

Committee Name:
Senate Committee –
Judiciary, Corrections and Privacy
(SC–JCP)

Appointments

03hr_SC–JCP_Appt_pt00

Committee Hearings

03hr_SC–JCP_CH_pt00

Committee Reports

03hr_SC–JCP_CR_pt00

Clearinghouse Rules

03hr_SC–JCP_CRule_03–

Executive Sessions

03hr_SC–JCP_ES_pt00

Hearing Records

03hr_ab0000

03hr_sb0051

Misc.

03hr_SC–JCP_Misc_pt00

Record of Committee Proceedings

03hr_SC–JCP_RCP_pt00

Dick's MARKET

Senate Bill 51

Senate Committee on Judiciary, Corrections and Privacy

Dear Senate Committee:

My name is Richard Rinehart. I am a small independent grocer from River Falls and Amery, Wisconsin.

Approximately two years ago a law was changed that had been a great help to all of us in business in collecting on bad checks. That law gave our Municipal Court the power to take a person's drivers license away if they broke the law by writing bad checks and not paying for them.

Three years ago our bad checks amounted to under \$3000.00 for our stores per year. This past year, after the law was changed, our uncollectable checks amounted to \$16,000.00 which is an increase of more than five times.

We, as small business people, must have help on this matter. We must stop sending a message to those who write bad checks that it is alright to disobey the law. It is wrong — and the wrong message. We all know who ends up paying for this; it is all of the people who obey the laws.

We as business people have a hard enough time making it with all of the cost increases such as Health Insurance which has gone up 100% in the past 4 years.

Please consider giving our Municipal Courts the power to help us with this major problem we're facing today.

Thank You,



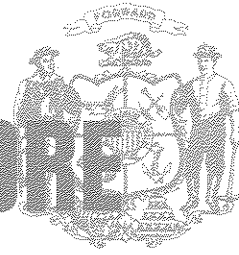
Richard Rinehart

4-8-03

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State Senator GWENDOLYNNE MOORE



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Member: Joint Finance Committee
Board Member: Wisconsin Housing and
Economic Development Authority

April 9, 2003

TO: Members of the Senate Judiciary, Corrections and Privacy Committee
FROM: State Senator Gwendolynne Moore
RE: Testimony in opposition to Senate Bill 51

Due to a committee hearing conflict, I am unable to appear before the Senate Committee on Judiciary, Corrections and Privacy. In light of my absence, I am submitting the following remarks that I hope will provide committee members ample information concerning the reasoning behind my opposition to Senate Bill 51.

As many of you may know, I sponsored a successful provision in the 1999-2001 biennial budget that removed the authority of courts to suspend driver's licenses solely for failure to pay fines for non-traffic municipal violations. The provision applied to both adults and juveniles.

Until this law was changed, judges were largely using driver's license suspensions as the only sanction for those persons who failed to pay a fine, regardless of the circumstances of the ordinance violation or the economic status of the individual. Most of the individuals who had their licenses suspended relied on their cars, and their driver's licenses, to get themselves to work and continued to drive after their licenses were suspended. Those who were caught ended up having their license revoked under Wisconsin's habitual traffic offender law, all because they could not afford to pay a fine and municipal court judges were unwilling to utilize one of the alternative sanctions at their disposal. As a result, over one half of the nearly 300,000 revocations and suspensions processed by the Division of Motor Vehicles (DMV) in 1994 were related to non-driving offenses.

In a March 15, 2001 letter to me regarding 2001 Senate Bill 59 (authored by Senator Harsdorf last session, that is almost identical to the bill being debated today), former Wisconsin Department of Transportation (DOT) Executive Assistant Robert Cook states *"WisDOT opposes SB 59 because the license suspension process does not seem to convince adults to pay forfeitures. They tend to continue to operate after suspension. Minor infractions that start out as FPN (Failure to Pay Forfeiture, non-traffic related) suspensions escalate into operating-while-suspended convictions."*

Moreover, the DOT, performing as a bill collector for local government (a role DOT has disapproved of in the past), estimates that the total annual cost of processing suspensions, revocations license reinstatements and occupational licenses is over \$15 million. However, according to the Legislative Fiscal Bureau, revenues generated from the reinstatement of fees only amounted to \$4.3 million in 1998. I question how Republicans plan to finance this pricey legislation. If enacted into law, 2001 SB 59, which stated earlier contains similar language to 2003 SB 51, would have increased state spending by \$350,000 annually and would have required eight additional staff to deal with the enormous workload. DOT would have had to absorb these costs from its Transportation Fund, which would have significantly hindered DOT's other operations. What strikes me most is that co-authors of SB 51 have been publicly fighting tooth and nail against every single attempt to divert money from DOT for non-road purposes. I

Vice Chair: Senate Committee on Universities, Housing and Government Operations; Senate Committee on Human Services and Aging

find it ironic that during this time of fiscal uncertainty, when our state is facing a \$3.2 billion deficit, supporters of SB 59 have finally found an acceptable reason for raiding this fund: to disenfranchise low-income individuals who rely on personal transportation to ensure a living wage.

Additionally, it should be noted that only about 40% of people whose licenses were suspended for the failure to pay a forfeiture reinstate their license within four years. It is likely that a significant portion of the 60% who did not reinstate their licenses continued to drive nevertheless. This action may have resulted in additional fines and/or jail time. Clearly, this program does not meet its purpose- to collect fines, nor is it cost effective.

The revocation of licenses is a highly relevant issue in my district of Milwaukee as many of my constituents have had their driver's licenses revoked due to their inability to pay for non-driving municipal violations. As you may be aware, the Milwaukee Police Department has a policy of increasing police presence in blighted areas. Citizens are ticketed for any violation – no matter how minor – including jaywalking, spitting, riding without a seatbelt and loitering. The individuals being ticketed tend to be poor and these excessive fines amount to a regressive tax on those least able to pay. As a result of these police policies, some of our constituents are losing their licenses because they cannot pay mounting fines. In fact, more central city males age 18-55 had suspension orders on record from 1992 through 1996 than had valid driver's licenses.

The revocation of licenses must be examined in light of the fact that some areas of Wisconsin – especially Milwaukee – suffer from economic stagnation. People seeking employment must travel to other communities not located on a bus line in order to find work. Many of my constituents, for example, must travel to Waukesha, Washington and Ozaukee counties to find entry-level employment. Revoking an individual's license for failure to pay these fines establishes a barrier to employment. The result is that individuals can neither pay fines, nor can they pay rent or buy food.

The 1995 Governor's Task Force on Operating After Revocation and Operating While Intoxicated identified non-traffic related license revocations as a statewide problem. Operating After Revocation (OAR) convictions rose statewide in correspondence with the tying of non-driving offenses to driver's license suspensions. The Task Force summarized the following statewide impacts:

- a) Enforcement of the OAR law diverts law enforcement, judicial, prosecutorial and defense resources from more important work;
- b) Driver's license sanctions are used for too many non-driving offenses;
- c) Escalated insurance costs due to OAR are an impediment to license reinstatement; many offenders have no insurance or only the state-mandated minimum;
- d) The driver's license has no status as a "privilege" for many people. It is deemed "essential." Loss of driving privilege is not a deterrent to numerous suspended or revoked drivers.

It is also important to note that less punitive penalties are accessible under current law to judges to effectively enforce the payment of forfeitures. These include:

- a) Order the person to pay the amount that is owed in installments spaced over a longer period of time;
- b) Order the person to perform community service;
- c) Order the person's wages garnished;
- d) Order a tax-set off against a state tax refund;
- e) Order that the payment of the amount owed be suspended or permanently stayed if the court finds the person's failure to pay is for good cause.

These alternative penalties can be used by judges for failure to pay forfeitures instead of suspending licenses or locking citizens up in "debtors prison" because they are unable to pay for municipal ordinance violations. Current license suspension penalties are costly, inefficient and suppress access to employment.

Thank you for your time and attention to this testimony. **I strongly encourage you to vote "NO" on SB 51.**


LEGAL ACTION OF WISCONSIN, INC.

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TO: Senate Committee on Judiciary, Corrections and Privacy

FROM: Bob Andersen 

RE: SB 51, relating to authority of a court to suspend a person's operating privilege for violations of ordinances unrelated to the operation of a motor vehicle or for failing to pay a penalty for such a violation.

DATE: April 9, 2003

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. One of the projects that LAW administers is the Legal Intervention for Employment (LIFE) project. That project focuses on getting driver's licenses restored so that people can obtain employment. As a result, we see a number of people whose employment is adversely affected by the suspension of their driver's licenses for ordinance violations.

Need for Compliance with Ordinances

There is no doubt that SB 51 addresses a very serious problem. That is to ensure that adults in the state abide by local ordinances. This is a huge problem, because to a large extent, the municipal justice system has taken over for the criminal justice system. Offenses which years ago use to be prosecuted as state criminal actions are now treated, particularly for first offenders, as municipal ordinance violations. This is actually good for both the system and for offenders. It is good for the system, because the more costly and formal requirements of the criminal justice system (including the right to counsel and certain criminal procedural requirements) have been replaced by the relatively less formal requirements of the municipal justice system. It is good for offenders, because, instead of being convicted of a crime, they can have a civil forfeiture imposed against them.

Suspension is for Failure to Pay Forfeiture, Not for Violating the Ordinance

However, municipalities lack the sovereignty, under the Wisconsin Constitution, to directly impose incarceration, against people who violate their ordinances. State ex rel. Pedersen v. Blessinger, 56 Wis 286, 201 NW 2d 778 (1972):

In village, city and county ordinance violations, the sanction can be only a fine or forfeiture as those units of government lack sovereignty which is necessary to make such

violation a crime involving punishment of imprisonment.

As a result, they are left with imposing forfeitures. It is only if the offenders fail to pay the forfeitures that the municipalities otherwise penalize the offenders. The penalty is for contempt of court. It is not for the underlying violation of the ordinance. And they cannot place a poor person in jail for failure to pay a forfeiture, under the equal protection clauses of the U.S. and Wisconsin Constitutions. Tate v. Short, 401 U.S. 395, 91 S.Ct. 668, 28 L.ED2d (1971). State ex rel. Pedersen v. Blessinger, 56 Wis 286, 201 NW 2d 778 (1972). Unfortunately, notwithstanding this prohibition, poor people are often sent to jail, where no examination is made of the person's ability to pay the forfeiture and where the courts do not apply the law.

Suspension of Licenses for Nonpayment of Forfeitures Only Relatively Recently Enacted

As a result of this dilemma, the law was changed not too many years ago, to allow for the suspension of a driver's license for a violation of an ordinance, in lieu of incarceration. Once again, the suspension of the driver's license is not a penalty for violating the underlying ordinance – it is a penalty for not paying the forfeiture. Here lies the rub. By definition, only poor people lose their licenses for a violation of these ordinances. No matter what the offense is that has been committed, if the offender has money, the offender can drive away.

State Policy and Equal Protection Concerns are Raised

The system raises grave policy concerns for the state of Wisconsin, and raises constitutional questions for the courts. The constitutional question is whether this system violates the Equal Protection Clause, because the mass of people who lose their licenses are people who lose their licenses based on only one criteria -- the ability to pay. As indicated above, the U.S. and Wisconsin Supreme Courts have already held that you cannot discriminate on the basis of ability to pay in incarcerating a person. However, the gravest concern in this area is the policy that is being implemented by the state. ***The system routinely places drivers out on the road throughout the state, without licenses and without insurance.*** This is an unwise policy both from the standpoint of the safety of other drivers and from the standpoint of what to do about these offenders. From the standpoint of safety, the fact that the other driver in an accident lacks insurance speaks for itself. From the standpoint of the offender, driving without a license because of an ordinance violation is only the beginning of what could be a budding life of crime. First, the driver's license is revoked for driving after suspension. Then the driver goes to jail for driving after revocation. Then the driver loses his or her job and things start spiraling out of control.

Statistics Show Skyrocketing Suspensions & Discriminatory Effect

DOT statistics show how driver's license suspensions have skyrocketed over the years. According to statistics of the Department of Transportation (DOT), license suspensions for non traffic related offenses have skyrocketed from 12,305 to 40,232 during the 1990's. Studies also show what a disproportionate effect license suspension has on inner city people. While it was a study directed at juveniles, not adults, a January 1999 University of Wisconsin -- Milwaukee is still probative of the disproportionate effect suspension has. The study found that, for Milwaukee County teenagers ages 16-18, the following startling statistics were revealed: (1) Of the 9,046 suspensions recorded for Milwaukee County teenagers, 84% were issued to city residents and 64% to teens from central city neighborhoods; (2) 93% of the suspensions were given to teens

without driver's licenses; (3) the overwhelming majority of the suspensions were for offenses that had nothing to do with operating a vehicle; (4) 71% of the Milwaukee County teens with revocations received their revocations for driving while suspended; (5) for every central city male teen with a valid license, there are three males with a suspension or revocation; (6) for every central city female with a valid license, there were two with a suspension or revocation; and (7) suburban teens were much less likely to be suspended, with seven teens having a license for every one with a suspension.

Suspension of Licenses Adversely Affects Employment

Studies also show what a significant effect the suspension of drivers' licenses has on employment. In surveys that have been taken of W-2 providers, the lack of a valid driver's license has been reported to be one of the largest obstacles to the successful employment of W-2 participants. Among other things, it deprives these agencies of the ability to place W-2 participants in nearby counties who are begging for workers. The W-2 participants with suspended licenses cannot get there because there is not sufficient alternative transportation available. The Special Committee on Labor Shortage of the Legislative Council submitted a report on May 8, 2001 including a concern about the profound effect driver's license suspension has on employment and recommended an investigation into revising laws that suspend driver's licenses because of not paying fines for non driving penalties.

Alternatives to the Suspension of Licenses

There are some alternatives to the automatic suspension of drivers' licenses. In some areas of the state (e.g., Waukesha County) civil enforcement of these civil forfeitures is exhausted before the decision is made to suspend a driver's license. First, *tax intercepts* are utilized to the fullest extent to satisfy these forfeitures. Secondly, *wage garnishment* has to be best of all worlds for both the municipalities and for the offenders, because the municipality gets paid what it is due and the offender is working to work off the debt. Thirdly, *community service* is increasingly being used in the major metropolitan areas, to require offenders to work off their forfeitures. At a minimum, this exacts some price from offenders as a penalty for violating an ordinance. It also could well benefit the community and the agencies that these workers are assigned to. For smaller communities, it has often been said that they do not have the community service facilities to be offering community service as an option. However, if these communities adopted a policy or requiring offenders to report to whatever local nonprofit organizations they have in their communities, a system can be worked out with the nonprofits that monitors the compliance of the offenders. If the offenders do not comply, driver's license suspension or other appropriate penalties can be brought to bear, for contempt of court. There already is precedent for these community service assignments. They are currently made for W-2 participants. Whatever questions exist regarding compliance and liability should be answered by the experience of these W-2 agencies.

In fact, the civil enforcement of judgments referred to above, should be win-win situation for the municipalities, because the municipalities will be able to collect on their forfeitures. While the current system is designed to result in remuneration to the municipalities, the sad reality is that large amounts of forfeitures go uncollected and people just continue to drive without valid licenses.

Suspension is Most Difficult to Justify for Non Traffic Violations

The analysis and recommendations included in this memo apply to the suspension of driver's licenses as an appropriate remedy -- this really applies to both traffic and non traffic ordinances alike, where the suspension of the license is being ordered for failure to pay the forfeiture. Of course, the concerns raised by this memo are only magnified when the focus is drawn specifically on non traffic violations alone -- as is the focus of SB 51. The effect of the suspension of drivers' licenses is even more troubling, when the underlying violations are not even related to the operation of a motor vehicle. It becomes even more difficult to justify putting people at risk by placing motorists on the road without licenses and without insurance -- when the offenders' transgression in the first place had nothing to do with the operation of a motor vehicle -- but instead was for something like vagrancy, disorderly conduct, or jaywalking.

RIVER FALLS
MUNICIPAL COURT



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April 9, 2003

To Whom It May Concern:

The River Falls Municipal Court would like to strongly urge all members to reinstate the right to suspend driving privileges on all municipal citations for failure to pay. Our Court is classified as a medium sized Court which means we process 1000-1500 citations yearly. Because we can no longer suspend for failure to pay, our Court has and will continue to lose substantial income. The Court has been left with minimal means to collect overdue fines. Losing the right to suspend on all municipal citations not only affects each court but a percentage of the fine is disbursed to the county and the state. This has become a no win situation for several agencies. Your support would be appreciated in moving towards the reinstatement of a driver's license suspension for all those who fail to pay their municipal fines.

Sincerely,

Hon. June H. Cicero
River Falls Municipal Court Judge

JHC:lg



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Roger D. Leque, Chief of Police

April 9, 2003

Senate Committee on Judiciary, Corrections and Privacy
Room 411 South
State Capital
Madison, WI

Re: Senate Bill 51, Authorizing a court to suspend a person's driver's license for non-traffic ordinance violations or for failing to pay a forfeiture for such a violation

Dear Committee Members:

Please accept this letter as an expression of support for Senate Bill 51. The ability of the Municipal Court to hold individuals accountable for non-traffic ordinance violations has been drastically reduced since the elimination of the driver's license suspension option several years ago. This is especially prevalent as it relates to worthless check violations and shoplifting violations. It is my opinion that the reinstatement of the driver's license suspension for non-traffic ordinance violations would re-establish a much needed alternative for the courts to hold people accountable for those types of violations.

Again, I would urge all of you to support Senate Bill 51.

Sincerely,

Roger D. Leque
Chief of Police

RDL:ch

c: File

Vote Record
Committee on Judiciary, Corrections and Privacy

Date: 1-8-4

Moved by: Carpenter

Seconded by: Fitz

AB _____

SB 51

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

S Amdt 1

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

Passage

Adoption

Confirmation

Concurrence

Indefinite Postponement

~~Rejection~~

Rejection

Tabling

Nonconcurrency

Committee Member

Senator David Zien, Chair

Roll Call

Absent

Not Voting

Senator Scott Fitzgerald

Senator Cathy Stepp *Polling*

Senator Tim Carpenter

Senator G. Spencer Coggs *Polling*

Totals: 5 0

Roll Open

Motion Carried

Motion Failed

Vote Record
Committee on Judiciary, Corrections and Privacy

Date: 1-8-4

Moved by: Zien Fitz Seconded by: Z.F.

AB _____ SB 51 _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
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Be recommended for as amended
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator David Zien, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Scott Fitzgerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cathy Stepp <i>Poll</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Tim Carpenter	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator G. Spencer Coggs <i>Poll</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>3</u>	<u>2</u>	_____	_____

Motion Carried Motion Failed