month from her Social Security.

She got a routine traffic violation in Michigan and they suspended her license. She has been unable to make her doctor's appointments. She's been unable to take her child to any of their appointments. And because she has a suspended license and chooses not to drive on that license, she has to rely on other people and other people's schedules in order to make any of her appointments. She usually has three doctor's appointments a month, including medical consultations with some of the surgeons. She also has a couple of physical therapy appointments as well. And oftentimes she has to cancel those appointments at the last minute because another person, the person she was relying on, has to change their schedule around. And as many of us know in this room, when you cancel a medical appointment at the last minute, you get charged. So she's incurring additional medical charges because she's unable to take herself to her own medical appointments.

So what we're seeing here is that if these two individuals had enough money they would not be in these circumstances. They would be able to take care of their children. They would be able to take care of their medical needs. So the suspension of their license, not only did it take away their transportation, but it took away their ability to provide for their families and their essential livelihood.

And so what Equal Justice Under the Law and the Sugar Law Center did was they brought a lawsuit in May 2017, and they alleged – they alleged that there was a constitutional violation to Michigan's current process of suspending driver's licenses, but especially because they do it without conducting an assessment for a person's ability to pay. So suspending a

license for unpaid fines or fees, and unpaid tickets especially unrelated to traffic safety violations.

And the court – there was a preliminary injunction that as issued which essentially said: Michigan, you have to stop doing this until – while this case is pending. And that was appealed, as was mentioned before. The state appealed that and an amended preliminary injunction was issued. And essentially, the court said that the state of Michigan can no longer suspend licenses as they relate to nonpayment of a fine, fee, or other court cost unless they have done one of three different things: they have offered a hearing to the individual to demonstrate their inability to pay; they've provided a hearing if an individual requests one; or that they have provided reasonable notice of a hearing – that a hearing is available, and that there are services and payment plans available to that individual. Which seems like common sense, and there are some districts that do that. But the fact that it is not a common practice across the state is bewildering.

And so that particular injunction is on a current stay, so that is not being enforced right now as the case continues to go through both the Court of Appeals and the District Court.

So I think what we've seen today is that these license suspensions have a very massive impact on the lives of individuals. We know that they don't make roadways any safer. And, in fact, I think some of the numbers that Evan mentioned, they may actually make some of the roadways more dangerous because, as they related to driver's responsibility fees, when people feel desperate because they're driving on a suspended license or because they know that they owe a certain amount of money, we saw that some of the fleeing of police tends to increase. And that's because people recognize that they need to be able to drive to make it to work, to make it to their doctor's appointments, to help out their families, and this is a general need in the state of Michigan. And a lot of that has to do with some of the fact that there is not reliable public transportation in a lot of counties, but especially in some of the more urban and rural areas this tends to be a greater problem.

And so what we also know is that the suspension of driver – sorry, I'm on driver's responsibility – the suspension of driver's licenses also has a disproportionate impact not only on low-income communities, but on communities of color, which are very much intertwined. The highest rates of accumulated ticket debt are actually concentrated overwhelmingly in African-American communities. And that has a lot to do with the fact that there are a lack of jobs in our low-income communities, and so they are often trying to travel outside of those communities in order to work. So when they have these fines and fees that are brought up and they're already low-income, they're going to continue to drive because they have to get elsewhere. They're not able to rely on public transportation within their smaller communities.

We also know that impacts an entire family. It punishes your entire family. Kitia Harris and Adrian Fowler's daughters are being punished for the simple fact that their parents were too poor to pay court costs and the court did not care.

So why is this a bipartisan effort? Well, if it's not obvious already, I will make it pretty clear: These policies and recommendations are pretty common sense. They're financially and

socially responsible. They allow us to take the very limited resources and use them for things that truly are needed.

So it was mentioned, you know, the courts spend a lot of time, the police spend a lot of time, prosecutors spend a lot of time. When I worked at the city of Dearborn, I was a law clerk there and I did a lot of subrogation. I was actually the person that was responsible for calling the secretary of state and telling them they should suspend someone's driver's license, and I had no idea what I was doing to people. And I would of course listen to someone when they called in and told me their story and why, and give them a payment plan, but at the end of the day it was the responsibility of the attorneys to ask the secretary of state to suspend licenses for a variety of reasons – because someone hit a fence and they owed \$200, but they owed \$200 for the past year and a half, and so now I'm going to suspend your license. It just didn't make sense.

So what we need to do is have a better funding solution for government. We can't continue to fund our government, our courts, our secretary of state off of the backs of poor people. And this is something that we've seen in a variety of different areas in Michigan. We've seen it with the way that we fund our courts, with the way that we fund our police, now with the way that we're funding our secretary of state. We have to come up with better solutions. And I know that if this legislature sits down and figures this out, if we really look at what we're doing, we're actually losing more money. We're putting more individuals in positions where they're not able to make a good wage, where they're relying on public assistance. And in actuality, we're probably losing way more money funding the suspension of driver's licenses than we are actually benefiting our government. So, at the end of the day, it's counterintuitive to suspend licenses of individuals, especially the ones who cannot pay, for any type of infraction that is unrelated to public safety and driving – and driving safety.

I think, with that, we'll go ahead and take questions, right?

MS. RILEY: Thank you all. (Applause.) I want to thank our panel for their presentations. It's such a fascinating issue.

And, as I think you're seeing, we've got my colleagues circulating the room, picking up question cards. So, again, if you do have a question, please write it down. I'll read it into the mic so that everyone watching at home can hear the question.

So, moderator's privilege, I'm going to kick things off because I'm just so interested to know, James, you referenced when initially Michigan started suspending driver's licenses for drug crimes, this was as a result of a piece of federal legislation that caused many states to introduce suspensions for drug crimes. But as you mentioned, Michigan is the minority that still has those on the books. And I'm wondering if you could tell us why other states have kind of moved away from that and what they did to get there.

MR. CRAVEN: Sure, I'd be happy to. So, again, I think this was a case – it was sort of peak drug war when the government handed down this mandate tied to highway funding. And what you saw was states were really eager to get out from under this burden as soon as the federal government said, you know, we're not going to admit we were wrong, but we will give

you your highway funding back even if you repeal these laws that are suspending people's driver's licenses for drug crimes. The reason they were so eager to do that was because they realized that their license suspensions were skyrocketing and they were starting to lose money.

Most states did it really, really quickly. And Washington state actually is the one who provided some of my numbers up there because they did a study to just try and figure out, you know, how much is this costing us to suspend somebody's license and to enforce these charges? And they realized, you know, it's way more than we want to pay.

So it's not surprising, I think, that a lot of states have changed course on this. And I think Michigan is one of maybe 11 states that are still suspending licenses for drug crimes.

MS. RILEY: Good, yeah.

Question for Kim: What would be a proper deterrent to people violating traffic laws if fines and fees are not appropriate?

MS. BUDDIN-CRAWFORD: That's the big question, right? You know, that's a hard question. I think that it depends.

Some of it is going to definitely – you have to look at there's a variety of different things that constitute a violation of traffic laws. I'll talk about myself personally. I've gotten speeding tickets, but I've also gotten, you know, a failure to stop ticket. And some of those things are just careless driving, some of it is being distracted, and some of it is necessity. And so I don't think that you can put a blanket policy, a blanket deterrent on those types of – those types of issues because they're all – they're all different.

I suppose the best deterrent for, you know, really trying to get people to pay or to not violate traffic laws is, one, probably access to better public transportation. That would be a big one. I don't know that this is necessarily deterrence as much as it is accessibility.

It's a hard question. I mean, I think, just like criminal law, the best way to deter something is not about – is not by punishing it. That's what we've seen. It's by addressing what are the reasons for that actually happening. And so that's where it really starts. The question really starts is why are people not paying attention to speeding? Why are people not paying their parking citations? And a lot of that is going to definitely be related to poverty.

MS. RILEY: Well, and I think a lot of it's related to enforcement too, right? I saw some research that I found kind of interesting to suggest that if you really want to deter a behavior, the best way to do that is not to promise that we're going to punish you very severely if you get caught. The best way to actually deter is to promise that you will get caught, right?

MS. BUDDIN-CRAWFORD: Sure.

MS. RILEY: So if you up your enforcement efforts, you actually see better reductions in the types of – and, frankly, some of this is pathological behavior, right?

MS. BUDDIN-CRAWFORD: Sure.

MS. RILEY: Like, there are drivers out there who are reckless, who are endangering other people, reckless disregard for the safety of others. And so, both in cases of people doing things that are not dangerous but people who are doing things that are, we really want to up that enforcement effort. Do you – is that something that sounds reasonable?

MS. BUDDIN-CRAWFORD: Yeah. Yeah, I absolutely agree. I think something interesting really to think about is that, you know, ticket costs are also set by – you know, they're regionally based. So I know people will – they know how much a parking ticket in one place is going to cost versus parking in another – in another city, and so you may be less willing to park someplace in the city of Detroit because you know that on that particular side of the road, that's where people are coming regularly. I know that the meter maids are coming to check down Woodward at the newly – at the new parking meters versus around the corner on John R, so I'm going to park there. So it is – it's a lot about enforcement.

But at the end of the day, the reason why people aren't paying their tickets is not simply because – it's not simply because they don't want to, but it's because most of the time they can't.

MS. RILEY: You know, we have – we have two lawyers up here on this panel, and I didn't realize, Kim, that you actually had worked for the city, right? Is that what you're saying?

MS. BUDDIN-CRAWFORD: Yeah.

MS. RILEY: And so this is interesting –

MS. BUDDIN-CRAWFORD: I don't tell people often. (Laughs.)

MS. RILEY: Yeah. (Laughs.) Well, but it just – it raises this really interesting opportunity for us to talk about, both of you from your perspective in your – your respective practice areas, this notion that, you know, we're going to sort of combine the functions of penalizing behavior that we've criminalized while simultaneously funding ourselves, right? And so, you know, what are your – what are your kind of thoughts on that?

MS. BUDDIN-CRAWFORD: James?

MR. CRAVEN: Well, as Kahryn alluded to, I was a criminal defense attorney for several years, and I did get appointed – I did both private work, but I also did court-appointed work. So when someone couldn't afford their own attorney, I would be assigned to them. They still had to pay a cost for my services. The state did not fully pay for that. It paid for, like, a small part of it. So, in addition to the fines and fees that they were facing, you know, I tried to make sure that they were getting their money's worth – (laughs) – based on the amount that they would have to pay me, that I could save them at least that much or more.

The way I feel about it, you know, the state only has a few different solutions to deal with wrongful behavior. We can put people in jail. We can charge them money. And, honestly, that's about it. We're trying to come up with something new for drug crimes in forms of rehabilitation services, but the state's options are just not that varied.

Putting people in jail for traffic crimes most of the time seems pretty over the top, but it actually does happen because people will come into court and they'll say – you know, the judge will say we could have you pay \$350 for court costs and for the cost of this fine or you could spend two days in jail, and they'll say, well, I'll spend two days in jail – in which case it costs the state money. My experience with these – I mean, these guys are committing, you know, very ordinary traffic violations that, you know, I think everyone in this room – I certainly had unpaid parking tickets that I had to get to. We had no parking for the defense attorneys near the courthouse and we never know how long we have to be in court for, so I would get parking tickets all the time.

The only difference, really, from their traffic crimes and mine is just that I can pay them off quickly and easily and they really, really can't. Oftentimes, too, they would live really, really far away from the courthouse. They wouldn't even know that they were supposed to be there. So I think it's important to treat these people with a lot of sympathy and some heart.

And when I look at the way Michigan does things, the one thing that really surprises me is how fast they pile on late fees and the nonpayment misdemeanor and these other charges which are supposed to act as deterrence mechanisms, especially license suspension, to kind of threaten people to paying on time. If people aren't paying on time, it's not usually – it's not like a willful thing. It's they either don't know that they're supposed to be in court because they are living in a low-information neighborhood or because they just don't have the means to pay that money. What we did in North Carolina most often, and what lots of states do, is you bring them in, you talk to them, you sometimes waive some fines or fees, and you set them up on a payment plan that they can do based on their ability.

MS. BUDDIN-CRAWFORD: Yeah, I completely agree. I mean, at the end of the day, there's no punishment, there's no amount of money that's going to incentivize someone to pay a debt if they are unable to pay it. I mean, just practically that's just how it works. And so, absolutely, it's individualized assessment. You have to have a certain amount of compassion.

Now, are there people who just don't pay their fees just because they don't want to pay and they have the money? Sure. But those aren't – those shouldn't be the ones that we're using to dictate massive policy because a majority of the times that's not the case.

You know, in working at the city of Dearborn, the part that – when James started talking about how many resources are actually expended to trying to track down people and get them to pay these debts and suspending their license and enforcing that, it's kind of ridiculous. I mean, I think in a year and a half of being there I probably got back maybe \$10,000 for the city. That's not very much, and it took me hours and hours. It was contacting people and having wrong numbers, and contacting, you know, a witness to some accident and then seeing if they could contact somebody, and waiting, and calling the secretary of state, and filing things. I mean,

hours of work from one individual just to get back maybe \$300 from somebody, it's really a waste. It's counterintuitive and counterproductive.

MS. RILEY: A question for you, James, regarding this question of amnesty. What's the response to the statement it would be unfair to those who have already paid in the past to grant amnesty to people who are getting it now?

MR. CRAVEN: You know, I think that that – I understand the fairness angle of what they're trying to say, but it really just feels like a straight-up lost-cost fallacy to say that we had this problem before and it was bad before, so let's just leave it bad. That's not a good problem-solving solution.

First I would say, you know, for people who are in between those two stages, for people who have paid some of these fines but haven't finished paying these fines and, you know, have had their license suspended, I think that they should go ahead and get their licenses back and I think that we should stop the practice going forward. When you have a problem, when something – when a policy has been, you know, causing problems, you can't just stick to that road because that's what you were doing in the past. You've got to change course as soon as you can. So I would say, you know, the best thing to do going forward is to give licenses back to people who have had – who, you know, are – had their license suspended for not paying fines and fees, and to stop the practice as soon as possible.

MS. RILEY: Last call for questions. We are wrapping up here, so if you have one please let us know.

Kim, there are 22 percent of drivers who are uninsured in the city of Detroit. So what if we waived all past fines for people who don't have insurance and just ask them to demonstrate one year's proof of insurance? Would that be effective to go on?

MS. BUDDIN-CRAWFORD: Yeah, I mean, that's definitely a start. Insurance, that's a big issue. There could probably be a whole 'nother panel on that alone.

But, yeah, insurance is a big thing for a lot of individuals. The inability to get insurance is – it's also very much a disproportionately impacted issue. Communities of color and low-income communities especially are more likely to be driving without insurance. And a lot of that is not just tied to poverty, but also tied to the fact that insurance rates are extremely high in those areas. And if you're choosing between whether or not you're going to have car insurance and whether or not you're going to be able to put food on the table for your children, I'll leave that up to you to decide, but a lot of individuals choose the latter.

So I think that that type of policy goes aligned with a lot of the things that we're saying, having that compassion, having the understanding, having those individualized needs assessments and those individualized opportunities for someone to demonstrate their ability to comply with the law and their willingness to comply with the law – not even just ability, their willingness to comply with the law. At the end of the day, sometimes people just need a break.

MS. RILEY: OK. Well, with that, we're going to wrap up. I want to thank all of you for joining us. I want to thank our panelists, all of our out-of-town guests actually, for making it down to Lansing.

Again, the study that James is referencing is available. It's Reason.org, I believe.

MR. CRAVEN: Yes.

MS. RILEY: If you just go to the homepage you'll find the study on the right-hand side in the bar. It was just recently released, so easy access.

MR. CRAVEN: It was. But scroll down to the "policy brief" section if it's, you know, been knocked down by other things. (Laughter.)

MS. RILEY: And, of course, Kim and the work that her organization does can be accessed online at ACLU.org.

And you'll find us online, Mackinac – Center – .org. And then, of course, we have some print resources available as well in the back if you're interested in learning more about what the Mackinac Center is doing.

So thank you all, again, for coming. Enjoy the rest of your afternoon. (Applause.)

(END)