

RACIAL DISPARITY IN DRIVING WHILE LICENSE SUSPENDED THIRD DEGREE CASES

PROBLEM

In many misdemeanor courts, driving while license suspended in the third degree (DWLS 3) cases constitute at least one-third of the caseload. There are an estimated 100,000 cases in Washington per year.¹ The great majority of these cases result from failure to pay a traffic ticket or to appear in court for the ticket. RCW 46.20.342(1)(c)(iv).²

Because of a combination of economic status and police deployment decisions, and possibly in some situations because of racial profiling, people of color are more likely to have suspended licenses for failure to pay a ticket. In 2000, a *Seattle Times* investigation found that black drivers in Seattle receive more tickets and are more likely to be cited for defective headlights than are white drivers.³ As a result, people of color are more likely to be charged with DWLS 3.

In some misdemeanor courts, there is no counsel available for indigent persons at first appearance or arraignment hearings. And in some misdemeanor courts, public defense counsel are overwhelmed with cases. Some prosecutors have established diversion programs and some courts have re-licensing programs, both of which have demonstrated the ability to reduce costs and in some cases to gain revenue for local governments while avoiding criminal convictions for drivers.

KEY POINTS

- **DWLS 3 is a crime, and most of the people charged with this offense are poor.** A Seattle study in 1999 found that of 184 people with suspended licenses, the average person had \$2,095 in unpaid fines and a monthly income of \$810.6.⁴
- **Because of economic factors and possibly the deployment of police and their vehicle stop practices, the people charged with DWLS 3 are disproportionately of color.**
- **Most people charged with DWLS 3 had their licenses suspended for not paying a fine or for missing a court hearing and if they had means and the knowledge on how to negotiate the court system, they could get their licenses reinstated.** Local prosecutors and courts should work with defenders and community groups to establish

¹ Driving While License Suspended 3rd Degree Survey of Courts of Limited Jurisdiction, Washington Office of Public Defense (2008).

² John B. Mitchell & Kelly Kunsch, *Of Driver's Licenses and Debtor's Prison*, 4 SEATTLE J. FOR SOC. JUST. 439, 443 (2005).

³ "A Seattle Times analysis of more than 324,000 citations issued in the past five years also found blacks get more tickets per stop than whites and are more likely to be cited for certain offenses, such as defective headlights. For example, the number of tickets issued to blacks for blocking traffic is four times the proportion of blacks in the driving population." Andrew Garber, "Seattle Blacks Twice as Likely to Get Tickets," THE SEATTLE TIMES, Jun. 14, 2000 (corrected August 3, 2001).

⁴ Evaluation of Seattle Re-Licensing Program (2002), *available at* <http://www.cityofseattle.net/courts/PDF/RelicensingEval.pdf>.

pre-charging diversion and re-licensing programs where they do not now exist.

- **DLWS 3 prosecutions consume a dramatic percentage of misdemeanor court, prosecution, and public defense resources in a time of severe budget challenges.**
- **The costs of prosecuting DWLS 3 cases are staggering.** It is estimated that Washington's statewide average cost of arrest is \$334, cost of conviction is \$757, and cost per jail day \$60.71.⁵ Even though most first-time DWLS 3 convictions do not result in jail, many people do go to jail on the second or third offense or for failing to complete probationary requirements. Not counting the cost of any jail time, 100,000 arrests and convictions cost more than \$100 million per year. Even if the DWLS 3 cases proceed on the basis of tickets with no arrests, the cost still exceeds \$75 million. This cost does not take into account the impact on the individual defendant or his or her family.

EXISTING ALTERNATIVES

Some courts have created relicensing programs to help low-income people get their licenses back while still making payments toward tickets.⁶ King County District Court has a relicensing calendar twice a month during which individuals may enroll in the program rather than face a DWLS 3 charge.⁷ There is a community service option that allows participants to perform community service at the rate of \$10 for each hour worked. The District Court holds are released once the court receives written proof of community service hours performed.

In addition, the program offers participation in work crew and credit towards King County District Court fines at the rate of \$150 for every eight-hour day worked. And another option is to make a 10% down payment on fines and monthly payments for the remaining balance. A community-based organization, Legacy of Equality, Leadership and Organizing (LELO), assists individuals with the process and refers individuals to the Relicensing Program.⁸ The relicensing program generates revenue as people pay their fines and avoids prosecution, public defense, and jail costs for cases diverted from prosecution.⁹ A 2004 study estimated that for every dollar spent on the King County District Court relicensing program, the court either earned or saved two dollars.¹⁰

⁵ WASH. ST. INST. FOR PUBLIC POLICY, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* at 41, Exhibit B.2 (2006), available at <http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf>. Figures are adjusted for 2007 dollars utilizing the Implicit Price Deflator (GDP) rate and computations performed at <http://www.measuringworth.com/uscompare>.

⁶ Cooper Offenbecher, *DWS: A Ticket to Debtor's Prison?*, KING COUNTY BAR BULLETIN, April 2008, available at <http://www.kcba.org/newsevents/barbulletin/archive/2008/08-04/article1.aspx>. See also, Mitchell & Kunsch, *supra* note 2.

⁷ *Re-Licensing*, King Ctny. Dist. Court Servs., available at <http://www.kingcounty.gov/courts/DistrictCourt/CitationsOrTickets/RelicensingProgram.aspx> (last visited Nov. 9, 2010).

⁸ LELO also conducts its own DWLS education programs. See Legacy of Equal., Leadership & Org., <http://www.lelo.org>.

⁹ Offenbecher, *supra* note 5.

¹⁰ Costs & Benefits of the King County District Court Relicensing Program, Christopher Murray & Associates, 2004, cited in Offenbecher, *supra* note 5.

The City of Spokane Prosecutor's office recently established a diversion program for DWLS 3 cases that it believes will reduce the municipal court caseload by 35 per cent.¹¹ The Legislature should amend the statute so that driver's licenses are not suspended for failure to pay a ticket or attend a court hearing.

¹¹ Robert C. Boruchowitz, *Diverting and Reclassifying Misdemeanors Could Save \$1 Billion per Year: Reducing the Need For and Cost of Appointed Counsel*, AMERICAN CONSTITUTION SOCIETY (2010), at 9, available at <http://www.acslaw.org/files/Boruchowitz%20-%20Misdemeanors.pdf>.