

THE CLASS OF 1964 POLICY RESEARCH SHOP

NON-DRIVING RELATED LICENSE SUSPENSIONS IN NEW HAMPSHIRE



PRESENTED TO THE SUPERIOR COURT OF NEW HAMPSHIRE
Chief Justice Tina Nadeau, Superior Court of NH

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EXECUTIVE SUMMARY

Eleven million Americans currently have suspended driver's licenses as a result of not paying fees/ fines or missing a hearing date.¹ Under current New Hampshire law, a driver's license can be revoked for a number of offenses unrelated to operating a motor vehicle. These categories are (1) suspension for failure to pay child support, (2) suspension for default, noncompliance, or nonpayment of a fine, and (3) revocation or denial for drugs or alcohol offenses. The Honorable Tina Nadeau, Chief Justice of the Superior Court of New Hampshire, is interested in collecting information to understand if non-driving related license suspensions are an effective tool for rehabilitation or an obstacle that leads to recidivism. The research team conducted a multi-state comparative case study to gather data on whether non-driving license suspensions are effective against recidivism.

1 INTRODUCTION: NON-DRIVING LICENSE SUSPENSIONS

In 1991, at the peak of the War on Drugs, Congress passed a new punishment in response to drug crimes.² This new law would reduce states' highway funding if they did not begin to suspend the driver's licenses of those who were convicted of any drug offense. As a result, almost all states passed laws in line with this punishment to maintain their highway funding.³

Why did Congress vote to use driver's licenses as a way to punish drug crimes? Drug offenses were rising among low-income communities of color; to pass such a law at the time seemed targeted. Furthermore, policymakers applied pressure through their rhetoric of needing to be tough on crime: "But let's not kid ourselves. That is not enough...Taking away driver's licenses in an automobile-oriented society will show that we are serious," said then-Representative Gerald Solomon of New York.⁴ This drug law and other non-driving related offense license suspension laws that followed suit became a point of contention, as some have argued they may cause more harm than good by creating restrictions that impose hardships on individuals trying to reenter society.

A critical part of this ongoing conversation is the relevance of having drivers' licenses suspended for those convicted of non-driving offenses. This law opened the door for the ability to use license suspensions, a driving-related punishment, as a way to threaten those who have committed a non-driving offense. Although there is now an option to opt-out of this law, the state of New Hampshire still uses this form of punishment. In order to align with evidence-based policy, it is important to see whether these license suspensions have been rightfully effective in reducing non-driving offenses as well as to evaluate the demographic and fiscal impacts.

2 PURPOSE STATEMENT

New Hampshire law only allows the suspension of a driver's license for non-driving offenses when an individual has the ability to pay the incurred fine but refuses to do so. The ability-to-pay analysis is determined by a judge, who analyzes the defendant's financial affidavit and all relevant factors at a plea hearing. The parties then reach a plea agreement on the amount of the fine. If the judge has determined the offender has the ability to pay but fails to do so, the judge may then suspend the defendant's license.⁵

Suspending a person's license, however, has collateral consequences. Limiting an individual's means of transportation can negatively affect employment status, income level, public safety, and childcare options. Currently, millions of U.S. citizens have their licenses suspended due to failure to pay a fine. Many offenders, particularly those in rural areas, find themselves with no alternative modes of transportation and may choose to drive with a suspended license. If stopped by police while driving, the individual is then charged for driving with a license suspended, resulting in a misdemeanor or a class B felony as well as additional fines.

Although these difficulties arise from an individual's refusal to pay a fine for which the court has found them financially able, there are no strict parameters judges must follow when conducting the ability-to-pay analysis. The factors that are considered and the weight they each are given are not uniform across New Hampshire courts. Beyond the potential disparities in individual application, courts must spend time and money processing additional charges of driving with a license suspended, many of which result from individuals originally charged with a non-driving offense.

It is important to evaluate the efficacy of New Hampshire's current policy and alternative policies in other states. How do these policies affect recidivism? What are the demographic and fiscal impacts? It may be that the status quo is imposing unnecessary strain on both individual offenders and New Hampshire courts. In the past five years, 22 states have passed legislation to reduce license suspension for non-driving offenses to varying degrees. But, these changes do not reflect a nationwide consensus on policy; many argue that license suspensions act as an effective deterrent and tool to collect unpaid fines.

3 BACKGROUND INFORMATION

The state of New Hampshire has used non-driving license suspensions for decades. Yet the state has not conducted a review of the efficacy of such policies or the disproportionate impacts they may have on disadvantaged groups. To determine the answer to these questions, one must understand the laws that lead to the suspension of a person's license for a non-driving offense and examine how extant research shows that similar laws in New Jersey have disproportionately impacted different groups of people.

3.1 REASONS FOR LICENSE SUSPENSION

Identifying and understanding the laws that play a role in the suspension of driver's licenses for incidents unrelated to driving is crucial to understanding the systems controlling this issue. These laws regarding license suspension or revocation fall under New Hampshire's Title XXI Chapter 263.⁶ The laws identified in this section highlight the three main ways individuals can have their licenses suspended for a non-violent, non-driving offense: suspensions for failure to pay child support, drug offenses, and failure to appear or pay fines.

3.1.1 SUSPENSION FOR FAILURE TO PAY CHILD SUPPORT

The New Hampshire Department of Health and Human Services (DHHS) plays a significant role in the suspension of a license for failure to pay child support. When enforcing an order to pay child support, one of the possible punishments for not complying with the court order is license revocation.⁷ This option is only imposed after others have failed, and the obligor has been mailed notice of risk of license suspension for failure to pay child support. Other enforcement actions include notification to credit bureaus, interception of the obligor's tax refund, denial of passport, and placement of a lien against the obligor's assets. If an obligor cannot afford the child support that is owed or have had changes in personal circumstances since the order was issued, the individual may request a modification to the amount of child support owed.

3.1.2 SUSPENSION FOR DEFAULT, NONCOMPLIANCE, OR NONPAYMENT OF FINE

Section 263:56-a allows for the court to suspend a person's license for failure to pay a fine and failure to appear in court on the selected date.⁸ The only exception is if the court determines a person is financially unable to pay the fine.⁹ While fines related to driving, such as speeding tickets, fall under this law's scope, the research team excluded nonpayment of fines related to driving from the research because the fine is directly linked to driving.

3.1.3 REVOCATION OR DENIAL FOR DRUGS OR ALCOHOL

Section 263:56-b allows for a person who is older than 18 years to have his or her license suspended if convicted of selling controlled drugs, or in possession of controlled drugs with the intent to sell.¹⁰ For those that are under the legal drinking age of 21 years old, possession of alcohol is also grounds

for license suspension.¹¹ This is the only law that explicitly calls for a person’s license to be suspended in relation to drug activity. However, Section 263:56, part I-d allows for a person to have his or her license suspended upon conviction of a crime involving “moral turpitude.”¹² In *Villegas-Sarabia v. Sessions*, the Supreme Court defined moral turpitude as “conduct that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.”¹³ The vague nature of this definition may result in disparities in the way judges apply the punishment of license suspension for an act they deem to be of moral turpitude.

3.2 DATA ON LICENSE SUSPENSIONS FOR NON-DRIVING OFFENSES

New Hampshire’s driver license suspension data is not publicly available. So, to examine the impacts of the suspension of licenses for non-driving offenses, the team sought to analyze similar data from New Jersey to glean evidence of impacts that may be applicable to New Hampshire. New Jersey has very similar license suspension laws to New Hampshire, including suspension for outstanding fines or tickets,¹⁴ failure to pay child support,¹⁵ or conviction of controlled drug possession.¹⁶ It is worth noting that persons may have their licenses suspended for just being in possession of drugs in New Jersey, while in New Hampshire persons can only have their licenses suspended for sale of drugs or possession with intent to sell. This could skew the New Jersey data by capturing more license suspensions for non-driving offenses than may likely be found in New Hampshire. On the other hand, the New Jersey law contains a clause that the court may not issue a license suspension for a non-driving offence if “extreme hardship would result from a suspension,”¹⁷ which provides slightly more leniency than New Hampshire laws.

Researchers from Brown University, published in the *Journal of Transport and Health*, conducted an in-depth analysis of individual and geographic variation in driver’s license suspensions using census-tract data from New Jersey.¹⁸ The researchers were able to split suspensions between non-driving and driving-related and subdivided non-driving suspensions by the categories of suspensions for drug usage, failure to pay fines or appear, failure to pay child support, and others. Overall, 5.5 percent of licensed drivers in New Jersey had a suspended license. Of those, 91.1 percent of the suspensions were for non-driving events.¹⁹ Of those whose licenses were under suspension in 2016, about 50 percent were due to failure to pay a fine, 40 percent due to failure to appear, 2.5 percent due to failure to pay child support, and one percent due to drug reform policy.²⁰ While the majority of existing discussion of non-driving related license suspensions focuses on drug-related suspensions, in New Jersey, even with its low-tolerance drug suspension laws, a comparatively small amount of license suspensions are the result of offenses involving illegal substances. Given the distribution of license suspensions the researchers found in New Jersey, it is likely that New Hampshire will have a similar distribution of suspension categories, since it has similar laws to New Jersey. This demonstrates the importance of interfacing with multiple agencies in New Hampshire throughout the research process, since some of the different categories of suspensions are handled through specialized agencies such as the Office of Child Support (OCS).

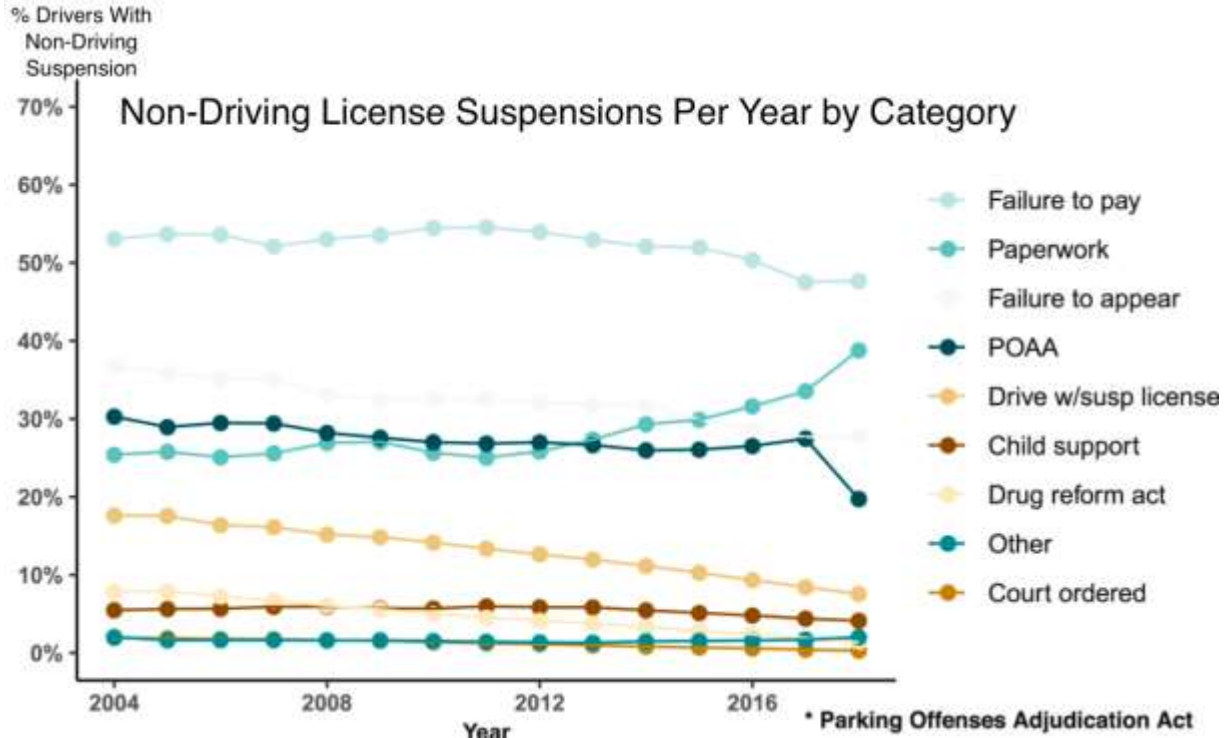


Figure 3.2: License suspensions for sub-types of non-driving offenses as a percentage of the total number of non-driving related suspensions from 2004 to 2018.

3.2.1 DEMOGRAPHIC IMPACTS

While this research will not focus on demographic impacts, it is important to keep them in mind when discussing non-driving suspensions, particularly because of the disproportional impacts found in New Jersey. There were several discrepancies regarding how non-driving related license suspensions impacted different demographic groups. In the New Jersey data base, individuals with a non-driving suspension had a mean age of 39.4 years, which was younger than individuals without any suspension (47.3 years) or individuals with only a driving-related suspension (47.2 years).²¹ Furthermore, individuals with a non-driving suspension were less likely to be male (59.5 percent male) than individuals with just a driving-related suspension (70.3 percent male), but were more likely to be male than individuals without any suspensions (47.4 percent male).²² When looking at median income, a greater proportion of people in the lowest quartile had non-driving suspensions compared to those in the top quartile.²³ Moreover, non-driving suspensions disproportionately impacted individuals living in predominantly Hispanic-Black neighborhoods.²⁴ With regards to unemployed populations, a larger percentage of those living in areas in the top quartile of unemployment received non-driving suspensions compared to individuals living in areas in the bottom quartile of unemployment. Finally, it should be noted that while driving-related suspensions followed similar trends as non-driving suspensions in each of these categories, the demographic disparities were not nearly as significant as those for non-driving suspensions.

TABLE 3.2.1

Percent of drivers in each census tract with a driving or non-driving-related suspension by the quintile of select census characteristics.

Quintile: (Range)	Driving Related Suspension	Non-Driving Related Suspension
Median Income		
Q1: (\$14,402-\$56,250)	1.3%	13.4%
Q2: (\$56,277-\$80,938)	1.1%	6.9%
Q3: (\$81,028-\$101,964)	1.0%	4.6%
Q4: (\$101,974-\$130,000)	0.8%	3.0%
Q5: (\$130,040-\$246,750)	0.5%	1.9%
% Non-Hispanic-black		
Q1: (0.0%–1.2%)	0.7%	2.8%
Q2: (1.2%–3.4%)	0.8%	3.5%
Q3: (3.4%–7.7%)	0.9%	4.2%
Q4: (7.7%–21.1%)	1.0%	6.0%
Q5: (21.1%–99.6%)	1.2%	13.2%
% Unemployed		
Q1: (0.0%–2.7%)	0.7%	3.5%
Q2: (2.7%–3.7%)	0.8%	3.9%
Q3: (3.7%–4.7%)	0.9%	4.7%
Q4: (4.7%–6.4%)	1.0%	5.8%
Q5: (6.5%–20.5%)	1.2%	11.9%

4 METHODOLOGY

The following section outlines the methodology for collecting data on the efficacy of license suspensions based on non-driving offenses in New Hampshire. This methodology seeks to illuminate the effect of non-driving license suspensions on recidivism as well as the policy's demographic and fiscal impacts.

4.1 CONDUCT STATE-BY-STATE COMPARISONS

In order to weigh the costs and benefits of New Hampshire's non-driving offense license suspensions, it will be helpful to compare New Hampshire's policies and results to states with similar non-driving offense license suspension laws and different non-driving offense license suspension laws. Throughout this research, the team will keep in mind the disproportional demographic impacts such laws may have and continue to compare data found in New Hampshire to data in other states. In the initial stage of research, information is gathered from state Department of Motor Vehicles websites and records, as well as the motor vehicle laws of relevant states.

4.1.1 OBJECTIVES FOR STATE-BY-STATE CASE STUDY

The following objectives are accomplished through the state-by-state case study methodology by answering these specific questions:

1. **Understand the role of the Department of Health and Human Services (DHHS) in child support-related license suspensions:**
 - At what point are individuals identified to have their licenses suspended for failure to pay child support?
 - How much leniency exists once individuals reach the point where license suspension is a potential consequence?
 - How informed are obligors about the risk of having their driving privileges being suspended as a result of outstanding child support payments?
 - How challenging is it for individuals to have their license reinstated?
 - In practice, are license suspensions used when offenders have the ability to pay and choose not to compared to cases where offenders do not have the income to spare?
 - Do offenders typically pay their child support soon after a license suspension, or is there a long period of time between the license suspension and the payment?
 - How do you think the system could be improved? Do you believe that license suspensions for failure to pay child support are effective?
2. **Understand the role of the Department of Motor Vehicles (DMV) in license suspensions for all non-driving license suspensions:**
 - Describe the role the DMV plays in processing license suspensions for non-driving offenses. Could this process be adapted to become more efficient or more effective?

- Does the DMV handle suspensions for non-driving offenses differently than for driving offenses?
 - How challenging is it for individuals to have their licenses reinstated after being suspended for a non-driving offense?
 - Could the system be made easier for those seeking license reinstatement?
 - What are the attitudes held by offenders who have had their licenses suspended for non-driving offenses?
 - What are the costs of fines for driving with a suspended license? Are these fines discretionary or are there mandatory minimums and maximums?
 - Where do these fines, as well as reinstatement fees for non-driving offenses, go in the State Budget?
 - What is the amount of time that you estimate DMV workers spend processing non-driving related license suspensions each year?
- 3. Assess the efficacy of New Hampshire's laws as a form of rehabilitation, compared to states with different laws regarding license suspension for non-driving offenses:**
- How many cases result in repeat offenses in each respective state?
 - How does compliance to pay fines in states without license suspensions for failures to pay fines compare to New Hampshire's compliance to pay fines?
 - Do states with an ability-to-pay analysis have higher or lower rates of offenders paying fines?
 - Is there a set number of license suspensions before a license is cancelled?
 - Are licenses suspended for a predetermined amount of time or until payment occurs?

4.1.2 BRIEF OVERVIEW AND RATIONALE FOR SELECTED STATES

The states selected for state-by-state comparison with New Hampshire are Vermont, Michigan, New York, and Virginia. The following is a brief rationale for why these states were selected.

- 1. Vermont** has a Driving with License Suspended (DLS) Program that allows people to regain their driver's licenses while they pay off their fees and fines.²⁵ Vermont is culturally and demographically similar to New Hampshire. Based on Census Data, both states have similar racial and gender compositions.²⁶ By comparing data from Vermont with that of New Hampshire, the research team may learn if a DLS program would be effective in New Hampshire.
- 2. Michigan** recently changed its non-driving license suspension law to require a payment analysis proving the defendant has the ability to pay a fine before suspending a license for failure to pay.²⁷ As a result, a great deal of data²⁸ on Michigan's previous law, where one could get a non-driving suspension with no payment analysis, is available. This will make an interesting comparison to New Hampshire, where a payment analysis is required under Title XXI Section 263:56-a, but does not have specific guidelines.²⁹ By comparing data from Michigan's non-driving suspensions with no payment analysis versus New Hampshire's with

payment analysis, the team can identify if payment analysis makes suspensions a more effective tool, or if it is simply a legal formality with little impact on case outcomes.

3. **New York** requires a payment analysis,³⁰ like New Hampshire, before a license suspension is issued for failure to pay a fee or fine. Speaking with New York officials, the team can see if its payment analysis structure differs from New Hampshire, or if the payment analysis process is roughly the same between the two states.
4. **Virginia** law changed in 2019 to prohibit suspensions for unpaid court costs and fines.³¹ Additionally, in 2020 Virginia eliminated license suspensions for possession of marijuana. Therefore, Virginia now only suspends licenses for child support nonpayment and failure to appear suspensions.³² While Virginia also suspends licenses if an operator does not have car insurance, that does not fall under the scope of a non-driving related event in this research and therefore will not be focused on. The team's research will investigate how the eliminations of suspensions for possession and unpaid court fines has impacted the state. Comparing Virginia to New Hampshire in this regard will help the team determine the impact of suspensions for unpaid court fines.

4.1.3 KEY CONTACTS AND RESOURCES FOR SELECTED STATES

1. **New Hampshire**

- New Hampshire Department of Motor Vehicles
- New Hampshire Title XXI, Chapter 263, Drivers' Licenses:
<http://www.gencourt.state.nh.us/rsa/html/xxi/263/263-mrg.htm>
- New Hampshire Department of Health and Human Services, Office of Child Support

2. **Vermont**

- Vermont Department of Motor Vehicles
- Vermont Title 23, Motor Vehicles: <https://legislature.vermont.gov/statutes/title/23>
- Vermont Department for Children and Families, Office of Child Support

3. **Michigan**

- Office of the Secretary of State
- Michigan Chapter 257, Motor Vehicles:
[http://www.legislature.mi.gov/\(S\(4lxylqkyl00q5h0zipv03ocv\)\)/mileg.aspx?page=getobject&objectname=mcl-chap257](http://www.legislature.mi.gov/(S(4lxylqkyl00q5h0zipv03ocv))/mileg.aspx?page=getobject&objectname=mcl-chap257)
- Michigan Children's Services Agency, Office of Child Support

4. **New York**

- New York Department of Motor Vehicles
- New York Chapter 71, Vehicles and Traffic:
<https://www.nysenate.gov/legislation/laws/VAT>
- New York Children and Family Services, Office of Child Support

5. Virginia

- Virginia Department of Motor Vehicles
- Virginia Title 46.2, Motor Vehicles
- Division of Child Support Enforcement

4.1.4 ANALYSIS OF DEMOGRAPHIC IMPACTS AND RECIDIVISM RATES BETWEEN STATES

After gathering the necessary information, the team will analyze the data, paying particular attention to the distinctions between states that do not allow license suspension for non-driving offenses, states that allow license suspension for non-driving offenses without restriction, and states that allow license suspension for non-driving offenses on a limited basis. The overarching question the team is seeking to answer in this section is whether non-driving license suspensions are applied equally across demographic groups and what effect this application has on rates of recidivism.

4.2 STATE-BY-STATE COMPARISONS FOR FISCAL IMPACTS

Assessing the fiscal impacts that the state's current policy has on the New Hampshire court system is highly relevant to determining the overall efficacy of license suspension for non-driving offenses. To do so, the team must evaluate the costs and revenue in New Hampshire, as well as states with similar and diverging policies.

4.2.1 OBJECTIVES FOR STATE-BY-STATE CASE STUDY

In order to assess the fiscal impacts of license suspensions for non-driving crimes, the team needs to obtain data in the following areas:

1. Non-driving Offenses

- How many cases in each state that fall into each of the three categories of non-driving offenses previously listed in the background section?
- What is the cost of fines that may result from these offenses?
- Are the fines discretionary or do mandatory minimums and maximums exist?
- What do these fines fund in New Hampshire?

2. Driving with License Suspended

- What is the number of fines that result from driving with a license suspended in each state?
- What percentage of these offenses are the result of a license suspension from a non-driving offense?
- What is the cost of fines for driving with a license suspended?
- Are the fines discretionary, or do mandatory minimums and maximums exist?
- What do these fines fund in each state?

3. Cost to Courts

- What is the cost to each state's courts for processing offenses for driving with a license suspended?

- Do states that do not suspend licenses for non-driving offenses appear to be unable to collect fines due to a lack of “enforcement mechanism”?
- In these cases, is there simply a net loss to the system (i.e., courts lost money processing individuals as those individuals never pay back fines)?
- How much time and money do courts spend pursuing these fines?
- How many of these individuals are repeat offenders?

4.2.2 KEY CONTACTS AND RESOURCES FOR SELECTED STATES

To obtain this data, the team contacted the State Court Administrator’s Office, the Department of Motor Vehicles, and the Clerk’s Office in New Hampshire, Vermont, New York, Michigan, and Virginia.

4.2.3 ANALYSIS OF FISCAL IMPACTS BETWEEN STATES

After gathering the necessary information, the team analyzed the data, paying particular attention to the fiscal distinctions between states that allow license suspension for non-driving offenses without restriction and states that allow license suspension for non-driving offenses on a limited basis. The overarching question the research team seeks to answer in this section is whether courts—and subsequently taxpayers—suffer from a certain policy on license suspension with respect to non-driving offenses.

5 RESULTS

Between January and March, the research team conducted interviews with representatives from each state’s Department of Health and Human Services and Department of Motor Vehicles, in addition to reaching out to each state’s court system with a request for fiscal data. Through the interviews, the research team was able to gather a great deal of qualitative information and some quantitative information about each state’s non-driving license suspension policies.

5.1 INTERVIEWS WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES IN SELECTED STATES

The research team interviewed representatives from each state’s Department of Health and Human Services (DHHS) or its equivalent. Interviews were conducted via video or phone calls by the team. Unfortunately, not all of the selected DHHS representatives responded for comment. The team was unable to make contact with a representative from the New Hampshire DHHS.

5.1.1 VERMONT

Vermont was selected for research because it is culturally and demographically similar to New Hampshire. Moreover, Vermont has a Driving with License Suspended (DLS) program that lets people regain their driver’s license as they pay off their fees and fines. The research team interviewed

the Director of the Vermont Office of Child Support (OCS), Robin Arnell, and the Managing Attorney, Jess Seman.

According to Vermont Statutes Title 15 § 798, Vermont's OCS or obligee (i.e., a person who is receiving child support) can ask family court to suspend an obligor's (i.e., a person who is required to pay child support) license.³³ OCS has a system that tracks an obligor's payments and alerts when a case is ripe for enforcement, which prompts OCS to scrutinize it to determine if there is evidence of an obligor's inability to pay. The system alerts OCS about a case when the obligor is three months or more behind in child support and there has been at least one court action brought against them in family court. Subsequently, OCS decides whether to suspend the obligor's license or modify the case by taking it to family court.

Recently, OCS has shifted its efforts to ensuring that all orders are "right sized," meaning it considers an obligor's circumstances when determining next steps. Thus, a case with limited information is usually taken to family court to gain information through hearings before it is modified. OCS does its best to inform an obligor of his or her case before filing for action by mailing them an eight-page form about license suspensions. In court, a magistrate judge typically makes a finding that an obligor did have an ability to pay, but they will not suspend the obligor's license. Instead, magistrate judges will conditionally assign and give the obligor months to come into compliance. If the obligor misses a payment, OCS asks the family court to suspend the license without a further hearing and the motion is sent to the Vermont Department of Motor Vehicles (DMV) to be processed.

These coercive methods appear to be effective since very few child support-related license suspensions actually happen in Vermont. Immediate license suspension is typically avoided because OCS recognizes that license suspension can be a barrier to an obligor to continue to pay his or her payments. An obligor needs to have a job to pay child support and a suspended license makes it very difficult for obligors to go to work, especially in a rural state like Vermont.

Out of all obligors, self-employed individuals are the first to come into compliance. However, there is a two-fold problem with OCS' procedures. The first is that there are a bevy of technological system problems since the computer system is over 40 years old. The second is that individuals in Vermont who work for cash, are working off the books, and do not file for taxes have eluded license suspensions since they have no records to track. These individuals, who on record demonstrate an inability to pay child support, are less likely to be sanctioned. OCS then plays the role of a social worker where it tries to connect these people to programs that may help them, but it only works when people are motivated to make a change. Nonetheless, Vermont license suspension procedures seem to function as an effective coercive measure rather than a punitive remedy. It also follows a much more judicial path that gives an obligor the opportunity to adjust his or her case to his or her circumstances and gives magistrate judges significant discretion over these matters.

5.1.2 MICHIGAN

Michigan was selected for research because it changed its non-driving license suspension law to require a payment analysis, like New Hampshire, to prove the obligor has the ability to pay a fee or fine before suspending a license for failure to pay. The research team interviewed the Director of the Michigan OCS, Erin Frisch.

According to Michigan Compiled Laws, Chapter 552, Act 295 of 1982, § 552.628, license suspensions are an enforcement tool used on a case-by-case basis.³⁴ In 2020, the law was updated to require that an obligor has to demonstrate that he or she has ability to pay prior to license suspension being used as an enforcement tool. Michigan's OCS flags an individual if he or she is two months or more behind on child support. The obligor then receives an initial notice that his or her license is being suspended. An obligor who responds receives the opportunity to pay his or her arrearages, enter a paying program, or request a modification to the case. However, the majority of individuals do not respond, under the guise that ignoring the notice might make the problem go away. If OCS receives no response from the obligor, the license is immediately suspended, and the motion is sent to Michigan's DMV. There are about 10,000 people who have their license suspended in Michigan because of failure to pay child support.

The process is long and tedious for an obligor who attempts to have his or her license reinstated after being suspended for failure to pay child support. The individual must pay a fee to Michigan's DMV, who must receive a letter from the courts ordering it to reinstate the individual's license.

Similar to Vermont, Michigan struggles with individuals who work off the books and participate in the underground economy. OCS has struggled to discern how it can encourage these individuals to participate and connect them with resources, like employment, housing assistance, and food assistance, that they may need. Furthermore, OCS understands that mailing out license suspension notices is not particularly effective since its system may not have the right address for an individual or an obligor may not open his or her mail. There is currently a law in the works that aims to mitigate these issues. In the end, Michigan seems to follow a more judicial path, like Vermont, but seems to have some distinctions, most notably in communication efforts, that result in marked contrasting outcomes in the level of people with child support related license suspensions.

5.1.4 NEW YORK

New York was selected for research because, like New Hampshire, it requires a payment analysis before a license suspension is issued for failure to pay a fee or fine. The research team interviewed the Deputy Commissioner of Child Support Services, Eileen Stack, and the Assistant Director of Child Support Services, Susanne H. Dolin.

According to Family Court Act, Article 4, § 458-A, if an obligor is at least four months or more behind in child support payments or fails to comply with a summons, subpoena, or warrant relating to child support proceedings, the court has the option of suspending the obligor's driving privileges.³⁵ An

obligor is exempt from getting his or her license suspended if he or she is on an Income Withholding Order (IWO). That is, if the individual has missed a child support payment, the court orders an IWO and the individual pays 50 percent of the original order. If the individual has 12 weeks or more of arrears, his or her required child support payment often rises to 55 percent of their take home wage. Since New York does not issue IWOs that take more than 55 percent of an individual's take home wage, these individuals are exempt from getting their license suspended. This process is protected by the Consumer Protection Law.³⁶ Additionally, an obligor is exempt from getting his or her license suspended if they are on public assistance; if there are due process protections; if the payment amount shown is incorrect due to error; if the individual is 135 percent of the federal poverty level; or if the individual claims that he or she did not receive notice of missed payments.

Individuals who do receive suspensions are still able to receive restricted licenses for the purpose of transportation to school, work, or childcare visits. Advocates in New York have not raised the issue of license provisions, other than in unique cases, because of this provision.

It should be noted that the process in handling arrears appears to be lengthy, with numerous complaints that it should either end sooner or start later. In addition, New York, much like Vermont and Michigan, struggles with obligors who participate in the underground economy and experience difficulties in enforcing these payments. Overall, the license suspension program in New York is estimated to raise \$10,000,000 a year. It appears that the license suspensions help ensure that an obligor's income is properly allocated to child support and thus effectively inspires better behavior.

5.1.3 VIRGINIA

Virginia was selected for research because the state now only suspends licenses for child support nonpayment and failure to appear suspensions. The team researched suspensions for failure to pay child support to better understand Virginia's process for non-driving related suspensions. The research team interviewed the Program Guidance Manager of the Division of Child Support Enforcement of the Virginia Department of Social Services (DSS), Sandra Brown.

According to Code of Virginia, Title 46.2. Motor Vehicles, Subtitle II. Titling, Registration and Licensure, Chapter 3. Licensure of Drivers, Article 3. Persons Not to Be Licensed, § 46.2-320.1, Virginia's DSS can suspend or refuse to renew driver's license of a person if he or she fails to pay child support for 90 days or more or has arrearages accruing to \$5,000 or more.³⁷ DSS has an automated system that automatically identifies an obligor who falls into this category. Additionally, DSS can suspend or refuse to renew the license of an individual that fails to comply with court orders relating to child support proceedings. DSS proceeds to send the obligor a notice of intent to suspend license which allows the obligor time to contact DSS. If the individual fails to respond, DSS suspends his or her license and notifies Virginia's DMV of the action.

If an obligor agrees to pay child support, but cannot pay his or her arrearages in full, he or she may enter a payment agreement with DSS and make payments in installments. A caseworker who is

assigned to their case will determine whether the obligor is eligible for this. There are many programs DSS has in place to help an obligor overcome barriers to pay child support related to factors like employment, education, and drug abuse. If an obligor enrolls in one of the programs, which are free of cost, it alleviates his or her mandated payments or prevents his or her license suspension. On the other hand, if an obligor has the means to pay child support but nonetheless refuses to do so, DSS can send an income withholding order to his or her employer who has to comply with the action by taking the specified amount out of the obligor's paycheck by the next regular pay period following the notice.

For a license to be reinstated in Virginia following a child support related license suspension, an obligor must enter a payment agreement and pay the child support balance in full. Depending on the case, DSS may decide that an obligor paying five percent of his or her arrearages may be grounds for license reinstatement. Ultimately, it seems like Virginia follows much more administrative procedural path when it comes to license suspension that leaves ample room for leniency on behalf of the caseworks and makes the process a lot more straightforward.

5.2 INTERVIEWS WITH THE DEPARTMENT OF MOTOR VEHICLES IN SELECTED STATES

The research team interviewed representatives from each state's DMV. While all the representatives were incredibly helpful, a common issue across states was that each DMV does not closely track the data the research team requested. Furthermore, no state's DMV collects data on race or ethnicity when suspending licenses. Lastly, not all of the selected DMV representatives responded to the interview request; the team was unable to interview a representative of the New York DMV.

5.2.1 NEW HAMPSHIRE

The New Hampshire DMV functions as a record-keeping agency above all else. It lacks the resources that other DMVs have that allowed for them to answer the questions of interest to the research team. As a result, little concrete information was obtained during the team's conversation with the New Hampshire DMV. The research team interviewed a Bureau Supervisor from New Hampshire's Bureau of Financial Responsibility, Bob Keller.

Regarding the costs of driving with a license suspension in New Hampshire, the first offense is a fine of \$310 while the second offense is a fine of \$360. Individuals have an option to either pay the fines or plead not guilty. Individuals can also discuss with a court official about potential payment arrangements. Most of the funds generated go into the general fund and are split up into fine amounts and penalty assessment, with some going to the court. As for the research team's other inquiries, it was unclear whether Mr. Keller did not have access to the information or if the information itself did not exist.

5.2.2 VERMONT

Vermont was chosen because of its similarities to New Hampshire, both culturally and demographically. Furthermore, Vermont has implemented a Driving with License Suspended Program that allows people to regain their driver's licenses while they pay off their fines. The research team interviewed the Deputy Commissioner of Vermont's DMV, Michael Smith.

In 2016, a report on license suspensions was conducted by a Vermont task force consisting of officials from the Attorney General's, Governor's, Agency of Transportation, Judicial Bureau, Legislative Counsel, and Legal Aid offices. It found that in 2016, there were 2,261 licenses currently suspended for underage tobacco use, 3,900 for underage alcohol possession or consumption, 208 for underage marijuana possession or consumption, and 41 for failure to pay child support. The task force found that people in poverty often could not afford fines, which dug them deeper into poverty traps. In addition, they found that Vermont's criminal courts were clogged with license suspension charges.

Unanimously, the task force agreed that suspensions should be removed for underage tobacco possession. The task force also agreed that suspensions should be removed for underage marijuana and alcohol usage, although there were some members who disagreed. As for helping people regain their licenses while suspended, the task force recommended reducing the duration of suspensions as well as eliminating reinstatement fees. To make up for this lost cost, a surcharge would be put into place on all traffic tickets.

It is important to note that in addition to these changes implemented by the 2016 Task Force, Vermont has a DLS program. The program is administered by the Vermont Judicial Bureau (VJB). The program is offered to those who have a suspended license as a result of failure to pay fines and fees, and it appears that the program is not applicable to child support related suspensions. An initial meeting with a Vermont Diversion staff member examines the reasons for license suspension, the financial situation of the offender, the steps needed to get the driver's license reinstated, and a plan for how to pay off the fines and fees. After the initial meeting, the offender fills out a financial affidavit, develops a plan to pay off fines and fees, attends check-in meetings, and places a down payment toward the program fee, which is included in the payment plan and works on a sliding scale. Following a successful initial meeting, the DMV conditionally reinstates the offender's driver's license. Failure to stay on track with the payment contract will lead to the renewed suspension of the offender's driver license.³⁸

As for the DMV's workload, it is estimated that the DMV spends roughly 350 plus hours a year working with these types of suspensions. With regards to the revenue generated from non-driving suspensions, some of it is returned to the municipality if the violation was for a municipal ordinance, while the rest is split between the police academy, victim services, and the state's general fund.

5.2.3 MICHIGAN

Michigan was chosen for research because of its recent changes in non-driving license suspension laws. In 2020, Michigan implemented a law that requires a payment analysis proving the defendant has the ability to pay a fine before suspending a license for failure to pay. The research team interviewed David Richmond from Michigan's Office of Program Support, Department of the Secretary of State.

Before reforming its law, Michigan was using driver's license suspensions to penalize a variety of offenses. A Michigan task force found that in 2018, more than 350,000 licenses were suspended solely for failure to pay fees or show up to court. Furthermore, the task force found that driving without a valid license was the third-most common reason for jail admission from 2016 to 2018. African-Americans were more likely to be arrested on these charges than Caucasians. The task force concluded that this contributes to the overrepresentation of African-Americans in jail in Michigan.

As a result of these findings, Michigan reformed its laws to require payment analysis. With this payment analysis, a significant level of discretion is given to the judiciary, as the court system now determines the cost of fines for driving with a suspended license. If it is a state fine, the funds generated from these fines go to the court and the public library system. If it is a local fine, the funds generated go to local entities. Since payment analysis is relatively recent, Michigan does not have publicly available data on the revenues of these fines. As for workload within the DMV, most of the work is reportedly automated; court computers are tied to DMV computers, so when the court sends a notice, the court applies the fee amount, and a letter is then printed.

5.2.4 VIRGINIA

Virginia was chosen because in 2019, the state repealed its law suspending licenses for failure to pay court fines. Furthermore, as of July 1st, 2020, the state no longer suspends licenses for possession of marijuana. The research team interviewed Emily Witt and Domica Winstead, program specialists of the DMV, to evaluate Virginia's laws regarding these issues.

In Virginia, the main non-driving causes for license suspension are failure to pay child support and lack of insurance. In 2021, there were 229 new suspensions for failure to pay child support and 330 the year before. In 2021 and 2020, the state issued no license suspensions for failure to appear. It is worth noting that though Virginia considers lack of insurance a non-driving related offense, this research does not and therefore does not focus on that data.

Regarding Virginia's law that does not suspend licenses for default, noncompliance, or nonpayment of fine and revocation or denial for drugs or alcohol, the DMV representatives conveyed that it has not changed behavior of fine payment. Furthermore, the fee to reinstate a license can be \$145, \$175, or \$220, depending on the offense (driving or non-driving). For non-driving offenses, it tends to be \$145. However, this is just the DMV fee, meaning it does not include additional court fees with

conviction. A portion of these fees goes toward a victim fund to support victims of the offense that resulted in the license suspension.

5.3 ADDITIONAL FINDINGS REGARDING COSTS TO COURTS

The team reached out to the State Court Administrator's Office or each state's equivalent but could only obtain financial data from the state of Michigan. While the methodology's intent was to compare data from the courts of New Hampshire, Michigan, Virginia, New York, and Vermont, this sort of analysis is rendered impossible by the fact that only one state responded to the team's request for financial data. Because Michigan shifted its license suspension policy in 2021, the relevant data was recently compiled by various bodies. Not only does the data serve as a point of comparison for New Hampshire if its financial data becomes available, but it sets the groundwork for metrics by which New Hampshire can continue to measure the financial efficacy of its policy.

5.3.1 MICHIGAN JOINT TASK FORCE ON JAIL AND PRETRIAL INCARCERATION FINDINGS

A member of the Michigan Joint Task Force on Jail and Pretrial Incarceration provided the team with additional information regarding Michigan's policy shift. The task force, composed of judges, attorneys, administrators, elected officials, and various experts, conducted research on the impact of license suspensions in Michigan when no ability to pay analysis was required. The task force examined 10 years of arrest data from more than 600 law enforcement agencies across the state, 10 years of court data collected from approximately 200 district and circuit courts, and three years of individual-level admission data from a sample of 20 county jails.

The task force found that, although arrests decreased in Michigan, the jail population did not experience a proportional decline. The Michigan county jail population nearly tripled from an average daily population of 5,700 in 1975 to an average of 16,600 in 2016. When examining which offenses led to high rates of incarceration, the task force found that traffic offenses accounted for half of all criminal court cases in 2018 and driving with a suspended license was the third most common reason for an individual to go to jail in Michigan.

Many of Michigan's traffic violations are civil infractions, such that they are punishable by fines but do not directly lead to arrest. However, other traffic violations are criminal offenses that do carry potential incarceration, including driving with a suspended license. These traffic offenses accounted for six of the top ten most common charges handled by Michigan courts. Previously, an individual in Michigan could have their license suspended for failing to appear in court, convictions for controlled substance offenses, and various reasons unrelated to driving safety. After a decline in arrests for operating under the influence (OUI), failure to appear was the most common reason for arrest. In 2018, approximately 358,000 licenses were suspended for failure to appear and failure to pay fines and fees.

As a result, the task force recommended that, in order to reduce the number of driver's license suspensions, a license should only be suspended or revoked when an individual has been convicted of an offense directly related to driving safety. Thus, the task force recommended eliminating license suspension as a possible sanction for non-driving offenses. Further, it recommended requiring courts to determine an individual's ability to pay fines that arise from criminal offense at the time of sentencing and at any hearing addressing the person's failure to pay. It was also recommended that, in the event that an individual is unable to pay, they should be offered an alternative, such as community service.

5.3.2 FISCAL IMPACTS

These high arrest and incarceration rates have associated costs to courts, but also generate significant funding for courts. Michigan trial courts are funded by both general tax revenue and monies assessed and collected by the courts. A study conducted by the Trial Court Funding Commission (TCFC) provided to the research team shows that it costs up to \$1.44 billion each year to operate the Michigan trial courts, and a significant portion of the funds generated by trial courts are assessments on defendants as part of sentencing. TCFC estimates found that Michigan trial courts are supported by over \$418 million assessed to criminal defendants. The TCFC found that Michigan trial courts are primarily locally funded (whereas New Hampshire is mostly state funded).

Additionally, the Michigan Senate's fiscal analysis on the state's proposed policy change in 2020 was provided to the team. The analysis concluded that the elimination of statutory provisions relating to license suspension could reduce costs for local units of government to operate county jails and probation supervision services. However, the potential savings in county jail costs and the potential decrease in fine revenue were indeterminate, as they would depend on the decrease in the total number of arrests and convictions.

One Michigan county judge told that team that, following Michigan's shift to a required ability to pay analysis, their respective court has experienced a practical inability to collect certain fines where payment was previously motivated by potential license suspensions. Conducting the ability to pay analysis has posed new costs to courts, such as additional staffing, which cannot be compensated for without additional funding. Unless there is a contested hearing, there is no actual sentencing proceeding that takes place for civil infractions. For many infractions in Michigan, an individual simply receives a ticket with a payment amount established by a schedule of fines. Thus, to conduct the ability to pay analysis for civil infractions, additional proceedings would have to take place for each infraction. In the case of criminal offenses, payment plans are often established at sentencing based upon a defendant's ability to pay. However, when any defendant defaults on payment, now the court must initiate additional proceedings to revisit the ability to pay, all at the cost of the taxpayer.

6 RECOMMENDATIONS

Almost all the individuals interviewed by the team stated that they believe license suspensions are an important tool for bringing offenders into compliance with state law. Without license suspensions acting as an enforcement mechanism, the respective law enforcement agencies have little recourse to collect fees and fines. It is in light of this information that the team recommends the continuance of license suspensions for non-driving offenses. However, the above research indicates areas of improvement for New Hampshire policy.

6.1 RECOMMENDATION FOR SUSPENSION FOR DEFAULT, NONCOMPLIANCE, OR NONPAYMENT OF A FINE AND REVOCATION OR DENIAL FOR DRUGS OR ALCOHOL

Introduce a Restricted License Program: The team recommends the state of New Hampshire institute a restricted license program, much like that of New York. This would allow individuals to drive only for the purposes of transportation to work, school, or childcare visits. Given the rural nature of New Hampshire and its lack of public transportation, this would likely mitigate many of the underlying factors that lead an individual to drive with an invalid license. A restricted license would be automatically issued until a payment agreement has been made.

Allow for License Reinstatements with Payment Agreements: The team recommends that, along with restricted licenses, New Hampshire allow payment agreements for license reinstatements, similar to Vermont. Individuals who enter into payment agreements would be eligible for license reinstatement while making partial payments. Payment agreements would be made with a diversion officer through the court system on a case-by-case basis. Failure to enter into a payment agreement or make timely payments would result in full license suspension. Given New Hampshire's relatively small size and similarities to Vermont, the creation of individualized payment agreements appears feasible.

6.2 RECOMMENDATION FOR SUSPENSION FOR FAILURE TO PAY CHILD SUPPORT

Allow for Case Modifications: The team recommends the state of New Hampshire follows a much more judicial path that gives an obligor the opportunity to adjust his or her case to his or her circumstances accordingly, similar to Vermont. This would entail having the New Hampshire DHHS, Office of Child Support (OCS) put a system into place that would allow for it to track an obligor's payments. If an obligor is three or more months behind on payments and there has been at least one court action brought against him or her in court, the system would alert OCS of the case. Subsequently, OCS is responsible for analyzing the obligor's ability to pay and consider his or her circumstances when determining next steps. If there is a demonstrated ability to pay, OCS would immediately issue a license suspension. However, if there is a demonstrated inability to pay or limited information regarding the obligor's circumstances, OCS would take the case to court to gain information through

hearings and modify the case accordingly. OCS would be responsible for informing the obligor of his or her case before filing for action by mailing and emailing the obligor documents about license suspension; telephone calls may also serve as adequate means for contact. Having various forms of contact would increase the chances of the obligor seeing the notice. If the obligor fails to either contest the claimed failure of child support payments or request an opportunity to submit evidence relating to the noncompliance within 21 days of the aforementioned notices being issued, OCS would have option to issue a license suspension. If the case proceeds to court, the presiding judge would have full discretion over determining the obligor's ability to pay as well as the payment options available for the obligor. If the obligor misses a payment after the fact, OCS would be entitled to ask the court to suspend his or her license without further hearing and the motion would be sent to the New Hampshire Department of Motor Vehicle (DMV) to be processed.

7 CONCLUSION

The research team finds that license suspensions can be an effective tool of rehabilitation when accompanied by provisions and programming that cater to the population's needs. For the New Hampshire population, a model similar to Vermont's Driving with License Suspended (DLS) program is the most promising option, since it puts offenders on a track to pay off fees and fines with the incentive of a conditionally reinstated license for the duration of the payment program. The team also finds that when a license is initially suspended, it should function as a restricted license so that the offender can still travel to school, childcare, and work while they wait to meet with an official to enter a payment plan. However, if an offender refuses a payment plan, or violates the terms of a plan, the license should be suspended in full until fees and fines are repaid. As for child support related suspensions, the research team finds that increased interface with case workers and the judicial system will allow obligors who have fallen behind on payments to most effectively develop a strategy to make up those payments, while still giving the State the option to suspend a license as a last-ditch effort to incentivize child support payments. While the state-by-state case study methodology provided the research team with the information from the Department of Health and Human Services (DHHS) and Department of Motor Vehicle (DMV) representatives needed to formulate recommendations for the state of New Hampshire, it was not without its limitations. The most significant limitation was that some states did not respond to requests for interviews, preventing the team from gathering results for certain state agencies. Additionally, much of the quantitative data that the team requested from the DHHS and DMV departments of each state in the study was not available to representatives, either because it was not easily accessible to the official, or because the data was not collected at all by that state. While some states had a great deal of data to provide, others had little to none, leading to gaps in the team's knowledge of some state's programs. The team recommends that future research focus on collecting quantitative data from a variety of states to measure the rehabilitative efficacy of various non-driving license suspension protocols. As non-driving license suspensions programs continue to be reformed to become more effective tools for rehabilitation in New Hampshire and across the nation, the research team is hopeful that the evidence and recommendations provided in this report can incite helpful changes to the Granite State's non-driving license suspension policies.

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⁸ “Section 263:56-a Suspension or Revocation for Default, Noncompliance, or Nonpayment of Fine.,” accessed October 30, 2021, <http://www.gencourt.state.nh.us/rsa/html/xxi/263/263-56-a.html>, parts I-a, I-b, and I-c

⁹ “Section 263:56-a Suspension or Revocation for Default, Noncompliance, or Nonpayment of Fine,” part III-b.

¹⁰ “Section 263:56-a Suspension or Revocation for Default, Noncompliance, or Nonpayment of Fine.”

¹¹ “Section 263:56-a Suspension or Revocation for Default, Noncompliance, or Nonpayment of Fine.”

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²¹ Joyce et al.

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³³ Enforcement of child support orders; suspension of licenses, 15 V.S.A. ch. 11 § 798.

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