

SUSPENDING COMMON SENSE IN MASSACHUSETTS:

Driver's license suspensions for drug
offenses unrelated to driving



PRISON
POLICY INITIATIVE

Leah Sakala | May, 2014

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ABOUT THE PRISON POLICY INITIATIVE

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to demonstrate how the American system of incarceration negatively impacts everyone. The Easthampton, Massachusetts-based organization is most famous for its work documenting how mass incarceration skews our democracy. Other projects have included groundbreaking reports about sentencing enhancement zones and the prison telephone industry, and online resources to give activists, journalists and policymakers the tools they need to participate in setting effective criminal justice policy.

FOR MORE INFORMATION

For more information, including additional copies of this report and up-to-date information about the the Massachusetts driver's license suspension law, see <http://www.prisonpolicy.org/driving/>.

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A Prison Policy Initiative report

Executive Summary

A misguided Massachusetts law automatically suspends the driver's licenses of people convicted of a drug offense for up to five years, regardless of whether or not the original offense had anything to do with driving or road safety. People who wish to get their licenses back after the suspension period is over must pay a reinstatement fee of at least \$500. About 7,000 people in Massachusetts unnecessarily lose their licenses due to this policy every year. This report finds that the Massachusetts license suspension policy does not effectively deter illegal drug activity, and in fact contributes to individuals' further involvement in the criminal justice system. Both law enforcement officials and organizations such as the American Association of Motor Vehicle Administrators oppose the policy because it carries harmful and costly side effects.

"Every year, about 7,000 people in Massachusetts unnecessarily lose their licenses due to this policy."

Suspending the licenses of safe drivers...

... **makes roads more dangerous** by

- leading to an increased number of unlicensed, and therefore uninsured, drivers on the road.
- increasing the risk that people will engage in dangerous driving behavior to avoid additional suspension-related penalties.
- inhibiting law enforcement from focusing on removing hazardous drivers from the road.

... **carries many hidden costs**, including:

- waste of police resources.
- waste of court resources.
- waste of correctional resources.
- waste of Registry of Motor Vehicle Resources.
- increase in auto insurance premiums for all insured drivers.

... **inhibits people with previous involvement in the criminal justice system from fulfilling personal, familial, and legal responsibilities**, which are three of the leading social factors that decrease the likelihood of future involvement in the criminal justice system. For example, this policy:

- prevents people from legally commuting to work by car, which is especially troublesome in a state where 80% of all workers travel to work in a private vehicle.
- undermines the Massachusetts Legislature's CORI reform laws by creating a "back door" way for potential employers to inappropriately access conviction information.
- prevents parents, spouses and other relatives from fulfilling family responsibilities that require driving.

"Suspending the licenses of safe drivers makes roads more dangerous, carries many hidden costs, and inhibits people with previous involvement in the criminal justice system from fulfilling personal, familial, and legal responsibilities."

- compounds economic struggles with a reinstatement fee that is prohibitively high.
- increases the likelihood of further involvement in the criminal justice system due to issues such as driving with a suspended license, failure to meet probation or parole requirements, or lack of success entering the legal workforce.

The Massachusetts Legislature should overturn this policy by passing H.3099/S.1643, which would end the practice of suspending driver's licenses for drug convictions unrelated to driving and seal the portions of public driving records that inappropriately disclose information about previous convictions. Further, Massachusetts can avoid the reduction in federal highway funds detailed in the corresponding federal law by simply joining the more than 32 other states¹ that have used the federal law's provision allowing states to opt out without fiscal consequence.

¹ United States Government Accountability Office, *License Suspensions for Nondriving Offenses* (Washington DC: GAO, February 2010), 2. Additional states, such as South Carolina, have opted out since the GAO report was published.

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Overview

A federal law passed in 1991 withholds a small portion of any state's highway funds unless the state agrees to either suspend the drivers' licenses of anyone convicted of a drug offense for at least six months, or decides to formally reject the suspension policy with a legislative resolution.² Such a suspension policy has been on the books in Massachusetts since 1989, mandating a suspension period of a up to five years after which a fee of at least \$500 is required to regain driving privileges.³ Not only has this license suspension policy proven to be ineffective at deterring drug activity, but it also carries harmful consequences including:

- making roads less safe by increasing uninsured driving;
- putting a significant financial strain on taxpayers; and
- obstructing people with involvement in the criminal justice system from fulfilling responsibilities to their families, their communities, and the state.

To date, at least 33 states have formally opted out of the federal law's requirements, avoiding both the fiscal consequences in the original law and the unintended harmful consequences of the policy. Massachusetts, however, has not yet freed itself from this policy that has yielded no demonstrated benefit and that significantly burdens the state.

Every year, the Massachusetts law unnecessarily suspends the licenses of about 7,000 people for up to five years solely because they have been convicted of a drug offense.⁴ In a given year, only about 2,500 people are able to pay the reinstatement fee to get their license back.⁵ While the reinstatement fee presents a formidable barrier for many of the disproportionately low-income people who are seeking to regain their driving privileges, the revenue to the state that the fee generates is negligible compared to the significant public safety, administrative, and law enforcement expenses associated with this policy.

"Not only has this license suspension policy proven to be ineffective at deterring drug activity, but it also carries harmful consequences."

² 23 U.S.C. § 159.

³ Mass. Gen. Laws ch. 90, § 22 (f).

⁴ Suspension data from the RMV released to EPOCA on July 10, 2012. Available on file with author.

⁵ Suspension data from the RMV released to EPOCA on July 10, 2012. Available on file with author. For comparison purposes, the reinstatement fee for a suspended license in Massachusetts is ten times the cost of the \$50.00 fee required to get a new license. See: <http://www.dmv.org/ma-massachusetts/apply-license.php>

An ineffective deterrent

While addressing illegal controlled substance activity is a legitimate policymaker concern, the practice of automatically suspending drivers' licenses for any drug conviction fundamentally fails to meet this goal. There is no empirical evidence that license suspensions are an effective method to deter drug behavior not related to driving. In fact, the American Association of Motor Vehicle Administrators commissioned a six-state study of the effectiveness of license suspension policies for deterring behavior not related to driving, concluding that, "driver license suspension for non-highway safety related reasons is ineffective in achieving compliance with non-highway safety violations."⁶ In sum, responding to certain drug offenses by suspending unrelated privileges such as driving is ineffective and counterproductive.

Antithetical to public safety goals

The net social benefit of keeping unsafe drivers out of the driver's seat is obvious.⁷ Unnecessarily taking away safe drivers' licenses, however, endangers everyone on the road because it increases the number of uninsured drivers, distracts law enforcement officials from tending to legitimate safety violations, and leads to unsafe driving practices.

While driving with a suspended license is an offense that carries an additional penalty, many people who do not have a reliable alternate means of transportation make a rational cost-benefit analysis and conclude that the mobility that allows them to safely fulfill their responsibilities is worth the risk of additional fees and/or jail time. Taking away the licenses of safe drivers increases the number of people who are forced to choose between compliance with their license suspension and fulfilling personal responsibilities such as getting to work in the morning, taking a sick child to the doctor, or complying with probation or parole requirements. Thus, suspending the licenses of safe drivers makes the roads less safe for everyone by unnecessarily increasing the number of unlicensed — and therefore uninsured — drivers on the roads.

Although people whose licenses have been suspended for drug convictions unrelated to driving are far less likely to cause an accident than people who have their license privileges withheld for bad driving,⁸ all drivers run the risk of causing accidents. When these accidents involve drivers barred from insurance, they carry an enormous cost and are more likely to undermine public safety. In Massachusetts, an estimated one in

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" Taking away the licenses of safe drivers increases the number of people who are forced to choose between compliance with their license suspension and fulfilling personal responsibilities."

⁶ American Association of Motor Vehicle Administrators Suspended/Revoked Working Group, *Best Practices Guide to Reducing Suspended Drivers 2013* (Arlington, Virginia: American Association of Motor Vehicle Administrators, February 2013), p 11. Accessed on April 14, 2014 from: <http://www.aamva.org/workarea/downloadasset.aspx?id=4248>

⁷ Massachusetts has strong laws that address dangerous driving behavior, including driving drunk or under the influence of a controlled substance. Mass. Gen. Laws ch. 90, § 24 (1)(a)(1).

⁸ American Association of Motor Vehicle Administrators Suspended/Revoked Working Group, *Best Practices Guide*, 7.

“Charging law enforcement and administrative officials with the task of tracking and processing licenses suspensions for reasons unrelated to driving reduces their capacity to respond to actual traffic safety matters.”

20 drivers on the road is uninsured.⁹ The state could easily lower that number simply by allowing all safe drivers to retain their licenses and therefore comply with their responsibility to obtain insurance. Also, law enforcement officials report that unnecessary license suspensions are associated with dangerous behavior when individuals attempt to avoid the additional penalties associated with driving without a license. Drivers with a suspended or revoked license are more likely to attempt to flee the scene of an accident¹⁰ or, as Easton, Massachusetts Chief of Police Allen Krajcik told *The Enterprise* (Brockton, MA) last year, try to avoid traffic stops.¹¹

Further, charging law enforcement and administrative officials with the task of tracking and processing licenses suspensions for reasons unrelated to driving reduces their capacity to respond to actual traffic safety matters — such as speeding, accidents, or other moving violations — and inhibits them from fulfilling their more urgent duty to remove people from the road who are actually endangering those around them. Each unnecessary traffic citation constitutes a misuse of precious resources. In 2011, Massachusetts police issued 33,353 citations to people who were on the road despite having a suspended or revoked license.¹² That number could easily be lowered if police officers were not responsible for enforcing license suspensions for reasons entirely unrelated to driving.

Law enforcement officers around the country have reported a sense of frustration at having to spend a growing amount of time and energy focusing on safe drivers whose licenses have been suspended for non-driving reasons.¹³ As Washington State Patrol Chief John Batiste told the American Association of Motor Vehicle Administrators:

A roadside encounter with a suspended driver is a time consuming endeavor for officers. Drivers suspended for non-driving reasons represent 39% of all suspended drivers, and are not the threat to the motoring public as other suspended drivers. Reducing law enforcement roadside encounters with suspended drivers by up to 39% would result in significant time savings allowing officers to be

⁹ PRWeb, “Recession Marked by Bump in Uninsured Motorists; IRC Analysis Finds One in Seven Drivers Are Uninsured,” April 21, 2011. Accessed on April 14, 2014 from: <http://www.prweb.com/releases/uninsured/motorists/prweb8330897.htm>

¹⁰ AAA Foundation for Traffic Safety, *Unlicensed to Kill* (Washington DC: AAA Foundation for Traffic Safety, November 2011), page 12. Accessed on April 14, 2014 from: <https://www.aaafoundation.org/sites/default/files/2011Unlicensed2Kill.pdf>

¹¹ Justin Graeber, “Study: Keeping unlicensed drivers off road nearly impossible,” *The Enterprise* (Brockton, MA), January 7, 2013. Accessed on April 14, 2014 from: <http://www.enterpriseneews.com/x459330966/Study-Keeping-unlicensed-drivers-off-road-nearly-impossible>

¹² Justin Graeber, “Study: Keeping unlicensed drivers off road nearly impossible.”

¹³ Gustitus, Sandra, Melody Simmons, and Margy Waller, *Access to Driving and License Suspension Policies for the Twenty-First Century Economy* (Washington DC: The Mobility Agenda, June 2008), 8. Accessed on April 14, 2014 from: <http://www.mobilityagenda.org/home/file.axd?file=2008%2f9%2fDLPaperforinternet.pdf>

available for calls for service and other proactive highway safety activities.¹⁴

A misuse of resources

While the \$500 minimum license reinstatement fee is unattainably high for many people seeking to get their driver's licenses back, the net revenue generated by this driver's license suspension policy is far outweighed by the cost of implementation and the expensive side effects. Taking away driver's licenses due to unrelated drug convictions initiates an expensive and burdensome process that ultimately falls on taxpayers to fund. By leading to an increase in the number of uninsured but safe drivers, this policy increases the likelihood that any given accident will involve an uninsured driver, which raises the premiums that insurance holders must pay. Nationally, accidents caused by uninsured drivers cost more than \$4.1 billion in insurance losses every year.¹⁵ Aside from the unnecessary expenditure of law enforcement resources discussed above, processing individuals who are accused of driving with a license that has been suspended for reasons unrelated to driving presents a significant strain on already-overburdened RMV and court systems.

The Massachusetts practice of license suspension for drug offenses not related to driving wastes resources at nearly every stage of the state's legal system. Every year, Massachusetts police officers spend many hours — with a median salary of \$27.40 per hour¹⁶ — finding, stopping, issuing citations to, and attending the court dates of people whose licenses have been suspended due to drug offenses unrelated to driving. This policy also places a significant strain on court and criminal justice systems. Traffic offenses constitute one of the most frequent charges processed in state and local courts, and this policy unnecessarily increases those caseloads.¹⁷ The people who are sentenced to jail time after being convicted of driving with a suspended license — regardless of whether or not the original suspension had anything to do with road safety — serve an average of between 10 days for a first offense and more than two months for a repeat offense, which further wastes taxpayer dollars by unnecessarily increasing jail populations.¹⁸

“Taking away drivers' licenses due to unrelated drug convictions initiates an expensive and burdensome process that ultimately falls on taxpayers to fund.”

¹⁴ American Association of Motor Vehicle Administrators Suspended/Revoked Working Group, *Best Practices Guide*, 7.

¹⁵ Maria Valdez, “Licensing All Drivers,” *Insurance Journal*, October 6, 2003. Accessed on April 14, 2014 from: <http://www.insurancejournal.com/magazines/partingshots/2003/10/06/32941.htm>

¹⁶ Bureau of Labor Statistics, “Police and Detectives,” U.S. Department of Labor, *Occupational Outlook Handbook, 2014-15 Edition*. Accessed on April 14, 2014 from: <http://www.bls.gov/ooh/protective-service/police-and-detectives.htm>

¹⁷ American Association of Motor Vehicle Administrators Suspended/Revoked Working Group, *Best Practices Guide*, 13-14.

¹⁸ Massachusetts Sentencing Commission, *Survey of Sentencing Practices FY 2011* (Boston, MA: Massachusetts Sentencing Commissions, May 2012), Table 46. Accessed on April 14, 2014 from: <http://www.mass.gov/courts/docs/admin/sentcomm/fy2011survey.pdf>

License suspension for drug offenses unrelated to driving also place a significant administrative burden on the state agency responsible for regulating driving privileges: The Registry of Motor Vehicles. The American Association of Motor Vehicle Administrators issued a February 2013 report, *Best Practices Guide to Reducing Suspended Drivers*, that describes how the burden of processing unnecessary suspensions requires extra resources to support both technical infrastructure and ongoing staff time. Further, the report notes, the task of processing license suspensions for reasons unrelated to driving falls outside of the RMV's main responsibility to ensure that roads are safe:

Significant savings could be recognized by DMV's if they were not responsible for processing social non-conformance violations. Perhaps more importantly, they could focus all of their energies on their core business of highway safety.¹⁹

The American Association of Motor Vehicle Administrators also reports that in many states the internal processing work for license suspensions not related to driving violations alone can require multiple additional full time positions.²⁰

Taxpayers and insurance holders also bear the cost of accidents caused by drivers who not eligible for car insurance because their licenses have been suspended for reasons unrelated to driving. Accidents caused by uninsured drivers, for example, raise insurance holders' premiums. Ensuring that drivers with safe driving records are not denied licenses — and consequently insurance coverage — due to unrelated drug activity would decrease those expenses.

Limiting mobility, destabilizing lives

The Massachusetts policy of suspending drivers' licenses for drug offenses undermines community stability by inhibiting mobility that is critical for fulfilling personal responsibilities. This policy creates particularly significant practical and economic barriers for people seeking to tend to their professional, personal, and legal obligations,²¹ increasing the likelihood that they will continue to be involved in the criminal justice system. Taking away the licenses of safe Massachusetts drivers who have drug convictions unnecessarily impedes their ability to achieve economic and social stability, fosters future involvement in illegal activity, and also increases the likelihood that people with previous drug convictions will continue to be enmeshed in the criminal justice system in the future.

¹⁹ American Association of Motor Vehicle Administrators Suspended/Revoked Working Group, *Best Practices Guide*, 16.

²⁰ American Association of Motor Vehicle Administrators Suspended/Revoked Working Group, *Best Practices Guide*, 18.

²¹ While Massachusetts does permit people with suspended licenses to apply for "Hardship Approval" to regain their driving privileges, this provision does not sufficiently allow for individuals to continue fulfilling personal and employment responsibilities because they are only eligible to apply *after* 50% of the suspension period is up, which can be as long as two and a half years.

Prohibiting safe drivers from driving creates significant challenges for those seeking employment, which is a major keystone of social stability. Research is clear that earning a legal income is key to achieving success after involvement with the criminal justice system.²² Not only does the Massachusetts license suspension policy automatically ban people with drug convictions from seeking any employment that might require on-the-job driving (such as delivery services, repair work, construction jobs, etc.), but it also renders them ineligible for any employment that is not accessible year-round on foot or via bicycle or public transportation. This is particularly problematic given that most communities nationally depend on private vehicles.²³ In Massachusetts, 80% of workers 16 years old and older commute to work by car,²⁴ and in the cities and towns outside of Route 128, 89% commute by car.²⁵

This policy's impact on employment is particularly pernicious because the criminal charges associated with the non-driving related license suspension permanently stain an individual's driving record, which is available to potential employers for a nominal fee. In 2010 the Massachusetts Legislature passed strong legislation to increase employment opportunities for people with criminal records by preventing potential employers from asking about criminal convictions on an initial job application. The state's license suspension policy, however, creates a "back door" method for potential employers to inappropriately access conviction information that is irrelevant to an evaluation of a job applicant's driving history.²⁶

Taking driver's licenses away from safe drivers also puts a significant strain on their ability to fulfill family obligations. Driving privileges are essential for many family-related duties, such as picking children up from school, helping family members address medical matters, or running errands such as grocery shopping. Not only does inhibiting people from tending to family matters that require a car burden all family members, but it also runs contrary to robust social science research findings that strong family ties and contributions to family affairs are key to success

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²² See for e.g.: Solomon, Amy L., Kelly Dedel Johnson, Jeremy Travis, and Elizabeth C. McBride, *From Prison to Work: The Employment Dimensions of Prisoner Reentry* (Washington DC: Urban Institute, 2004) Accessed on April 14, 2014 from: http://www.urban.org/UploadedPDF/411106_prison_to_work.pdf

²³ Gustitus, Sandra, Melody Simmons, and Margy Waller, *Access to Driving*, 4.

²⁴ Census Bureau, 2012 American Community Survey, Table S0801 "Commuting Characteristics by Sex." See also: Patrick Doyle, "How Massachusetts Commutes to Work," *Boston Magazine*, March 12, 2013. Accessed on April 14, 2014 from: <http://www.bostonmagazine.com/news/blog/2013/03/12/massachusetts-commute-to-work/>

²⁵ Calculated by the Prison Policy Initiative from town level results of the Census Bureau's 2012 American Community Survey, Table S0801.

²⁶ American Civil Liberties Union of Massachusetts, Community Resources for Justice, Ex-Prisoners and Prisoners Organizing for Community Advancement, Prisoners Legal Services of Massachusetts, and Worcester Initiative for Supported Reentry, "Please Support H.3099/S.1643" fact sheet. On file with author.

EDWIN MELENDEZ



Edwin Melendez is a Massachusetts resident who was convicted of drug possession in 2008. Even though he had never had a driver's license when he was convicted, his license was preemptively suspended and he faced a \$500 fee if he should ever get his license in the future. Now that the period of his license prohibition is over, he needs to get his license but cannot afford the hefty fee. In his words:

"I'll be celebrating four years of sobriety in September, it has been the hardest yet most rewarding thing I've ever done in my life. I've gotten married and have a beautiful family with a newborn on the way due in June of this year. I have a humble home, kids in school, etc. I'm part of a ministry that feeds and clothes the needy, I do outreach in and out of the community bringing a message of hope to the people still struggling with addiction, but I have to rely on public transportation (which can be limited) a bike or my legs to get to my destination which doesn't always happen. I've lost jobs and career opportunities because of the lack of transportation. I haven't paid the fine because now I have a home and family that I have to take care of, and the little bit I get to make ends meet. One of the hardest things for me is to take my 15-year-old, who is a freshman in high school, to any school activities that are out of town. Things like food shopping are hard especially with my wife expecting in June."

after involvement in the criminal justice system.²⁷ It is counterproductive to unnecessarily prohibit people with previous involvement in the criminal justice system from making meaningful mobility-dependent contributions to their families.

As Edwin Melendez's story (at left) illustrates, the hefty license reinstatement fee only exacerbates the financial struggles faced by many families with loved ones who have had criminal convictions. Apart from the fact the people with prior involvement in the criminal justice system earn disproportionately low wages,²⁸ they often face a plethora of court fees and other conviction-related expenses that are immediate financial priorities, pushing their ability to afford their license reinstatement fee farther and farther down the road. Also, in a vicious cycle, limiting the ability of people with drug convictions on their records to find employment and earn an income makes it even harder for them to pay their license reinstatement fees. Sara Williams described this paradox, reporting to the Prison Policy Initiative, "I have an awful time getting a job... the fact that I can't make money means I can't pay to get my drivers license. [The fact that] I can't get my license means I can't get a job."²⁹

"I have an awful time getting a job... the fact I can't make money means I can't pay to get my drivers license. [The fact that] I can't get my license means I can't get a job."

—Sara Williams

²⁷ One study, for example, found that people with previous involvement in the criminal justice system identified family relationships as the single most important factor in preventing them from reoffending. See Joan Petersilia, *When Prisoners Come Home* (New York, NY: Oxford University Press, 2006), 41-42. See also Christy Visser, "Incarcerated Fathers: Pathways from Prison to Home" *Criminal Justice Policy Review* Vol. 24 No. 1 (January 2013), 9-26. Other studies have shown that formerly incarcerated individuals who assume active roles as partners and parents are less likely to return to prison. See Nancy La Vigne, *Chicago Prisoners' Experiences Returning Home* (Washington D.C.: Urban Institute, 2004). Accessed on September 24, 2012 from: http://www.urban.org/UploadedPDF/311115_ChicagoPrisoners.pdf

²⁸ See Allen Beck et. al, *Survey of State Prison Inmates, 1991* (Washington D.C.: U.S. Department of Justice Bureau of Justice Statistics, 1993), 3. See also: The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Mobility* (Washington, DC: The Pew Charitable Trusts, 2010). Accessed on April 14, 2014 from: http://www.pewtrusts.org/uploadedFiles/Collateral_Costs.pdf?n=8653

²⁹ Personal testimony of Sara Williams, original on file with author.

Finally, the practice of unnecessarily suspending licenses creates additional opportunities for people with previous involvement in the criminal justice system to be arrested and convicted of new charges. Even though driving may be a safe and essential component of fulfilling personal responsibilities, every time people with a suspended driver's license get behind the wheel they risk incurring an additional charge for violating their suspension. These additional offenses can have grave implications for terms of parole or probation, and can even result in jail time. Imposing unnecessary restrictions on individuals' mobility also hampers their ability to comply with requirements related to their original conviction, such as parole or probation meetings or mandates.

The Massachusetts policy of suspending driver's licenses for drug activity not related to driving negatively impacts three of the leading social metrics that keep people from future involvement in the criminal justice system: employment, family stability, and compliance with court requirements. Thus, rather than deterring future illegal activity, this policy contributes to it both by undermining the very structures that help people with prior criminal justice involvement succeed, and by unnecessarily creating more opportunities to incur additional charges.

Policy recommendations:

The **federal government should repeal 23 U.S.C. § 159**, the original statute that triggered states' passage of laws that require driver's license suspension for drug offenses not related to driving. The evidence shows that license suspensions are not an effective response to illegal controlled substance activity, and the expensive and harmful effects of this practice are straining state budgets and communities alike.

The **Massachusetts Legislature should pass Bill H3099/S1643**, introduced by Senator Harriette Chandler and Representative Liz Malia, to both end the practice of suspending licenses for drug convictions unrelated to driving, and to expunge the driving records of people who have experienced such license suspensions in the past.

Further, Massachusetts can avoid the fiscal consequences detailed in the corresponding federal law by simply using the provision of the original federal law that allows states to opt out without fiscal consequence. **The Massachusetts Legislature should join more than 33 other states by passing a resolution against the policy and formally opting out.**

"Massachusetts Legislature should pass Bill H3099/S1643, to both end the practice of suspending licenses for drug convictions unrelated to driving and expunge the records of people who have experienced such license suspensions in the past."
