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TO: Senator Gary George
Chairman of Senate Committee on Judiciary and Consumer Affairs

FROM: Bob Andersen 

RE: SB 253, Relating to Traffic Regulations and Ordinance Violations: Permitting Judgments to Be Paid in Installments in Poverty Cases

DATE: January 25, 2002

This is the same as a bill introduced during the past session (1999 AB 846) that passed the Assembly Judiciary Committee on a vote of 9-0, was approved by the Assembly on a voice vote, passed your Senate Committee on Judiciary and Consumer Affairs by a vote of 5-0, but failed to pass in the Senate as time ran out. The bill was drafted in consultation with Municipal Court Judge Michael Hurt and Sheryl Gervasi, Director of State Court's Office.

I. Purpose

W-2 providers report that one of the greatest barriers to successful employment for W-2 participants is their inability to drive to job sites because of suspended driver's licenses. Many W-2 participants have suspended driver's licenses because they failed to pay parking tickets, failed to pay forfeitures for moving traffic ordinance violations, or failed to pay forfeitures for other municipal ordinance violations. In many cases, participants have had their licenses suspended because default judgements were entered against them for failure to appear on the return dates

In summary, what this bill attempts to do is to allow indigent defendants one opportunity to have an installment payment plan ordered in lieu of the suspension of a driver's license. That one opportunity can be offered before the judgment is initially entered or it can be offered after a judgement is entered. Allowing installment payment plans already is the practice for many municipal courts. The bill will make this a uniform practice and will allow jurisdictions, who currently do not believe they have the authority, to enter these installment payment plans.

II. What this Bill Does

A. Before Judgements are Initially Entered, Municipal Courts and Circuit Courts are Required to Offer Indigent Defendants Installment Payment Plans Before Suspending their Driver's Licenses, When Defendants Appear in Court.

When defendants appear in court to answer to the charges and are found guilty of ordinance violations, courts are required to first offer them an opportunity to pay the forfeitures by installments, before suspending their driver's licenses, if the defendants are unable to pay because of their poverty. If the defendants subsequently fail to comply with the installment payment plans, their licenses will be suspended.

This is the practice that is actually being followed by many municipal courts and circuit courts. The bill ensures that this practice will be codified in the statutes and that it will be followed by all courts, in municipal ordinance violation cases.

B. After Judgments Have Already Been Entered, Defendants Who are Unable to Pay Because of Poverty may Obtain Installment Payment Plans in Lieu of the Suspension of their Licenses, Provided that They Have Not Previously Been Given an Installment Payment Plan and Failed to Comply with the Plan.

This bill provides that a court shall terminate the suspension of a driver's license that was previously ordered because of an ordinance violation, and substitute an installment payment plan therefor, if all of the following circumstances are met:

- (1) the defendant requests the installment payment plan.
- (2) the defendant is unable to pay because of poverty.
- (3) the defendant has not previously failed an installment payment plan that has been ordered by the court.

If an installment payment plan is ordered under these circumstances and the defendant subsequently fails to comply with the plan, the suspension of the license will be reinstated.

This proposal is considered to be a better approach than requiring the reopening of judgments in these cases. Instead of requiring judgments to be reopened -- which creates administrative problems for the courts and which unsettles those judgements -- this proposal avoids those problems by simply requiring that orders for license suspension be terminated.

C. **The Determination that a Person is "Unable to Pay Because of Poverty" Uses the Same Criteria that Already Exists in the Statutes under s. 814.29, Regarding the Waiver of Costs and Fees for Persons who are Unable to Pay Because of Poverty.**

In order to establish a uniform definition of poverty for all courts, this bill incorporates the determination of when a person is unable to pay because of poverty that already exists in the statutes, under s. 814.29 (1)(d). Under that section, essentially, a person is determined to be unable to pay costs and fees because of poverty if any of the following is true:

- (1) that the defendant is a recipient of means tested public assistance, including Wisconsin Works, general relief under Chapter 49, relief provided by the counties under s. 59.53 (21), medical assistance, supplemental security income, food stamps, or benefits received by veterans under 45.351 (1) or under 38 USC 501 to 562.
- (2) that the person is represented by an attorney through a legal services program for indigent persons, including, without limitation, those funded by the federal legal services corporation, the state public defender or volunteer attorney programs based on indigency.
- (3) that the person is otherwise unable, because of poverty, to pay the fees and costs. In considering the defendant's inability, the court shall consider the person's household size, income, expenses, assets and debts and the federal poverty guidelines under 42 USC 9902.

Under this bill, if a defendant meets these criteria, the defendant would be entitled to an installment payment plan in lieu of the suspension of a license, provided the defendant had not already been offered such an option and failed to comply with the plan.

D. **The Installment Payment Plan Required under this Bill Would be Required to be a "Reasonable Installment Payment Plan that takes into Account the Defendant's Income."**

The purposes of this bill will not be achieved if a genuinely poor person, taking a look at assets and income, cannot make payments because of current income.