

**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\_sb0058

**Misc.**

03hr\_SC–JCP\_Misc\_pt00

**Record of Committee Proceedings**

03hr\_SC–JCP\_RCP\_pt00

Jim Doyle  
Governor

Roberta Gassman  
Secretary

SB 58  
??



State of Wisconsin  
Department of Workforce Development

**EQUAL RIGHTS DIVISION**  
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February 12, 2003

Good afternoon Representative Suder and members of the Committee:

Thank you for the opportunity to appear for information on behalf of the Department of Workforce Development. The Equal Rights Division of the department enforces the Wisconsin Fair Employment Law, including its provisions related to conviction record. The division's Civil Rights Bureau, of which I am Director, handles the investigation and hearing of complaints filed under the Fair Employment Law.

The Equal Rights Division receives over 4,000 complaints of employment discrimination each year. Of those, approximately 300 per year include an allegation of discrimination because of conviction record.

The Wisconsin Fair Employment Act prohibits an employer from engaging in any act of employment discrimination against any individual on the basis of arrest or conviction record. However, the law contains the following relevant exception:

"Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity. . . ."

Equal Rights Division personnel carefully apply the substantial relationship test at all stages of case processing, in determining whether there has been a violation of the Fair Employment Law. The outcome statistics for cases against educational agencies indicate that the division found a substantial relationship in every case where the issue was determined.

For calendar years 2001 and 2002, the following numbers 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.

I hope this information is helpful to the committee in its deliberations. I would be glad to answer any questions you have.

# Alberta Darling

## Wisconsin State Senator

Co-Chair, Joint Committee on Finance

### TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

TUESDAY MAY 12, 2003

SENATE BILL 58

THANK YOU CHAIRMAN ZIEN AND MEMBERS OF THE COMMITTEE FOR ALLOWING ME TO TESTIFY ON SENATE BILL 58, THE SENATE COMPANION BILL TO REPRESENTATIVE PETROWSKI'S ASSEMBLY BILL 41. I'M TOM PETRI, AIDE TO SENATOR DARLING. SENATOR DARLING IS UNABLE TO BE HERE HERSELF TODAY, AS THE JOINT FINANCE COMMITTEE IS ABOUT TO CONVENE THEIR DAYS' BUSINESS.

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 SENATOR DARLING APPRECIATES HIS ACCEPTANCE OF HER SUPPORT AND ASSISTANCE.

I WILL SPARE THE COMMITTEE THE "WHAT" AND THE "WHY" BEHIND SENATE BILL 58, BUT I WOULD LIKE TO ARTICULATE WHY SENATOR DARLING FEELS SO STRONGLY ABOUT THE PASSAGE OF THIS BILL. SHE HAS THROWN HER SUPPORT BEHIND THIS ISSUE FOR TWO VERY IMPORTANT REASONS. ONE, SHE BELIEVES 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, SHE BELIEVES 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 DISTRICT 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, SENATOR DARLING BELIEVES WE CAN NEVER, EVER PROTECT OUR CHILDREN TOO MUCH. WE CAN NEVER, EVER WATCH THEM CLOSELY ENOUGH AND WE SHOULD NEVER, EVER STOP TRYING TO PROTECT 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 AS A LEGISLATURE TO STOP THAT ONE CRIMINAL ACT SOMEWHERE INSIDE OF ONE OF WISCONSIN'S 426 SCHOOL DISTRICTS.

THANK YOU FOR ALLOWING ME TO TESTIFY ON BEHALF OF SENATOR DARLING AND I STAND READY TO ANSWER ANY QUESTIONS THE COMMITTEE MAY HAVE ON SENATE BILL 58.

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Capitol Office: P.O. Box 7882 • Madison, Wisconsin 53707-7882 • Phone: 608-266-5830 • Fax: 608-267-0588 • Toll-free: 1-800-863-1113

District Office: N88 W16621 Appleton Avenue • Menomonee Falls, Wisconsin 53051

Email: Sen.Darling@legis.state.wi.us • Web page: www.legis.state.wi.us/senate/sen08/news/

**WOMEN AND POVERTY  
PUBLIC EDUCATION INITIATIVE**

**3782 N. 12<sup>th</sup> Street  
Milwaukee, WI 53206  
(414)265-3925**

May 12, 2003

TO: Members of Senate Judiciary Committee  
FROM: Jean Verber and Anne Hazelwood  
RE: Senate bill – companion to AB41

**We come to speak in opposition to AB 41.**

We have been working in Milwaukee for the past 8 years with women struggling to make the transition from AFDC to meaningful employment after W-2. For the vast majority of women meeting time limits, the greatest challenge is finding a decent paying job. In central city Milwaukee, reports show that there are presently 11 active job seekers for every available full time job(UWM). For mothers, reliable child care and transportation are added concerns in finding and keeping a good job.

These mothers do not need further roadblocks to landing a job. To make it possible for education agency employers to reject an application **just because they read 'a felon'** in the person's background does not make sense. Certainly, if the felony was directly related to some kind of crime against children or vulnerable adults, an employer would find that in the background check, which is the purpose of background checks. But to make it possible to reject someone with any kind of felon goes beyond the base of reason. How do returning felons get started again? This, it seems, is a slippery slope making it easy for any employer to reject applicants for a felony in one's background. This is unfair and unreasonable. As it is, many job seekers come back from their job search totally depressed because many employers **already** use the felon info as the reason for not hiring the individual who apparently is quite qualified for the job.

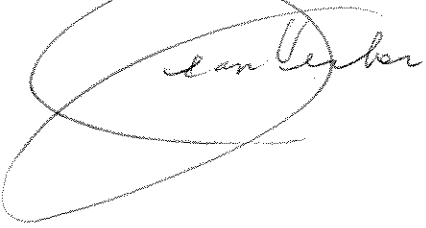
With nearly 2000 families currently listed as having no earned income from employment or from W-2 cash benefits, how many more will find the same fate when rejected for work due to a felon in one's history.

We believe this legislation will promote blatant discrimination, will discourage job seekers from the hard task of searching for jobs already in short supply, and give a message from society to those who served their time, that there is no room for change or moving on in one's life to provide for one's family and live a productive life in the community. On the contrary, employment has been shown to stabilize family life and reduce crime in neighborhoods.

We, therefore, urge you to reject AB 41 or its senate equivalent. The law, as it stands, is quite sufficient to safeguard the community from predators or those likely to be a danger to the community. Further barriers to employment only promote the conditions for crime and violence where people become desperate for the resources to support oneself or one's family. AB 41 is punitive and unnecessary.

We trust you will give this your careful consideration especially as you dedicate yourself to the support of family well-being in this state.

Thank you.

A handwritten signature in cursive script, appearing to read "Sean Decker", enclosed within a large, loopy circular scribble.

# MEMORANDUM

TO: Senator Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy  
FR: John Hogan, Committee Clerk  
RE: Agenda for Committee hearing on May 13, 2003

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The committee will hold a public hearing on the following items at the time specified below:

Tuesday, May 13, 2003  
10:00 AM  
201 Southeast

The following is an agenda for today's committee hearing:

- I. Call to order 10:00am
- II. Clerk call the roll (hold open)
- III. Purpose of holding hearing:
  - **Senate Bill 32 / Assembly Bill 51 (companion bills):** RELATING TO sexual activity involving jail/ prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of the Department of Corrections and providing a penalty.
    - AB 51 passed the full Assembly on April 29 by a unanimous 96-0 vote.
  - **Senate Bill 58 / Assembly Bill 41 (companion bills):** RELATING TO permitting an education agency to refuse to employ or to terminate from employment an unpardoned felon.
    - AB 41 passed the full Assembly on March 18 by a vote of 69-29.
- IV. Public testimony
  - **Senate Bill 32 / Assembly Bill 51 (companion bills):** RELATING TO sexual activity involving jail/ prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of the Department of Corrections and providing a penalty.
    - Limit testimony to 5 minutes per speaker
    - Ensure testimony is germane to topic
    - Summarize/limit redundant testimony
    - A SUBSTITUTE AMENDMENT to AB 51 was adopted in assembly committee, 9-0.
    - A SIMPLE AMENDMENT to the SUB was adopted on the Assembly floor.
    - The Committee will introduce a SUB to SENATE BILL 32, which encompasses the changes adopted by the Assembly. LEG COUNCIL memo explains the Assembly amd.
- V. Public testimony
  - **Senate Bill 58 / Assembly Bill 41 (companion bills):** RELATING TO permitting an education agency to refuse to employ or to terminate from employment an unpardoned felon.
    - Limit testimony to 5 minutes per speaker
    - Ensure testimony is germane to topic
    - Summarize/limit redundant testimony
- VI. Committee discussion/actions
- VII. NO Executive Session today. Likely EXEC before our public hearing next Tuesday, May 20<sup>th</sup>.
- VIII Adjournment—12:01pm



**WISCONSIN  
LAWYERS**  
STATE BAR of WISCONSIN\* EXPERT ADVISERS.  
SERVING YOU.

## MEMORANDUM

**To:** Members of the Senate Committee on Judiciary, Corrections & Privacy  
**From:** Individual Rights & Responsibilities Section, State Bar of Wisconsin  
**Date:** May 13, 2003  
**Re:** Assembly Bill 41/Senate Bill 58

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The Individual Rights and Responsibilities (IRR) Section of the State Bar of Wisconsin opposes Assembly Bill 41 and Senate Bill 58 because they would close the doors to employment opportunities for ex-offenders without justification. This legislation 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. These bills 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.

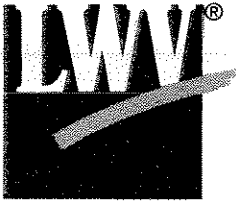
Should employers ever be allowed to deny someone an employment opportunity based on his or her criminal record? State law says yes. Current law allows employers, including schools, to discriminate on the basis of conviction records where the "circumstances of the offense substantially relate to the circumstances 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 IRR Section of the State Bar of Wisconsin believes current law strikes the appropriate balance. It promotes the common goal of reducing recidivism while giving employers the ability to refuse to hire felons whose offense relates to the job.

For these reasons, the IRR Section urges committee members to oppose Assembly Bill 41 and Senate Bill 58.

### State Bar of Wisconsin

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(800) 728-7788 ♦ (608) 257-3838 ♦ Fax (608) 257-5502 ♦ Internet: [www.wisbar.org](http://www.wisbar.org) ♦ Email: [service@wisbar.org](mailto:service@wisbar.org)



## The 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](mailto:genfund@lwvwi.org) URL: <http://www.lwvwi.org>

### **Statement to the Senate Judiciary, Corrections and Privacy Committee in Opposition to SB58 and AB41 Relating to Permitting an Educational Agency to Refuse to Employ or to Terminate from Employment an Unpardoned Felon**

**May 13, 2003**

The League of Women Voters of Wisconsin has consistently opposed legislation that unfairly denies work opportunities for ex-offenders from the criminal justice system. The current law, which allows denial of employment if the circumstances of a conviction relate to the circumstances of the job, in our view has fairly addressed the concerns of businesses and organizations.

The proposed legislation, SB58/AB41, allows an educational agency to refuse to employ or to terminate employment of any individual who has been convicted of a felony and not been pardoned, whether or not the circumstances of the felony substantially relate to the circumstances of the particular job.

The safety of children should raise special concerns but this bill provides only a superficial protection. The current law does not REQUIRE an employer to hire a person with a conviction relating to the circumstances of the job. Since this protection already exists it is of some concern to us that SB 58/AB41 is directed not for actual need, but for appearance.

In the last decade the State of Wisconsin has continued to create and reclassify a significant number of felonies. Since there are a miniscule number of pardons issued to ex-offenders we believe it is necessary to raise questions regarding possible undesirable and unintended consequences from this bill.

Can this be used to arbitrarily deny work opportunities for ex-offenders whose felonies were well in the past? Is there any protection for an employed ex-offender with satisfactory work performance from arbitrary termination? Are there employment positions, which have contact with their direct supervisors only and should not be included? And most important, if this bill is enacted will it be used as precedent for other employers to allow a conviction record as a basis for employment discrimination?

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. If we continue to deny opportunities for employment to felons and other offenders there can be no meaningful re-integration into ordinary society. The public will continue to bear the increasing costs of such policy. The costs of Wisconsin's correctional policy are already affecting taxpayers at every level.

The League of Women Voters of Wisconsin opposes Senate Bill 58/AB41 and urges you to do so also.

Thank you for considering our comments on this important matter.

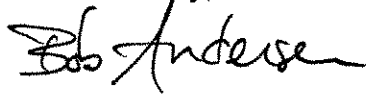
The League depends on public support for its work.  
Contributions, unless given to the Education Fund, are not tax deductible for charitable purposes.





OFFICERS

Judy Crain, *President, Green Bay*  
Larry Hagar, *Vice President, Wausau*  
Jacquelyn Boggess, *Secretary, Madison*  
Debra Suchla, *Treasurer, La Crosse*

TO: Senate Committee on Judiciary, Corrections and Privacy  
FROM: Bob Andersen   
RE: SB 58/AB 41, Permitting an Educational Agency to Refuse to Employ or to Terminate from Employment an Unpardoned Felon.

BOARD MEMBERS

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Shirley Williams, *Beloit*  
Marcus White, *Milwaukee*

DATE: May 13, 2003

1. **SB 58/AB 41 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.

2. **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 Who are Dangerous**

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.

ADMINISTRATION

Anne Arnesen, *Executive Director*  
Nan Brien, *Associate Director*  
Tanya Atkinson, *Milwaukee Director*

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, e.g. employees who have convictions where the circumstances involved the abuse of other people.

3. **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.”**

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. *SB 58/AB 41 would allow these employers to automatically reject* an applicant or fire an employee with *any* felony record, for simply having check 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. As heading #8 below reveals, the number of felonies that exist today would allow these employers to automatically reject applicants or fire employees who have been convicted of a host of offenses which may well bear no relationship to the circumstances of their particular jobs.

4. **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 58/AB 41 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.

5. **Current Law is not a Burden on Employers**

According to an article in the August 28, 1999 edition of the *Milwaukee Journal Sentinel*, 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.

6. **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.

7. **Employment of Ex-Offenders Becomes an Even More Serious Problem with the Large Increase in the Prison Population and the Subsequent Release of Those Prisoners; Effect on African Americans is Especially Profound**

The New York Times published a story on March 15, 2001, describing how the prison population soared in the 1990's nationally from 1.2 million to 2 million inmates. The article discussed how society will now be confronted with a new challenge as tens of thousands of those inmates are being released from prison. The challenge will be to reintegrate those ex-offenders into society. All of the studies that have been conducted in the past show the importance of meaningful employment in the rehabilitation of these ex-offenders.

The article went on to cite the findings of Princeton University Department of Economics Professors Bruce Western, Jeffrey Kling, and David Weiman in their January 2001 publication entitled, "The Labor Consequences of Incarceration." This study is the most

recent in a line of studies that have been conducted over the past several years on the effects of arrest, conviction and incarceration on the employment opportunities of ex-offenders. The study 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."

8. **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 SB 58/AB 41 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 "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.

9. 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:

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.

Illinois Commission Guidelines 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 therefore 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]

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."

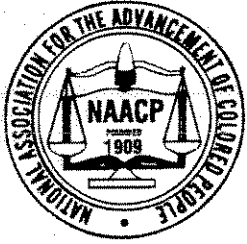
Connecticut statutes prohibit state employers from discriminating based on conviction record, unless the employer considers all of the following: (1) the relationship of the crime to the job; (2) the rehabilitation of the applicant or employee; and (3) the time that has elapsed since the conviction or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

10. **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; providing false information to a law enforcement officer; and providing false information to an officer of the court.



**FRANK A. HUMPHREY**  
REGION III REPRESENTATIVE — NATIONAL BOARD OF DIRECTORS  
**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE**  
PO BOX 821 • MADISON, WISCONSIN 53701-0821 • TELEPHONE (608) 288-9707

**WISCONSIN STATE NAACP CONFERENCE OF BRANCHES  
POSITION STATEMENT ON**

**Senate Bill 58**

**May 13, 2003**

Good morning Chairman Zien and members of the State Senate Committee on Judiciary, Corrections and Privacy. We commend each of you for providing the public with an opportunity for dialogue and significant discussion on this vitally important public policy issue.

My name is Frank A. Humphrey, and I represent the Wisconsin State NAACP Conference of Branches as the Legislative Committee Chairperson. The Wisconsin State NAACP Conference comprises chartered adult branches located in the cities of Milwaukee, Racine, Kenosha, Madison, Beloit, Green Bay and the counties of Waukesha, and Ozaukee.

As you can readily determine these geographic locations are also representative of this state's most concentrated areas of ethnic minority populations and modifications to the existing Wisconsin's Employment Relations Law, Chapter 111 is of vital importance to the citizens who reside in these communities.

We would like to make three points:

#1. The NAACP does not favor the elimination of protective status for those persons who have previously been convicted of a felony or any lesser crime and particularly where there is no showing by an employer that the refusal to hire or to terminate from employment is substantially related to the circumstances of a job. The Employer Community is already adequately protected under existing law and can either deny or terminate employment if in fact the conviction is substantially related to the duties and responsibilities of the position.

#2. In the past and again on today, the NAACP has appeared before various legislative bodies and has fervently expressed its position that the enactment of such a stringent statutory provision as that proposed in SB58 will very likely have the deleterious impact of increasing the recidivism rate of ex-offenders. We do not believe that at a time when spending on the Criminal Justice System and Incarceration is at all time highs within the state fiscal budget and given the state's

MEMBER, NAACP NATIONAL COMMITTEES

BUDGET & FINANCE • LEGAL • POLITICAL ACTION • ECONOMIC DEVELOPMENT • RESOLUTIONS

WISCONSIN STATE NAACP CONFERENCE OF BRANCHES, LEGISLATIVE DIRECTOR AND LABOR AND INDUSTRY CHAIR



Wisconsin State NAACP  
Position on SB58  
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dire budget deficit that it is prudent to enact a law that will only exacerbate this condition.

#3. The NAACP believes that in view of the disproportionate record of convictions for persons of color and other ethnic minorities, SB58 will fuel greater unemployment, underutilization and increase the magnitude of economic disparities between white communities and those where persons of color reside. These affected communities may also experience even greater community instability resulting from the likelihood that higher crime rates will result when ex-offenders are left without any recourse to either house, feed or otherwise economically provide for themselves.

In view of each of these adverse factors, we urge the Wisconsin Senate Committee on Judiciary, Corrections and Privacy to vote against adoption of SB58.

Thank you all for the opportunity to appear today and to offer these comments on behalf of the Wisconsin NAACP State Conference of Branches.

# State Senator GWENDOLYNNE MOORE



**Capitol Office:**  
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**E-Mail:** sen.moore@legis.state.wi.us  
**Member:** Joint Finance Committee  
**Board Member:** Wisconsin Housing and  
Economic Development Authority

Date: May 13, 2003

To: Chairman David Zien and Members of the Judiciary, Corrections and Privacy

From: Senator Gwendolynne S. Moore

Unfortunately, I am unable to attend the hearing today because of a prior engagement. In my absence, I am submitting the attached testimony urging you to reject Senate Bill 58.

## **BACKGROUND**

Under Wisconsin's current Fair Employment Act (FEA), no employer public or private may engage in employment discrimination based on an individual's conviction record unless there is a substantial relationship between the circumstances of that conviction and the circumstances of the particular job. For example, a bank is allowed to deny employment to a person convicted of embezzlement for a banking position, but a school could not refuse to hire that same person for a janitorial position due to the embezzlement conviction.

"Conviction record" includes information that a person has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, or has been less than honorably discharged or has been placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

SB 58 would allow an educational agency to refuse to employ or to terminate an individual from employment solely based on a felony conviction. "Educational agency" is defined so broadly under the bill that it even includes state correctional institutions and mental health institutes. Therefore, under this bill, persons with a felony conviction from 30 years ago whose job duties would render them little or no contact or unsupervised contact with children could legitimately be fired or denied employment.

Effective February 1, 2003, Wisconsin has 531 felonies. Examples of the myriad of non-violent felonies include theft of cable television service (a second or subsequent offense); theft of farm-raised fish (second or subsequent violation); possession of a fish with a value exceeding \$1000 in violation of statutes; possession of clams with a value exceeding \$1000 in violation of statutes; and unauthorized release of animals lawfully confined without consent. Furthermore, a felony conviction remains on one's record for life.

## **REASONS TO OPPOSE THIS BILL**

During the original 1977 deliberations over the FEA, corrections officials indicated that ex-offenders who gain employment have been shown to have lower recidivism rates. **Ex-offenders who are unable to find jobs are more likely to return to a life crime.** If the state were to allow employers to discriminate against prospective employees who have a conviction record, then in effect, the state would be encouraging recidivism.

A great deal of evidence points to potential **racial bias in the criminal justice system.** The August 1999 report by Wisconsin's Criminal Penalties Study Committee found a "shocking" racial disparity in Wisconsin's prisons. "[There is a] need to address the racial problems in our society and criminal justice system, which have resulted in a prison population that is 57% minority, and the imprisonment of 3% of all African-Americans living in Wisconsin. These are social ills that can no longer be ignored," wrote committee chair Thomas Barland in an October 2, 1999, editorial in the Milwaukee Journal-Sentinel. If minorities are more likely to be pursued by the justice system as the evidence suggests, then the legislation proposed by Petrowski would unfairly target minorities for employment discrimination.

Because minorities have a disproportionate record of convictions, this legislation will promote the underemployment of blacks and Hispanics and further suppress their ability to become active and contributing members of their families and the larger community. Moreover, **if a job-seeking person-of-color has a felony conviction on his or her conviction record, this legislation provides the employer an opportunity to deny that individual a job even if the real reason for denying employment is based on skin-color and not on the conviction itself.**

Current efforts to weaken the FEA with respect to conviction records use exaggerated claims, which state that current law unfairly protects ex-offenders over employers. In fact, according to recent information compiled by the state's Equal Rights Division:

- In Calendar Year 2001, 105 conviction record/hire complaints were filed with the Division, 3 of which were against educational agencies. While there were 10 findings of probable cause in the 105 cases, there were no findings of probable cause against an educational agency; and
- In Calendar Year 2002, 161 conviction record/hire complaints were filed with the Division, 6 of which were against educational agencies. While there were 18 findings of probable cause in the 161 cases, there were no findings of probable cause against an educational agency.
- In Calendar Year 2001 and 2002, there were no cases where an administrative law judge found that an employer had discriminated on the basis of conviction record in regard to hire. **Therefore, it would be misleading to state that current law favors ex-offenders over employers in these cases.**

Ex-offenders have paid their dues to society by spending time on probation, in prison and on parole, and/or through fines. By allowing employers to discriminate based on past felony convictions, the state would be denying the reality that offenders can be rehabilitated and at some point, finish paying his or her "debt to society."

Current law already allows for employers to consider a person's conviction record in their hiring and firing decisions if that conviction record substantially relates to the job at hand. Current law provides sufficient protection for employers as well as sufficient protection against discrimination for employees. Broadening "workplace protection" as authors of SB 58 seek to do would take the fairness out of the Fair Employment Act.

In conclusion, I urge members of this committee to reject Senate Bill 58 for these listed reasons.

**Vote Record**

**Committee on Judiciary, Corrections and Privacy**

Date: 5-20-03

Moved by: Steph

Seconded by: Fitz

AB \_\_\_\_\_

SB 58

Clearinghouse Rule \_\_\_\_\_

AJR \_\_\_\_\_

SJR \_\_\_\_\_

Appointment \_\_\_\_\_

AR \_\_\_\_\_

SR \_\_\_\_\_

Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

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  
 Introduction    
 Rejection    
 Tabling    
 Nonconcurrence

Committee Member

Senator David Zien

Aye No Absent Not Voting

Senator Scott Fitzgerald

Senator Cathy Stepp

Senator Gary George

Senator Tim Carpenter

Totals: 3 2      0



# STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

**CHAIRPERSON**  
COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY  
**VICE CHAIRPERSON**  
COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM  
**MEMBER**  
COMMITTEE ON SENATE ORGANIZATION  
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES  
COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS  
SENTENCING COMMISSION  
COUNCIL ON TOURISM  
JUDICIAL COUNCIL

SB 58

## MEMORANDUM

**TO:** Senator Gary George, Member, Senate Committee on Judiciary, Corrections & Privacy  
**FR:** Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy  
**DT:** May 20, 2003  
**RE:** Paper Ballot for May 20, 2003 Executive Session

Please consider the following bills and vote on the motions below. **Return this ballot to Senator Dave Zien no later than 10:00am, Wednesday, May 21.** Committee members' ballots not received by the deadline will be marked as not voting.

### Senate Bill 32

Relating to: sexual activity involving jail, prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of the Department of Corrections and providing a penalty.

By Senators S. Fitzgerald, Roessler, Brown, Kanavas, Lazich, Leibham, Kedzie, Reynolds, Risser, Robson and Zien; cosponsored by Representatives Ladwig, Townsend, Wasserman, Ainsworth, Albers, Balow, Bies, Cullen, J. Fitzgerald, Freese, Gielow, Gundrum, Hahn, Hines, Hundertmark, Jeskewitz, Kestell, Krawczyk, Lassa, J. Lehman, M. Lehman, LeMahieu, Loeffelholz, Lothian, McCormick, Montgomery, Nass, Nischke, Ott, Owens, Petrowski, Plale, Plouff, Pocan, Seratti, Shilling, Stone, Suder, Towns, Van Roy, Vrakas, J. Wood and Pope-Roberts.

### Assembly Bill 51

Relating to: sexual activity involving jail, prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of the Department of Corrections and providing a penalty.

By Representatives Ladwig, Townsend, Wasserman, Ainsworth, Albers, Balow, Bies, Cullen, J. Fitzgerald, Freese, Gielow, Gundrum, Hahn, Hines, Hundertmark, Jeskewitz, Kestell, Krawczyk, Lassa, J. Lehman, M. Lehman, LeMahieu, Loeffelholz, Lothian, McCormick, Montgomery, Nass, Nischke, Ott, Owens, Petrowski, Plale, Plouff, Pocan, Pope-Roberts, Seratti, Shilling, Stone, Suder, Towns, Van Roy, Vrakas, J. Wood, A. Williams, Gottlieb, Hebl and Coggs; cosponsored by Senators S. Fitzgerald, Roessler, Brown, Kanavas, Kedzie, Lazich, Leibham, Reynolds, Risser, Robson and Zien.



**Senate Bill 58**

Relating to: permitting an educational agency to refuse to employ or to terminate from employment an unpardoned felon.

By Senators Darling, Kanavas, Harsdorf, S. Fitzgerald, Kedzie and Roessler; cosponsored by Representatives Petrowski, Nass, Ziegelbauer, Montgomery, Pettis, Ladwig, Stone, Suder, Musser, Albers, Nischke, Hundertmark, Freese, J. Fitzgerald, Olsen, Van Roy, Gielow, LeMahieu, Huebsch, M. Lehman, Hahn, Owens, D. Meyer, Loeffelholz, Kestell, Kreibich, M. Williams, Townsend, Kerkman, Grothman, Gunderson, F. Lasee, Weber, Vukmir, J. Wood and McCormick.

**Assembly Bill 41**

Relating to: permitting an educational agency to refuse to employ or to terminate from employment an unpardoned felon.

By Representatives Petrowski, Nischke, Nass, Ziegelbauer, Montgomery, Pettis, Ladwig, Stone, Suder, Musser, Albers, Hundertmark, Freese, J. Fitzgerald, Olsen, Van Roy, Gielow, LeMahieu, Huebsch, M. Lehman, Hahn, Owens, D. Meyer, Loeffelholz, Kestell, Kreibich, M. Williams, Townsend, Kerkman, Grothman, Gunderson, F. Lasee, Weber, Vukmir, J. Wood, Hines, Vrakas and McCormick; cosponsored by Senators Darling, Kanavas, Harsdorf, S. Fitzgerald, Kedzie, Stepp, Lazich, Leibham and Roessler.

**Please consider the following motions:**

- Moved by Senator Fitzgerald, seconded by Senator Carpenter, INTRODUCTION & ADOPTION of LRB s0078:

Aye \_\_\_\_\_ No \_\_\_\_\_

- Moved by Senator Fitzgerald, seconded by Senator Stepp, PASSAGE of Senate Bill 32 as amended:

Aye \_\_\_\_\_ No \_\_\_\_\_

- Moved by Senator Fitzgerald, seconded by Senator Stepp, CONCURRENCE of Assembly Bill 51:

Aye \_\_\_\_\_ No \_\_\_\_\_

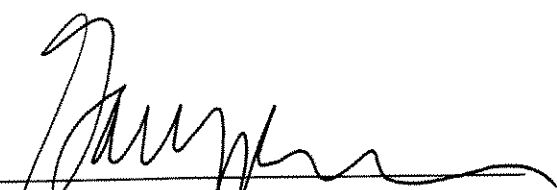
- Moved by Senator Stepp, seconded by Senator Fitzgerald, PASSAGE of Senate Bill 58:

Aye \_\_\_\_\_ No \_\_\_\_\_

- Moved by Senator Fitzgerald, seconded by Senator Stepp, CONCURRENCE of Assembly Bill 41:

Aye \_\_\_\_\_ No \_\_\_\_\_

SSAI to SB32

Signature   
Senator Gary George