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☞ Details: See also SB363

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Education, Ethics and Elections...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Education, Ethics and Elections

Senate Bill 406

Relating to: the Milwaukee Parental Choice Program and granting rule-making authority.

By Senators Plale, Darling, Stepp, Kanavas, Welch and Leibham; cosponsored by Representatives Jensen, Krug, Krusick, Nischke, Ladwig, Krawczyk, Hundertmark, Honadel, Ainsworth, Ott, Albers, Owens, Nass, Stone and Jeskewitz.

January 26, 2004 Referred to Committee on Education, Ethics and Elections.

February 25, 2004 **PUBLIC HEARING HELD**

Present: (5) Senators Ellis, Stepp, Jauch, Robson and Hansen.
Absent: (2) Senators S. Fitzgerald and Reynolds.

Appearances For

- Sen. Jeff Plale
- Alvaro Garcia-Velez, Notre Daeme Middle School, Wauwatosa, WI
- Basimah Abdullah, Clara Mohammed School, Milwaukee, WI
- John Huebscher, Wisconsin Catholic Conference, Madison, WI 53703

Appearances Against

- Wendell Hruska, Project Return, Milwaukee, WI 53212
- Tommie Calmese, Madison, WI 53704
- Bob Anderson, Wisconsin Council on Children and Families
- Calvin Edwards, Voices Beyond Bars
- Arthur Fuqua, Madison, WI
- Paul Thormann, Fitchburg, WI

Appearances for Information Only

- Tricia Collins, Department of Public Instruction
Deputy State Superintendent Tony Evers, Wisconsin Department of
Public Instruction

Registrations For

Senator Bob Welch

Joe Quick, Madison Metropolitan School District, Madison, WI
John Forester, School Administrators Alliance, Madison, WI 53704

Registrations Against

Mary Kay Baum, Madison Area Urban Ministry

LuAnn Bird, League of Women Voters, Madison, WI 53703

Joanne Ricca, Wisconsin State AFL-CIO, 6333 W. Bluemound,
Milwaukee, WI 53213

Michelle Hill, Project Return

Representative Christine Sinicki

Tauvaris Moore, Madison, WI 53703

March 11, 2004

Failed to pass pursuant to Senate Joint Resolution 1.

Michael Boerger
Committee Clerk

Department of Workforce Development
Equal Rights Division
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P.O. Box 8928
Madison, WI 53708-8928
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State of Wisconsin
Department of Workforce Development
Jim Doyle, Governor
Roberta Gassman, Secretary
Micabil Diaz-Martinez, Esq., Division Administrator

February 24, 2004

State Senator Michael G. Ellis
Room 188 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

RE: Senate Bill 406

Dear Senator Ellis:

Thank you for the opportunity to address the Senate Committee on Education, Ethics and Elections on behalf of the Department of Workforce Development and the Equal Rights Division. The purpose of this letter is to publicly state our opposition of Senate Bill 406.

For information purposes, let me state that the Equal Rights Division is the entity within the Department of Workforce Development that enforces the Wisconsin Fair Employment Law (111.31-111.396 Wisconsin Statutes). The division receives over 4,000 complaints of employment discrimination each year. **Of those 4,000 complaints, 264 cases included an allegation related to conviction record discrimination, last year. Only one case in 2003 involved a school and the department found in favor of the school district.**

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 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. This standard has been the subject of much litigation, including three cases that reached our Supreme Court. See *County of Milwaukee v. LIRC*, 139 Wis. 2d 805; *Gibson v. Transportation Comm'n*, 106 Wis. 2d 22; and *Law Enforcement Standards Bd. V. Lyndon Station*, 101 Wis. 2d 472.

In *County of Milwaukee v. LIRC*, our Supreme Court explained that rather than the factual details of the crime, what is relevant to the determination of "substantial relationship" is whether the job provides a context within which

"a convicted person, being placed in an employment situation offering temptation or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism." 139 Wis. 2d at 821

It should be noted that 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.

• State Senator Michael Ellis
February 24, 2004
Page Two

In addition to the aforementioned, allowing employers to discriminate based on conviction record regardless of the circumstances would have a more practical impact perhaps not foreseen by the drafters of this bill. According to recent data from the Department of Corrections, there are over 32,823 individuals convicted of a felony being actively supervised in the community through its probation and parole system. One of the paramount principles of the justice system is the rehabilitation of the offender. Rehabilitation not only encompasses serving time, but accepting responsibility for the act, and making restitution to the aggrieved party or parties injured by the act. Rehabilitation also includes the reintegration of the ex-offender, as a productive and contributing member of society. The ability to find a stable and adequate source of income upon release from prison is an important factor in an individual's transition from prison back to the community. Many ex-offenders were connected to the world of legitimate work prior to incarceration and presumably want to find legal and stable employment following their release.

Part of this reintegration effort is the ability of the ex-offender to successfully secure gainful employment. In addition, as our "baby boom" generation begins to retire throughout this decade, a shortage of workers will be felt in our economy. As this wave hits our economy, every available worker, including rehabilitated ex-offenders, will be needed. The employment of ex-offenders will be necessary not only to bring stability to their families and incomes, and to control recidivism and public safety costs, but also to help address Wisconsin's expected labor shortage.

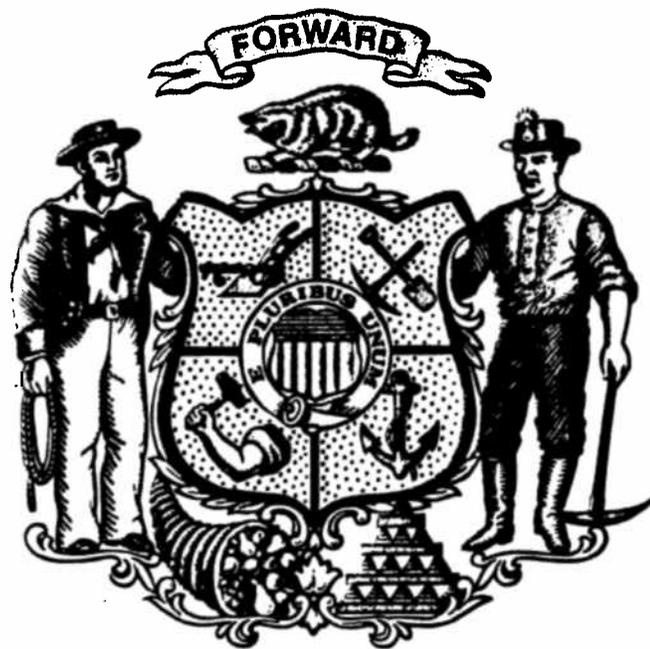
To allow this legislation to go forward would contravene years of proven research in the criminal justice field. Moreover, Wisconsin would create bad public policy by sending a clear and disturbing message to the effect that ex-offenders who already have served their time for their crimes will never be accepted back into society. These ex-offenders faced by this new reality would have no other alternative but to return to the illicit enterprises that put them originally in prison while creating a new wave of victims throughout our state in the process. It would be a shame after spending millions of dollars in taxpayers' monies in housing and educating these ex-offenders, that upon their release, our employment laws would set them to doom and failure from the outset.

In closing, the Equal Rights Division and the Department of Workforce Development are opposed to SB 406. I hope this information is helpful to the committee in its deliberations. Please feel free to contact if you have any questions.

Sincerely,



Micabil Diaz-Martinez, Esq.
Administrator
Equal Rights Division



**Testimony in support of SB 406
Senate Committee on Education, Ethics, and Elections**

February 25, 2004

**Basimah Abdullah
Principal Clara Mohammed School
317 West Wright Street
Milwaukee WI 53212**

**Alvaro Garcia-Velez
President, Notre Dame Middle School, Inc.
1420 West Scott Street
Milwaukee, WI 53204**

We represent several schools convened last year by Howard Fuller to work with the Department of Public Instruction on legislation to improve oversight of the Milwaukee Parental Choice Program.

We acknowledge and appreciate that this Committee — through Senator Ellis and Senator Jauch — encouraged DPI's initiative in this matter.

We support Senate Bill 406. It addresses concerns raised by unacceptable and very isolated circumstances in Milwaukee's choice program. SB 406 deals with three main issues:

- **First**, it expands DPI authority to act when schools violate program rules.
- **Second**, it requires sound fiscal practices by schools in the choice program.
- **Third**, it requires criminal background checks for all employees of schools in the MPCP.

There is substantial agreement between SB 406 and SB 363 —another bill before you today — on provisions involving DPI authority and sound fiscal practices. SB 406 and SB 363 differ in their approach to school safety and criminal background checks. SB 406 requires background checks for all employees, whereas SB 363 requires them only for “instructional staff.” We

do not support the SB 363 language, which excludes janitors, food service workers, and other employees.

For schools that now will be mandated to do background checks, SB 406 gives them the necessary discretion to use information from background checks in hiring decisions. We strongly support this aspect of SB 406. Without it, our schools both will be mandated to do background checks but will be limited in their ability to use resulting information.

Specifically, under current law, schools may not consider many crimes unless they prove the offense is “substantially related” to the job. This is a very ambiguous standard that applies to dozens of crimes. Here is a **partial list** of crimes where the burden of proof is on schools to show that an offense is substantially related to a job:

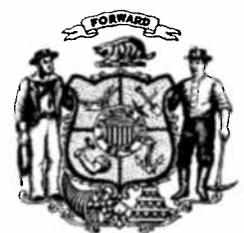
- 941.20 Endangering safety by use of dangerous weapon.
- 941.21 Disarming a peace officer.
- 941.30 Recklessly endangering safety.
- 941.31 Possession of explosives
- 943.02 Arson of buildings; damage of property by explosives.
- 943.10 Burglary.
- 944.15 Public fornication.
- 944.17 Sexual gratification.
- 944.20 Lewd and lascivious behavior.
- 944.31 Patronizing prostitutes.
- 946.31 Perjury.
- 946.41 Resisting or obstructing officer.
- 946.47 Harboring or aiding felons.

If schools are mandated to do background checks, they need adequate discretion to use resulting information in hiring. For crimes such as those listed above we don't believe the burden of proof must be on the school to show that the crime disqualifies an applicant.

We conclude by reiterating our thanks to this committee for taking a leadership role last fall in the development of the bills before you today.



WISCONSIN STATE LEGISLATURE





League of Women Voters of Wisconsin, Inc.

122 State Street, Madison, Wisconsin 53703-2500

608/256-0827 FX: 608/256-2853 EM: genfund@lwvwi.org URL: <http://www.lwvwi.org>

**TO: Senate Education, Ethics and Elections Committee - Chairperson
Senator Ellis, Senators S. Fitzgerald, Reynolds, Stepp, Jauch, Robson, and
Hansen**

STATEMENT IN OPPOSITION TO SB406

DATE: February 25, 2004

The League of Women Voters of Wisconsin has consistently **opposed legislation that unfairly denies work opportunities for ex-offenders** released from the criminal justice system. We object to the blanket provision in SB406, which denies work opportunities for certain employees in the educational institutions cited in the legislation.

Under current regulations, a teacher cannot be licensed if a felony has been committed within the past six years. This requirement is repeated in SB406. SB406 also requires criminal background checks for all employees which is an appropriate action and should be standard procedure in schools.

The League, however, objects to the blanket proposal in SB406 to deny employment to any other individuals in the educational institution. We object to allowing the termination of an employee who has been convicted of any felony in the previous six years regardless of the circumstances of the offense. We believe there are undesirable and unintended consequences from this provision.

What protects an employed ex-offender with satisfactory work performance from arbitrary termination? What about positions that should not be included such as those that involve contact with direct supervisors? What if this law is used to arbitrarily deny work opportunities for ex-offenders whose felonies do not relate to current circumstances?

If we continue to deny employment opportunities for felons and other offenders there can be no meaningful re-integration into ordinary society. This legislation creates policy that will only increase the cost of Wisconsin's Correctional System that already burdens our taxpayers.

It is important to remember that the ability of ex-offenders to responsibly re-enter society through adequate employment opportunities lessens the incidence of recidivism and its high cost to the public.

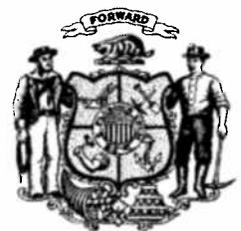
The League of Women Voters of Wisconsin opposes Senate Bill 406 and urges you to do so also.

The League depends on public support for its work.

Contributions, unless given to the Education Fund, are not tax deductible for charitable purposes.



WISCONSIN STATE LEGISLATURE



MEMORANDUM

To: Members of the Senate Committee on Education, Ethics and Elections
From: Individual Rights & Responsibilities Section, State Bar of Wisconsin
Date: February 25, 2004
Re: SB 406 – OPPOSE

The **Individual Rights and Responsibilities (IRR) Section** of the State Bar of Wisconsin opposes Senate Bill 406 because it would close the doors to employment opportunities for ex-offenders without justification.

This legislation would require that ALL employees of Choice Schools be refused jobs if they have violations of Chapter 940 or 948 in the past six years. In addition, it allows Choice Schools to refuse to hire or to fire *any employee* who has been convicted of any other felony within the past six years, *regardless of whether the elements of the offense substantially relate to the circumstances of a particular job*. SB 406 would result in denial of jobs to qualified applicants, frustrating the State's efforts to reintegrate ex-offenders into society and its efforts to reduce recidivism.

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.

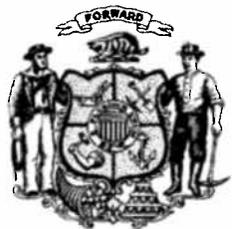
When the doors to employment opportunities are shut, it makes it that much harder for ex-felons to begin anew and steer clear of crime. As more crimes are classified as felonies, ex-offenders will find it increasingly more difficult to find a job. Denial of gainful employment can drive criminals to reoffend. 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.

For these reasons, the IRR Section urges committee members to OPPOSE SB 406.

If you have any questions, please feel free to contact Deb Sybell, State Bar of Wisconsin Government Relations Coordinator, at (608) 250-6128.



WISCONSIN STATE LEGISLATURE



COMPARISON OF OPERATIONAL ACCOUNTABILITY BILLS

Safeguard Measure	Moore's SB 363	Plale's SB 406	Jensen's AB 836
Certificate of Occupancy	<ul style="list-style-type: none"> o Requires MPCP schools to submit certificate of occupancy issued by city of Milwaukee. o Gives DPI authority to terminate immediately a MPCP's participation if they do not provide certificate. 	<ul style="list-style-type: none"> o Requires MPCP schools to submit certificate of occupancy issued by the city of Milwaukee. o Gives DPI authority to terminate a MPCP's participation in the succeeding year if they do not provide certificate. 	Same as SB 406
Fiscal Management	<ul style="list-style-type: none"> o Requires that MPCP schools show proof of participating in DPI approved fiscal management training and evidence of fiscal practice. o Gives DPI authority to terminate immediately a MPCP's participation if they do not provide proof. 	<ul style="list-style-type: none"> o Requires that MPCP schools show proof of participating in DPI approved fiscal management training and evidence of fiscal practice. o Gives DPI authority to terminate a MPCP's participation in the succeeding year if they do not provide proof. 	Same as SB 406
DPI Authority	<p>Authorizes DPI to:</p> <ul style="list-style-type: none"> o Prohibit schools' participation in MPCP if school misrepresents information in above points, or fails to refund any overpayments made to the school; o Immediately terminate a schools' participation if conditions are an imminent threat to the health and safety of pupils; o Notify parents when a school is barred from the MPCP; <p>Withhold payment from a school if the school violates the laws of MPCP.</p>	Same	Same as SB 406
Background Checks	<ul style="list-style-type: none"> o Requires MPCP schools to annually conduct background checks on all instructional staff (professional employees who have as part of their responsibilities have direct contact with pupils or supervise those with close contact to pupils). o Prohibits MPCP schools from employing as instructional staff any individual convicted of a 	<ul style="list-style-type: none"> o Requires MPCP schools to annually conduct background checks on all future staff (including cooks and janitors) when they are first hired, not every year. o Allows MPCP schools to terminate or refuse employment of any individual with any felony conviction that occurred within the past 6 years. 	<ul style="list-style-type: none"> o Requires MPCP schools to annually conduct background checks on all future staff (including cooks and janitors) when they are first hired, not every year. o Allows MPCP schools to terminate or refuse employment of any individual with any felony or

<p>Background Checks, Continued</p>	<p>crime related between the circumstances of that conviction and the MPCP job that occurred within the past 6 years.</p> <ul style="list-style-type: none"> o Gives DPI authority to immediately terminate a school's participation if the school fails to provide a statement that they will perform background checks. o <i>* Provides that convictions for the specified crimes also includes convictions for an equivalent crime in another state, country, or U.S., (not just under WI law);</i> o <i>*Changes the requirement that background checks be required annually to prior to being employed and at least once every 5 years thereafter (which is required of public teachers);</i> o <i>*Provides a 120-day period after the effective date of the bill for schools to complete checks of existing instructional staff;</i> o <i>*The MPCP must submit a statement that the appropriate background checks have been conducted by 8/1 (or by 5/1 for summer school conversions) or will be conducted prior to the schools participation in the MPCP;</i> o <i>*Modifies the check procedure to require non-residents be fingerprinted and that DOJ submit these prints to the FBI (a national check requirement).</i> 	<ul style="list-style-type: none"> o Gives DPI authority to terminate a school's participation in the succeeding year if the school fails to provide a statement that they will perform background checks. o Provides a 120-day period after the effective date of the bill for schools to complete checks of existing instructional staff. 	<p>misdemeanor conviction at any time. There is no look back.</p> <ul style="list-style-type: none"> o Gives DPI authority to terminate a school's participation in the succeeding year if the school fails to provide a statement that they will perform background checks. o Provides a 120-day period after the effective date of the bill for schools to complete checks of existing instructional staff.
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* Refers to Senator Moore's amendment to SB 363.