

TO: Wisconsin State Assembly

FROM: Bob Andersen
Legal Action of Wisconsin

RE: Assembly Bill 60/Senate Bill 37, relating to payment of judgements in traffic courts and municipal courts by installments and the suspension of operating privileges

DATE: March 24, 2009

1. U.S. Supreme Court and Wisconsin State Supreme Court Prohibit Incarceration of Poor People for Nonpayment of Forfeitures for Ordinance Violations; As a Result There Has Been an Explosion in the Number of Driver's License Suspensions for Poor People.

The court decisions are based on the premise that it is unconstitutional to imprison a poor person for failure to pay a forfeiture, while a person with means can escape prison simply by paying the forfeiture for exactly the same offense. The result has been an explosion in the number of driver's license suspensions for poor people, as an alternative to imprisonment.

Below are the findings of John Pawasarat, Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005, in studying the lack of licenses as a barrier to employment:

- The suspensions solely for failure to pay bills make up almost half of the total suspensions in the state. Previous studies of the impact of these suspensions have shown the adverse impact on residents of central city neighborhoods in Milwaukee. Milwaukee County residents are twice as likely to have a suspension in a year than are residents in the balance of the state. Most of this disparity occurs because Milwaukee has the largest concentration of poor young minorities, who show the highest levels of suspensions for failure to pay fines.
- The drivers license file shows 39,685 individuals in Milwaukee County who have drivers licenses but also recent suspensions or revocations on their licenses. Another 49,804 Milwaukee County adults had a recent suspension/revocation but no license with the DOT. Only 65 percent of adults in Milwaukee County have a current and valid Wisconsin drivers license, compared to 83 percent of adults in the Balance of State.

- Minorities and poor populations are the most likely to have drivers license problems. Less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults in the Balance of State (BOS, i.e., outside Milwaukee County). The situation for young adults ages 18-24 is even worse-- with only 26 percent of African Americans and 34 percent of Hispanics in Milwaukee County with a valid license compared to 71 percent of young white adults in the Balance of State.
- Statewide, only 22 percent of young African American males and 34 percent of young African American females have a valid license. For young Hispanics, 43 percent of males and only 37 percent of females have a valid license. For whites, 64 percent of males and 75 percent of females have valid licenses.
- Statewide, an estimated 11 percent of African American adults and 8 percent of Hispanic adults have a license with a current revocation or suspension, compared to 4 percent of whites. An even larger number have no license but a recent suspension or revocation. An estimated 17 percent of African American adults and 8 percent of Hispanic adults, compared to 1 percent of white adults, fall into this category

2. SB 37 Simply Allows a Poor Person a Chance to Pay the Forfeiture in Installments, Instead of Automatically Suspending the Person's Driver's License for Nonpayment After 60 Days – It Imposes No Further Burden on the Courts; Exactly the Same Legislation was Approved by the Municipal Courts and Circuit Courts and Passed the Assembly Judiciary Committee 9-0 and the Assembly on a Unanimous Vote in 1999.

The bill simply requires a municipal or circuit court to determine whether the defendant is indigent, if the defendant asks for an installment payment plan, and to set a plan for the defendant to meet. It does not require the courts to establish coupons or any other process.

Some municipal courts and circuit courts already do this, but others do not. Some courts do not believe they have the authority to order installment payment plans.

The bill was drafted with the agreement and support of the Municipal Court Judges Association legislative liaison, Michael Hurt, and Sheryl Gervasi, Director of State Court's Office, on behalf of the state's circuit court judges.

Exactly the same bill as this passed the Assembly Judiciary 9-0 and the Assembly on a unanimous vote in 1999, but was stalled in the Senate by a controversy that surrounded other legislation. That session a budget bill provision repealed the authority for suspension of driver's licenses for non traffic violations and it was feared in the Senate that this bill would be used as a vehicle to undo that repeal. Consequently the bill was never acted on. The same bill passed the Senate on a unanimous vote the very next session, but stalled in the Assembly, this time because Municipal Court Judge Hurt withdrew his support at the final

hour. The circuit courts continued to support the bill.

3. The Argument Has Been Made that the Bill is too Lenient by Allowing a Poor Person an Installment Payment Plan After 60 Days, But What is the Alternative? On the Contrary, It can be Argued that SB 37 is Stricter Because it Requires Defendants to Start Making Payments Immediately, Rather Than for Them to Let the Judgments Ride for 60 Days.

Since a poor person cannot be placed in jail and the suspension of drivers' licenses has been proven not to work, the only alternative is to order the defendant to perform community service. But not many communities have community service. The reality is that the requirement of an installment payment plan can be considered to be stricter than current law, which allows defendants 60 days or longer (after extensions) to pay, because it requires defendants to start paying something immediately, within their means.

4. Studies Show that Installment Payment Plans Produce More Revenue than Lump Sum Plans.

When defendants make payments by installments, they are at least making some payments, even if they do not complete the installment payment plans. Of course, if they fail to complete the plans, their driver's licenses may be suspended.

5. For Non Traffic Violations, the Requirement of an Installment Payment Plans Offers a Much Needed Alternative

For non traffic violations, driver's licenses may not be suspended. Since incarceration is not an option for poor people, the only remaining option is community service, but not many communities have community service. This requires an installment payment plan for poor people which is not included in the statutes now.

6. Purpose

The bill allows low income people the opportunity to avoid the automatic suspension of their licenses by making payments of forfeitures in installments. The bill has an important effect on the success of W-2. W-2 providers report that one of the greatest barriers to successful employment for W-2 participants is their inability to drive to job sites because of suspended driver's licenses. Many W-2 participants have suspended driver's licenses because they failed to pay parking tickets, failed to pay forfeitures for moving traffic ordinance violations, or failed to pay forfeitures for other municipal ordinance violations. In many cases, participants have had their licenses suspended because default judgements were entered against them for failure to appear on the return dates.

The bill allows indigent defendants one opportunity to have an installment payment plan ordered in lieu of the suspension of a driver's license. That one opportunity can be offered before the judgment is initially entered or it can be offered after a judgement is entered. Allowing installment payment plans already is the practice for many municipal courts. The bill will make this a uniform practice and will allow jurisdictions, who currently do not believe they have the authority, to enter these installment payment plans.

7. Provisions of the Bill

A. Before Judgements are Initially Entered, Municipal Courts and Circuit Courts are Required to Offer Indigent Defendants Installment Payment Plans Before Suspending their Driver's Licenses, When Defendants Appear in Court.

When defendants appear in court to answer to the charges and are found guilty of ordinance violations, courts are required to first offer them an opportunity to pay the forfeitures by installments, before suspending their driver's licenses, if the defendants are unable to pay because of their poverty. If the defendants subsequently fail to comply with the installment payment plans, their licenses will be suspended.

This is the practice that is actually being followed by many municipal courts and circuit courts. The bill ensures that this practice will be codified in the statutes and that it will be followed by all courts, in municipal ordinance violation cases.

B. After Judgments Have Already Been Entered, Defendants Who are Unable to Pay Because of Poverty may Obtain Installment Payment Plans in Lieu of the Suspension of their Licenses, Provided that They Have Not Previously Been Given an Installment Payment Plan and Failed to Comply with the Plan.

This bill provides that a court shall terminate the suspension of a driver's license that was previously ordered because of an ordinance violation, and substitute an installment payment plan therefor, if all of the following circumstances are met:

- (1) the defendant requests the installment payment plan.
- (2) the defendant is unable to pay because of poverty.
- (3) the defendant has not previously failed an installment payment plan that has been ordered by the court.

If an installment payment plan is ordered under these circumstances and the defendant subsequently fails to comply with the plan, the suspension of the license will be reinstated.

This proposal is considered to be a better approach than requiring the reopening of judgments in these cases. Instead of requiring judgments to be reopened -- which creates administrative problems for the courts and which unsettles those judgements - - this proposal avoids those problems by simply requiring that orders for license suspension be terminated.

C. The Determination that a Person is "Unable to Pay Because of Poverty" Uses the

Same Criteria that Already Exists in the Statutes under s. 814.29, Regarding the Waiver of Costs and Fees for Persons who are Unable to Pay Because of Poverty.

In order to establish a uniform definition of poverty for all courts, this bill incorporates the determination of when a person is unable to pay because of poverty that already exists in the statutes, under s. 814.29 (1)(d). Under that section, essentially, a person is determined to be unable to pay costs and fees because of poverty if any of the following is true:

- (1) that the defendant is a recipient of means tested public assistance, including Wisconsin Works, general relief under Chapter 49, relief provided by the counties under s. 59.53 (21), medical assistance, supplemental security income, food stamps, or benefits received by veterans under 45.351 (1) or under 38 USC 501 to 562.
- (2) that the person is represented by an attorney through a legal services program for indigent persons, including, without limitation, those funded by the federal legal services corporation, the state public defender or volunteer attorney programs based on indigency.
- (3) that the person is otherwise unable, because of poverty, to pay the fees and costs. In considering the defendant's inability, the court shall consider the person's household size, income, expenses, assets and debts and the federal poverty guidelines under 42 USC 9902.

Under this bill, if a defendant meets these criteria, the defendant would be entitled to an installment payment plan in lieu of the suspension of a license, provided the defendant had not already been offered such an option and failed to comply with the plan.

- D. The Installment Payment Plan Required under this Bill Would be Required to be a "Reasonable Installment Payment Plan that takes into Account the Defendant's Income."

The purposes of this bill will not be achieved if a genuinely poor person, taking a look at assets and income, cannot make payments because of current income.