



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: June 21, 2022

RE: OPPOSITION TO SB 1049 P.N. 1772 (STEFANO)

Bill summary: [SB 1049](#) (PN 1772) would amend [42 Pa.C.S. § 1520](#), [75 Pa.C.S. § 1533](#), [75 Pa.C.S. § 6504](#), and additional provisions to make explicit that magisterial district courts can use community service as an alternative to payment of fines and costs for traffic offenses when a defendant's driver's license has been suspended as a result of nonpayment, or when a defendant is unable to pay all fines and costs in a single payment. The community service alternative program will allow a judge to impose up to 50 hours of community service for even minor traffic offenses when a defendant lacks the financial means to pay; however, even upon successful completion of the community service program, the defendant will still have to pay any fines.

Common pleas courts would apparently be excluded from using community service in traffic cases such as summary appeals.

The bill also provides that if a defendant's driver's license is suspended due to nonpayment, any subsequent offenses of driving on that suspended license would not lead to additional suspension; instead, the defendant would pay an additional fine.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 1049.

SB 1049 would condemn impoverished Pennsylvanians to a "choice" between either 50 hours of involuntary servitude for minor traffic offenses or trying to pay money they do not have and getting their driver's licenses suspended.

The stated goal of this legislation is to reduce the disproportionate burden that low-income Pennsylvanians face due to unaffordable traffic debt that leads to driver's license suspension. Despite being well-intentioned, the bill fails to address the problem and would make the situation even worse for struggling Pennsylvanians who are trying to take their kids to school, drive to work, or get to medical appointments. Under the bill, Section 6504 would permit a judge to impose up to 50 hours of community service for any traffic offense in lieu of payment for any traffic offense when the defendant cannot pay, itself a disproportionate punishment.

Take, for example, a typical offense that runs approximately \$200 for fines and costs. For a legislator making approximately \$90,000 annually, or about \$43/hour, this would take approximately five hours to work off. Yet the program under SB 1049 would expect poor Pennsylvanians to work **ten times that amount of community service** to satisfy the same obligation. This sets up a false choice between struggling to pay and facing repeated punishment for nonpayment, or agreeing to spend more than a full week's worth of time performing community service.

This proposal also raises troubling questions about when individuals are supposed to perform this service if they are working (and simply unable to afford to pay) and what the consequences will be if the person is **unable—not unwilling**—to comply with a court order. Will individuals face bench warrants, contempt proceedings, and incarceration, as they do now when they fall behind on payments? Nothing in this bill addresses this or provides guidance to courts.

Worse, the amendment to Section 1520 in SB 1049 states that as an exception to the general ability to place people in community service programs, the judge will be **unable** to “relieve the person of the obligation to pay a fine associated with the conviction upon successful completion of the program”—meaning that the person would complete 50 hours of community service and **still** have to pay the fine. This defeats the purpose of the community service provision because a person who cannot pay would still be required to pay the fines.

The “fix” proposed by SB 1049 is unnecessary, harmful, and would actually make the situation worse than current practice.

Community service is already an alternative in Pennsylvania for unpaid debt under [42 Pa.C.S. § 9730\(b\)\(3\)](#) when a judge determines that a defendant is unable to pay. Under that provision, all fines and costs can be converted to community service. By contrast, SB 1049 would not allow fines to be worked off in community service. Moreover, by listing such an astronomically high number of community service hours—again, SB 1049 suggests 50 hours could be appropriate for even minor offenses—the bill would require far longer periods of community service than what courts typically require.

In addition, by tying all community service to the Adjudication Alternative Program in Section 1520, **SB 1049 seems to eliminate community service in common pleas cases**. By its plain language, Section 1520 applies to decisions “by the magisterial district judge.” Common pleas judges would be excluded, possibly from using any community service as an option in the numerous traffic cases that come before them, either directly (as with DUIs) or indirectly (through summary appeals). This needlessly constrains common pleas courts.

There are some misinformed MDJs who think that provision does not apply to traffic cases; they are wrong. Provisions in Title 42 apply equally to offenses under Title 75 unless two provisions cannot be read together and are irreconcilable, which is set forth in the Rules of Construction.¹ Since nothing in Title 75 prohibits community service, there is no irreconcilable conflict between any such provisions. A faulty statutory interpretation by some MDJs should not tie the hands via this bill of all MDJs and common pleas judges who already permit community service in traffic cases. Instead, **if the legislature wants to clarify that community service is an option** (something the ACLU-PA would generally support), that could easily be accomplished by adding a straightforward clarification in § 9730(b)(3) that the option to allow a defendant to perform community service applies equally to Title 75 offenses.

Due process requires a pre-deprivation hearing and consideration of ability to pay before a driver’s license is suspended for nonpayment.

The best approach would be to repeal [75 Pa.C.S. § 1533](#) altogether, as it relates to nonpayment of fines, costs, and restitution, and thus end the disproportionate punishment of impoverished Pennsylvanians who cannot afford to pay those financial assessments.

Absent that, the appropriate course of action is to require that license suspensions only occur after a judge holds a hearing and determines whether the defendant is able to pay. That would allow indigent defendants to avoid additional and disproportionate punishment by having their driver’s licenses suspended while still allowing licenses to be suspended for individuals who have money and are simply refusing to pay.

Not only is this good and fair practice, but it is also what is required by law. The U.S. Supreme Court has held that people have a protected property interest in their driver’s license.² In other words, the state cannot take away your license without appropriate due process. The same principles that say you cannot jail someone without a hearing on ability to pay³ also apply to SB 1049. That means: the court must hold a hearing and suspend someone’s license only if the person is willfully refusing to pay.

¹ See 1 Pa.C.S. §§ 1922 and 1923.

² [Bell v. Burson, 402 U.S. 535, 539 \(1971\)](#), drivers have a property interest in their licenses, which cannot be revoked or suspended “without that procedural due process required by the Fourteenth Amendment”.

³ See [Bearden v. Georgia](#).

If repealing 75 Pa.C.S. § 1533 isn't an option, we strongly suggest, in order to protect people's due process, amending both 1533(a) and (b), at the end of the paragraphs with the following language:

An issuing authority or court shall notify the Department that a person has failed to pay any fine, costs, or restitution only if, following a hearing, it finds that the person is not indigent and has willfully refused to pay without hardship.

Without constitutionally-protected due process provisions, SB 1049 would compound punishment on poor people for no discernible public safety reasons, putting PA out of step with other states.

Suspending someone's driver's license for failure to pay court debt compounds punishment on poor people while yielding no measurable benefits to public safety. Debt-based license suspensions are bad public policy. Taking away someone's ability to legally drive simply due to debt is:

- [Bad for employment](#);
- [Bad for public safety](#); and
- [Disastrous](#) for the [millions of people](#) whose lives are upended each year for "[driving while broke](#)."⁴

There are devastating consequences for tens of thousands of Pennsylvanians each year who are too poor to pay. As of 2020, 376,000 PA drivers had their licenses suspended for unpaid traffic tickets. That's more than the population of Pittsburgh.⁵

Furthermore, the trend across the country is to repeal these old, archaic laws that suspend driver's licenses without consideration of ability to pay. According to [Free to Drive—National Driver's License Suspension Campaign](#) from the Fines and Fees Justice Center:

- In 2020, lawmakers in 15 states—[Alabama](#), [Colorado](#), [Florida](#), [Hawaii](#), [Illinois](#), [Kansas](#), [Maryland](#), [Minnesota](#), [New York](#), [Oregon](#), [Utah](#), [Virginia](#), [Washington](#), [Wisconsin](#), and [West Virginia](#)—introduced legislation to stop taking away driver's licenses for unpaid fines and fees.
- In 2021 alone, the governors of 10 states—Arkansas, Arizona, Colorado, Illinois, Indiana, Michigan, Minnesota, Nevada, Utah, and Washington—signed legislative reforms.

Pennsylvania should be on this list. If Arkansas can do it, so can we.

We encourage legislators to consider a repeal of § 1533. But if a repeal is unachievable, then, at a minimum, we urge lawmakers to provide for the constitutionally required hearings to determine ability to pay before suspending someone's license and/or ordering them to complete dozens of hours of community service.

For these reasons, we urge you to oppose Senate Bill 1049.

⁴ Fines and Fees Justice Center, [22 States in 5 Years: Bipartisan Lawmakers Coalesce Behind Curbing Debt-Based Driving Restrictions](#) (2021).

⁵ [The True Cost of Court Debt](#) [Public Source, February 20, 2020]