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(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2005-06

(session year)

## Senate

(Assembly, Senate or Joint)

## Committee on Judiciary, Corrections and Privacy...

### 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**

\* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)

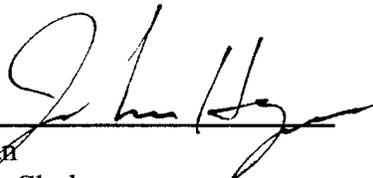


Present: (5) Senators Zien, Roessler, Grothman, Taylor and  
Risser.  
Absent: (0) None.

Moved by Senator Roessler, seconded by Senator Grothman that  
**Senate Bill 592** be recommended for passage.

Ayes: (5) Senators Zien, Roessler, Grothman, Taylor  
and Risser.  
Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0

  
\_\_\_\_\_  
John Hogan  
Committee Clerk

## Vote Record

### Committee on Judiciary, Corrections and Privacy

Date: 3/6/6  
 Moved by: Risser      Seconded by: Grothman

AB \_\_\_\_\_ SB 597      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

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator David Zien, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Carol Roessler</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Glenn Grothman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Lena Taylor</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Fred Risser</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Totals:**      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_



March 7, 2006

Senator David A. Zien, Chairman  
Committee on Judiciary, Corrections and Privacy  
Room 15 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

RE: Senate Bill 592

Dear Senator Zien:

I write to seek your support of Senate Bill 592. This Bill will correct a long-standing problem prosecutors and police officers have faced in drunk driving cases.

I am currently prosecuting a drunk driving homicide case. In addition to the allegation the defendant killed one person, he also allegedly seriously injured two others. If convicted, this will be his 4<sup>th</sup> drunk driving offense.

At the hospital, the defendant refused to submit a sample under the Implied Consent law. The police involuntarily obtained a blood sample from the defendant. The result was 0.191 g/100mL.

Under the current Implied Consent Law, given the refusal, the defense may employ the full panoply of civil discovery tools to obtain information about the prosecutor's case. This includes, but is not limited to, sending me written questions which I must answer (interrogatories), requests for admissions favorable to the defense, every piece of paper I have that was generated by the police, and depositions of police officers. Notwithstanding the Criminal Code's discovery procedure that requires me to turn over the police-generated reports after a Preliminary Hearing and does not permit depositions, the current law permits the defense to receive the information earlier than they would have and requires me to spend endless hours responding to their requests.

If I attempt to use any of the civil procedures to obtain information from the defense, I am met with a response that the defendant has a Fifth Amendment right not to incriminate

Senator David A. Zien, Chairman  
February 28, 2006  
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himself; therefore, nothing is forthcoming. In short, the current Bill creates a one-way street where I am required to do hours of additional work, the defense has the possibility to get a deposition of a police officer before he ever sets foot into Court, and the defense is in a much better position than they would otherwise be at a Preliminary Hearing. Unfortunately, none of this discovery does anything to enhance the prosecutor's case or assist the victim.

The passage of Senate Bill 592 will correct this quirk in the law that permits criminal defendants to obtain more information than they otherwise would be able to obtain. It will save countless hours of work for all prosecutors involved in traffic law. It will further assist victims of crime as we currently advise them when these procedures are being used and it causes the victims additional stress.

I would like to appear and testify at the hearing on this Bill. Unfortunately, I have a heavy Court schedule tomorrow which does not permit me to do so. Please accept this communication in lieu of my appearance. Please contact me, or have someone on your behalf contact me, if I may provide you with further information on this Bill.

Thank you for your time and attention in this matter.

Sincerely yours,

Allen R. Brey  
Assistant District Attorney

ARB/mp



If I could be there to testify, I would tell you about the phone calls I receive from officers on this subject. They have called me asking if they really have to take off work to honor subpoenas by traveling 60 miles to be deposed. They ask if there is any way somebody from our office can be there. They ask for motions to quash the proceedings because it takes them away from their work and family duties, especially when they know there are other opportunities for defense counsel to obtain the same information.

From a law enforcement perspective, the civil discovery aspect of the Refusal law is simply a nuisance. It is only another opportunity for defense counsel to attempt to generate inconsistent statements and reasonable doubt in preparation for trial. It is harassment of officers, who certainly make appearances in their own Courthouse to answer motions on the stop, detention, arrest, search, and seizure issues already. It serves no additional ends in the search for truth and justice, because these officers are available for questioning under oath already.

It is, at best, surplus usage and inefficiency, and at worst a drain on the already strained resources of many City and County law enforcement agencies for no other purpose than to harass the system and line the pockets of defense attorneys.

I am from a small office--4 ADA's cover 5 Judges, with even the Elected DA getting into the 'rotation system' we have devised to help us keep our heads above water. We do not have the luxury to adequately charge many cases as it is. We do not have the luxury to take time off work for hearings out of county of any kind. We are running as thin as anybody in State government in my county and there is no relief in sight.

This law will have an impact on reducing the burdens placed on local law enforcement. It should also save time for those Prosecutors who are lucky enough to be able to attend these hearings while preventing witnesses from being man-handled in an ex-parte proceeding. It will have some effects in my office. It will reduce the number of phone calls I have to take on this subject, while saving the taxpayers money and enhancing safety by keeping law enforcement officers on the street. It will help prevent this office from having to deal with requesting copies of transcripts and spending hours researching them for potential discrepancies when compared with other hearings. It will prevent a 'civil' analysis from applying 'civil' procedure in 'criminal cases' that already have procedures spelled out.

Scot Mortier  
ADA FDL Co.