

THE DEPARTMENT OF PUBLIC SAFETY'S PROPOSED INDIGENCY PROGRAM REQUIRES SIGNIFICANT CHANGES

The proposed indigency program rules published in the Texas Register on March 5, 2010, will reduce surcharges for individuals whose annual income is at or below 125% of Federal Poverty Guidelines (FPG) to one-time payments of \$150 to \$500. The 30-day public comment period expires on April 5, 2010, after which time the Public Safety Commission (PSC) may vote to adopt these rules under Texas Government Code §2001.023(a).¹ Although the proposed indigency program would provide some relief to low-income individuals, it will not sufficiently remedy the DRP's unintended consequences. The PSC should amend its proposed rules in order to increase collections and provide more effective relief to low-income individuals through:

- An amnesty program to encourage payments from individuals who have defaulted on their outstanding surcharges;
- Evaluation of indigency program applicants according to current, accurate financial information;
- Waiver of surcharge fees for individuals earning 125% or less of FPG, or reduce the indigency program's one-time payments and allow indigent drivers to pay their surcharges in installments; and
- Incentive programs designed to encourage partial payments by low-income drivers who do not qualify for the indigency program but who are still unable to afford full DRP surcharges.

The details of each suggested change are outlined below along with recommended text for amendments to the rules. Contact Scott Henson at shenson@austin.rr.com or Amanda Marzullo at amarzullo@texasdefenseproject.org if you have any questions, concerns or suggestions regarding these recommendations.

AMNESTY PROGRAM

Due to the enormous number of people who have defaulted on DRP surcharges, an amnesty program has the potential to collect tens of millions of dollars from individuals who are currently pay nothing. Comparable programs at other Texas agencies have generated considerable revenue by incentivizing individuals to pay reduced fees and penalties to regain legal status. For example, a tax amnesty program conducted by the Comptroller in 2007, motivated 1,258 businesses to pay delinquent taxes by waiving or reducing most penalties and collected more than \$100 million owed to the state and local governments. According to the Legislative Budget Board, approximately 1.2 million Texas drivers have defaulted on DPS surcharge payments;

¹ “A state agency shall give at least 30 days’ notice of its intention to adopt a rule before it adopts the rule.”

participation of only one-third of noncompliant drivers in a program that reduced unpaid fees to a total of at least \$250 (which could be paid in installments) would yield \$100 million in unpaid fees at the end of all payment plans. Even if participation rates are lower, a 10% rate would yield an extra \$30 million from drivers who aren't currently paying anything.

RECOMMENDED TEXT:

- (1) The Department will create periodic amnesty programs as authorized under TEX. TRANS. CODE §708.152(a).
- (2) By September 1, 2010, the department shall evaluate all persons subject to surcharges, who have defaulted in their payments pursuant to the Driver Responsibility Program as of April 1, 2010 and are subject to a possible suspension of their license.
- (3) Following the evaluation required under subsection (b), the Department of Public Safety shall reduce the surcharges imposed upon individuals who have defaulted in their surcharge payments as follows:
 - (a) Surcharges for the first offense of the following convictions: Intoxicated Driver Offenses (TEX. PENAL CODE §49.09), Driving While License Invalid (TEX TRANS. CODE §521.457), Driving Without Valid License (TEX TRANS. CODE §521.021), Failure to Maintain Financial Responsibility (TEX TRANS. CODE §601.191) and Operation of a Motor Vehicle in Violation of a Suspended License (TEX TRANS. CODE §601.371) shall be reduced to \$250 all 36 months upon demonstration of proof of insurance. If an individual has already submitted payments totaling \$250 at the time of the assessment, the remainder of his or her surcharges shall be dismissed.
 - (b) Surcharges for second or more violations of the offenses listed in subsection (a) shall be reduced to \$50 for each violation up to a maximum payment of \$750.
 - (c) Surcharges specified by of Tex. Trans. Code §§708.104 and 708.053 shall be reduced to \$50 for all three years.

EVALUATE APPLICATIONS ACCORDING TO CURRENT, ACCURATE FINANCIAL INFORMATION

The Department's proposed indigency program requires that applicants for surcharge relief furnish information reported on the previous year's federal income tax statement in order to establish financial eligibility for the program. In many cases, there will be considerable lag time between the date on which individuals file applications for surcharge reductions and the time periods during which the declared income is earned. Reliance on this outdated tax information will generate erroneous determinations of an applicant's eligibility for the indigency program, and may in turn increase personnel expenses due to subsequent complaints from individuals who are wrongfully declined.

A more practical approach would adopt policies similar to other Texas agencies making income determinations which allow applicants to submit current information regarding their finances. The Turner Amendment to HB 2730 specifies that DPS must accept recent statements of drivers' income—e.g. paystubs—in support of applications for a surcharge reduction. Integrating these criteria into the current program will ease the transition into the statutorily mandated program in 2011.

RECOMMENDED TEXT:

A person must provide information to the Department to establish that the person is indigent. The following forms of documentation may be used as proof:

- (1) A copy of the person's most recent federal income tax return, if indicative of the person's current income, that shows that the person's household income does not exceed 125 percent of the application income level established by the federal poverty guidelines;
- (2) A copy of the person's most recent statement of wages, including paystubs, or a letter from the person's employer that shows that the person's household income does not exceed 125 percent of the application income level established by the federal poverty guidelines;
- (3) A signed affidavit from the person, stating the person's income and that the person's household income that does not exceed 125 percent of the application income level established by the federal poverty guidelines; or
- (4) Documentation from a federal agency, a state agency or school district that indicates that the person, or if the person is a dependant as defined by Section 152, Internal Revenue Code of 1986, the taxpayer claiming the person as a dependent, receives assistance from:
 - (a) The food stamp program or the financial assistance program established under Chapter 31, Human Resources Code;
 - (b) The federal special supplemental nutrition program for women, infants and children authorized by 42, U.S.C. 32, Human Resources Code; or
 - (c) The medical assistance program under Chapter 32, Human Resources Code;
 - (d) The child health program under Chapter 62, Health and Safety Code; or
 - (e) The national free or reduced-price lunch program established under 42 U.S.C.

WAIVE SURCHARGE PAYMENTS FOR INDIGENT INDIVIDUALS

HB 2730 §15 (81st Tex. Leg., 2009) mandates that DPS waive all surcharges for individuals whose income is at or below 125% of FPG by September 1, 2011. However, DPS staff has proposed an interim arrangement, which merely reduces surcharges for qualifying drivers.

Leaving aside the wisdom of making rules that must be changed again in a year's time, the requisite lump-sum payments in the DPS staff's proposal are too high for most indigent drivers, ranging from \$150 to \$500 per offense. These individuals barely earn enough to cover their basic expenses (\$1,100 a month or less before federal withholding²). Requiring one-time payments of \$150 to \$500 per offense will be an unreachable goal for most persons within this income bracket; which will reduce compliance and undermine indigency program goals of having more indigent drivers licensed and insured. A more reasonable line of attack would be to waive surcharges now and make the program compliant with the law that takes effect in 2011. Dispensing entirely with indigent individuals' surcharges will minimize the risk that indigent motorists will drive without a valid license or auto insurance.

RECOMMENDED TEXT:

- (1) Following receipt of a completed application, the Department shall waive all surcharges for qualifying individuals.

LOWER THE INDIGENCY PROGRAM'S REQUISITE ONE-TIME PAYMENTS AND ALLOW QUALIFYING INDIVIDUALS TO PAY THEIR REDUCED SURCHARGES IN INSTALLMENTS

If DPS is unable or unwilling to waive surcharges for indigent motorists, at a minimum it should reduce the lump-sum payments to more manageable amounts and allow qualifying drivers to make incremental payments on their outstanding balance over periods of 12 months or more. Someone making \$1,100 per month likely cannot make a one-time payment of up to \$500 per offense, particularly if he or she is subject to compounding surcharges. Creating payment plans for these individuals is perhaps the only way that that indigent individuals will be able to fall into compliance under the new plan.

RECOMMENDED TEXT:

This section applies to surcharges resulting from offenses for Intoxication, No Insurance, Driving While License Invalid, and No Driver License.

- (1) For an Intoxication surcharge, the assessment may be reduced to a three-year total of \$500, to be paid in a lump sum or in installments of over a period of up to 36 months.
- (2) For a No Insurance or Driving While License Invalid surcharge, the assessment may be reduced to a three-year total of \$250 to be paid in a lump sum or in installments over a period of up to 24 months.

² This month income is calculated using the Federal Poverty Guidelines for single person households.

- (3) For a No Driver License surcharge, the assessment may be reduced to a three-year total of \$150 to be paid in a lump sum or in installments over a period of up to 24 months.

CREATE INCENTIVE PLAN FOR LOW-INCOME INDIVIDUALS WHO DO NOT QUALIFY FOR THE INDIGENCY PROGRAM

The DRP places a tremendous burden on individuals who live on more than 125% of FPG, but who still earn low to moderate incomes. Creation of an incentive program for low-income individuals whose income is between 125% and 300% of FPG that includes manageable payments would minimize the collateral effects of DRP surcharges, while still allowing the State to generate revenue from this group and hold them accountable.

The effects of surcharges on this income group have been specifically studied. In 2006, the New Jersey³ Motor Vehicles Affordability and Fairness Task Force released the results of a survey on drivers with licenses suspended due to its Driver Responsibility Program, which levies the same license surcharges as the Texas DRP.⁴ According to their estimates, of persons with suspended licenses whose annual income was under \$30,000⁵: (1) 64% were unable to maintain their prior employment following a license suspension; (2) only 51% of persons who lost their job following a license suspension were able to find a new employment; (3) 66% reported that their license suspension negatively affected their job performance; and (4) 90% of persons whose license was suspended within this income bracket indicated that they were unable to pay costs that were related to their suspended driving privileges.⁶ In addition, of those who were able to find a new job following a license suspension-related dismissal, 88% reported a reduction in income.⁷ Creating an incentive program could help avoid such unintended consequences.

Further the state has a strong interest in ensuring that employed, low-income Texans are able to pay off outstanding surcharges. In many cases, though not “indigent” under proposed DPS definitions, surcharges for such individuals remain beyond their means. Yet, they are often able to make some sort of payment. Texas is both leaving money on the table and harming the economy by not crafting the program to accommodate them.

³ The Effect of the DRP are most likely more severe in Texas than in New Jersey as Texans do not benefit that from a comprehensive public transportation system which include regional rail and buses that are currently in place in New Jersey.

⁴ MOTOR VEHICLES AFFORDABILITY AND FAIRNESS TASK FORCE, FINAL REPORT (FEB, 2006)
[HTTP://WWW.STATE.NJ.US/MVC/PDF/ABOUT/AFTF_FINAL_02.PDF](http://www.state.nj.us/mvc/pdf/about/aftf_final_02.pdf).

⁵ Even with adjustments for differences in consumer price indexes in New Jersey, this amount is still close to double 125% of FPG, depending on the comparison city. For example, the cost of living is higher in Dallas than in Atlantic City with \$33,000 necessary in Dallas to equal the same quality of living achieved with \$30,000 in Atlantic City, according to CityRating.com, <http://www.cityrating.com/costofliving.asp> (accessed March 24, 2010).

⁶ Id. at 37-38.

⁷ Id. at xii.

RECOMMENDED TEXT:

- (1) The Department is authorized to provide for an Incentive Program under the Driver Responsibility Program, Texas Transportation Code, Chapter 708.157(b).
- (2) Pursuant to the Incentive Program, drivers license surcharges under the Driver Responsibility Program shall be reduced for qualifying individuals who are not subject to reductions under the Amnesty or Indigency Programs as follows:
 - (a) In order to be eligible for reductions under this program, a person must submit:
 - (i) An application including one of the forms of documentation identified in subsection [indigency program application], establishing that the person's household income is between 125% and 300% of Federal Poverty Guidelines; and
 - (ii) Insurance statements or SR-22 forms showing that he or she has maintained insurance coverage for at least six consecutive months and have no additional convictions subject to the Driver Responsibility Program.
- (3) Upon receiving evidence identified in subsection (a), the Department shall reduce an individual's surcharges according to the following schedule:
 - (a) The Department shall place the driver on a 36-month payment plan.
 - (b) After 12 months of regular, on-time payments, the Department shall reduce the amount owed in total surcharges to 50% of the remaining balance, unless the total is more than \$1000, in which case the total shall be reduced to a maximum of \$750 per year to be paid in a lump sum or by installments.
 - (c) After 24 months of regular on-time payments, the Department shall reduce the amount owed in total surcharges to 50% of the remaining balance, unless the total is more than \$1000, in which case the total shall be reduced to a maximum of \$350 per year to be paid in a lump sum or by installments.