

Office of the Attorney General of Washington State



Consolidating Traffic-Based Financial Obligations in Washington State:

Recommended Plan and Program

Washington State Attorney General Bob Ferguson

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This report responds to the legislative directive in Substitute Senate Bill 6360 (2016) for the Office of the Attorney General to develop a plan and program for the efficient statewide consolidation of an individual's traffic-based financial obligations imposed by courts of limited jurisdiction into a unified and affordable payment plan, and to submit a report detailing the plan and program developed and the Attorney General's recommendations.

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Table of Contents

Acknowledgements.....	4
Executive Summary	5
Introduction to the Issue.....	7
I. Overview.....	7
II. A Concern of National Significance	7
III. Racial Disparity	9
IV. Legal Landscape	9
Recommendation	12
I. The existing method for collecting traffic-based financial obligations inhibits some Washingtonians from restoring their driving privileges.	12
II. Establishing a program to consolidate traffic-based financial obligations aligns with the constitutional norm and policy objectives of not penalizing people for their poverty.	13
III. The recommended approach to consolidation is narrowly tailored to facilitate compliance beyond the current approach to collection, improving collection on the underlying obligations with minimal costs to the state.	14
Background.....	16
I. Senate Bill 6360.....	16
II. Work Group Process Summary	17
III. Existing Processes and Procedures	18
A. Civil Traffic Infractions	19
B. Criminal Traffic Offenses	22
C. Amount of Traffic-based Financial Obligations	23
D. Alternatives	26
Analysis.....	31
I. Court Caseloads	31

II. License Suspensions	33
III. Revenue.....	38
Program Proposal.....	40
I. Mission, Goals & Evaluation Metrics.....	40
II. Authority & Administration.....	40
III. Eligibility	42
IV. Application.....	43
V. Payment Plan	44
VI. Operation.....	45
VII. Termination.....	46
Implementation	50
I. Enacting Legislation & Rules	50
II. Executing a Performance Contract	50
III. Establishing New JIS Code.....	51
IV. Financial Viability	51
V. Promoting the Program.....	53
VI. Conclusion	54
References.....	55

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This report was authored by the Washington State Office of Attorney General. Contributing staff includes: lead author and work group facilitator Travis Alley, Assistant Attorney General; Kate Kelly, Policy Director; Sydney Miyahara, Policy Analyst; Ellen Austin Hall, Policy Analyst; Jay Geck, Deputy Solicitor General; Cooper Smith, Policy Analyst; Tricia Kealy, Legal Assistant; Mary Harper, Executive Assistant; and Abigail Yadav, Policy Volunteer.

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EXECUTIVE SUMMARY

Substitute Senate Bill 6360, legislation requested by the Attorney General's Office in 2016, called for the convening of a work group of stakeholders to provide input and feedback on the development of a plan and program for the statewide consolidation of traffic-based financial obligations imposed by courts of limited jurisdiction. This report provides information about the work group process and the input and feedback received, and sets out the Attorney General's recommended plan and program for the consolidation of traffic-based financial obligations.

Traffic-based financial obligations are imposed for civil and criminal traffic violations. Additional penalties and collection costs are added on if a violator fails to respond to the violation notice or fails to pay. Obligations frequently total in the hundreds of dollars.

For violations defined as "moving violations," failure to respond or pay results in the suspension of driving privileges. Driving privileges can be suspended for a multitude of reasons, but snapshot data from the Department of Licensing shows that approximately 190,000 individuals have their licenses suspended for failure to respond or pay. This is about half of the total number of individuals statewide whose driving privileges have been suspended, revoked, or cancelled.

Under Washington law, driving privileges are recognized as an important property interest. There are constitutional protections that must be met before the state can take away those privileges. Under existing statutes, a court is required to offer a payment plan to an individual when the court finds that person is unable to pay an obligation in full. However, there is a lack of consistency in the courts' evaluations of a defendant's ability to pay, or how defendants can request a payment plan.

Some courts offer local relicensing programs or work with the collection agencies they contract with to offer payment plan options. These avenues enable restoration of driving privileges so long as payments are made towards outstanding obligations. However, there are structural limitations prohibiting courts from resolving outstanding obligations from other jurisdictions.

Available snapshot data shows that at any point in time, nearly 50,000 individuals may have multiple outstanding failure to respond or pay suspensions issued by more than one court of limited jurisdiction. Based on a sampling of these records, approximately 46% of the individuals have multiple suspension orders from more than one court, and are in circumstances where the various courts involved contract with different collection agencies. For these individuals, there is currently no mechanism for establishing a single payment plan addressing all obligations.

The work group convened by the Attorney General's Office evaluated different potential approaches to consolidation. Ultimately, the group reached consensus on or expressed majority

support for 39 different propositions for how various aspects of a program to consolidate traffic-based financial obligations should be designed, if such a program is established.

Based on the input and feedback of the work group members, and as called for by the legislation, the Attorney General's Office recommends a plan and program to establish a unified payment plan system for the consolidation of multiple traffic-based financial obligations. The recommended plan and program would:

- Authorize the Administrative Office of the Courts (AOC) to establish a unified payment plan system for the consolidation of multiple traffic-based financial obligations;
- Allow eligible defendants to bring their multiple outstanding obligations into the new payment plan system for ongoing servicing with a single point of contact;
- Restrict eligibility to individuals who have at least one suspension order based on failure to respond or pay to keep the program focused on facilitating compliance for those not otherwise successfully making payments;
- Request the Washington State Supreme Court to adopt a policy governing repayment terms for the program that reflects a consideration of a defendant's ability to pay; and
- Restore driving privileges for those successfully meeting the terms of payment, provided there are no other suspension or revocations on record and proof of valid liability insurance is provided.

The recommended plan and program also contemplates allowing a private entity specializing in the management of such payment plan arrangements to contract with AOC to administer the system. This approach mirrors the regular existing practice used by courts of limited jurisdiction of structuring such contracts so the obligors bear collection costs directly and are the source of revenue for the compensation received by the private entity in exchange for its services.

The recommended plan does not contemplate that the amount of the obligation originally imposed by a court could be lowered except by the court that originally imposed it.

If implemented as recommended, the plan should result in a reduction in suspensions for failure to respond or pay, fewer prosecutions for the misdemeanor of driving while license suspended in the third degree, and improved collection rates. The recommended plan and program increases options for those with outstanding traffic-based financial obligations, while still encouraging defendants to satisfy their obligations as quickly as possible.

INTRODUCTION TO THE ISSUE

I. Overview

The State has an interest in the efficient administration of traffic regulations, including ensuring accountability for drivers who commit infractions or offenses. Washington law allows for the suspension of driver's licenses of individuals who fail to respond to infraction or citation notices, or who fail to pay their fines—which should incentivize payment. However, the current system of suspending driver's licenses for unpaid traffic-based financial obligations disproportionately affects poor and low-income Washingtonians, and has the potential to contribute to what has been described as a “cycle of poverty, unemployment, and incarceration.”¹ Steps have been taken to begin to address the disparity, including ending the practice of suspending licenses for nonpayment in cases involving non-moving traffic violations.² In addition, certain local jurisdictions offer alternatives, such as local relicensing programs or the option of community service, to pay off traffic-based financial obligations.

While alternatives to monetary payment or flexible payment plans are offered in some jurisdictions, they are not available for everyone statewide. Indeed, local courts of limited jurisdiction exercise considerable discretion whether to establish such programs and in making determinations about any particular defendant's ability to pay.

Moreover, the lack of consistency and coordination between jurisdictions can make it more difficult for drivers to address their financial obligations and retain or restore their driving privileges. Currently, a driver with multiple outstanding traffic-based financial obligations may experience difficulty trying to consolidate those obligations into a single payment plan. Because of the structural realities of the system, this potential difficulty increases when the traffic-based financial obligations are outstanding in multiple jurisdictions. In such circumstances, a person may need to negotiate separate payment plans with each individual court or contracted collection agency, and obligations owed in other jurisdictions are not necessarily considered for purposes of setting payment arrangements.

II. A Concern of National Significance

The potential for disproportionate impact on poor and low-income households from court-imposed fines and fees has gained attention around the country. This attention correlates to a general growth in the amount of court fees and fines. Often, these increases are adopted by state and local governments to offset court operating costs and to respond to broader budgetary pressures. In a 2010 report, the Brennan Center for Justice noted that what is emerging nationally is “a disturbing uptick in both the dollar amount and the number of criminal justice fees imposed on offenders, as well as increased pressure on officials to collect fees, fines, and other forms of criminal justice debt.”³

As fees and fines have proliferated, so too has a desire to examine and understand the collateral consequences. According to the U.S. Department of Justice, “Recent years have seen increased attention on...enforcement of fines and fees in certain jurisdictions around the country—often with respect to individuals accused of misdemeanors, quasi-criminal ordinance violations, or civil infractions.”⁴ The disproportionate impact on less advantaged populations has been widely recognized.⁵ The Department of Justice has described the effect of court-imposed fines and fees on individuals, their families, and communities as “devastating”:

In isolation, an individual fine or fee may appear insignificant, but for many people, paying a fine that, together with associated fees and assessments, can easily exceed several hundred dollars can be challenging. And the obligations can easily and rapidly add up. For example, a person ticketed for a municipal violation who cannot afford to pay the original fine can be charged late payment fees and compounding interest and be subjected to further consequences such as wage garnishment or driver’s license revocation...For an individual charged with a criminal offense, the assortment of fees assessed by the justice system can be especially daunting...These harms are most frequently felt by the most vulnerable members of our communities—not just those who are justice-involved, but their families and children, too—as they become trapped in cycles of poverty that can be nearly impossible to escape.⁶

Traffic-based costs, fines, and fees impact low-income drivers disproportionately. Indeed, low-income drivers who do not find a way to either pay in full or establish and maintain a payment plan can have their driving privileges suspended. According to the Brennan Center for Justice, “One common collection practice that leads to a cycle of reincarceration is the suspension of driver’s licenses...If these individuals continue driving—as they often must to work—they face new and often severe criminal penalties for driving with a suspended license.”⁷ Without a license, these individuals can face a serious dilemma: lose their jobs or risk a criminal charge for driving illegally.

This concern has been highlighted in Washington State. As far back as 2006, the “Report of the Courts of Washington” included the following statement when describing an amnesty event to help residents take care of financial obligations to resolve driver licensing and other legal problems caused by their unpaid fines:

[C]ourt officials...were also interested in helping people get out of a downward spiral. It can happen when a driver can’t pay a fine, has his or her license suspended, can’t get car insurance, then either loses a job because of inability to drive or gets caught driving without a license. The legal and financial burdens

multiply... This kind of spiral affects both the offenders and the courts, which end up dealing with increasing caseloads from drivers who find themselves in these situations.⁸

III. Racial Disparity

Disparities associated with traffic-based financial obligations fall on racial, as well as income-based, lines. In 2011, the Research Working Group of the Task Force on Race and the Criminal Justice System published a report on race and Washington's criminal justice system. The report generally confirmed that minority racial and ethnic groups remain disproportionately represented in Washington's court and criminal justice system. This racial disparity extends to the prosecution and administration of traffic misdemeanors and infractions. In the section addressing traffic stops, the report states, "The data shows that [racial] minorities are cited more often, and that when they are cited, their citations are for more serious offenses."⁹ With racial minorities more likely to receive tickets for even minor infractions, it is not surprising that the disparity extends to collateral consequences. "Because the failure to pay fines stemming from traffic tickets can lead to a license suspension, the [Driving While License Suspended] law disproportionately affects minority drivers."¹⁰ Similarly, in discussing variability in the assessment of legal financial obligations, the report explains that "extra-legal factors, such as race and ethnicity, affect this variability, and significantly impacts how [legal financial obligations] are assessed."¹¹

Washington State is not unique. This racial disparity exists across the country to varying degrees. For example, a recent report out of California found that "Just as the U.S. Department of Justice found in Ferguson, [Missouri,] people of color in California are disproportionately impacted by licenses suspension...[and] data from several localities...demonstrates that from the very beginning of the process, citations have a disproportionate racial impact."¹² States that regularly collect and analyze data on traffic stops generally reach consistent findings. According to an analysis performed by the New York Times, "in the seven states with the most sweeping reporting requirements—Connecticut, Illinois, Maryland, Missouri, Nebraska, North Carolina and Rhode Island—the data show police officers are more likely to pull over black drivers than white ones, given their share of the local driving-age population."¹³

IV. Legal Landscape

The increasing scrutiny and attention on the disproportionate impacts of traffic-based financial obligations includes an examination of the broader legal framework related to the prosecution and administration of the cases involving the imposition of traffic-based financial obligations. This examination notably includes a March 2016 *Dear Colleague* letter from the U.S. Department of Justice (DOJ) to state and local courts "intended to address some of the most common practices that run afoul of the United States Constitution and/or other federal laws and

to assist court leadership in ensuring that courts at every level of the justice system operate fairly and lawfully.”¹⁴ The letter discusses a set of basic constitutional principles grounded in the rights of due process and equal protection relevant to the enforcement of fines and fees in both the context of criminal charges and civil infractions.

To comply with these principles, the “Courts must not use...license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.”¹⁵ This principle is by no means a new concept. The Washington State Supreme Court has acknowledged that “It is well settled that driver’s licenses may not be suspended or revoked ‘without that procedural due process required by the Fourteenth Amendment.’”¹⁶ In 2004, the Court invalidated sections of state law compelling mandatory license suspension for failing to appear, pay, or comply with notices for traffic infractions on the basis that the law did not provide defendants an opportunity for an administrative hearing before the license suspension became effective.¹⁷

Some argue that the guarantee of due process also requires courts to proactively inquire about and assess a defendant’s ability to pay. As described in the March 2016 DOJ letter, suspension of an individual’s driver’s license due to failure to pay a fine “may be unlawful if the defendant was deprived of his [or her] due process right to establish inability to pay.”¹⁸ More recently, in November 2016, DOJ filed a statement of interest in a case challenging the constitutionality of Virginia’s practices of suspending the driver’s licenses of those who fail to pay fines or fees. DOJ’s brief concludes that the “practice of automatically suspending the driver’s license of a defendant who fails to pay owed court debt without any inquiry into the defendant’s financial circumstances—i.e., whether the nonpayment was willful or the result of an inability to pay—violates the Fourteenth Amendment.”¹⁹

In California, a county court recently settled a case alleging the court acted improperly by routinely failing to notify traffic defendants of their right to demonstrate they were low-income and unable to pay fines.²⁰ The first-of-its-kind settlement includes provisions reflecting the court’s agreement to implement changes to its procedures and forms to proactively notify infraction defendants of their right to seek an “ability to pay” determination at any time between the issuance of a ticket and the time when the fines and fees are paid in full.

The implications of courts not making an individualized inquiry and determination of a specific defendant’s ability to pay was also at issue in the recent Washington Supreme Court decision, *State of Washington v. Blazina*. Although that case involved discretionary legal financial obligations in the context of criminal charges, and was ultimately decided on statutory as opposed to constitutional grounds, the court engaged in a significant discussion about the “problematic consequences” of Washington’s legal financial obligation system.²¹ In holding that a trial court must make an individualized inquiry into a defendant’s current and future ability to

pay, *Blazina* suggests that courts should consider a defendant's other debts as part of the process of making a meaningful inquiry into a person's ability to pay.²² Indeed, when the Washington Supreme Court raised monetary penalties for traffic infractions in 2015, justices dissenting to the increase argued that the principle motivating the conclusion in *Blazina* should also be applied in the context of civil traffic infractions.²³

RECOMMENDATION

During the 2016 session, at the request of the Attorney General's Office, the Washington State Legislature passed Substitute Senate Bill (SSB) 6360. The bill called for the Attorney General's Office to submit a report presenting recommendations for a plan and program to enable the consolidation of traffic-based financial obligations across jurisdictions. The report was to be based on feedback and input from a stakeholder work group, which convened for over a year. While the members did not reach consensus on every issue, common ground exists about a number of essential elements of a program design, should a program to consolidate traffic-based financial obligations be implemented.

The Attorney General's recommendation is that Washington adopt a program to enable the consolidation of traffic-based financial obligations. This introductory section provides an overview of the bases for the recommendation and highlights some of the key aspects to the program being recommended.

The program outlined in this report is designed to operate in conjunction with the existing method of collecting traffic-based financial obligations, supplementing the current process in a way that facilitates compliance and improves outcomes for individuals and the public without disrupting those parts of the current system that are effective.

I. The existing method for collecting traffic-based financial obligations inhibits some Washingtonians from restoring their driving privileges.

Traffic regulations exist to promote the safe and efficient movement of traffic throughout the state. Cumulatively, about one million cases involving traffic violations are brought every year in Washington's courts of limited jurisdiction, whether it is for failing to signal while changing lanes, driving with a headlight out, speeding, or something else. Indeed, in *State v. Ladson*, the Washington Supreme Court essentially acknowledged that virtually the entire driving population has been in violation of some regulation at some point.²⁴

A driver found violating traffic regulations receives a citation or notice of infraction, and often is required to pay a fine or penalty. Most individuals pay the obligation timely and continue to drive legally unless the conduct warrants mandatory license suspension. If a court finds an individual is unable to pay an obligation all at once, Washington law requires the court to offer a payment plan based on ability to pay. An individual's ability to pay a traffic-based financial obligation can become complicated if there are multiple obligations across jurisdictions. Because courts of limited jurisdiction cannot adjudicate matters from other courts, individuals in such circumstances may find themselves having to negotiate multiple payment plans. A court (or the collection agency they contract with) may not necessarily consider obligations owed elsewhere

when establishing the terms of payment. These jurisdictional silos can be a barrier for individuals who need a payment plan to resolve the outstanding obligations they owe in multiple jurisdictions. Without a consolidated payment plan, those individuals may not establish a payment at the outset or they can fall behind in paying their obligations, and their license can be suspended. Suspended drivers who continue to drive can be subject to criminal prosecution.

Based on Department of Licensing data, at any point in time, approximately 50,000 individuals have two or more orders from different Washington courts suspending their driving privileges for failure to respond or failure to appear. Given that failing to pay non-moving traffic violations is no longer a basis for license suspension, the number of individuals who owe traffic-based financial obligations in different jurisdictions is almost certainly higher. Some of these individuals owe in jurisdictions that contract with the same collection agency, which may help facilitate a single, affordable plan. However, there remains an underlying structural issue of an existing collection approach incapable of supplying all Washingtonians the option of a consolidated payment plan. The program proposed in this report addresses that issue.

II. Establishing a program to consolidate traffic-based financial obligations aligns with the constitutional norm and policy objectives of not penalizing people for their poverty.

It is well established under federal and state law that the due process and equal protection clauses prevent the arbitrary punishment of indigent defendants for their failure to pay fines. Where personal liberty is at stake, courts must inquire about a defendant's ability to pay to determine if the failure to pay was willful or not. This norm is essential to fundamental fairness.

In addition, courts have consistently held that drivers have a substantial property interest in their driver's licenses, and that this interest cannot be taken away without due process. In 2004, for example, in *City of Redmond v. Moore*, the Washington State Supreme Court held that the statutory scheme existing at the time did not provide adequate procedural safeguards to ensure against the erroneous deprivation of a driver's continued use and possession of his or her driver's license.²⁵ In doing so, the Court acknowledged that the state's interest in suspending an individual's driver's license for failing to appear, pay, or comply with a notice of traffic infraction is in the efficient administration of traffic regulations and, although important, that interest does not rise to the same level of the compelling interest of keeping unsafe drivers off the roadways.

Although not as severe as incarceration, suspending a person's driving privileges is a penalty that can significantly impact individuals and families. A valid driver's license promotes economic self-sufficiency and can often be a condition for employment. Further, not being able to drive legally can present challenges for routine daily tasks, such as going to medical appointments or

getting children to school. Finally, individuals with driving privileges suspended for outstanding financial obligations can be subject to criminal penalties if they continue to drive.

Current law requires courts of limited jurisdiction to enter into a payment plan if the court determines, in its discretion, that a person is not able to pay a monetary obligation in full. Under the existing statutory scheme, “payment plan” is defined as a plan that requires reasonable payments based on the financial ability of the person to pay. However, how courts make determinations of ability to pay varies among jurisdictions. This has been a topic of litigation in several other states, and was discussed in the recent Washington Supreme Court decision, *State v. Blazina*. Based on the facts of the case, the *Blazina* court held that a trial court must make an individualized inquiry into a defendant’s current and future ability to pay when assessing discretionary financial obligations, and that within this inquiry, the court should consider other factors, including a defendant’s other debts.²⁶

The recommended program would give courts and defendants a means to create a consolidated payment plan that considers all their outstanding obligations; this is an important consideration for a meaningful inquiry into ability to pay. Allowing consolidation will help prevent circumstances where individuals forego payment of their traffic-based financial obligations entirely because they lack the ability to sustain multiple payment plans, each with its own minimum payment.

III. The recommended approach to consolidation is narrowly tailored to facilitate compliance beyond the current approach to collection, improving collection on the underlying obligations with minimal costs to the state.

The program recommended in this report includes eligibility conditions specifically targeting the population that owes multiple obligations. The conditions require a person be subject to either multiple existing orders suspending his or her driving privileges based on failure to appear, pay, or comply, or that a person be subject to one such order and owe obligations collectively exceeding \$750, an amount that generously exceeds the typical obligation imposed for a single traffic violation. This limitation keeps the proposed program focused on individuals failing to meet all their outstanding obligations under the current approach to collection.

Importantly, the recommended program design does not forgive the original obligations, but instead facilitates compliance. The program provides eligible defendants with a choice of how to pay their obligations, but payment of the amount imposed by each court will still be required. Also, the program design does not displace requirements for payment plan terms and options offered by local courts. The unified system and the local courts (and the collection agencies they contract with) would have the ability to adopt different strategies for working with individuals and, as a result, may offer alternate payment plan terms for obligations in their jurisdiction.

A program that is successful at facilitating compliance for individuals who are not currently paying their obligations will improve collection rates with minimal ongoing expenditures to the state. To help offset costs associated with program administration, the design outlined here contemplates replicating existing fee authority. Currently, local jurisdictions with relicensing diversion programs may charge participants a one-time fee of up to \$100 to support administration of the program. Granting similar authority to establish a consolidated payment plan will help offset costs.

In addition, ongoing costs to the state should be minimal because the program design contemplates imitating existing models for vendor compensation that involve the entity responsible for overseeing the program to pay nothing beyond contract management and providing information to the public. Currently, contracts between private collection agencies or accounts receivable companies and many courts of limited jurisdiction provide that such companies receive compensation exclusively by means of the associated collection costs paid by the obligors. By adopting a similar model and scaling up statewide, the costs to the state for a program for the consolidation of traffic-based financial obligations should be negligible.

BACKGROUND

I. Senate Bill 6360

During the 2016 regular legislative session, the Washington State Legislature passed Substitute Senate Bill (SSB) 6360, which became effective on June 9, 2016.

SSB 6360 directs the Attorney General's Office (AGO) to convene a work group of stakeholders "to provide input and feedback on the development of a plan and program for the efficient statewide consolidation of an individual's traffic-based financial obligations imposed by courts of limited jurisdiction into a unified and affordable payment plan."²⁷

The legislation lists the members of the work group:

- The Administrator for the courts (or designee);
- The Director of the Washington State Department of Licensing (or designee);
- A district or municipal court judge, appointed by the District and Municipal Court Judges' Association;
- A prosecutor (or designee), appointed by the Washington Association of Prosecuting Attorneys;
- A public defender, jointly appointed by the Washington Defender Association and the Washington Association of Criminal Defense Lawyers;
- A district or municipal court administrator or manager, appointed by the District and Municipal Court Management Association;
- A representative of a civil legal aid organization, appointed by the Office of Civil Legal Aid;
- The Chief of the Washington State Patrol (or designee);
- A representative of a statewide association of police chiefs and sheriffs, selected by the association;
- The Director of the Washington Traffic Safety Commission (or designee);
- A representative of a statewide association of city governments, selected by the association;
- A representative of a statewide association of counties, selected by the association; and
- A representative of a statewide association of collection professionals.

As the convening agency, the Attorney General appointed an ex officio representative to facilitate the work group process and meetings.

SSB 6360 specified that the work group will convene "as necessary" and provide final feedback and recommendations to the AGO by September 15, 2017.²⁸ SSB 6360 also directs the AGO to

submit a report detailing its recommendations for a plan and program for the efficient statewide consolidation of traffic-based financial obligations by December 1, 2017.²⁹

II. Work Group Process Summary

In May 2016, after SSB 6360 passed the State Legislature and was signed by the Governor, the AGO sent letters inviting the listed agencies and organizations to select a representative to participate in the work group. The letter emphasized that stakeholder participation was critical to a successful process and outcome. The AGO received responses from all stakeholder agencies and organizations, each of which appointed a representative to the work group.

Consistent with the AGO's commitment to transparency and accountability, the work group operated according to the Washington State Open Public Meetings Act (OPMA). Meetings were open to the public. Meeting agendas were posted in advance online at <http://www.atg.wa.gov/task-forces> and posted physically at the meeting site. Meeting notices and agendas were also sent electronically to individuals who asked to be on the distribution list.

In total, the AGO hosted eight full work group meetings. Meetings generally lasted three hours. Work group members could attend either in person or telephonically. The work group's input and feedback progressed through three stages. The initial meetings focused on defining how existing policies and processes function, the nature of the issue under consideration, and the role of the work group. Notably, the group adopted a charter outlining how the group would operate. Echoing the legislation, the charter expressed the purpose of the work group as providing input and feedback to be incorporated into the report required by the legislation, and to help inform the Attorney General's recommendations. In addition, the charter provided that work group members would assist the project by, among other things, relaying information to their respective constituencies about work group activities and gathering information from their constituencies to share with the work group. The charter also outlined the role of the Attorney General's Office as facilitator and noted that the work group would strive for consensus.

The second stage of the work group's process involved gathering and analyzing relevant information, ascertaining what work group members believed to be necessary components for any program proposal, and developing propositions for consideration and discussion. During this second phase, the work group as a whole met less frequently, but between meetings of the entire group, stakeholder representatives participated in four sub-group conversations to discuss specific topic areas: Operational Logistics, Public Safety, User Experience, and Financials. Sub-group meetings were held telephonically. Work group members self-selected the single sub-group in which they participated.

In March 2017, two different program concepts were distributed to work group members. This roughly began the third and final stage of the work group process. The concepts represented different approaches to consolidation offered to and discussed by the work group as potential options for further refinement. Work group members were asked to identify the perceived benefits and drawbacks of each approach, and to identify practical questions raised by the two consolidation approaches. Subsequent meetings involved the work group comparing the approaches for points of confluence and using them as a basis for evaluating propositions for inclusion in the AGO's ultimate report and recommendations. These propositions are detailed in Appendix A.

On September 15, 2017, the statutory deadline for the work group's input and feedback to the AGO, a final meeting was held. The group considered a number of propositions synthesizing the ideas and thoughts previously expressed by work group members. Following the general process outlined in the work group charter, the AGO solicited opinions from all members and provided an opportunity for comment on the propositions. The work group reached consensus on or offered majority support for 39 propositions. The propositions represent the group's input and feedback for guiding the design and operation of a program to consolidate traffic-based financial obligations, should a program be established.

III. Existing Processes and Procedures

An overview of existing processes and procedures is useful for understanding the input and feedback provided by the work group, and the recommended plan and program for consolidating traffic-based financial obligations.

SSB 6360 specifically focuses on traffic-based financial obligations imposed by courts of limited jurisdiction, which includes district courts and municipal courts:

- District courts are county courts serving defined territories, both incorporated and unincorporated, within their respective counties. District courts have civil jurisdiction over traffic infractions, and criminal jurisdiction over misdemeanors and gross misdemeanors involving traffic offenses.
- Municipal courts are created by cities and towns to address violations of municipal ordinances occurring within the municipality. Like district courts, municipal courts have jurisdiction over gross misdemeanor and misdemeanor traffic offenses, as well as civil traffic infractions. Some municipalities contract with local district courts or other municipalities for court services. A municipality may also establish and operate, under the supervision of the municipal court, a violations bureau³⁰ to assist in the processing of designated traffic offenses and infractions.

According to AOC's court directory, courts of limited jurisdiction operate at 177 different locations in Washington State. A complete list of these courts is available in Appendix B.

A person can incur a traffic-based financial obligation as a result of either a civil traffic infraction or a criminal traffic offense, a distinction established by statute. Pursuant to RCW 46.63.020, the failure to perform any act required or the performance of any act prohibited by statute, regulation, or local ordinance relating to traffic is designated as a traffic infraction and may not be classified as a criminal offense unless it is listed as an exception.³¹

A. Civil Traffic Infractions

A civil traffic infraction case is initiated when a notice of traffic infraction is issued, served, and filed with the court.³² The notice represents a determination that an infraction has been committed and such determination is final unless the person who received the notice contests it.³³ A person who receives a notice of a traffic infraction is given three options to respond and generally must do so within 15 days.³⁴ The three prescribed response options are:

- 1) Paying the associated monetary penalty;
- 2) Requesting a hearing to contest the notice; or
- 3) Requesting a hearing to explain mitigating circumstances.

What happens next depends on how the person in receipt of a notice of traffic infraction responds:

- 1) **PAY:** If the person remits payment in full with the response, the court enters an order that the defendant committed the infraction.
- 2) **CONTEST:** At a hearing to contest the notice, the court determines whether the governmental unit issuing the notice has proved by a preponderance of the evidence that the defendant committed the infraction.
 - If the court determines the infraction was not committed, an order dismissing the case is entered.
 - If the court determines the infraction was committed, an order is entered that includes the associated monetary penalty for the infraction. The court may also waive or suspend a portion of the monetary penalty, provide for time payments on a payment plan, or—in lieu of monetary payment—provide for the performance of community restitution.
- 3) **REQUEST MITIGATION:** At a mitigation hearing, the court determines whether the defendant's explanation of the events justifies reducing the associated monetary penalty. The court then enters an order finding that the defendant committed the infraction that includes the associated monetary penalty for the infraction. The court may also waive or

suspend a portion of the monetary penalty, provide for time payments on a payment plan, or—in lieu of monetary payment—provide for the performance of community restitution.

At either a contest or mitigation hearing, state law allows the court to defer findings for up to one year on conditions the court deems appropriate.³⁵ The court may assess costs for the administrative processing of the deferral. If, at the end of the deferral period, the defendant meets all conditions and did not commit another infraction, the court may dismiss the infraction. Defendants who are not holders of a commercial driver’s license are eligible for no more than one deferral for a moving violation and one deferral for a nonmoving violation within a seven-year period.

If any person issued a notice of traffic infraction fails to respond to the notice or fails to appear at a requested contest or mitigation hearing, the court enters an order finding that the defendant has committed the infraction that includes the associated monetary penalty for the infraction.³⁶

A civil traffic infraction is classified as either a “moving violation” or a “nonmoving violation.” The Washington State Department of Licensing (DOL), in consultation with the Administrative Office of the Courts (AOC), adopts and maintains a rule defining what constitutes a moving violation.³⁷ This categorical distinction is important for whether a person’s driver’s license can be suspended as a consequence of failing to respond to the notice of traffic infraction, appear for a requested hearing, or comply with any order finding the infraction was committed.

Under RCW 46.20.289, DOL suspends all driving privileges when the department receives notice from a court that a person has:

- Failed to respond to a notice of a traffic infraction for a moving violation;
- Failed to appear at a requested hearing for a moving violation;
- Violated a written promise to appear in court for a notice of infraction for a moving violation; or
- Failed to comply with the terms of a notice of a traffic infraction or citation for a moving violation.

A person who fails to respond, appear, or comply with a notice for a nonmoving violation is not subject to having his or her driver’s license suspended.

Whenever a traffic-based financial obligation is imposed for a civil infraction, “it is immediately payable and is enforceable as a civil judgment.”³⁸ In practice, the various courts of limited jurisdiction can have different procedures and timelines for determining when traffic-based financial obligations are deemed unpaid. For example, in Adams County, the Ritzville District Court requires defendants who owe penalties on traffic infractions to report to the cashier/clerk

immediately after leaving the courtroom, and failure to do so may be considered failure to pay,³⁹ whereas Spokane County District Court allows 30 days from a person's court hearing for payment.⁴⁰

A notice of traffic infraction must include a statement that the person who receives the notice may be able to enter into a payment plan with the court.⁴¹ Pursuant to RCW 46.63.110:

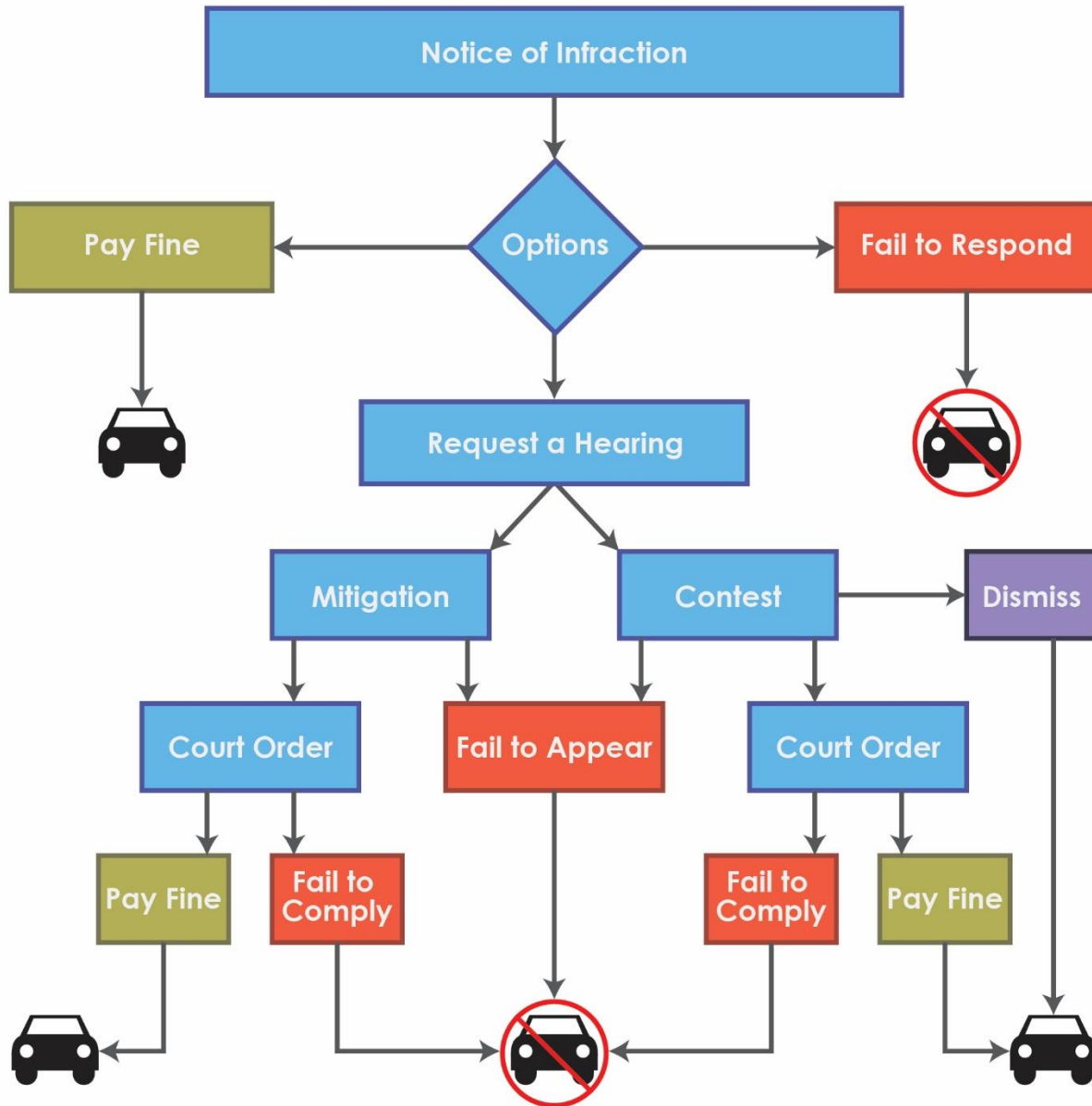
If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since...the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan.

A court may administer the payment plan itself or may contract with an outside entity to do so.⁴²

If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation to a collection agency until the obligations have been paid or until the person has entered into a payment plan.⁴³ The court notifies DOL of the delinquency and, for qualifying moving violations the person's driving privileges are suspended. Generally, a court must forward the information to DOL within ten days.⁴⁴

The figure below outlines the general process and outcomes for moving violations as described above:

Figure 1: Traffic Infraction Adjudication Process & Outcomes for Moving Violations



B. Criminal Traffic Offenses

A traffic offense is criminal if conviction can lead to jail time in addition to traffic-based financial obligations. Courts of limited jurisdiction can adjudicate criminal traffic offenses that are either misdemeanors or gross misdemeanors. Misdemeanor crimes have a maximum sentence of 90 days in jail and a maximum fine of \$1,000.⁴⁵ Gross misdemeanor crimes have a maximum sentence of 364 days in jail and a \$5,000 maximum fine.⁴⁶

A criminal traffic case can be initiated by a criminal complaint filed by a prosecutor⁴⁷ or, more often, by a citation and notice to appear served by a law enforcement officer.⁴⁸ When signed by the citing officer and filed with a court of competent jurisdiction, a citation and notice to appear is deemed a lawful complaint for the purpose of initiating the prosecution of the offense charged.⁴⁹ Among other things, the citation and notice to appear must include the time and place where the person in receipt of the notice is required to appear in court.

Arraignment is generally the first required court appearance in a criminal traffic offense case, and typically occurs not later than 14 days after the date the complaint is, or the citation and notice are, filed in court. Arraignment entails the formal reading of the criminal complaint against the defendant and generally requires the defendant's presence in court.⁵⁰

If a person willfully fails to appear at arraignment or at any other requested hearing related to a criminal traffic complaint, the court notifies DOL of the defendant's failure to appear and the person's driving privileges are suspended.⁵¹ Moreover, "the court may order the issuance of a bench warrant for the arrest of any defendant who has failed to appear before the court...in answer to a citation and notice"⁵² or as otherwise required.

Criminal traffic cases generally resolve in one of two ways. If the defendant is found not guilty or the case is dismissed, the defendant is not liable for monetary obligations typically associated with the offense. If, however, the defendant is found guilty, the court enters a judgment of conviction, and typically imposes some amount of monetary obligation. The court "may order that its sentence include special conditions or requirements, including a specified schedule for the payment of a fine, restitution, or other costs."⁵³ Upon entry of a judgment of guilty in a criminal traffic case, the court forwards an abstract of the order to DOL with a copy of the complaint or citation and notice to appear.⁵⁴

As with traffic infractions, failure to pay a traffic-based financial obligation stemming from a conviction of a criminal traffic offense can result in the suspension of driving privileges. DOL "is authorized to suspend the license of a driver upon a showing...that the [person]...has failed to comply with the terms of a...criminal complaint, or citation, as provided in RCW 46.20.289."⁵⁵ The Washington Supreme Court affirmed this outcome in a recent case.⁵⁶

C. Amount of Traffic-based Financial Obligations

The amount of traffic-based financial obligations incurred by an individual can vary depending on the nature of the traffic violation. Despite this variance, it is useful to review the amount of a typical traffic-based financial obligation stemming from both a civil infraction and a criminal offense.

For civil traffic infractions, RCW 46.63.110 provides that the Supreme Court shall set a schedule of monetary penalties by rule. The rule identifies the base penalty for 78 different traffic infractions ranging from \$20 to \$500; the most common penalty amount in the schedule is \$48. In addition to the base penalty, there are statutory assessments that, together, exceed the base penalty. Table 1 below details the traffic-based financial obligations for a typical civil traffic infraction and the authority under which they are imposed:

Table 1: Example of Financial Obligations for a Civil Traffic Infraction

<u>Amount</u>	<u>Authority</u>	<u>Description</u>
\$48	RCW 46.63.110(1)	Authority exercised by schedule in IRLJ 6.2 prescribed by the Supreme Court.
\$51	RCW 3.62.090	Public safety and education assessment; 70% of base penalty + additional 50% of initial assessment. Shall not be suspended or waived by court.
\$20	RCW 46.63.110(8)	Court may not reduce, waive, or suspend unless offender found indigent. \$8.50 deposited in general fund.
\$10	RCW 46.63.110(7)(b)	Revenue deposited in the auto theft prevention authority account. Under no circumstances shall this fee be reduced or waived.
\$5	RCW 46.63.110(7)(a)	Revenue deposited in the emergency medical services and trauma care system trust account. Under no circumstances shall this fee be reduced or waived.
\$2	RCW 46.63.110(7)(c)	Revenue deposited in the traumatic brain injury account.
<u>Total</u> \$136		

In addition to the suspension of driving privileges, failure to respond to the infraction notice or to make and adhere to payment arrangements for traffic-based financial obligations owed results in additional monetary penalties as detailed in Table 2:

Table 2: Additional Financial Obligations for Failure to Appear, Respond, or Comply

<u>Amount</u>	<u>Authority</u>	<u>Description</u>
\$25	RCW 46.63.110(4)	Penalty for failure to respond to notice of infraction or failure to pay monetary penalty.
\$27	RCW 3.62.090	Public safety and education assessment; 70% of base penalty + additional 50% of initial assessment. Shall not be suspended or waived by court.
<u>Total</u> \$52		

The amount of traffic-based financial obligations resulting from conviction for a criminal traffic offense is often higher than the amount associated with a typical civil traffic infraction. As discussed above, the base penalty for a misdemeanor is up to \$1,000 and up to \$5,000 for a gross misdemeanor. A commonly charged and prosecuted criminal traffic offense is Driving While License Suspended in the Third Degree (DWLS-3), a simple misdemeanor. Table 3 provides a breakdown of the traffic-based financial obligations associated with a DWLS-3 conviction assuming the judge imposes a penalty of \$500, which, according to AOC, is the current suggested “bail amount” for DWLS-3.⁵⁷

Table 3: Example of Financial Obligations for a Criminal Traffic Offense

<u>Amount</u>	<u>Authority</u>	<u>Description</u>
\$500	RCW 46.20.342(1)(c); RCW 9.92.030	Specific fine amount set by court up to \$1,000.
\$50	RCW 46.64.055	Court may not reduce, waive, or suspend unless offender found indigent.
\$43	RCW 3.62.085	Imposed upon conviction or a plea of guilty in any court.
\$525	RCW 3.62.090	Public safety and education assessment; 70% of base penalty + additional 50% of initial assessment. Shall not be suspended or waived by court.
<u>Total</u> \$1,118		

In 2012, however, AOC produced a fiscal note citing a past study that found the average penalty assessed per DWLS-3 case was \$293.⁵⁸ In either case, a conviction of a criminal traffic offense likely results in the imposition of a larger traffic-based financial obligation than in a civil infraction case.

As the tables above make clear, there are both mandatory and discretionary traffic-based financial obligations authorized under the law, and statutes vary in the standards for imposition and waiver. RCW 3.62.010, for example, provides that a district court may, at the time of sentencing or at any time thereafter, suspend a portion or all of a fine or penalty. The courts track and report revenue data, but there is a lack of reliable data on the average amount of traffic-based financial obligations assessed to individuals that remains unpaid or the amount of the typical traffic-based financial obligation.

If the individual subject to traffic-based financial obligations does not pay the entirety of the original amount plus any additional penalties, or if the individual does not execute a payment plan arrangement, the outstanding obligation is typically referred to a collection agency. RCW

19.16.500 authorizes governmental entities to retain collection agencies to collect traffic-based financial obligations.

When outstanding traffic-based financial obligations are referred to a collection agency, fees are usually added beyond the amount of the original obligation imposed by the court. “Any governmental entity...using a collection agency may add a reasonable fee...to the outstanding debt.”⁵⁹ The governing statute leaves the specific amount of the additional fee to the agreement of the court and the collection agency. The law provides that the amount of the additional fee is presumptively reasonable, but the statute also provides that “a contingent fee of up to fifty percent... per account...is reasonable, and a minimum fee of the full amount of the debt up to one hundred dollars per account is reasonable.”⁶⁰ Consequently, a person who failed to respond to a typical traffic infraction, once it is referred to a collection agency, could owe nearly \$300. Moreover, traffic-based financial obligations, like other legal financial obligations, incur interest at the statutory annual interest rate of 12%.

D. Alternatives

In some cases, available options may help to restore or retain driving privileges, or facilitate repayment of outstanding traffic-based financial obligations.

RESTRICTED LICENSES

In Washington, a driver with a suspended license may, under certain circumstances, apply for an "Occupational/Restricted Driver License" (ORL).⁶¹ Among other qualifying conditions, an ORL may be issued only to a person who has a Washington State driver license and who demonstrates that it is necessary to drive for statutorily specified reasons. Furthermore, an ORL can be issued only if the applicant maintains verification of satisfactory proof of financial responsibility, most commonly through an SR-22 form. Insurance companies generally charge extra for SR-22 verification. In addition, when issuing an ORL, DOL describes the qualifying circumstances for the license and sets forth in detail the specific hours and days when driving is allowed, as well as a general description of the permitted routes for travel. These detailed restrictions are in a written form and must be carried in the vehicle at all times and presented to law enforcement upon request. Any violation of the restrictions is treated as a violation of the law prohibiting driving with a suspended or revoked license.

There is a \$100 nonrefundable application fee for an ORL. The fee is not applied to the underlying unpaid traffic-based financial obligations. Thus, while those eligible for an ORL may be able to drive legally, the ORL alternative does not help facilitate repayment of outstanding traffic-based financial obligations.

Another type of restricted license is an Ignition Interlock License (IIL). Authorized under RCW 46.20.385, an IIL allows a person to continue to legally drive while his or her license is suspended or revoked for a drug or alcohol-related offense, as long as the person equips an ignition interlock device. Like with an ORL, an IIL requires a person to maintain proof of financial responsibility, typically through an SR-22 form. A person may apply for an IIL at any time, and is eligible if he or she has:

- An arrest or conviction for any one of the following: Driving Under the Influence (DUI) or Physical Control involving drugs or alcohol, reckless driving, vehicular assault involving drugs or alcohol, or vehicular homicide involving drugs or alcohol;
- An unexpired Washington driver's license or a valid out of state license; and
- The current suspension does not include either Minor in Possession or Habitual Traffic Offender.

When a person gets an IIL, he or she must maintain an interlock device in the vehicles he or she drives for the entire period of suspension. Moreover, the person seeking an IIL is responsible for paying all costs associated with installing, leasing, and removing the device, although some financial assistance may be available for low-income drivers. Similar to an ORL, there is a \$100 application fee, but that fee is not applied to the underlying traffic-based financial obligations. Again, this alternative does not help facilitate repayment of outstanding traffic-based financial obligations.

SPECIAL "AMNESTY" EVENTS

Another alternative used by courts of limited jurisdiction are special "amnesty" events aimed at reducing the number of outstanding fines in collection and resultant license suspensions. While the specifics for such events are unique to each court, in general these programs have allowed individuals to pay fines at a reduced rate. A common characteristic of these types of events is that courts and their contracted collection agencies agree to waive interest and a significant portion of collection costs on outstanding traffic-based financial obligations. For example, in May 2009, more than 100 courts across Washington State participated in a temporary amnesty event to help those with outstanding traffic tickets and fines. In total, the event closed 25,513 cases and collected \$3,964,975 in revenue, or an average of \$155.41 per case.⁶²

From July to September 2017, the Yakima County District Court and municipal courts in Yakima, Selah, Zillah, Sunnyside, Union Gap, and Grandview announced an amnesty event designed to help those with outstanding traffic tickets and misdemeanor fines.⁶³ As part of the event, participating courts and their collection agencies "agreed to waive interest and...reduce a significant portion of collection costs on delinquent accounts...in collection."⁶⁴ In a news article the Yakima County Director of Court Services is quoted as saying that amnesty was offered as a

way for people with delinquent accounts “to get out from underneath those interests and penalties” and as “a way for [the court] to clean up...delinquent accounts.”⁶⁵ Battle Ground Municipal Court offered a similar two-month amnesty event in 2017 “for people behind on court payments to have accumulated interest waived...[and] also seek to reinstate driving privileges, if applicable.”⁶⁶

LOCAL RELICENSING PROGRAMS

To assist suspended drivers restore or retain their driving privileges and pay outstanding fines, some jurisdictions have established local relicensing programs. State law provides that “courts of limited jurisdiction in counties or cities are authorized to participate [in] or provide relicensing diversion programs.”⁶⁷ In general, these types of programs can be categorized as either a pre-filing diversion program or a post-filing program.

Pre-filing Programs --- Pre-filing diversion programs are generally designed to avoid prosecution for eligible drivers. Typically, the driver is cited and released at the time of the offense and advised that the citation will be sent to the prosecutor’s office for review. The prosecutor reviews the criminal history of the driver and specifics of the incident. If the driver is eligible, the prosecutor then sends notice that if the driver enters into the relicensing program, the case will not be filed. According to the Office of Public Defense, “this type of program invites the driver to come to court and address the outstanding tickets, collection fees and interest.”⁶⁸

King County launched a new relicensing effort in October 2017, but, prior to that, King County District Court had an example of a pre-filing program.⁶⁹ For eligible individuals, the King County Prosecutor’s Office offered an invitation to enroll in the relicensing program in lieu of filing the criminal charges of Driving While License Suspended in the Third Degree and No Valid Operator’s License. In addition, individuals who were suspended with no pending charges or individuals with pending charges who wanted help restoring their driving privileges could appear as walk-ins. The person was then offered a variety of options to satisfy payment, including community service or the county’s Community Work Program. Participants were invited to voluntarily enroll in the program at a hearing where a judge could mitigate and adjudicate any King County District Court infraction fines. The participant then had the opportunity to meet with collection agency representatives to address outstanding fines by establishing a payment plan. Once an individual made the first monthly payment, the license suspension would be removed. If the participant successfully completed the program and paid off his or her obligations, the charge was never filed. If a participant was out of compliance, the case was referred back to the prosecutor for potential filing.

Post-filing Programs --- Post-filing programs generally require that the prosecutor file a charge with the court, often for Driving While License Suspended in the Third Degree and No Valid

Operator's License. The court then issues a summons and notice to appear for arraignment. The case is continued for eligible drivers who appear at arraignment, agree to participate in the relicensing program, and enter into a payment plan for their unpaid traffic-based financial obligations. Once a driver begins making payments, his or her driving privileges may be reinstated. According to the Office of Public Defense, "Most courts, which have this type of program, will dismiss or reduce the original charge once the driver begins the payment plan and obtains a valid license."⁷⁰ Some of these programs also allow for walk-in participation for individuals not currently facing a pending charge, but potentially subject to such a charge should they continue to drive while suspended.

Spokane's Relicensing Program is an example of a post-filing program. Participants include individuals whose driving privileges are suspended for failing to pay traffic fines in the City of Spokane, County of Spokane, Pend Oreille County, Medical Lake, Airway Heights and Cheney. The Spokane City Attorney's Office administers the program. Participants are either referred by the court or can walk-in to be screened for eligibility. To be eligible, a person must:

- Resolve all outstanding warrants, alcohol holds, out of jurisdiction holds, child support holds and financial responsibility holds;
- Have a suspension of driving privileges in the third degree based upon unpaid fines actually imposed by the court or which resulted from failure to respond or appear;
- Have all fines causing suspension be from participating jurisdictions; and
- Not have been convicted of a "sex offense," "serious violent offense," or a "most serious offense," or have a criminal history demonstrating a pattern of felony, assault, drug and/or weapons charges.

For participants in the Spokane program, there is an opportunity to have unpaid traffic-based financial obligations pulled from collections and combined into a single manageable monthly amount. Upon the first successful payment, all associated driver's license suspension holds will be released as long as the driver continues to make successful payments and comply with other program requirements.

Of the courts of limited jurisdiction operating at 177 locations in Washington State, 45 appear to offer some kind of a relicensing program based on the information available to the public online. Under RCW 46.20.341, subject to available funds, counties and cities that operate relicensing programs are directed to provide information to AOC on an annual basis regarding:

- The eligibility criteria used for the program;
- The number of referrals from law enforcement;
- The number of participants accepted into the program;
- The number of participants who regain their driver's license and insurance;

- The total amount of fines collected;
- The costs associated with the program; and
- Other information as determined by the AOC.

However, AOC reports that local programs do not regularly report consistent information. As a result, AOC does not have reliable complete information. The information that is publicly accessible for each locality's relicensing program is attached to this report in Appendix B.

The lack of complete, consolidated information makes it difficult to assess the collective outcomes of local relicensing programs. A 2003 RAND working paper evaluating the impact of Seattle's DWLS impound law found that participation in the Seattle Municipal Court's relicensing program designed to assist DWLS drivers regain their legal driving privileges was associated with lower rates of recidivism among Seattle drivers compared to those who did not participate.⁷¹ A 2008 report by the Office of Public Defense notes that King County's relicensing program produced an estimated 84% reduction in DWLS-3 filings over a two-year period. A more recent King County report found that despite the successes of the local relicensing program, a large number of residents with suspended licenses remain unserved, in part because persons who have tickets outstanding in several jurisdictions face difficulties in navigating the varied processes.⁷²

ANALYSIS

Understanding existing policies and processes is important, but evaluation of policy options also requires an analysis of outcomes, both for the institutions that comprise the system and for the involved individuals. To that end, this section puts the existing policies and procedures in context through available information and quantifiable metrics.

I. Court Caseloads

According to data compiled by AOC, Washington’s courts of limited jurisdiction typically process more than one million charges for traffic infractions and offenses annually. Such cases consistently account for more than 40% of the aggregate total caseload. Table 4 shows the volume of traffic-related cases and charges courts of limited jurisdiction handled from 2011 to 2016:

Table 4: Courts of Limited Jurisdiction Traffic Infraction & Misdemeanor Filings & Charges

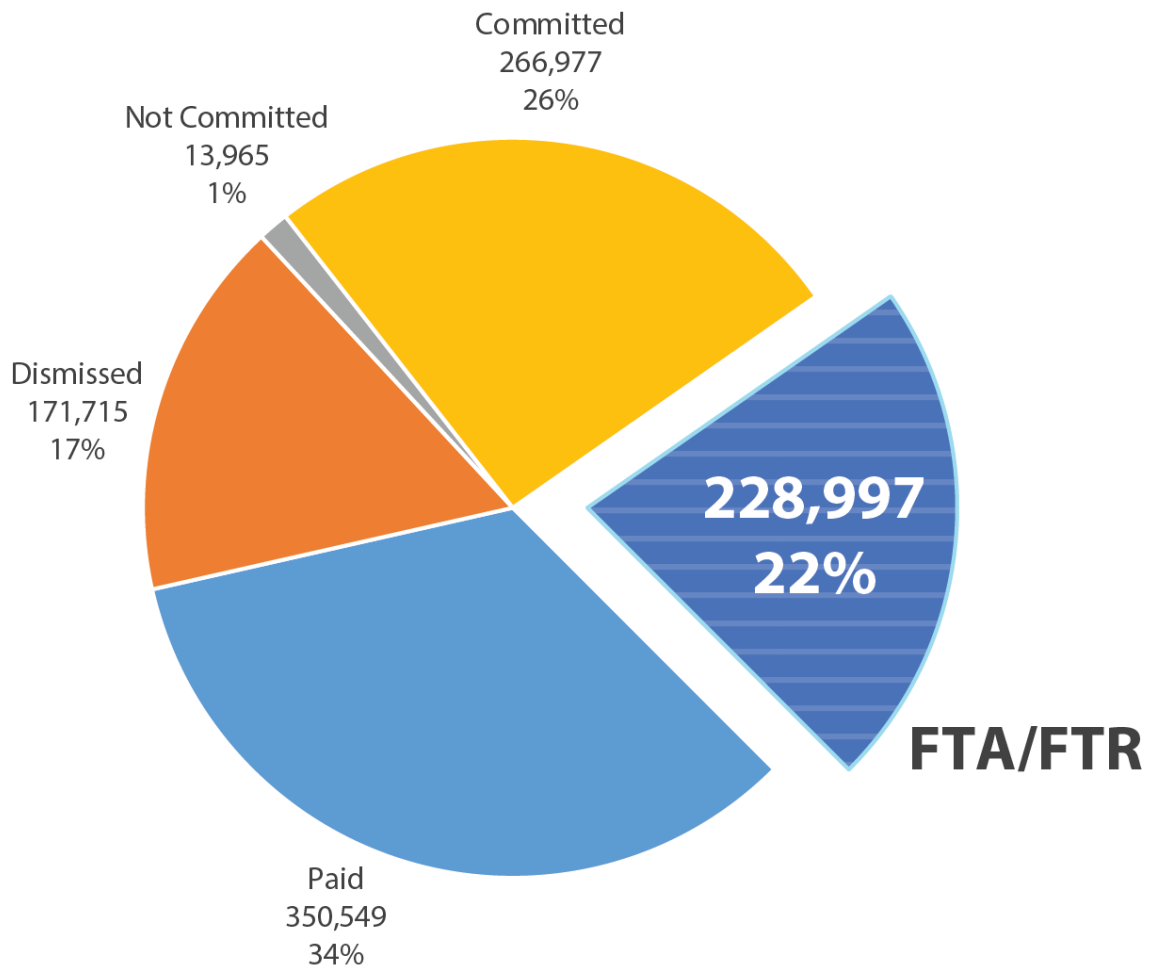
	2011	2012	2013	2014	2015	2016
Total # Cases Filed	2,359,906	2,109,314	2,199,412	2,035,796	2,082,795	2,064,818
Traffic Infractions (excluding parking)	972,140	872,789	867,875	824,729	810,635	715,216
% of Cases Filed	41.2	41.4	39.5	40.5	38.9	34.6
Violations Charged	1,171,256	1,046,102	1,038,971	983,005	961,074	860,793
Traffic Misdemeanors (non-DUI/Physical Control)	113,720	98,564	93,816	78,654	73,948	73,018
% of Cases Filed	4.8	4.7	4.3	3.9	3.6	3.5
Violations Charged	130,480	113,419	108,461	92,778	87,534	87,565
DUI/Physical Control Misdemeanors	38,024	34,701	31,730	28,588	26,363	24,425
% of Cases Filed	1.6	1.7	1.5	1.4	1.2	1.2
Violations Charged	38,822	35,391	32,406	29,164	27,060	25,125
Total: (excluding DUI/Physical Control Misdemeanors)	1,085,860	971,353	961,691	903,383	884,583	788,234
% of Cases Filed	46.0	46.1	43.7	44.4	42.5	38.2
Total: (including DUI/Physical Control Misdemeanors)	1,123,884	1,006,054	993,421	931,971	910,946	812,659
% of Cases Filed	47.6	47.7	45.2	45.8	43.7	39.4

Source: Courts of Limited Jurisdiction Annual Caseload Reports 2011 – 2016

As the data makes clear, civil traffic infractions constitute the bulk of traffic cases in Washington’s courts of limited jurisdiction. Consequently, traffic infractions are the most likely cause of a person incurring a traffic-based financial obligation.

According to data published by AOC regarding the disposition of civil traffic infraction cases, about 1 in 5 infraction notices statewide involve a person who failed to respond to a notice or failed to appear for a requested hearing. This rate has been consistent over time. Figure 2 shows the average of the disposition characterizations of traffic infractions from 2011 to 2016.

Figure 2: Disposition of Traffic Infractions



Source: Courts of Limited Jurisdiction Annual Caseload Reports 2011 – 2016

In addition to infractions, courts of limited jurisdiction adjudicate traffic misdemeanors and gross misdemeanors. Court caseload data indicates a decline over the last few years of criminal traffic violations charged. As shown in Table 4 above, there were 33% fewer prosecutions in 2016 than in 2011.

The most commonly prosecuted traffic misdemeanor in Washington is driving while license suspended or revoked in the third degree (DWLS-3), which has been reported as the most commonly prosecuted crime in the state overall.⁷³ A number of sources indicate that DWLS-3 charges comprise approximately 30% of all criminal cases filed in courts of limited jurisdiction.⁷⁴ A recent report suggests, however, that there is considerable jurisdictional variance, with DWLS-3 being “heavily enforced in some jurisdictions and effectively decriminalized in others.”⁷⁵

Under RCW 46.20.342, a person is guilty of the misdemeanor of DWLS-3 if he or she drives a motor vehicle while that person’s license is in a suspended status for certain reasons. Those reasons include failing to respond to a notice of traffic infraction, failing to appear at a requested hearing, violating a written promise to appear in court, or failing to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289.⁷⁶ Indeed, a common example of the circumstances leading to a DWLS-3 prosecution is when a person is driving with a suspended license due to an unpaid traffic infraction. Because one of the conditions for a DWLS-3 case is unpaid traffic-based financial obligations stemming from a moving infraction, the number of moving infractions and the resulting financial obligations for which defendants do not make payment are directly related to the amount of potential DWLS-3 cases and prosecutions.

Concerns have been raised about the costs the state, counties, and cities bear for DWLS-3 prosecutions. This concern was emphasized, for example, in testimony presented to the Washington State Legislature in 2012 for SSB 6284, a bill reforming Washington’s approach to certain civil traffic infractions and limiting the suspension of driving privileges for failure to respond, appear, or comply with infractions classified as “moving violations.”⁷⁷ Using information in the fiscal note submitted by state agencies, it has been estimated the total annual net costs for DWLS-3 prosecutions and convictions exceeds \$37 million.⁷⁸ For example, the City of Longview’s “400 DWLS 3 cases every year require all the resources of one of the city’s five public defenders, resulting in an annual cost to Longview taxpayers of \$135,000.”⁷⁹

Because one of the predicate conditions for a DWLS-3 prosecution is driving with a failure to appear (FTA) suspension, it follows that any policy or program helping participants address outstanding FTA suspensions will necessarily result in fewer DWLS-3 prosecutions and, consequently, provide some associated amount of corresponding savings for the state, counties, and cities.

II. License Suspensions

DOL is the administrative agency that processes license suspensions upon receipt of a triggering notice from a court. Drivers in Washington can have their driving privileges suspended or

revoked for a number of different reasons, including reasons unrelated to traffic offenses or infractions, such as failing to pay child support, or for traffic offenses that imperil the public safety, such as driving under the influence. DOL lists 28 different mandatory or discretionary reasons that driving privileges can be suspended.

According to point-in-time data published by DOL, on June 30, 2016, there were 372,170 individuals with suspended, revoked, or cancelled driving privileges.⁸⁰ This is equivalent to just over 5% of the population of the state.⁸¹

Of chief concern for the purposes of this report are suspensions reported to DOL as FTA suspensions. These suspensions are statutorily authorized under RCW 46.20.289 and can generally be described as occurring because an individual did not respond to a notice of infraction or citation, did not appear in court as required, or did not pay the traffic-based financial obligations due. DOL does not identify the reasons for suspensions. They are all reported as FTA suspensions.

After receiving notice from the court, DOL suspends the license pursuant to the process provided for in RCW 46.20.245. A suspension remains in effect until the department receives a certificate from the court that the case has been adjudicated and the person meets the requirements of RCW 46.20.311, establishing the process for license reinstatement and imposing conditions under certain circumstances. FTA suspensions exist only because an individual failed to appear or failed to pay. FTA suspensions persist only until the traffic-based financial obligations are adequately addressed and the department reissues the license.

Point-in-time data from DOL of outstanding FTA suspensions in each Washington county shows that individuals residing in one county can be subject to FTA suspensions from courts in other counties. In Mason County, for example, less than half of the total FTA suspensions issued against that county's residents originated with Mason County courts. Indeed, for Mason County residents, there are collectively thousands of FTA suspensions issued from courts in the nearby counties of Kitsap, Thurston, Pierce, and Grays Harbor.

Appendix B includes maps for each county showing the proportion of FTA suspensions that come from courts located within—and outside—the county of residence. According to the DOL snapshot information, the range is quite broad, but the average proportion of FTA suspensions issued from courts located outside the county of residence is just over 55%.

There appears to be at least some correlation between the geographic spread of FTAs and a county's population density. The more densely populated counties appear to have a larger share of FTA suspensions issued to individuals residing in that county. Conversely, the less densely populated counties are among the counties with the largest share of out-of-county FTA

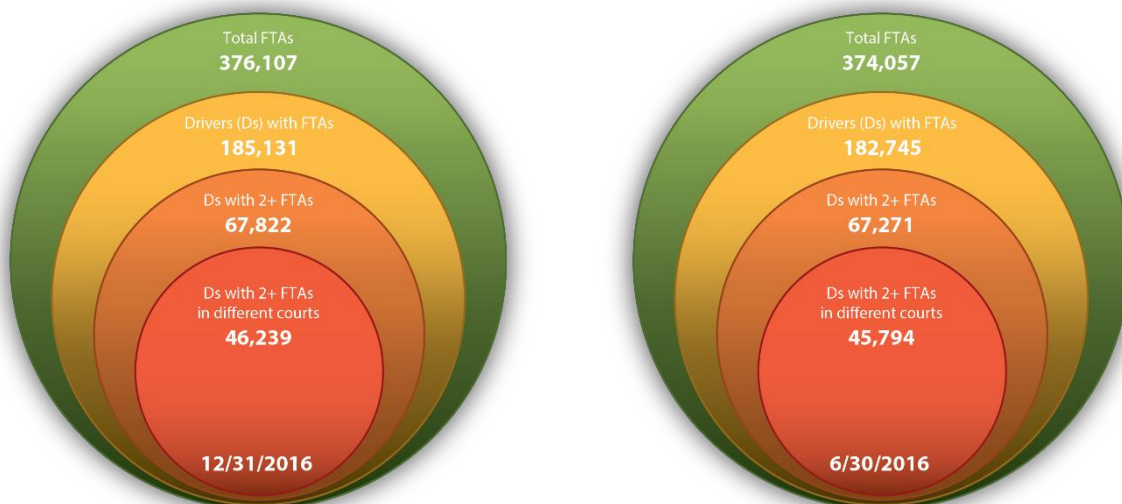
suspensions. This observation reinforces the notion that individuals living in rural areas may need to travel farther than their urban counterparts and, consequently, appear to be relatively more prone to have FTA suspensions issued by courts located in jurisdictions other than where they live.

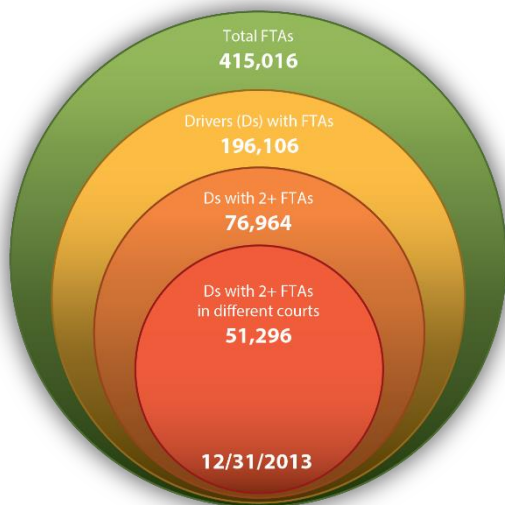
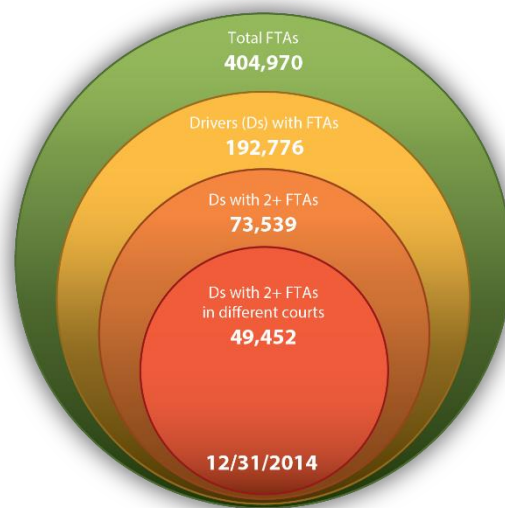
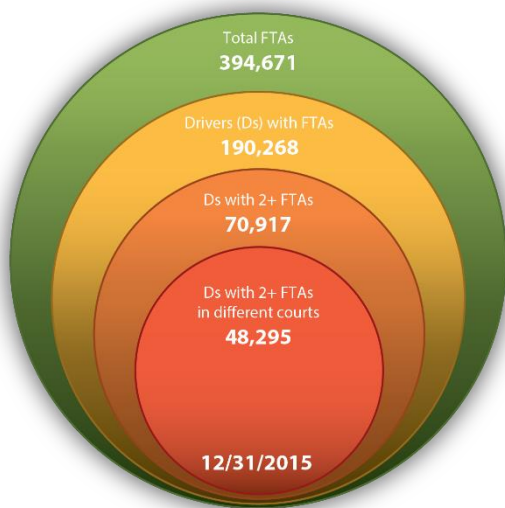
Additional snapshot information provided by DOL of six different points in time from the last five years shows, at any given time, an average of approximately 190,000 individuals with only FTA suspension orders. This group represents roughly half the total number of individuals with suspended, revoked, or cancelled driving privileges. The average number of FTA suspension orders linked with the FTA-only population is over 395,000. Necessarily, this means that there are individuals with only FTA suspensions who are subject to multiple suspension orders.

Most of the individuals subject only to FTA suspensions—approximately 60%—have just one FTA hold. The remaining segment, an average of more than 72,000, is comprised of individuals with multiple FTA suspension orders. Of these, a smaller subset, approximately 50,000—slightly more than 25% of those with only FTA suspension orders—have multiple suspension orders issued from multiple courts.

Figure 3 shows the number of drivers affected by multiple FTAs and the proportion who have multiple FTA suspension orders issued from multiple courts at six points in time over the last five years.

Figure 3: Drivers with Multiple FTAs





Source: Data provided by the Washington State Department of Licensing

Again, according to the point-in-time DOL data, statewide, about 75% of the individuals who are subject only to FTA suspensions have traffic-based financial obligations from one court. The remaining 25% have traffic-based financial obligations from multiple courts. Moreover, as the analysis regarding diffuseness makes clear, the multiple FTA suspensions originating in multiple courts can be located in multiple counties, which, in the aggregate, appears to be the case more than 50% of the time. Appendix B includes tables showing the number of individuals by county of residence who are subject to only FTA suspensions, and the relative proportion of those individuals who have multiple FTA suspensions from multiple courts, and whether those courts are in different counties.

Unfortunately, this analysis, while necessary, does not sufficiently uncover the probability a person with multiple FTA suspensions is able to arrange a consolidated payment plan. Because different courts can contract with the same collection agency or accounts receivable company, another layer of analysis is necessary to determine how this fact may mitigate the jurisdictional barrier when individuals owe outstanding obligations to multiple jurisdictions. If the issuing jurisdictions share the same account servicer, a defendant would only have to negotiate with the one collection agency or accounts receivable company, making it possible for that individual to arrange a consolidated payment plan.

To address this issue, AGO staff conducted an analysis of five random samples of 200 individuals pulled from the population of 185,131 individuals with only FTA suspensions as shown in the December 31, 2016 snapshot data provided by DOL. In each sample, at least 10% of the individuals had multiple FTA suspension orders issued from different courts that use different collection agencies. Extrapolating from this finding to the approximately 190,000 with only FTA suspensions, an estimated 21,280 persons would not have the option of dealing with only one servicer to consolidate their outstanding FTA suspensions. However, looking just at the proportion of the samples that have multiple FTA suspension orders from different courts, the average percentage being serviced by different collection agencies is 46.3%. Applying this percentage to the approximately 50,000 persons with multiple holds issued from different courts, an estimated 23,150 persons would not have the option of dealing with a single point of contact to consolidate their outstanding FTA suspensions and the associated financial obligations. Averaging the two metrics ascertained from the sample provides an estimate that about 22,215 persons have their driver's licenses suspended because of multiple FTA orders that originate in different courts that do not contract with the same collection agency.

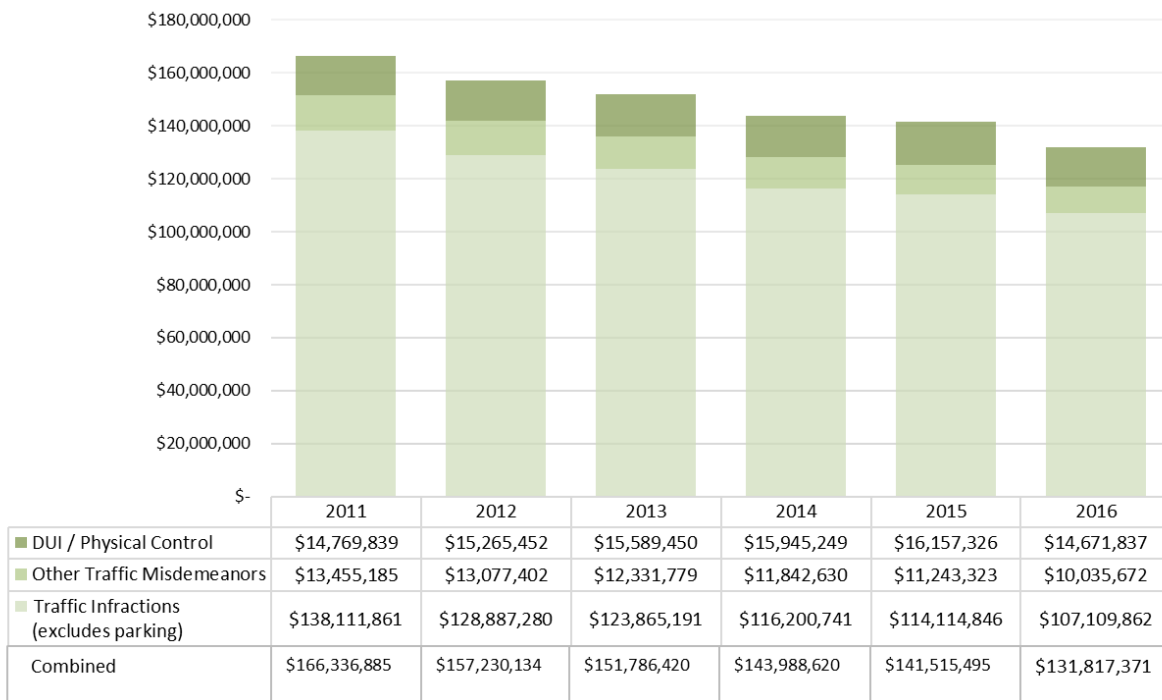
Appendix B identifies which companies various courts of limited jurisdiction contract with for collection services.

The samples of DOL's FTA data also offer insight into another important consideration to ascertaining the number of individuals who could benefit from consolidation by showing the "license type." DOL assigns FTA notices from various courts to individuals. The agency keeps a record of whether those individuals have a driver's license or identification card; this is the license type. For some individuals who are not otherwise in the system, DOL needs to build a record so they can assign the FTA suspension to the individual. In general, built records are individuals who never had a Washington driver's license, likely because they live out of the state. The samples show that overall, an average of 37.5% of the sampled individuals have built records. The data also shows, however, that the proportion of individuals with built records are not equally distributed. Specifically, about 83% of the individuals with a built record as a license type had only one FTA suspension order, whereas a much smaller share of the individuals with built records—about 17%—were persons with multiple FTA suspensions.

III. Revenue

Revenue from traffic-based financial obligations is collected by the courts, and the money is generally deposited with the local county or city treasurer, or remitted to the state treasurer for distribution and deposit in statutorily designated funds. Some amounts of traffic-based financial obligations are apportioned to fund certain programs, such as the judicial information system account or the Washington auto theft prevention authority account. As discussed above, the amount of the penalty for civil traffic infractions and misdemeanor traffic offenses is established by a combination of statute and court rule. Figure 4 provides a breakdown of revenue collected from traffic infractions and misdemeanors from 2011 to 2016.

Figure 4: Revenue from Traffic Infractions and Misdemeanors



Source: Administrative Office of Courts Annual Caseload Reports, 2011-2016

The revenue reported represents all monies received during the report period, regardless of when the original infractions or misdemeanors were filed or processed.

There are approximately 190,000 FTA suspensions in effect at any given point in time, indicating that a certain amount of traffic-based financial obligations go uncollected. However, because DOL does not differentiate among the different types of FTAs, and because of the variance inherent in the imposition of traffic-based financial obligations, it is difficult to calculate a precise dollar figure for this uncollected amount.

Nonetheless, even assuming a collection rate of 90% across all types of cases, uncollected traffic-based financial obligations likely total tens of millions of dollars. This rate is likely generous. AOC has previously reported to the State Legislature that the average payment for each DWLS-3 prosecution was only 31% of the average penalty assessed.⁸² In addition, as discussed above, about 20% of traffic infraction cases are reported by AOC as having a FTA disposition. While instructive, this measure is imperfect because it does not account for payment subsequent to the court's final disposition of the case. Previous amnesty events can also be instructive regarding the amount of outstanding traffic-based financial obligations.

Ultimately, SSB 6360 did not include a directive for or resources to support a comprehensive study on the amount of traffic-based financial obligations from courts of limited jurisdiction that go uncollected. Nonetheless, in an attempt to evaluate the number of traffic infractions that go unpaid, it is helpful to look at revenue into the state's Traumatic Brain Injury Account, administered by the Department of Social and Health Services. The account is funded exclusively by traffic infraction fees and interest earnings. Courts assess two dollars for each traffic infraction. Dividing the biennial revenue by half provides an estimated annualized amount. Dividing this annualized result by \$2 (the amount of the fee), and comparing the result to the sum of the infraction charges disposed of as either "paid," "committed," or "FTA" over the same period of time, supports a conclusion that the infraction collection rate is typically well below 90%.

PROGRAM PROPOSAL

The following program proposal design is the Attorney General's recommended approach based on the input and feedback received from work group participants.

I. Mission, Goals & Evaluation Metrics

1.1 The mission of the program is to consolidate traffic-based financial obligations owed to courts of limited jurisdiction into a single affordable payment plan. This will facilitate reinstatement of driving privileges for individuals with outstanding traffic-based financial obligations.

1.2 The goals of the program are three-fold:

1.2.1 Public safety is promoted by reducing the number of unlicensed drivers on the state's roads and highways, reducing barriers for these drivers to obtain required insurance, and reducing the use of law enforcement and criminal justice resources associated with enforcing and prosecuting driving while license suspended in the third degree charges.

1.2.2 Court efficiency is improved by increased transparency and consistency in the adjudication of civil traffic infractions and criminal traffic offenses, and by reducing the frequency of charges brought for driving while license suspended in the third degree.

1.2.3 The payment of traffic-based financial obligations is promoted by increased availability of an affordable payment plan, improving collection rates and reducing debt owed by persons experiencing financial hardships.

1.3 Consistent with the stated goals, the program's success can be gauged by evaluating trends in: 1) the number of FTA license suspensions; 2) the number of prosecutions for driving while license suspended in the third degree; 3) the percentage of infractions with a disposition of failure to respond and/or failure to appear, and; 4) the rate and volume of collections for traffic-based financial obligations.

II. Authority & Administration

2.1 The Administrative Office of the Courts shall have the authority to establish a unified payment plan system for the consolidation of multiple traffic-based financial obligations.

2.2 "Payment plan," means a plan that requires reasonable payments based, at least in part, on the financial ability of the person to pay.

2.3 "Traffic-based financial obligations" means any monetary penalty or monetary obligation imposed by a court of limited jurisdiction when a person is either found to have committed a civil traffic infraction or found to be guilty of a criminal traffic misdemeanor or gross misdemeanor, and includes all associated costs, fees, fines, and pecuniary penalties, except for any amount of court-ordered restitution obligations.

2.4 The Administrative Office of the Courts may use collection agencies under chapter 19.16 or private accounts receivable companies for the purposes of administering the payment plan system, and may enter into agreements with one or more attorneys, accounts receivable companies, or collection agencies for such purpose.

2.4.1 An agreement under this section should specify the scope of work, remuneration for services, and other provisions deemed appropriate.

2.4.2 An agreement under this section should provide that the contracting entity shall, with reasonable notice, make available to the Administrative Office of the Courts at a time during normal operating hours, all records and information kept in conjunction with the administration of the unified payment plan system.

2.4.3 An agreement under this section should provide that the contracting entity shall comply with all applicable federal, state and local laws, ordinances, and regulations, including that it is duly licensed by the State of Washington and will maintain that license in good standing.

2.5 The Supreme Court shall be requested to establish a payment plan policy for the unified payment plan system established by the Administrative Office of the Courts.

2.6 The Supreme Court shall be requested to promulgate a rule requiring courts of limited jurisdiction to develop their own payment plan policies regarding, and provide information to the public explaining, how defendants can request a payment plan from the court, a current version of which should be on the court's website.

2.7 All courts of limited jurisdiction shall be required to participate in the unified payment plan system.

2.8 The program outlined in this proposal shall be known as the Washington State Driver Reinstatement and Unified Payment Program (Driver Re-UP Program).

III. Eligibility

3.1 Unless otherwise restricted, a person shall be eligible to participate in a unified payment plan when he or she has either: a) more than one order for a license suspension issued pursuant to RCW 46.20.289 on his or her driving abstract in effect at the time of application, or b) at least one order for a license suspension issued pursuant to RCW 46.20.289 on his or her driving abstract in effect at the time of application and owes traffic-based financial obligations totaling at least \$750.

3.1.1 Eligibility to obtain a payment plan under the unified payment plan system shall not be denied because: (i) the traffic-based financial obligations underlying the FTA suspension have been referred to collections, unless the collection agency has filed formal legal proceedings for qualifying traffic-based financial obligations; (ii) the total amount of outstanding traffic-based financial obligations are beyond the eligibility minimum, if applicable; (iii) of the income of the prospective participant; (iv) of the availability of an occupational or temporary restricted driver's license; or (iv) of the particular category of the traffic infraction or traffic offense underlying the outstanding traffic-based financial obligations causing the qualifying suspension issued pursuant to RCW 46.20.289.

3.1.2 Eligibility to obtain a payment plan under the unified payment plan system shall not be contingent upon a current or deferred charge for a violation of, or traffic-based financial obligations for, a previous violation of driving while license suspended in the third degree.

3.1.3 Eligibility to obtain a payment plan under the unified payment plan system may be denied for a period of up to two years for repeated noncompliance with prior payment plans under the unified payment plan system, but only if the participant had his or her payment plan terminated more than three times in the most recent three-year period. Individuals with a history in the most recent three-year period of noncompliance with a payment plan under the unified payment plan system may be subject to higher initial costs to establish a subsequent payment plan.

3.2 To be eligible to have a suspension of driving privileges lifted, a participant must provide proof of liability insurance or other proof of financial responsibility as required by law, although a person may nonetheless obtain a payment plan under the unified payment system in the absence of such proof.

- i. The proof of financial responsibility for motor vehicle operation must be provided in the format specified under RCW 46.30.030.
- ii. Participants should be required to provide such proof to the program administrator no later than 45 days after the program administrator sends notice to a court that triggers the court to notify the Department of Licensing that the infraction or offense has been adjudicated.
- iii. Failure to provide such proof as required shall be cause for the participant to have his or her payment plan terminated for lack of compliance.

3.3 A person shall not be eligible to participate in a unified payment plan if he or she is the subject of any outstanding arrest warrant.

3.4 No individual shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under the administration of or in connection with the unified payment plan system pursuant to RCW 49.60.

IV. Application

4.1 Any entity that contracts with the Administrative Office of the Courts pursuant to Section 2.4 shall create an application and intake form designed to provide sufficient information to, at the least: (i) identify the applicant, (ii) identify the outstanding traffic-based financial obligations owed by the applicant, (iii) verify the applicant's eligibility for participation, and (iv) verify the applicant's overall financial resources and obligations to determine the applicant's ability to pay.

4.2 Upon receiving a person's application and intake form, the unified payment plan system administrator shall make a timely review of the application, and should respond within 10 business days.

4.3 A person determined to be ineligible to participate in the unified payment plan system should be provided information on how to obtain personalized instructions from the Department of Licensing on what steps the person must take to reinstate his or her driver's license.

4.4 Once a person is determined to be eligible to participate, the unified payment plan administrator shall send notice to each court to which the applicant owes outstanding traffic-based financial obligations informing each court that the program administrator will thereafter be servicing a payment plan for the applicant's consolidated traffic-based financial obligations.

4.5 After receiving such notice, if the court has already referred the traffic-based financial obligation to a collection agency, the court will give notice to the collection agency that the account is being withdrawn or recalled by the court.

V. Payment Plan

5.1 In establishing the terms of a payment plan, an individual’s financial resources and obligations, including any other legal financial obligations to any court in Washington, should be considered for the purposes of determining the amount of reasonable required payments. Required payment amounts should not exclusively be a function of the amount of the outstanding traffic-based financial obligations or the time to pay off the obligation.

- i. For example, payment plans may be based on a matrix that considers a participant’s ability to pay, such as income, but which includes other relevant factors, including the total amount of the outstanding obligation(s), such as the following example:

\$ Owed	Income Relative to Federal Poverty Level			
	<125%	125-199%	200-299%	>300%
<\$500	\$25	\$30	\$40	\$50
\$500-\$999	\$30	\$40	\$50	\$60
\$1,000-\$1,499	\$40	\$50	\$60	\$75
>\$1,500	\$50	\$60	\$75	\$100

- ii. Payment plans should be established to conform to the payment plan policy promulgated by the Supreme Court.

5.2 The payment plan shall be established in writing between the individual owing traffic-based financial obligations (the “participant”) and the unified payment plan system administrator, who is effectively acting on behalf of AOC as a surrogate for the courts to which the participant owes delinquent traffic-based financial obligations.

- 5.2.1 The writing establishing the payment plan shall include all relevant terms, including, but not limited to, the monthly payment amount, when payments are due, and how payments are to be remitted.
- 5.2.2 The writing establishing the payment plan shall also include a recitation of the potential consequences for noncompliance, which may include the suspension of driving privileges, additional monetary fines or penalties, or the referral of any

remaining outstanding traffic-based financial obligations back to the originating court.

5.3 A participant may request a modification of an effective payment plan based upon changed circumstances, including, but not limited to, loss of employment, a reduction in income, or the imposition of new traffic-based financial obligations.

5.3.1 A new one-time establishment fee shall not be required to modify an existing payment plan.

5.3.2 Program participants are required to keep existing payment plans current until a modified payment plan is finalized.

VI. Operation

6.1 If a court of limited jurisdiction participates in or operates a relicensing diversion program in accordance with RCW 46.20.341, but is unable to adjudicate all the FTA suspensions listed in the abstract of the driving record, the court or prosecuting attorney shall refer the suspended driver to the unified payment plan system. Nothing in this section precludes a court (or contracted collection agency) from entering into a payment plan with a suspended driver for the traffic-based financial obligations which the court can adjudicate.

6.2 If the court of limited jurisdiction does not participate in or operate a relicensing diversion program in accordance with RCW 46.20.341, the court or prosecuting attorney shall refer the suspended driver to the statewide payment plan system in conjunction with providing an abstract of his or her driving record as set forth in RCW 43.20.341(1)(a). Nothing in this section precludes a court from entering into a payment plan with a suspended driver for the traffic-based financial obligations which the court can adjudicate.

6.3 Upon the execution of a payment plan agreement and receipt of the initial payment, the unified payment plan administrator shall promptly notify each court to which the program participant owes traffic-based financial obligations covered by the agreement.

6.3.1 The payment plan administrator will accept payment, but will not send notice to the court if the program participant requests to delay such notice until he or she is in a position to obtain the requisite proof of insurance triggered by providing an adjudication notice to the court.

6.4 Upon receiving notice of the payment plan agreement, if the court has previously notified the Department of Licensing that the person has failed to pay or comply, the court shall notify the department that the infraction has been adjudicated via electronic means according to

procedures established by the Department and the Administrator for the Courts as provided in IRLJ 4.1.

6.5 The Department of Licensing shall refer suspended drivers to the unified payment plan system by providing information online and within license suspension notices sent under RCW 46.20.245.

6.6 The Department of Licensing shall continue to process suspension and restoration of driving privileges pursuant to current law and practice.

6.6.1 No person's license will be reinstated or restored if that person is currently subject to a period of mandatory suspension or has driving privileges suspended for another reason.

6.6.2 No person's license will be reinstated or restored until the person meets the requirements of RCW 46.20.311, including, if required for other reasons, until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW.

6.7 The unified payment plan system administrator should accept payment by personal check, money order, traveler's check, debit card, ACH, and credit card, and any costs associated with payment processing should not be charged to the Administrative Office of the Courts, but may be charged as a convenience fee to the individual making the payment.

6.8 The unified payment plan system administrator shall remit payment no less frequently than monthly to each court to which a program participant owes traffic-based financial obligations covered by the plan.

6.9 The unified payment plan system administrator shall have the capability to support automated account referrals and reporting on the current status of accounts, compatible with each court's current computer systems or any upgrade equipment subsequently acquired.

VII. Termination

7.1 A participant shall have his or her payment plan terminated upon breach of the payment plan agreement for defaulting on payment, recurring late payments, or for other reasons, such as providing false proof of liability insurance or demonstrating behavior during participation in the program that shows undue disregard for public safety.

7.2 For purposes of terminating a participant for too frequently making late payments, a payment should be considered late if it is not received and processed on or by its due date.

7.2.1 If a payment is not received within ten days of the due date, a reminder notice shall be sent within five days thereafter to the participant. The notice shall include: (i) a statement that payment has not been received, (ii) information on how to make payment, (iii) a statement that if payment is not received before the next payment is due, that the participant's driving privileges will be suspended pursuant to RCW 46.20.289 and the remaining traffic-based financial obligations may be referred to another collection agency, and (iv) notice that if the program participant continues to drive after his or her license is suspended that a criminal charge may result for driving while license suspended in the third degree.

7.2.2 A third late payment within a 365-day period shall constitute a breach of the payment plan agreement.

7.2.3 In conjunction with sending the reminder notice for the second late payment, a separate notice will be sent to the program participant notifying them that future late payments will result in termination from the unified payment plan system.

7.3 For purposes of terminating a participant for demonstrating behavior that shows undue disregard for public safety, conviction of certain traffic offenses will constitute breach, including:

7.3.1 Conviction of any new traffic-related felony or gross misdemeanor; and

7.3.2 Any combination of more than three new convictions of traffic misdemeanors or determinations of the commission of any moving traffic infractions within a 365-day period.

7.4 After a unified payment plan system participant breaches his or her payment plan agreement, the system administrator shall promptly notify each court to which the program participant owes traffic-based financial obligations.

7.5 Upon receiving notice of the breach of the payment plan agreement, the court may refer the outstanding traffic-based financial obligations to a collection agency and the court shall notify the Department of Licensing of the person's delinquency.

VIII. Financials

8.1 When traffic-based financial obligations are consolidated as part of a unified payment plan, some portion or percentage of the existing interest charges and collection fees or costs shall be provisionally suspended and not included as part of the aggregate amount owing under the unified payment plan.

8.1.1 The portion or percentage of the provisionally suspended interest charges and collection fees or costs may be based on a matrix that considers the participant's ability to pay, such as income, but which may also include other relevant factors, including the total amount of the outstanding obligation(s).

8.1.2 If the participant successfully meets the terms of the payment plan, the provisionally suspended interest charges and collection fees or costs should thereafter be waived.

8.1.3 If the participant breaches the terms of his or her payment plan and the plan is terminated, the provisionally suspended interest charges and collection fees or costs may be reinstated when the account is referred back from the court to the original collection agency, if it had been so referred.

8.2 Except for suspending the interest charges and collection fees or costs accumulated to outstanding traffic-based financial obligations, the unified payment plan system administrator shall not have the authority to waive or accept compromises on any portion of the outstanding traffic-based financial obligations originally imposed by the court; although the court shall retain any inherent or statutory authority to do so.

8.3 There may be assessed, and the administrator, acting as an agent for the courts, may collect, a reasonable one-time payment plan establishment fee and a monthly administrative fee for participation in the unified payment plan system, which may be calculated on a periodic, percentage, or other basis.

8.3.1 The fees allowed under this section shall be applied to fund the management and administration of the unified payment plan system.

8.3.2 The one-time payment plan establishment fee should not exceed the amount allowed under RCW 46.20.341(e). The fee can be added to the total amount to be paid by the participant or required to be paid upfront in addition to the first monthly payment, depending upon the prospective participant's ability to pay and in conjunction with the governing payment plan policy.

8.3.3 The monthly administrative fee should be reasonable and any increases in the fee should be justified by increasing costs of operation.

8.4 When payments are received, monies shall first be applied to unified payment plan system administrative fees and the remaining amount should be split equally among the particular courts to which the participant owes traffic-based financial obligations included in the payment plan.

8.5 If a payment is late, a late fee may be assessed to help cover the costs associated with sending payment reminders. This fee should be added to the total outstanding obligation and shall not increase the monthly payment amount.

8.6 A “NSF fee” may be assessed for any payment by check or electronic payment that is returned by the institution on which it is drawn for insufficient funds.

8.7 Notwithstanding any other provision, a person with traffic-based financial obligations shall retain his or her right to contest the enforcement of waivable obligations on the basis of indigence to the court that originally imposed the traffic-based financial obligation.

IMPLEMENTATION

SSB 6360 directed the AGO to develop, with stakeholder input and feedback, a plan and program for the efficient statewide consolidation of an individual's traffic-based financial obligations imposed by courts of limited jurisdiction into a unified and affordable payment plan. Pursuant to this direction, below is a summary of steps to implement the program set forth above, as well as a brief discussion of financial viability for the recommended approach.

I. Enacting Legislation & Rules

The first necessary action to implement any program for the efficient statewide consolidation of an individual's traffic-based financial obligations is to amend the existing statutory scheme. The Attorney General anticipates bringing agency-request legislation in 2018 that would provide sufficient authority for the establishment of a unified payment plan system.

The recommended approach also contemplates requesting the Supreme Court to promulgate two new rules. The Supreme Court's rulemaking process is governed by General Rule (GR) 9. GR 9 provides that any person may initiate rule changes by submitting the change to the Supreme Court, which will determine if the request is clearly stated and in the form required. The rule also specifies that all proposed rules must be necessary statewide.

The Supreme Court's adoption of rules operates on a different timeline than the legislative process. Under the Supreme Court's process, a suggested rule must be received no later than October 15 to be published for comment in January. Proposed rules are published for comment in January of each year. Comments must be received by April 30 of the year in which the proposed rule is published. Adopted rules are published in July and take effect on September 1.

If the State Legislature passes a bill providing the requisite authority during the 2018 session, a rule can be proposed before October 15, which means that a unified payment plan system could be in place as early as September 1, 2019.

II. Executing a Performance Contract

As discussed briefly above, courts of limited jurisdiction often execute contracts with collection agencies that do not require courts to make direct payments to the private entity. Rather, the compensation that collection agencies receive under these contracts comes from the addition of collection fees to the accounts of the individuals with the outstanding obligations.

AOC could implement the unified payment plan system for the consolidation of multiple traffic-based financial obligations by issuing a Request for Proposals (RFP) for an administrator capable

of managing the payment plans. Structuring any resulting contract to make compensation for the administrator contingent upon collection should prevent extensive ongoing costs.

To help expedite implementation, if possible, AOC should issue the RFP following the requisite legislative action and begin review of proposals during the Supreme Court's rulemaking process.

III. Establishing New JIS Code

The proposed program would likely require AOC to include new Judicial Information System (JIS) Codes. Each collection agency that contracts with courts of limited jurisdiction has official and organization records created and maintained by a court using the system's "Official/Organization record" screens. A new collection agency would need to be entered into the system. Similarly, there would likely need to be new Cost Fee Codes added to JIS to enable receipt and categorization of the one-time establishment fee and the monthly maintenance fees. Any costs associated with these programming changes required to implement the new fees and necessary tracking codes would be a one-time expenditure.

IV. Financial Viability

It is critical to ensure the financial viability of a program adopted for the efficient statewide consolidation of an individual's traffic-based financial obligations imposed by courts of limited jurisdiction into a unified and affordable payment plan. This section provides a rough examination of the funding for the recommended program.

If the program administrator enrolls at least 2,000 individuals every year and the one-time payment plan establishment fee is set at \$75, \$60 of which goes to AOC, AOC would collect \$120,000 annually to cover costs associated with managing or administering the unified payment plan system and the contract with the administrator. The calculation for the expected revenue AOC would receive can be expressed as:

$$(\# \text{ of program enrollees}) \times (.8 \times \text{one-time payment plan establishment fee}) = \text{AOC revenue}$$

The estimated number of enrollees of 2,000 is purposefully conservative. This is only about 10% of the smallest sub-section of potential participants identified, and is just about 1% of the 190,000 individuals on record as having a FTA-only suspension.

If the program administrator can build the program to a point where there are at least an average of 3,000 individuals participating in the unified payment plan system from month-to-month, and the monthly administrative fee is set at \$7.50, the program administrator would generate

\$270,000 in revenue. The program administrator would also receive \$15 of each payment plan establishment fee, another \$30,000, for a total in annual revenue of \$300,000. The calculation for the expected annual revenue the program administrator would receive can be expressed as:

$$[(\# \text{ of program participants}) \times (\text{monthly administrative fee}) \times 12] + [(\# \text{ of program enrollees}) \times (.2 \times \text{one-time payment plan establishment fee})] = \text{program administrator revenue}$$

Program participants successfully making payments will likely carry a balance for years. Presumably, each year some participants will pay-off their traffic-based financial obligations and successfully exit the program. There will also be some number of participants who do not meet their payment plan obligations and are terminated from the program. At an exit rate of 50%—meaning that half of the participants enrolled are terminated or complete the program at some point during the year—the potential participant population begins to stabilize as it approaches 4,000 participants, which, at a 50% exit rate, would occur approximately 5 years after establishment of the program.

Because the program would allow the administrator to pass payment processing costs on to participants, the profit realized by the administrator is directly related to the administrator's capacity to perform the necessary work at the lowest cost.

Under the recommended program, revenue collected on behalf of courts of limited jurisdiction would be remitted to them by the program administrator. Courts of limited jurisdiction would then apportion that revenue under existing processes. The annual amount of revenue to the state, cities and counties would be the amount collected from the payment plans. Using a potential minimum payment of \$25 per program participant, and assuming at least an average of 3,000 participants, the aggregate revenue generated from the program would be \$630,000. The calculation for the expected revenue the state and cities and counties would collectively receive can be expressed as:

$$(\# \text{ of program participants}) \times [(\text{monthly payment amount}) - (\text{monthly administrative fee})] \times 12 = \text{revenue to state and cities and counties}$$

The revenue generated from the program would be offset to whatever extent program participants are already making payments or would make payments towards their traffic-based financial obligations under the current system. This is why an existing order for at least one FTA suspension is a condition for program eligibility. The intention is to help ensure the program targets individuals who currently are not, at least in part, making successful payments on traffic-based financial obligations for which license suspension is an actual or possible consequence.

V. Promoting the Program

The program will only be successful in meeting the identified objectives if individuals who would benefit from the program are aware of it and participate. Information about the program would be provided to potential program participants through the following channels:

- *Courts of Limited Jurisdiction:*
RCW 46.20.341 requires courts that do not have relicensing diversion programs to provide defendants charged with DWLS-3 an abstract of that defendant's driving record and a list of unpaid traffic offense related fines and the contact information for each jurisdiction or collection agency to which the money is owed. These courts could simultaneously provide information about the unified payment plan program, thereby increasing awareness. Courts that do have relicensing diversion programs could provide information about the program when an individual appearing before them has a FTA suspension order that the court cannot adjudicate.
- *Administrative Office of the Courts:*
AOC can provide information about the program online and electronically publish a downloadable informational brochure about the program.
- *Department of Licensing:*
Upon receiving an FTA notice from a court of limited jurisdiction, DOL sends a written notice of the pending suspension of driving privileges. One way to improve awareness of the unified payment plan program is to have DOL include information about the program in the notice of suspension sent by the department. For example, the notice could include the following text: "To learn more about payment plan options available through the Washington State Driver's License Reinstatement and Unified Payment program, contact [PHONE #] or visit [WEBSITE]." Alternatively, information about the program could be provided via an insert, such as an informational brochure produced, paid for, and provided by, AOC or the program administrator.

DOL would also need to update information in its online "Learn How to Reinstatement Your License" tool, which provides personalized instructions for what individuals need to do to reinstate their license.

- *Advocates:*
Civil legal aid organizations and public defense attorneys can also help generate awareness about the program. These advocates can counsel their clients about the available options and help determine eligibility for the program. AOC and the program

administrator should work to make sure such agencies and organizations are well-informed about the program.

VI. CONCLUSION

If policy makers adopt legislation and rules as recommended, the program should result in a reduction in driver's license suspensions for failure to respond or pay, fewer DWLS-3 prosecutions, and improved collection rates. The recommended program would provide options for defendants who may owe outstanding obligations in multiple jurisdictions and help facilitate compliance.

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- ⁷ Brennan Center for Justice, *supra* note 3, at 24.
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³⁵ See RCW 46.63.070 (5).

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⁴⁵ RCW 9.92.030.

⁴⁶ RCW 9.92.020.

⁴⁷ See generally CrRLJ 2.1.

⁴⁸ RCW 46.64.015.

⁴⁹ CrRLJ 2.1(b)(5).

⁵⁰ CrRLJ 4.1.

⁵¹ RCW 46.64.025.

⁵² CrRLJ 2.5. See also CrRLJ 3.4 (providing that “if in any case the defendant is not present when his or her personal attendance is necessary, the court may order the clerk to issue a bench warrant for the defendant’s arrest.”).

⁵³ CrRLJ 7.3.

⁵⁴ CrRLJ 8.12.

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