



# Texas' Failure to Appear/Pay Program Criminal Justice Project Issue Brief (February 2023)

## INTRODUCTION<sup>1</sup>

Under Texas law criminal courts can put a hold on active drivers' licenses and prevent license renewals for nonpayment of fines, court costs, and fees (collectively referred to as "court debt").<sup>2</sup> Unlike license suspensions resulting from convictions for dangerous driving (e.g., driving while intoxicated), debt-based holds deprive licensed drivers of the ability to legally drive due to financial hardship. These types of license holds are counterproductive, given that driving is essential for daily needs and activities such as commuting to work to earn a living. Debt-based holds prevent residents from earning wages, driving increased debt, and leading to potentially impoverished conditions. These holds have also been shown to disproportionately impact people of color.<sup>3</sup>

**Debt-based license holds criminalize poverty and can devastate communities economically.** No evidence shows that license holds increase court revenue in Texas, and lawmakers should therefore end debt-based license holds statewide.

## KEY FACTS

- Currently, the Department of Public Safety (DPS) has over 472,000 licenses with renewal holds through the Failure to Appear/Pay (FTAP) Program.<sup>4</sup>
- 96% of these holds are associated with an expired license, forcing more 454,000 Texans to drive with an invalid license due to unresolved court debt.<sup>5</sup>
- Two different entities keep track of holds associated with the FTAP Program: DPS and OmniBase Services of Texas (OST). The latter is a third-party vendor that contracts with both the state and local courts to serve as an intermediary between the two.
- The number of people impacted by license holds in OmniBase's system is nearly 994,000 – or about 1 in 20 of the state's driving population.<sup>6</sup>
- License holders impacted by OmniBase have on average 3.6 holds.<sup>7</sup>
- Black drivers represent 28% of those with expired licenses due to FTAP holds, even though Black drivers represent only 11% of residents with Texas driver's licenses.<sup>8</sup>
- Researchers in New York and Nebraska have found that redesigning summons forms and implementing text message reminders to be an effective alternative to reducing FTA rates.<sup>9</sup>

## BACKGROUND

Prior to 2019, two separate Texas programs prescribed penalties that led to the invalidations of driver's licenses for nonpayment of court debt. The Driver's Responsibility Program (DRP) levied hefty surcharges in addition to the standard fines for certain driving-related offenses.<sup>10</sup> Nonpayment of these surcharges resulted in the automatic suspension of a driver's license. Following years of protests by diverse and bipartisan organizations calling for an end to the DRP, the Texas Legislature voted unanimously to eliminate the Program in 2019.<sup>11</sup> The passage of this legislation led to the lifting of license suspensions for approximately one million Texans in 2019.<sup>12</sup>

The second and lesser known, but equally insidious, program is the subject of this brief and still widely used across Texas: the Failure to Appear/Pay (FTAP) or "OmniBase Program," so named for the private vendor that administers the programs: OmniBase Services of Texas (OST). Pursuant to Texas Transportation Code chapter

706, the OmniBase Program allows for participating courts to issue holds (“OmniBase holds”) that prevent a person from renewing their driver’s license until all their court debt is completely resolved.<sup>13</sup>

Courts contracting with OST are mostly at the municipal and justice level<sup>14</sup>, both which adjudicate low-level offenses punishable solely by fine (not jail), like traffic tickets. For the municipal court in a city or the justice courts in a county to participate in OmniBase, the city or county must enter into a contract with the Texas Department of Public Safety (DPS).<sup>15</sup> Participation is completely voluntary, with cities and counties retaining discretion regarding both entering and ending contracts.

Texas courts currently have approximately 3.7 million outstanding holds on Texas drivers’ licenses through the OmniBase Program.<sup>16</sup> Resident license holders impacted by OmniBase have on average 3.6 holds.<sup>17</sup> Nearly 994,000 Texans — or about 1 in 20 of the state’s driving population — are currently prevented from renewing their licenses due to OmniBase. Of those, some still have valid licenses given that the hold itself does not prevent one from driving legally until the license expires. According to DPS, the number of individuals with a hold on an expired license is 454,484, which roughly equates to 1 in 50 Texas drivers.<sup>18</sup>

**While OmniBase distinguishes between “failure to appear” and “failure to pay” as reasons a court may impose a driver’s license renewal hold, “failure to appear” is *de facto* “failure to pay” in fine-only cases.**

License holders can pay a fine either online or by mail prior to a court date in order to avoid appearing in court for a fine-only offense. OmniBase holds always arise because a resident has not paid the fine, either prior to a court appearance date or after a court appearance during which a resident is convicted and ordered to pay a fine. Drivers often fail to appear in court because of an inability to pay and fear of the alternatives (fear of jail) or due to other poverty-related factors, such as lack of transportation, lack of childcare, or the inability to miss work.<sup>19</sup>

Moreover, even if a resident with an OmniBase hold does appear in court to resolve the fine, the hold is not lifted immediately until all debt is paid or otherwise resolved.<sup>20</sup> If the license holder is not able to pay the entire amount owed, they must seek an alternative sentence from the court, such as community service or a payment plan.<sup>21</sup> These alternative sentences are within the discretion of the court, and typically take months or even years to complete. During the time a driver is making installment payments or performing community service, the hold restriction continues to prevent license renewal. As a result, many holds last for years, even more than a decade.<sup>22</sup>

**THE SHORTCOMINGS OF PRIVATE VENDOR ADMINISTRATION**

OST is a private, for-profit company that contracts with the Texas Department of Public Safety for the sole purpose of administering the FTAP Program. OST manages a database of holds, as well as a searchable online tool that the DPS directs residents to use to find hold information.<sup>23</sup> OST receives a portion of each \$10 fee (previously \$30 fee) as compensation in order to lift each hold.<sup>24</sup> OST has been the primary opposition to any proposed changes to the FTAP Program at the Texas Legislature, given that any reduction in the number of holds placed by courts is likely to reduce the revenue OST receives in fees.

OST’s administration of the OmniBase Program is rife with problems. Attorneys representing drivers attempting to restore licenses report that information within the OmniBase system is incorrect and holds may not be lifted in a timely manner even after the court has directed OST to do so. Furthermore, significant discrepancies between the data maintained by OST and that maintained by DPS make it difficult for drivers to determine the steps necessary to resolve the fines and remove the holds.<sup>25</sup>

## **DEVASTATING ECONOMIC CONSEQUENCES**

Through the OmniBase Program, the Texas Legislature has essentially established a direct pathway from a single traffic ticket to long-term unemployment. Drivers are unable to afford the initial fines and fees because the fines are almost never adjusted for income. Recent academic research reveals that even small traffic fines can cause major financial distress for low-income households.<sup>26</sup> Driving-related penalties for nonpayment of court debt, like the OmniBase Program, compounds this financial distress by making it more difficult to work and earn the money needed to support their families, not to mention resolve their fines.

A New Jersey study of drivers with suspended licenses found that 42% of drivers lost their jobs when their licenses were suspended.<sup>27</sup> The impact was even greater on drivers with household incomes below \$30,000, as 64% of these drivers lost their jobs when their license was suspended, and 51% could not find another job.<sup>28</sup> Similar employment loss can be anticipated given that many jobs in Texas, even in the largest urban areas, cannot be accessed via public transportation.<sup>29</sup>

The lack of a valid driver's license is both a significant barrier to holding an existing job and to obtaining a new job.<sup>30</sup> The barrier to employment without a valid driver's license is especially common in industries like construction, health care, manufacturing or office jobs, jobs that often pay above minimum wage and may help families earn enough to escape poverty.<sup>31</sup> On the other hand, restoration of driver's licenses can contribute to economic growth.<sup>32</sup>

## **DEBT-BASED DRIVER'S LICENSE HOLDS PUSH PEOPLE DEEPER INTO DEBT**

Because driving is critical to accessing the workplace, many residents continue to drive despite having an invalid license.<sup>33</sup> Driving is also often required for other tasks critical to health and wellbeing, such as obtaining medical care for oneself and one's family members; transporting children to childcare and school; buying groceries, medicine, and other essentials; and caring for family members.<sup>34</sup> Even attending court and complying with a court order to complete community service requires driving for most Texans.

Consequently, drivers with invalid licenses often receive additional tickets, mounting debt that takes even longer to resolve. A driver stopped in traffic with an invalid license will almost certainly receive a ticket for Driving While License Invalid (DWLI), in addition to a ticket for any offense that led to the stop. A driver may also receive a citation for Failure to Maintain Responsibility (FMR) (*i.e.*, driving without insurance) because it is more difficult and expensive to obtain insurance without a valid license, as well as for Failure to Register a Vehicle (FRV) because nonpayment of fines also prevents drivers from registering their vehicles as required by law. Moreover, Texas law requires automatic license suspension after a conviction for DWLI or after the conviction for any moving violation that occurred during the suspension.<sup>35</sup> This departmental suspension increases the time a driver cannot legally drive, increasing the fines and license holds.

For these reasons, it is common for drivers with OmniBase holds to have more than one hold on their licenses.<sup>36</sup> Drivers receive a separate hold for every case in which fines and fees are unpaid. But all holds must be lifted, and all debts resolved before the license can be renewed. For those without the money to resolve their court debt, one small traffic violation can completely derail their life and economic stability.

## DISPROPORTIONATE BURDEN ON PEOPLE AND COMMUNITIES OF COLOR

Texans of color are overrepresented throughout the criminal legal system,<sup>37</sup> and debt-based license holds are no exception. People of color are more likely to be stopped by police in Texas, and more likely to be ticketed once they are stopped.<sup>38</sup> In addition, these holds impact those who are unable to pay; in Texas, wealth is concentrated in white communities.<sup>39</sup> An examination of DPS data by Texas Appleseed found that Black drivers represented nearly 28% of all people with invalid licenses due to OmniBase holds, despite the fact that Black people represent only 11% of residents with Texas driver's licenses.<sup>40</sup>

Further, not being able to legally drive often leads to deeper criminal legal system involvement — all stemming from the person being unable afford the original fine. A second Driving While License Invalid offense is a jailable Class B misdemeanor under Texas law, meaning that a person will typically be arrested and booked into jail, rather than issued a citation. These regulations exacerbate racial disparities within our criminal justice system and intensify the counterproductive effects of continued system involvement, as even a short jail stay significantly impacts one's ability to retain employment.<sup>41</sup>

The FTAP Program disproportionately burdens communities of color given the existing racial wealth gap, and then compounds that gap by driving people of color further into debt and increasing the likelihood of deeper involvement with the justice system.

## PARTICIPATION IN THE FTAP PROGRAM DOES NOT IMPROVE COLLECTION RATES

The FTAP Program is both counterproductive and ineffective for its intended purpose. While the ostensible function of an OmniBase hold is to ensure payment of fines, no compelling evidence exists that OmniBase is required to collect said fines. **There is no significant difference in the amount collected per criminal case between municipal courts using the OmniBase Program and those that do not.** For example, both Harris County and the City of Austin voted to end OmniBase contracts in 2020 and lift all existing holds, and in neither place did court collections decrease as a result. Moreover, lifting these holds could save thousands of hours of law enforcement time, allowing law enforcement officers to focus on real safety risks.<sup>42</sup> It would also alleviate the burden on the courts processing so many DWLI cases.<sup>43</sup>

**Several studies tested the effectiveness of alternative methods on decreasing failure to appear (FTA) rates.** New York City took a twofold approach to reduce FTA rates for low-level offenses in 2020,<sup>44</sup> redesigning its court summons forms by moving court information from the bottom to the top of the forms. Within the top section of the form, the consequences for missing the court date are stated in bold. The New York courts also sent text messages to fine holders to reiterate court information in the days leading up to court hearings. Both measures were deemed successful, as the redesigned summons form and text messages reduced FTA rates on average by 13% and 21%, respectively.<sup>45</sup> Researchers in Nebraska also studied the effect of text messages on FTA rates, finding that iteration of sanctions for failure to appear produces the lowest FTA rate in comparison to no reminder, simple reminders, and reminders that include procedural justice sentiments.<sup>46</sup> This Nebraska study also found that misdemeanor defendants who appear in court have more confidence in the courts than those who do not appear.<sup>47</sup> Texas should consider enacting and supporting dynamic strategies like these pursued in other states to reduce FTA rates for low-level offenses while simultaneously promoting trust in the courts.

## RECOMMENDATIONS FOR REFORM

Given the harmful consequences and counterproductive nature of debt-based driver's license suspensions/holds/renewals, a growing coalition of diverse voices and organizations across the country have called on states to eliminate driving consequences for nonpayment of court debt, and many have done so. **Texas should build on the progress begun with the elimination of the Driver Responsibility Program, eliminate the FTAP Program entirely, and lift all existing holds.** Procedural improvements and tinkering around the edges cannot salvage an enforcement mechanism that so patently discriminates against Texans based on wealth.

Until the Texas Legislature acts to eliminate this destructive program, cities and counties must step in to protect their own residents from the devastation of it. City and county governments have statutory authority to determine whether local courts will use the FTAP Program. City councils or commissioners can vote to cancel their contracts with DPS. Local governments should act to provide relief to burdened constituents.

**Local governments and courts can also implement research- and evidence-based policies that help people quickly resolve debt and avoid long-term financial distress. These policies include:**

- Provide clear communication from courts, using text messages and other reminders;
- Clarify court forms so they are easier to read and assuage residents' fear of court,
- Tailor fines to income level to increase affordability and likelihood of payment;
- Cease issuing warrants for failure to appear and nonpayment, and instead focus on alternatives to payment that are truly accessible to people; and
- Dismiss older cases and forgive the associated debt.

## CONCLUSION

The FTAP/OmniBase Program is both harmful and counterproductive. License hold restrictions deepen criminal legal system involvement and prevent residents from achieving financial stability. Texas should invest in and tailor methods that are effective in collecting fines and in reducing appearance rates, such as text message reminder systems or court form redesigns.

Terminating the FTAP Program will provide relief to the nearly one million drivers burdened by OmniBase license holds. Elimination of the FTAP Program would empower residents to obtain gainful employment and avoid prolonged contact with the criminal legal system, thereby improving the financial stability and wellbeing of all Texans.



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## REFERENCES & ENDNOTES

<sup>1</sup> Special thanks to Mary Mergler, former Senior Counsel with Texas Appleseed's Criminal Justice Project. Mary served as the primary author on this issue brief and is now a Senior Campaigns Strategist with the Fines and Fees Justice Center. Cole Meyer, Policy Associate with the Criminal Justice Project, served as co-author.

<sup>2</sup> See Tex. Transp. Code § 706.004.

<sup>3</sup> DPS data on the number of licenses held pursuant to the FTA/P program show Black drivers to represent 28% of all people with invalid licenses due to OmniBase holds, despite the fact that Black people represent only 11% of people with Texas driver's licenses. Data on file with the author.

<sup>4</sup> Data obtained via Public Information Request to the Texas Department of Public Safety on the total number of holds by jurisdiction as of Nov 1, 2022, on file with author (hereinafter "DPS Holds Data").

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Evidence and data also suggest that OmniBase holds disproportionately burden Latinx drivers as well, but ethnicity has not historically been tracked by DPS. Local court data analyzed by Texas Appleseed has shown similarly racial and ethnic disparities. Data from the Dallas Municipal Court showed that almost 60 percent of OmniBase holds in Dallas Municipal Court were against Black individuals in 2017, despite their being only about 25 percent of the Dallas population. In Houston, 40% of these license holds are applied to Black people, who make up 22% of the city's population. Outside of Texas, study after study of license suspensions in states across the country have documented similar racial disparities. (hereinafter "OmniBase racial disparities").

<sup>9</sup> Bornstein, B. H., Tomkins, A. J., Neeley, E. M., Herian, M. N., & Hamm, J. A. (2013). Reducing courts' failure-to-appear rate by written reminders. *Psychology, Public Policy, and Law*, 19(1), 70. (hereinafter "Bornstein et al.").

<sup>10</sup> Tex. Transp. Code § 708.001 *et seq.*, repealed by Acts 2019, 86th Leg., ch. 1094 (H.B. 2048), § 15, eff. Sept. 1, 2019.

<sup>11</sup> Acts 2019, 86th Leg., ch. 1094 (H.B. 2048), § 15, eff. Sept. 1, 2019.

<sup>12</sup> Data on file with author.

<sup>13</sup> Tex. Transp. Code § 706.004.

<sup>14</sup> DPS Holds Data, see note 4.

<sup>15</sup> Tex. Transp. Code § 706.002.

<sup>16</sup> DPS Holds Data, see note 4.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> One North Carolina study found that poverty was predictive of not just failure to pay but also failure to appear in traffic cases, suggesting those who do not appear fail to do so for reasons related to poverty, like inability to take time off work and no transportation to court. William E. Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver's License Suspensions in North Carolina*, 69 Duke L. J. 1585 (Apr. 2020).

<sup>20</sup> Tex. Transp. Code. § 706.005.

<sup>21</sup> Tex. Code of Crim. Pro art. 45.041(a-1).

<sup>22</sup> Texas Appleseed data analysis in 2019 showed that more than 10% of all holds were over a decade old, and nearly 40% were between 5 and 10 years old.

<sup>23</sup> See [www.texasfailuretoappear.com](http://www.texasfailuretoappear.com)

<sup>24</sup> See, e.g., Interlocal Cooperation Contract, Failure to Appear Program, Bexar County, Texas, and Texas Department of Public Safety, signed May 7, 2020.

<sup>25</sup> Correspondence on file with author.

<sup>26</sup> Mello, S. (2018). *Speed Trap or Poverty Trap? Fines, Fees, and Financial Wellbeing*, available at <https://mello.github.io/files/jmp.pdf>.

<sup>27</sup> Carnegie, J.A. & Voorhees, A.M. (2007). *Driver's License Suspensions, Impacts & Fairness*, Transportation Center at Rutgers, State Univ. of New Jersey, available at <https://www.nj.gov/transportation/business/research/reports/FHWA-NJ-2007-020-V1.pdf>

<sup>28</sup> Another study of recipients of government benefits found that those with a valid driver's license were twice as likely to have earnings about the poverty level than those without a license. Pawasarat, J. & Stetzer, F. (2007). *The EARN (Early Assessment and Retention Network) Model for Effectively Targeting WIA and TANF Resources to Participants*, U. OF WIS. EMP. & TRAINING INST., available at <https://www4.uwm.edu/eti/2007/EARNModel.pdf>

<sup>29</sup> Brookings Institute, *Missed Opportunity: Transit and Jobs in Metropolitan America* (2011).

<sup>30</sup> The Chicago Jobs Council found that more than half of respondents to a 2018 survey of people whose licenses had been suspended for court debt missed an employment opportunity due to the suspension. In fact, many jobs require a valid license as a condition of employment, even if it is not required for the performance of the job.

<sup>31</sup> See e.g., Alana Semuels, *No Driver's License, No Job*, The Atlantic (Jun. 15, 2016), available at <https://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/>.

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<sup>32</sup> For example, restoration of 7,000 suspended driver's licenses in the City of Phoenix resulted in \$87 million in labor income and a \$149.6 million increase in the city's GDP. Fines & Fees Justice Center, *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices* (Oct. 2019), available at <https://finesandfeesjustice-center.org/content/uploads/2019/11/florida-fines-fees-drivers-license-suspension-driving-on-empty.pdf>

<sup>33</sup> A national study by the American Association of Motor Vehicle Administrators found that 75% of people continue to drive after their license is suspended. American Association of Motor Vehicle Administration, *Best Practices Guide to Reducing Suspended Drivers*.

<sup>34</sup> Not having a driver's license may not only also impact one's ability to find a place to live and to access healthcare. Landlords also commonly ask applicants for a driver's license when applying for a lease. Eviction may even result from not having a valid license. A survey of hundreds of North Carolina residents, 28.5% of respondents reported that they were being evicted as a result of their suspensions.

<sup>35</sup> Tex. Transp. Code § 521.292(a)(1).

<sup>36</sup> On average, people have nearly four OmniBase holds per person – evidence of the cycle of debt that these holds create. Data from DPS, received 2019, on file with author.

<sup>37</sup> See, e.g., Vera Inst. of Justice, *Incarceration Trends in Texas* (2018) (black individuals are 33% of prison population and 27% of jail population but only 11% of state population), available at <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-texas.pdf>

<sup>38</sup> Texas Department of Public Safety (2021). 2021 Motor Vehicle Stop Data Report. pp. 3-4. Retrieved from [https://www.dps.texas.gov/sites/default/files/documents/director\\_staff/public\\_information/2021\\_traffic\\_stop\\_data\\_report.pdf](https://www.dps.texas.gov/sites/default/files/documents/director_staff/public_information/2021_traffic_stop_data_report.pdf)

<sup>39</sup> For example, while 17% of Black Texans and 18% of Latinx Texans live in poverty, only 7% of white Texans do. Univ. of Texas Institute for Urban Policy Research & Analysis, *The State of Black Lives in Texas: Income & Poverty Report* (2018).

<sup>40</sup> OmniBase racial disparities, see note 8.

<sup>41</sup> Digard, L., & Swavola, E. (2019). *Justice denied: The harmful and lasting effects of pretrial detention*. Vera Institute of Justice, Vera Evidence Brief (August 2019). Retrieved from <https://safetyandjusticechallenge.org/wp-content/uploads/2021/06/Justice-Denied-Evidence-Brief.pdf>

Dobbie, W., Goldin, J., & Yang, C. (2016). The effects of pre-trial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. National Bureau of Economic Research (No. 22511). Retrieved from [https://www.nber.org/system/files/working\\_papers/w22511/w22511.pdf](https://www.nber.org/system/files/working_papers/w22511/w22511.pdf)

<sup>42</sup> One Washington state amnesty program for drivers with suspended licenses saved 4,500 hours of patrol officers' time. A California study of debt-based license suspensions was spending "millions" on the law enforcement, court, and agency time "arresting, processing, administering and adjudicating charges for driving A Florida study estimated that the adjudication of cases involving debt-based license suspensions was costing Florida state courts more than \$40 million a year. on a suspended license" resulting in a "costly debtor's prison."

<sup>43</sup> Fishbane, A., Ouss, A., & Shah, A. K. (2020). Behavioral nudges reduce failure to appear for court. *Science*, 370(6517), eabb6591.

<sup>44</sup> Ibid

<sup>45</sup> Bornstein et al., see note 9.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.