WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2005-06
(session year)

Senate
(Assembly, Senate or Joint)

Committee on Education (SC-Ed)

File Naming Example:

Record of Comm. Proceedings ... RCP
- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

Published Documents

- *Committee Hearings ... CH* (Public Hearing Announcements)
- **

- *Committee Reports ... CR*
- **

- *Executive Sessions ... ES*
- **

- *Record of Comm. Proceedings ... RCP*
- **

Information Collected For Or Against Proposal

- *Appointments ... Appt*
- **

- *Clearinghouse Rules ... CRule*

**

- *Hearing Records ... HR* (bills and resolutions)
- **05hr_sb0151_SC-Ed_pt01**

- *Miscellaneous ... Misc*
- **

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Equal Rights Division
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State of Wisconsin
Department of Workforce Development
Jim Doyle, Governor
Roberta Gassman, Secretary
Lucia Nunez, Division Administrator

October 14, 2005

Senator Luther Olsen
Chair of the Senate Committee on Education
Room 5 South
State Capitol
Madison, WI

Dear Senator Olsen and members of the Senate Committee on Education:

Thank you for the opportunity to provide information to the committee on behalf of the Department of Workforce Development in opposition to SB151.

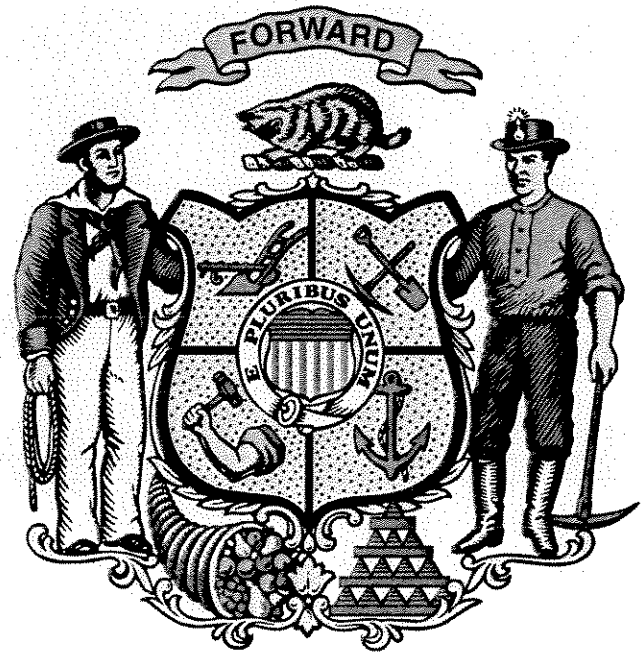
The Equal Rights Division of the department enforces the Wisconsin Fair Employment Law (111.31-111.396 Wisconsin Statutes). The division receives nearly 4,000 complaints of employment discrimination each year. Of the 3,977 complaints accepted for investigation in calendar year 2004, 280 cases included an allegation related to conviction record discrimination. Only two cases completed in 2004 involved an educational agency. There were no findings of probable cause related to conviction record against any educational agency.

The existing Wisconsin Fair Employment Law includes a substantial relationship exception that allows employers to refuse to employ or terminate from employment a person whose conviction is substantially related to the job. The department opposes any amendments to the law that create additional exceptions to the law. The current law provides for the appropriate balance between protecting the rights of individuals and the rights of the public. The department has appropriately applied the law to school districts finding a substantial relationship when the conviction related to the ability to work with children in an educational setting.

I hope this information is helpful to the committee in its deliberations. Please feel free to contact me if you have any questions.

Sincerely,

Lucía Nuñez
Administrator
Equal Rights Division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Individual Rights & Responsibilities Section

State Bar of Wisconsin
Wisconsin Lawyers. Expert Advisers. Serving You.

MEMORANDUM

To: Members of the Senate Committee on [redacted] Education [redacted]

From: **Individual Rights and Responsibilities Section**

Date: October 17, 2005

Re: Senate Bill 151 --OPPOSE

This testimony is submitted on behalf of the Individual Rights and Responsibilities (IRR) Section of the State Bar of Wisconsin. The Individual Rights and Responsibilities Section brings together roughly 200 attorneys from around the State whose practices involve civil liberties and constitutional rights. The Section is opposed to Senate Bill 151. The State Bar as a whole has not taken a position one way or another on the Bill.

Mr. Chair and members of the committee, the assumption underlying SB 151 is that the current law that reasonably balances the competing public interests in rehabilitation and reintegration with that of minimizing the opportunity for recidivism is in need of being amended and modified. That assumption is debatable, for reasons I will explain later in my testimony. However, it is important to stress from the outset the need for the Committee to understand that the serious problems with this Bill that have nothing to do with its intended result. In fact, the primary problem with the Bill is that it violates the "Law of Unintended Results."

Senate Bill 151 would allow an educational agency to refuse to employ or to terminate from employment a felon, regardless of whether the elements of the offense substantially relate to the circumstances of a particular job. Thus, the bill would permit the irrational denial of jobs to qualified applicants, frustrating the State's efforts to reintegrate ex-offenders into society and reduce recidivism.

Discrimination on the basis of arrest and conviction record has been prohibited under the Wisconsin Fair Employment Act since November 1, 1977. At that time, the Wisconsin Legislature determined that, as matter of public policy, discrimination on the basis of criminal record impaired the general welfare of the state by depriving individuals with conviction records "of the earnings that are necessary to maintain a just and decent standard of living." See, § 111.31(1), Wis. Stats.

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The Legislature intended the new law to "strike a balance" between the state's important interest in rehabilitating former offenders and reintegrating them into society and its equally important interest in protecting citizens from situations that presented unreasonable risks of recidivism.

To strike this balance, the Legislature provided an exception to the prohibition against discrimination in employment on the basis of criminal record in instances where the circumstances of the crime are substantially related to the circumstances of the job in question. (§ 111.335(1)(c)1, Wis. Stats.) The "substantial-relationship test" enacted by the legislature in 1977 was intended to permit employers to reject employees for employment in circumstances in which the risk of recidivism was too great.

The substantial relationship test under the Wisconsin Fair Employment Act (WFEA) most effectively balances the competing state interests in preventing recidivism and encouraging reintegration. To remove the criminal records protection in the WFEA would permit irrational discrimination against persons with criminal records unrelated to the risk of recidivism and based upon pure bias, and would have the effect of impeding reintegration of ex-offenders.

Criminologists state that the single greatest factor affecting recidivism is the ex-offender's *perception* of his or her prospects for employment. The existence of the prohibition against discrimination on the basis of criminal record in the WFEA is important to this perception. It makes it easier for ex-offenders to believe that they will not be so stigmatized by their convictions as to be denied a reasonable opportunity for employment.

Employment of offenders who have paid their debt to society plays an important role in reintegrating them back into the community and reducing recidivism. Everyone benefits when ex-offenders successfully turn their lives around to become contributing, law-abiding members of the community – the neighbor, the family, the friend and the taxpayer.

When the doors to employment opportunities are shut, the unintended consequence is that it makes it much harder for ex-felons to begin anew and steer clear of crime. As more crimes are classified as felonies, ex-offenders will find it increasingly more difficult to find a job. Denial of gainful employment can drive criminals to re-offend. When this happens, a heavy price is paid: public safety is jeopardized; our courts are burdened; and state taxpayers are saddled with the ever-increasing cost of our correctional system.

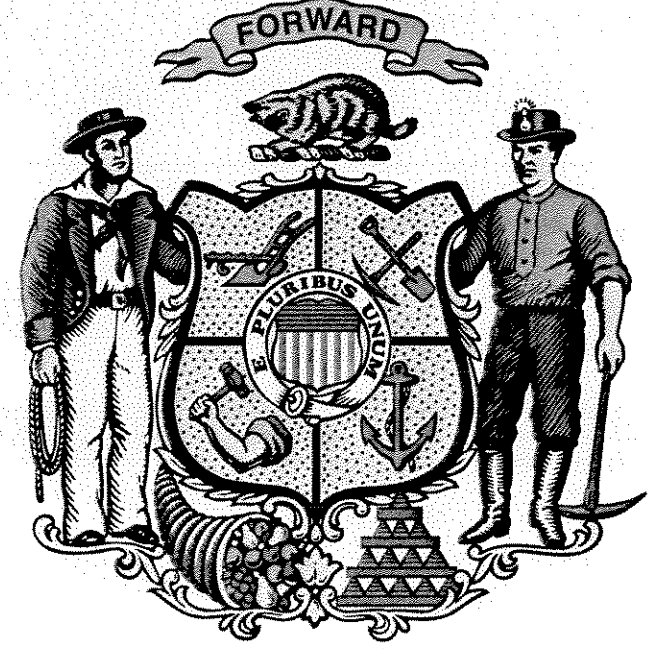
Should employers ever be allowed to deny someone an employment opportunity based on his or her criminal record? State law says "Yes."

Current law allows employers, including schools, to discriminate on the basis of conviction records where the "circumstances of the offense substantially relate to the circumstances of a particular job." If the criminal offense does not relate to the job, MUST the employer hire the person? State law says "No." Current law simply does not allow an employer to automatically reject an applicant simply because of the felony record. Employers can refuse to hire for other reasons.

The Individual Rights and Responsibilities (IRR) Section believes current law strikes the appropriate balance. It promotes the goal of reintegration of ex-offenders, while giving employers the ability to refuse to hire felons whose offense relates to the job.

For these reasons, the IRR Section opposes Senate Bill 151.

If you have any questions, please contact Dan Rossmiller, Public Affairs Director for the State Bar of Wisconsin, at (608) 250-6140 or drossmiller@wisbar.org.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Alberta Darling
Wisconsin State Senator
Joint Committee on Finance

TESTIMONY BEFORE THE SENATE EDUCATION COMMITTEE
TUESDAY OCTOBER 18, 2005
SENATE BILL 151

THANK YOU CHAIRMAN OLSEN AND MEMBERS OF THE COMMITTEE FOR ALLOWING ME TO TESTIFY IN SUPPORT OF SENATE BILL 151. I AM THE SENATE AUTHOR OF THIS BILL WHICH IS THE SENATE COMPANION BILL TO REPRESENTATIVE PETROWSKI'S ORIGINAL LEGISLATION.

LET ME FIRST THANK REPRESENTATIVE PETROWSKI FOR HIS EAGERNESS AND STEADFASTNESS IN WORKING TO GET THESE BILLS THROUGH THE LEGISLATURE. HE HAS BEEN THE FIGURE HEAD BEHIND THIS LEGISLATION FOR SOME TIME NOW, AND I APPRECIATE HIS ACCEPTANCE OF MY SUPPORT AND ASSISTANCE.

I WILL SPARE THE COMMITTEE THE "WHAT" AND THE "WHY" BEHIND SB151, BUT I WOULD LIKE TO ARTICULATE WHY I FEEL SO STRONGLY ABOUT THE PASSAGE OF THIS BILL. I HAVE THROWN MY SUPPORT BEHIND THIS ISSUE FOR TWO VERY IMPORTANT REASONS. ONE, I BELIEVE THAT LOCAL SCHOOL BOARDS SHOULD BE ABLE TO DECIDE FOR THEMSELVES WHO THEY CAN AND CAN'T HIRE TO WORK NEXT TO, AND WITH THE CHILDREN OF THE PARENTS THEY SERVE. TWO, I BELIEVE THIS TIGHTLY WORDED LEGISLATION WILL NOT ADVERSELY DISCRIMINATE AGAINST THOSE WHO HAVE BEEN CONVICTED OF A FELONY, HAVE PAID THEIR DEBT TO SOCIETY, AND ARE OF NO THREAT TO THE SCHOOL DSITRICT OR ITS CHILDREN.

THE FAIR EMPLOYMENT ACT CURRENTLY HAS AN EXEMPTION THAT ALLOWS AN EMPLOYER TO DENY SOMEONE THAT HAS BEEN CONVICTED OF A FELONY, WHEN THE CRIME AND THE POTENTIAL JOB ARE CLOSELY RELATED. THAT MUCH IS TRUE, UNDERSTANDABLE AND VERY, VERY IMPORTANT.

UNFORTUNATELY, IT IS A SAD REALITY THAT WE CAN NEVER GUARD OUR CHILDREN ENOUGH. WE CAN NEVER WATCH THEM TOO CLOSELY AND WE SHOULD NEVER, EVER STOP WORKING TO PASS LAWS TO SAFEGUARD OUR CHILDREN ON THEIR WAY TO SCHOOL, DURING SCHOOL AND AFTER SCHOOL.

WHILE PASSAGE OF THIS BILL WILL NOT AFFECT DOZENS OF CONVICTED FELONS OR HUNDREDS OF STUDENTS, IT WILL SOMEDAY KEEP ONE MAN FROM TAKING ONE JOB WHERE HE HAS ACCESS TO ONE CHILD WHERE HE CAN DO HARM ONE TIME. BY GIVING SCHOOL DISTRICTS THE AUTHORITY TO NOT HIRE A CONVICTED FELON WE WILL BE DOING OUR PART TO BE A PROACTIVE LEGISLATURE.

THANK YOU FOR ALLOWING ME TO TESTIFY AND I STAND READY TO ANSWER ANY QUESTIONS.

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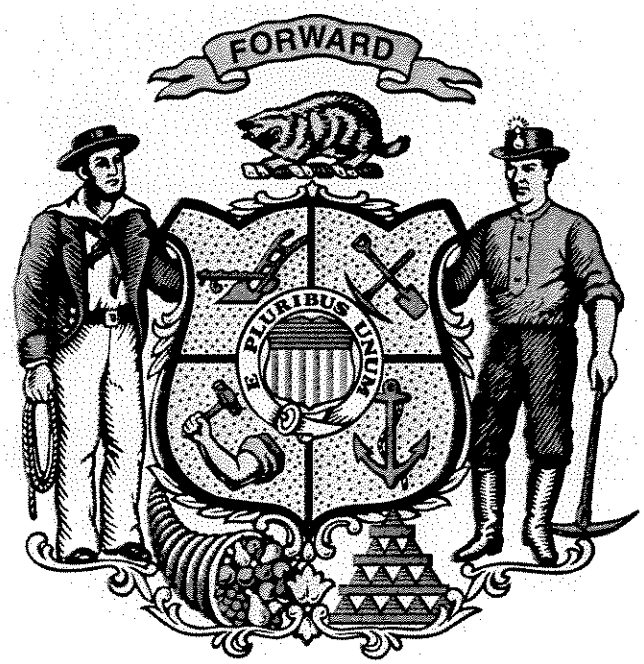
Email: Sen.Darling@legis.state.wi.us ▫ **Web page:** www.legis.state.wi.us/senate/sen08/news/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WISCONSIN ASSOCIATION OF SCHOOL BOARDS

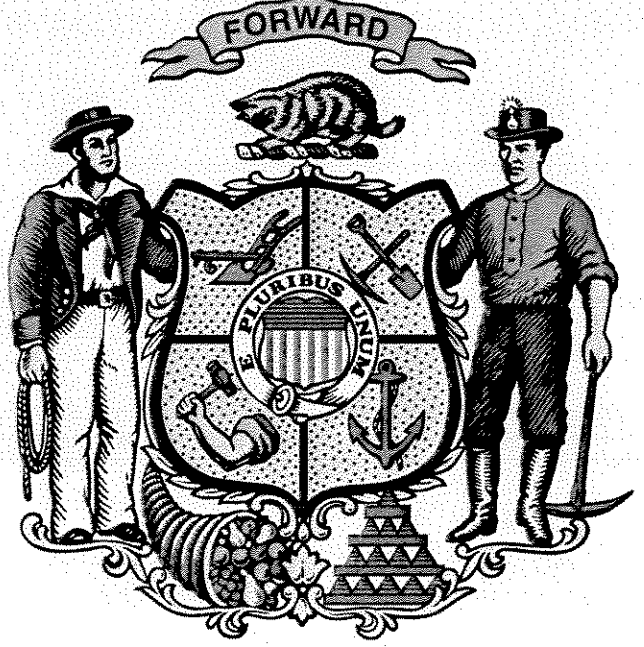
122 W. Washington Avenue, Madison, WI 53703
Phone: 608-257-2622 • Fax: 608-257-8386

John Ashley, Executive Director

TO: Senate Education Committee
FROM: Jeff Pertl, Legislative Services Coordinator
DATE: October 18, 2005
RE: Summary of positions

The Wisconsin Association of School Boards (WASB) strongly supports AB 84, SB 151, SB 327 and SB 384. The WASB will provide supplementary information on AB 84 and SB 280. Thank you for your consideration.

Bill	Description	Position
AB 84	Provides flexibility on the number of school days required each school term, while maintaining the current hours of instruction required. (*See specific position paper)*	Supports
SB 151	Permits an educational agency to refuse to employ or to terminate from employment an unpardoned felon.	Supports
SB 229	Allows school boards to grant high school physical education credit for extracurricular sports if the pupil earns an additional 1.5 credits in another academic subject.	Monitoring
SB 280	Prohibits pupils who take prohibited substances or engage in certain practices from participating in interscholastic athletics. (*See informational paper*)	Monitoring
SB 327	Requires districts to provide performance reports to parents only upon request and to post them on the district's Internet site if possible.	Supports
SB 361	Makes technical changes to state statutes relating to fingerprint cards for background checks and to reflect the name change of the Wisconsin Council of Religious and Independent Schools.	No position
SB-382	Requires districts to transport pupils, who live outside the school district due to a joint custody arrangement, to and from an agreed-upon location within the district.	Monitoring
SB-383	Makes technical modifications to the laws governing transportation of children with disabilities.	Monitoring
SB-384	Counts pupils who attend the Youth Challenge Academy for school district revenue limit purposes	Supports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WISCONSIN CATHOLIC CONFERENCE

Testimony on Senate Bill 151
Presented to the Senate Committee on Education
By Barbara Sella, Associate Director
October 18, 2005

On behalf of the Wisconsin Catholic Conference, I am offering this testimony in opposition to Senate Bill 151.

Our stance on criminal justice issues is guided by the social teaching of the Catholic Church and insights gained from long experience ministering to prisoners, ex-offenders, crime victims and their families. This experience led to the development of the WCC's 1999 statement, *Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin.*

The statement identifies several principles for evaluating public policies in the criminal justice area. Three of these principles that speak directly to issues raised in SB 151 are **1)** that criminal justice policies serve the common good, **2)** that they foster restoring victims and offenders to the community, and **3)** that they exercise an option for the poor and marginalized. On this latter point, policies must be assessed in light of their impact on racial minorities.

We believe this bill will weaken efforts to restore offenders to the community. The bill will affect the right to work of many, many people. More than 65,000 people are on probation or parole. However, this number does not include those who are no longer under supervision but have not been pardoned. Hence the number of people affected by this legislation is undoubtedly much higher.

We appreciate the legislature's desire to respond to the public's fear of crime, however, Wisconsin has one of the lowest violent crime rates in the country. In 2002 the violent crime rate in Wisconsin was about 48 percent less than the 2001 Midwest rate and 55 percent less than the 2001 rate for the United States. Clearly, the fact that a felon can't be denied a job unless his crime is related to the position he seeks has not made Wisconsin a dangerous place to work or live. Rather, one can argue that our crime rate is lower because our laws make it easier for ex-offenders to support themselves upon completion of their sentences.

Further, although rape and murder get headlines, the vast majority of offenses in Wisconsin are for less violent crimes. According to the Office of Justice Assistance 2002 preliminary report on crime and arrests in Wisconsin, violent offenses accounted for just under 7% of all adult arrests in Wisconsin. In our view, the low rate of violent crime in Wisconsin does not justify undermining the right to employment of so many.

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Permitting discrimination against felons may make for good politics but it undermines the goal to reintegrate former offenders into society. Research cited by a special Legislative Council Committee on faith-based approaches to criminal justice found that offenders with the best chance of staying out of prison are those who have a supportive family, a supportive faith community and gainful employment. Inmates who believe that they will be denied employment solely on the basis of their record may be less inclined to improve their job skills while in prison. This can only undermine rehabilitation and training in the corrections system. The goal of keeping people out of prison and in jobs is better served by opening doors to the workplace, not closing them.

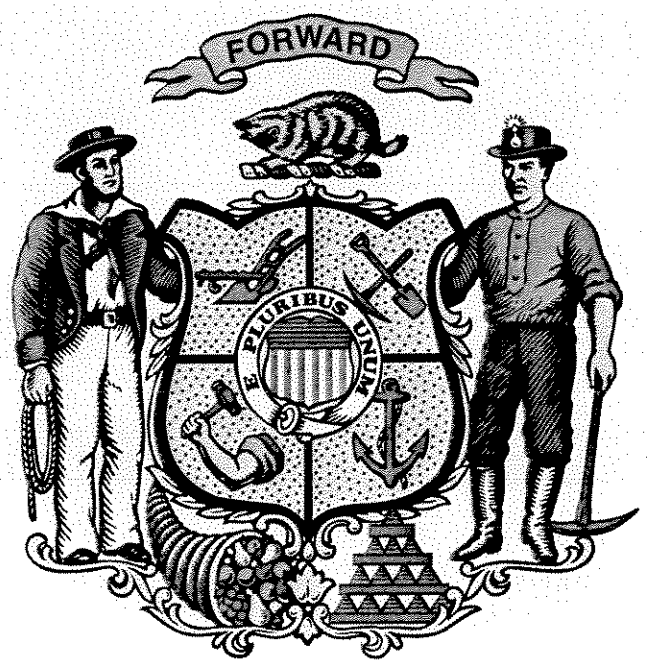
Another serious flaw in this bill is its disproportionate impact on people of color. Though less than ten percent of our state's population, minorities account for nearly half of our prison population. In calendar 2002, the unemployment rate in Wisconsin was 5.5% overall. But for African-American workers it was 18.5%. It is reasonable to assume that enacting this bill may serve to increase that disparity.

Finally, it is the role of society, not individuals, to impose punishment for crimes against the community. Should this bill become law, employers will be free to reach their own judgments as to which crimes are more serious and warrant denying a person access to a job.

We believe that SB 151, as currently drafted, is broader than necessary to achieve its goals. As an alternative, we invite you to consider an approach suggested in the form of Assembly Substitute Amendment 1 to 2001 Assembly Bill 4. This alternative is based on the provisions of Wis. Stat. sec. 118.19, governing teacher licensure which provides that the state superintendent may not license a person as a teacher if the applicant has been convicted of a felony (Class A, B, C or D) under Chapter 940 (which addresses crimes against life and bodily security) or Chapter 948 (which addresses crimes against children) until six years have passed since the conviction and the person establishes by clear and convincing evidence that he/she is entitled to a license.

Inasmuch as teachers have the most unsupervised face-to-face contact with our children it seems unreasonable to place a greater barrier to employment before other employees who have less access to children. At the same time, limiting SB 151 to crimes mentioned in 118.19 also provides more clarity as to which offenses warrant denying employment.

Thank you.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WISCONSIN COUNCIL ON CHILDREN & FAMILIES
Voices For Wisconsin's Children

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www.wccf.org
A Member of the National Association of Child Advocates

TO: Senate Committee on Education

FROM: Bob Andersen

RE: Senate Bill 151, relating to: Permitting an Educational Agency to Refuse to Employ or to Terminate from Employment an Unpardoned Felon.

DATE: October 18, 2005

1. **SB 151 is Going in the Wrong Direction: The Movement Nationally and in Wisconsin is Towards Rehabilitating Ex-Convicts in the Face of Massive Incarceration Efforts Over the Past Several Years.**

650,000 people are released from prisons and over 7 million people are released from jails each year nationally, according to the Re-Entry Policy Council. Virtually every person incarcerated in a jail in this country – and 97 percent of those incarcerated in prisons – will eventually be released. The Re-Entry Policy Council was established in 2001 by The Council of State Governments to assist state government officials grappling with the increasing number of people leaving prisons and jails to return to the communities they left behind.

Last year, 500 felons were released from prison to Dane County, according to an article by Phil Brinkman for the Wisconsin State Journal (WSJ – September 27 2005).

According to the Bureau of Justice Statistics of the U.S. Department of Justice, there were ***8,107 inmates released from prison in 2003*** in Wisconsin. According to the Wisconsin Office of Justice Assistance, there were ***266,343 estimated adult admissions to jails in Wisconsin in 2003***. In addition, there were an estimated ***11,075 admissions of 17 year olds in 2003***. Because jail inmates are in jail for only a relatively short period of time, ***they will almost all be released within the year***.

The state's inmate population has tripled in 15 years, from less than 7,000 in 1989 to more than 22,000 today, according to a January 17, 2005 WSJ article by Brinkman. The incarceration rate has also nearly tripled.

National studies indicate as many as ***60 percent of inmates remain unemployed one year after release, while two in three are re-arrested within three years and nearly one-half will end up back in prison***, according to a January 16, 2005 WSJ article by the same author. The cost to taxpayers can be enormous. It costs Wisconsin taxpayers ***$28,088 on average per year to keep each of the estimated 22,000 men and women in prison and $2,041 a year supervising more than 67,700 people on probation or parole, according to the same article.***

These and other statistics have led the ***Wisconsin State Journal to editorialize that we need to be effective, not soft on crime (January 28,2005). We need to "recruit employers to hire former inmates. Many offenders have poor work histories but those under close supervision will have a compelling incentive to show up on time and ready for work."***

These articles of the Wisconsin State Journal are part of a series that may be found at http://www.madison.com/wsj/spe/prison. They are a series of 15 articles exhorting the public and policy makers to make sensible decisions about treating crime and the rehabilitation of ex-convicts.

A January 22, 2005 WSJ article summed up the shift in direction that has been occurring among policy makers by quoting former ***State Senator Bob Welch***, in remarks he made about creating halfway houses for the reintegration of offenders. The article said that "Welch had been one of the strongest supporters during the 1990's for longer prison terms and abolishing parole."

It quoted Welch as saying, ***"As far as I am concerned, I was on the winning side of that and got my way. . . Now, I am circling back and saying, 'OK, now that I know we're going to lock up the bad guys for a sufficient length of time, now we've got to look at what happens when they get out."***

2. **Employment is Critical in the Rehabilitation of Ex-Offenders and the Treatment of Ex-Offenders has a Profound Effect on African Americans.**

Numerous studies conducted in the past show the importance of meaningful employment in the rehabilitation of ex-offenders. In a recent study, Princeton University Department of Economics Professors Bruce Western, Jeffrey Kling, and David Weiman, in their January 2001 publication entitled, "The Labor Consequences of Incarceration," found that the treatment of ex-offenders has a profound effect on African-American males. ***On a typical day two years ago, Professor Western was quoted as saying, 29% of young African American male high school dropouts ages 22-30, were employed, while 41% (up from 26% in 1990) were in prison. He said that ex-offenders who do get jobs start work making 10-30% less than other African American high school dropouts.***

Professor Western also said that, without adequate jobs, these ex-offenders are unable to pay court costs that come out of their convictions, restitution to victims, and child support for their families. Professor Western was quoted to say that

> "we know that employment discourages crime, and because their employment opportunities are poor, they're more likely to commit crime again."

3. **Senate Bill 151 is Too Broad in Its Definition of What Employers are Covered**

The definition of an "educational agency" goes far beyond the elementary school setting that the authors of this bill generally have in mind with this bill. It covers a wide range of facilities that house adults: "a state correctional institution under s. 302.01, the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin School for the Deaf, the Mendota Mental Health Institute, and a state center for the developmentally disabled." First, these are institutions who take care of adults who are not the people that this bill seeks to protect. The enactment of this bill would adversely affect employees in settings where children are not involved. Secondly, these are also institutions who employ invaluable people who are likely to have felony records. The mental health institutes have teachers and counselors, among others, who are among the best at their trade because they have had drug problems that left them with felony convictions.

4. **The Bill Does Not Cover the Employees of Entities that Contract with Schools – Such as School Bus Drivers and Janitors – Fortunately, Current Law Allows Schools to Refuse Jobs To These Employees Where the Circumstances of Their Convictions Relate to the Circumstances of Their Jobs**

The bill does not include the employees of employers who contract with the schools. This means that the employees of employers who contract with the schools to provide transportation services and janitorial services, for example, are not covered by this bill. The fact is that, if you do have someone who is dangerous to children, probably the last place you want them to be working is on a school bus or in rest room where there is no supervision and where the chance for harm is even greater.

Fortunately, current law covers these employees and provides that they will not be employed where the circumstances of their convictions would make it dangerous for contracting employers to employ them on school buses and in rest rooms.

5. **Current Law Allows Employers, Including Schools, to Discriminate Against Employees on the Basis of Conviction Records, Where the "Circumstances of the Offense Substantially Relate to the Circumstances of a Particular Job." – SB 151 Allows Employers to Discriminate Against Employees Solely Because They Checked a Box Marked "Felony Convictions" Alone.**

Under ***current law***, a public or private employer may refuse to hire someone, or may terminate the person's employment, on the basis of ***any conviction record***, if there is a ***substantial relationship*** between the ***circumstances*** of that ***offense*** and the ***circumstances of the particular job***. This is perceived to be a better approach than looking only at the ***conviction***, because looking at the circumstances involved in the crime is far more revealing for an employer than looking only at what a person was convicted of -- especially where the person was convicted of a lesser offense. Current law does ***not require*** an employer to hire a person with a conviction record; it simply does ***not allow an employer to automatically*** reject an applicant who has checked a box on an application marked "felony conviction," for example. ***Employers can refuse to hire someone for any other reason. SB 151*** would allow these employers ***to automatically reject*** an applicant or fire an employee with ***any felony record***, for ***simply having checked a box marked "felony conviction."*** Over the years, a great number of crimes have been reclassified as felonies -- resulting in 5 different classes of felonies today. Heading #10 below reveals the host of felonies which would allow these employers to automatically reject applicants or to fire employees who have been convicted of offenses which may well bear no relationship to the circumstances of their particular jobs.

6. **Automatically Denying Jobs to Applicants Based on Felony Records Frustrates State Efforts to Put its Residents to Work, Contributes to Recidivism, and Endangers State Residents' Safety and Property.**

If SB 151 were to be enacted, these employers would still be able to hire an applicant with a felony record, of course. However, the enactment of this bill would promote a policy for these employers statewide that would deny employment to people based solely on their felony convictions. This frustrates the goal of the state in ensuring that its residents are engaged in gainful employment. It frustrates the goals and success of W-2, because many W-2 participants have felony convictions in their past, especially since the definition of felonies has been broadened. In addition, without employment, people are driven to commit crimes to support themselves. Numerous studies have shown that employment is one of the most important factors in combating recidivism. When people are driven to commit new crimes, more residents of the state become the victims of crime.

7. Current Law is Not a Burden on Employers

According to the testimony of the Equal Rights Division of the Department of Workforce Development on this same legislation during the 2003 session, following is the record of these cases for 2001 and 2002:

> For calendar years 2001 and 2002, the following number of complaints involved an allegation of conviction record discrimination against an educational agency:
>
> 5 complaints in 2001
> 9 complaints in 2002
>
> During those years, there were no findings of probable cause against any educational agency, no appeals of findings of no probable cause and no hearings held. Three of the complaints received in 2002 remain in investigation.

This is consistent with an article in the August 28, 1999 edition of the *Milwaukee Journal Sentinel*, which reported that for ***all employers*** the records of the Equal Rights Division indicate that from January 1, 1997 to August 26, 1999, a total of ***131*** claims of discrimination based on arrest or conviction records were filed. Of those, only ***22*** were shown to have probable cause -- meaning that the claims would go any further. Of those, in only ***2*** claims was it shown that the action of the employer was in violation of the law.

In other words, in almost all claims there is always some "substantial relationship between the circumstance of the offense and the circumstances of the job." For example, in one of the few court decisions to come out of the statute, the Supreme Court found that there was a "substantial relationship" between a record of armed robbery and a job as a bus driver, so as to entitle the employer to refuse the job to the applicant on that basis alone. ***Similarly, LIRC and county court decisions have held that convictions involving drug trafficking are substantially related to jobs as a district agent for an insurer, youth counselor for emotionally disturbed juveniles, a school bus driver, a home health aid, a paper mill machine operator, and a door to door salesman.***

With this stark reality as a background, anecdotal claims of inconvenience for employers or of cases that are contrived by lawyers to extort money from employers become difficult to imagine.

8. **The Value of Current Law, Then, is Simply to Prevent Employers from Establishing Application Forms that Automatically Reject Applicants who Check a Box Marked "Felonies."**

Under current law, these employers can easily refuse to hire someone for "other reasons," or because they want to hire someone else. They simply cannot say they are refusing to hire someone because of a "felony conviction" ***alone***.

9. **Current Law is a Codification of Decisions of the U.S. Supreme Court, Federal and State Courts, the Equal Employment Opportunities Commission (EEOC) and the State Equal Rights Division (ERD), Holding that Discrimination Against Minorities on the Basis of Conviction Record, in the Absence of "Business Necessity," Constitutes Race Discrimination – The Enactment of AB 284 Will Not Change This Law.**

The U.S. Supreme Court ruled in Griggs v. Power Co., 401 U.S. 424 (1971), that discrimination based on circumstances which have a "disparate effect" on persons because of their race or national origin, ***is in fact*** discrimination based on ***race or national origin*** and is prohibited by Title VII of the Civil Rights Act of 1964, ***in the absence of a showing of "business necessity"*** in a particular case. This decision was followed by a number of federal and state court decisions, and decisions of the EEOC and ERD, in ruling that discrimination based on criminal record for minorities is in fact discrimination based on race or national origin, in violation of Title VII of the Civil Rights Act of 1964. This is so, because minorities have a greatly disproportionate record of convictions. The logic, then, is that to refuse employment or to take other adverse job treatment of a minority because of a record of conviction, without an adequate business reason, is in fact an adverse treatment of an employee because of race or national origin. It is racial discrimination in violation of Title VII and in violation of Wisconsin's statutory prohibition against discrimination based on race.

The Equal Employment Opportunities Commission (EEOC) states in its guidelines that an employer may only exclude an applicant because of a criminal conviction if there is a business necessity.

"To establish business necessity, the employer must show that three factors were taken into consideration in the hiring decision: the nature and gravity of the offense(s); the time that has elapsed since the conviction and/or completion of the sentence; and the nature of the job held or sought," according to the EEOC. "For example, business necessity exists where the applicant has a fairly recent conviction for a serious offense that is job-related."

The "disparate impact" theory is still the law of the land. In April, 2002, the U.S. Supreme Court dismissed an appeal in an age discrimination case challenging the "disparate impact" theory, Adams v. Florida Power Corporation,

No. 01-584. While there was no explanation given by the court for its dismissal, it was a dismissal of a case that the court had earlier approved for appeal and had even heard arguments on. In any event, the dismissal of the case means that the "disparate impact" theory is still the law.

10. Other States' Laws

Several states fair employment agencies and courts have issued decisions based on "disparate effect." Some have included "disparate effect" in their administrative rules or statutes, e.g. Iowa. In addition, at least the following several states have created special laws -- either by statute or by administrative action of Human Rights Commissions -- prohibiting discrimination based on conviction:

There have been at least two recent developments in other states, as states attempt to address the growing problem of putting ex-offenders to work:

Delaware enacted a law last year lifting the ban on licensing for individuals with felony convictions for over 35 professions and occupations. The legislation provides that licenses may only be refused if the applicant has been convicted of crimes that are "substantially related" to the licensed profession or occupation.

Illinois enacted a law this year that provides that the records of most misdemeanors and Class 4 felony violations are to be sealed, provided that certain conditions are met. The sealing of the records means that they cannot be part of an official record that can be used against people. The conditions are that 3 years have elapsed for misdemeanors and 4 years for felonies, and the persons have not committed another offense.

Illinois Commission Guidelines also have been existence for some time and have the force of law and similarly applies to all employers:

> "Use of such criteria [arrest or conviction information] operates to exclude members of minority groups at a higher rate than others, since minority members are arrested and convicted more frequently than others. Such criteria are therefor unlawfully discriminatory unless the user can demonstrate in each instance that the applicant's record renders him unfit for the particular job in question." An applicant may be disqualified for a job based on a conviction if "(I) state or federal law requires the exclusion or (ii) the nature of the individual's convictions considered together with the surrounding circumstances and the individual's subsequent behavior reveals the individual as objectively unfit for the job." [emphasis added]

Otherwise, the following states maintain similar restrictions:

Hawaii prohibits both private and public employers from discriminating because of any court record, unless a criminal conviction record bears a rational relationship to the duties and responsibilities of a particular job.

New York statutes prohibit discrimination by any employer based on the applicant or employee having committed a criminal offense, ***without allowing employers any exception***.

Washington prohibits discrimination by any employer on the basis of conviction records, except for those related to a particular job which are ***less than 7 years old***, under regulations issued by the Washington State Human Rights Commission.

Minnesota provides that consideration of a criminal record by a private employer cannot be an absolute bar to employment and that the job-relatedness of the crime must be considered, under the administrative policies set forth in the Minnesota Department of Human Rights Pre-Employment Inquiry Guide. The guide is not an administrative rule, but the effect is the same, since it would be risky to ignore it, because it is the state agency's interpretation of state law.

Colorado's Civil Rights Commission similarly has issued a pre-employment guide which provides that it may be a discriminatory practice for an employer to even make any inquiry about a conviction or court record that is not substantially related to job. While this is not expressed as a mandate, again, it would be risky to ignore it, since it is an interpretation of state law by the state agency.

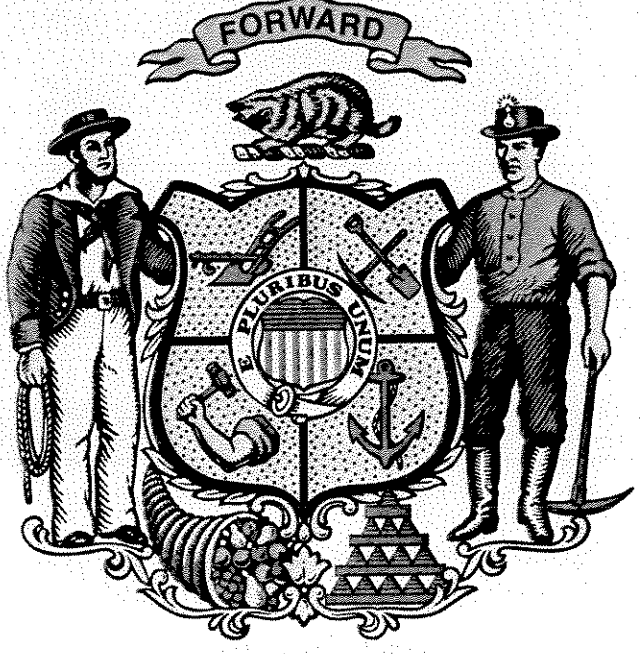
Ohio's Civil Rights Commission pre-employment guide similarly advises employers that even any inquiry into convictions of applicants for jobs is unlawful, ***without any reference to "substantial relationship***."

Connecticut statutes prohibit state employers from discriminating based on conviction record, unless the employer considers ***all*** of the following: (1) the relationship of the crime to the job; (2) the rehabilitation of the applicant or employee; and (3) the time that has elapsed since the conviction or release of the applicant from prison or jail.

Florida statutes prohibit a state or municipal employer from discriminating based on a conviction record, unless the crime is (1) either a felony or first degree misdemeanor and (2) is ***directly related*** to the employment position sought. In other words, an applicant may not be discriminated against for having committed a lesser misdemeanor, even if it is directly related to the job.

11. **Limiting the Repeal of the Prohibition to Only Felony Convictions, Still Extends the Repeal to a Broad Range of Conduct, Especially as More Crimes Have Become Classified as Felonies over the Years**

Section 939.50 of the statutes now lists five different classes of felonies. The following offenses are now felonies: possession of controlled substances (which accounts for the great majority of criminal offenses); operating a vehicle without the consent of the driver; removal of a part of a vehicle without the owner's consent; issuance of a check for more than $1,000 with insufficient funds in an account; forgery; property damage to a public utility; stalking with the use of public records or electronic information; threat to accuse another of a crime; theft of property in excess of $1,000; threat to communicate derogatory information; receiving or forwarding a bet; receiving or concealing stolen property of a value in excess of $1,000; distribution of obscene materials; solicitation of prostitution; conducting an unlawful lottery; bribery; bribing a public official; possession of burglary tools with the intent to enter a room or building designed to keep valuables; providing special privileges to a public official in return for favorable treatment; cohabitation with another by a married person; failure to pay child support for 120 days; action by a public official to take advantage of office to purchase property at less than full value; interference with the custody of a child for more than 12 hours; perjury; false swearing; destruction of public documents subject to subpoena; making a communication to influence a juror; fraud on a hotel or restaurant owner in excess of $1,000; transferring real or personal property known to be subject to a security interest; threatening to impede the delivery of an article or commodity of a business; damage to mortgaged property in excess of $1,000; threatening to influence a public official to injure a business; falsification of records by an officer of a corporation; destruction of corporate books by an officer of the corporation; fraudulent use of credit cards; theft of telecommunications services, cellular telephone services, or cable TV services for the purpose of financial gain; modifying or destroying computer data to obtain property; adultery; incest; theft of library materials of a value in excess of $1,000; criminal slander of title of real or personal property; flag desecration; theft of trade secrets; retail theft of a value in excess of $1,000; intentional failure of a public official to perform a ministerial duty; and providing false information to an officer of the court.


FORWARD
E PLURIBUS UNUM

SB 151 - felon

Petrowski and Alberta -

can't school board do that now

- only if the crime directly affects the school

Bob Anderson - not really will do what you think

massive amount of people being released from prison

they need jobs and we're going to tell them no?

Luther - which kids are you representing?

- Kids with parents who can't get jobs

↳ What about school kids?

application - if felon box is checked they're at now

Isn't it the employers responsibility to look into it

But we give them the means?

What does this not cover school - contracts w/ busing and janitorial

Alberta - what is the purpose of this bill?

not to fence people out.

Project Return Group - what we do, its not fair

some felonies are weak

make communities safe - get their jobs

Hansen - voted for this - supported Luther to vote this because of politics

Horsley - drunk driving position

open to amendment to list felonies

Frank Polaczek - drug now stacks at mental health

ticked off - a little over the top but he did put in

his time - Angry - takes it personal

Alberta - tried to calm - Frank doesn't think he'd ever be buried

Barbara Sella - No questions
we have her testimony