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TO: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

FROM: Bob Andersen Bob Andersen

RE: Senate Joint Resolution 6 and Senate Bill 36, relating to Motor Vehicle Operating Privilege Suspensions for Controlled Substance Violations

DATE: February 5, 2009

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 programs of LAW focuses on the removal of barriers to employment, through which we are involved in the restoration of driver's licenses.

We would like to thank Sen. Taylor for her leadership in this area and on these particular proposals. The ***mandatory*** suspension of driver's licenses for drug violations is one of the largest impediments to employment for low income people. ***These are drug violations that have nothing to do with the operation of a motor vehicle – other criminal and municipal laws cover that conduct.*** The state does not need to make suspensions mandatory and can make them ***permissive*** orders to be entered in the discretion of the court. The proposal contained in Senate Joint Resolution 6 and SB 36 to make these orders permissive has been strongly supported in the past by the Department of Transportation, the Wisconsin District Attorneys Association, and the Milwaukee Police Association.

This proposal was also recommended a few years ago by a ***Driver's License Policy Reform Task Force*** in Milwaukee, which recommended 4 different policy proposals relating to a 3 month amnesty program, driver's education, community service options, and making the 5 year license suspensions discretionary rather than mandatory for drug convictions. The Task Force included many representatives of community organizations in the Milwaukee area and was headed by Tyrone Dumas, the Milwaukee Jobs Initiative, the Private Industry Council of Milwaukee County, the Wisconsin Council on Children and Families, and LAW.

A committee of the task force was involved in promoting this proposal to make drug suspensions permissive. The committee included Circuit Court Judge John Siefert; Circuit Court

Judge Chuck Klein; Milwaukee County District Attorney Mike McCann; Ladette Austin of Chairman Lee Holloway's Office, County Board of Supervisors; Eloisa Gomez of Making Connections Milwaukee; and Marilyn Walczak of Justice 2000.

In 1990, federal law required each state to make the suspension of driver's licenses mandatory for drug convictions, unless a state governor certified that the governor was opposed to making this mandatory and the governor certified that the legislature adopted a resolution opposing the mandatory suspension of licenses for drug violations. If a state refused to either adopt such a mandatory law or to adopt certifications and resolutions in opposition to making this mandatory, the state would be severely penalized by the loss of federal funds.

Unfortunately, in 1991 Wisconsin enacted such a mandatory law. 37 other states made this discretionary. Wisconsin adopted what is now s. 961.50 in 1991 Wis. Act 39, the budget bill. The statute mandates that driver's licenses be suspended for 6 months to 5 years. In 1993, the statute was amended to make the suspension effective when a person applies for a license, to be consistent with the provision under federal law.

In 2007 there were 11,406 licenses withdrawn for drug convictions and there were 14,849 the year before. What makes this policy particularly objectionable is that, under s. 961.50 (3), the mandatory 6 month to 5 year license suspension does not begin to run until the person applies for a license! The result is that many people do not even go in to have their licenses reinstated, because of the futility of applying for a license that will begin to be suspended for as much as 5 years. The further result is that all these drivers return to the roads, without a license and without insurance. They will not pay forfeitures for ordinance violations, because they do not have a license to be suspended. Many of them begin to get into even more trouble with the law, by driving without a license. Some of those are incarcerated and begin lives that will continue to lead them into getting into even further trouble with the law.

Of course, this has a profound effect on the safety of other drivers and on costs to the municipalities and to the state, if these people continue to drive. Unfortunately, surveys taken by DOT show that many people do continue to drive, because driving is so essential to work. Indeed, this is one of the principal reasons that we favor this proposal, because of the need to enable these people to maintain self supporting employment.

According to the Department of Transportation, states may still exercise this option to make suspensions permissive, without losing any federal funds. In order to accomplish this objective, SB 36 must be enacted and a joint resolution must be adopted, indicating the approval of the legislature in making this permissive. The governor must certify his approval of this policy as well. SJR 6 is the resolution that contains this affirmation by the legislature.

LENA C. TAYLOR
Wisconsin State Senator • 4th District

Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, & Housing

Testimony of Senator Lena C Taylor
Senate Bill 36 – Drivers License Suspensions for Drug Violations
Senate Joint Resolution 6 – Opt Out of Federal Mandates
Thursday, February 5th, 2009

Honorable Colleagues,

Thank you for hearing testimony today on Senate Bill 36, a bill regarding the policy of suspending drivers' licenses for drug violations., and Senate Joint Resolution 6, a resolution expressing the Legislature's desire to opt-out of the federal mandate requiring this policy.

Last session this committee traveled around Wisconsin on the State of the Justice System Tour. We heard from lawyers, judges, inmates, corrections employees, families, and anyone else who cared enough to testify before us. The committee found some great things on the tour: Lawyers, judges, and everyday citizens giving their time for justice; corrections officials and inmates working together to fix our prisons. These were truly inspiring reports.

But there was also a less encouraging side of the testimony we heard. It came through in the words of the young man who left prison with nothing but a bus ticket—no food, no job, no place to spend the night. And from the father, who told us how he'd found himself a job but lost it when his parole officer didn't return the employer's phone calls. We heard all too many stories like those, with different players but always the same ending: Poverty, recidivism, revocation, and hopelessness.

Today, with this bill, our committee can help write a new ending to many of these stories. Senate Bill 36 and Senate Joint Resolution 6 end the requirement that courts suspend the driver's license of anyone convicted of a drug violation. It doesn't prevent judges from suspending licenses; it simply gives them a choice. As we were told throughout the Tour, that choice can be critical to the many citizens trying to rebuild their lives after a drug conviction.

In addition to this testimony, I have submitted an editorial of the Milwaukee Journal Sentinel from January 19th of 2008. As you can see, in Milwaukee County alone, one of eight drivers is revoked or suspended. In real terms, that is just over 90,000 drivers! These people are either forced to drive illegally resulting in the vicious cycle of more tickets and fines, or not drive at all. In this case, we must ask ourselves, how do we get people to their jobs? How do we stop the cycle that makes the poor, already saddled with unaffordable fines, pay even more? The answer is to ***change our policy***.

Most jobs around the state are contingent on an employee's ability to drive. For hundreds of thousands of people in Wisconsin, losing their license and losing their job is the same thing. This is all the more true for those convicted of drug offenses, men and women already laboring

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under debilitating addictions and the stigma of criminal records. To strip them of their driving privileges—at the moment when they most need the stability and support that a job and a wage can bring—is an invitation for them to fail in the rehabilitative process. It's one more nearly insurmountable obstacle on a path already littered with them.

That path, though, is exactly the one our state chooses. Our laws impose these barriers before people who want to recover, who want to find jobs, and who want to contribute. Are there reasons we do so? Of course. But they do not justify crippling tens of thousands of our fellow citizens as the current system does. The facts show, incontrovertibly, that our current policy of suspending licenses drives people to unemployment and, frequently, to crime. We must ask if we are truly better off for doing so. I don't believe we are.

The intent of these two bills is apparent. SB 36 will change our state's policy to make the suspensions discretionary with a judge, rather than mandatory. Changing this policy requires us to "opt-out" of the federal mandate requiring this. A letter of intent from the Governor and a joint resolution from the Legislature accomplishes this. Hence, the reason we are proposing SJR 6. Already in these United States, 37 other states have done this. It is time for Wisconsin to join them.

Shutting people out from opportunity won't solve our state's problems with drugs, crime, or unemployment; it'll make those problems worse. What these people need is a chance to make a legitimate start in our society. They need real hope that they can move beyond the lives that led to their convictions; they need the tools to find a job and contribute; they need to know that our state will support them as they strive to build better futures for themselves. In that spirit, my fellow senators, I ask you to support Senate Bill 36 and Senate Joint Resolution 6.

Thank you.

JSOnline
JOURNAL SENTINEL

Editorial: Unfair suspensions leave workers idling

Revoking or suspending driver's licenses in Wisconsin has made it all that much harder for low-income residents to obtain and retain employment.

Posted: Jan. 19, 2008

Officials are acting much too slowly on a pressing problem: the epidemic of suspended or revoked driver's licenses in Wisconsin. The problem is wreaking havoc in Milwaukee County and elsewhere in the state.

By grounding workers, the problem slows the economy and exacerbates poverty. By punishing being broke more than bad driving - the single biggest reason for voided licenses is failure to pay fines - the suspensions betray American ideals. What's more, the glut of suspensions is clogging the courts and undermining respect for the law, particularly in Milwaukee's inner city, where the voided licenses are rife.

Lawmakers must end this epidemic by voiding the many laws that mandate or permit the suspension or revocation of driver's licenses for offenses unrelated to bad driving.

In Milwaukee County, suspended or revoked licenses saddle one of every eight driving-age residents, more than half of whom never held real licenses to begin with. The state voids even nonexistent licenses - which hampers getting a real one.

State lawmakers and Gov. Jim Doyle must do the following:

Opt out of a federal law that requires at least a six-month suspension of driver's licenses for all drug offenses. This law is likely making Wisconsin more dangerous than it would be otherwise by thinning the already slim chances of former drug offenders of obtaining work. According to the New York City-based Legal Action Center, 27 states already have opted out of the law.

Require the courts to grant indigent or low-income defendants reasonable installment payment plans in lieu of the automatic suspension of their licenses. The statute

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should permit defendants with licenses already suspended to reopen their cases and to pay by installment.

Allow state courts to do as municipal courts are now allowed to do: sentence indigent defendants to community service in non-criminal traffic offenses.

Encourage courts to collect overdue fines through holds on income tax refunds. Even poor people get such refunds, through the earned income tax credit - that is, if they're allowed to get to their jobs.

Reinstitute universal driver's education in the public schools. This will better enable poor kids to obtain driver's licenses. The program could be paid for by a surcharge on drunken driving convictions. Besides teaching motoring skills, driver's ed instills such values as the importance of maintaining a valid driver's license.

Bar courts from charging fees to reopen driver's license cases. Perhaps peg fines to ability to pay, as some other countries do.

Step up funding for agencies helping poor residents gain valid licenses, such as the Center for Driver's License Recovery and Employability, housed at the Milwaukee Area Technical College's downtown campus.

Public and private agencies should take these steps:

Agencies involved in boosting employment should milk driver's license data to identify participants who need help in getting valid licenses, as advocated by the University of Wisconsin-Milwaukee's Employment & Training Institute. The lack of such a license is the No. 1 barrier to employment, even bigger than the lack of a high school diploma or of day care.

The state Department of Workforce Development should require that Wisconsin Works agencies aggressively seek to help their clients repair any driver's license problems.

An ETI study showed that only 7% of released inmates had valid licenses, and most have license suspensions or revocations. The Department of Corrections should help its population to obtain valid driver's licenses upon release.

Local governments should take these steps:

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JOURNAL SENTINEL

They should forbid the use of driver's license suspension for non-payment of fines.

Yes, needy offenders must be held accountable - but through installment plans, community service or tax holds. The Milwaukee Common Council must take action, but that alone won't be enough.

Suburban police are stopping many Milwaukee residents who lack driver's licenses. So suburban governments should adopt this policy, too.

The Milwaukee Common Council should end the quaint practice of requiring residents to pay for the privilege of parking in front of their homes - a practice that disadvantages both the upscale east side and the poverty-stricken inner city, where off-street parking is relatively scarce.

Yes, such fees, and the parking tickets that result from failure to pay, are a lucrative source of city income. But they're also an unfair tax because of the burden they put on the poor. Failure to pay tickets can result in the suspension of a vehicle's registration. And driving with such a suspension can lead to the suspension of driver's licenses.

Finally, private employers have a role to play. For some reason, more and more employers seem to require a driver's license for prospective employees whose jobs don't entail driving. Employers should require a license only if it's related to the job.

Unfortunately, in the 1980s and '90s, politicians turned to the suspension of driver's licenses to punish all manner of wrongdoing not related to driving. The result was an explosion in such suspensions.

The suspensions may be achieving their intended effect in middle- and upper-class neighborhoods. But they are certainly not working in poor communities. Instead, they are blocking access to a possible escape hatch from poverty: jobs.

What reforms, if any, do you favor to help the poor maintain valid driver's licenses? Send a letter to: Journal Sentinel editorial department

From the Jan. 20, 2008 editions of the Milwaukee

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February 3, 2009

Senator Lena Taylor
Chair, Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
Room 415 South
State Capitol
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RE: Mandatory Motor Vehicle Operating Privilege Suspensions For Controlled Substance Violations

Dear Senator Taylor,

I write in strong support of the proposal to give Wisconsin courts and the Department of Transportation the authority, but no longer the strict obligation, to suspend the motor vehicle operating privilege of a person if that person is convicted of any violation of the state's Uniform Controlled Substances Act. The mandatory feature of the current law does much more harm than good.

Prosecutors across the state regularly issue and promptly resolve low level drug cases in hopes of deterring crime, undermining the cynical business of drug trafficking, and encouraging sobriety and public safety. Often there is minimal or no confinement time associated with the case. When a court in such a case is ***required*** to suspend the offender's operating privilege--even if that means the offender will then have trouble staying connected with AODA programs or other needed treatment, with employment, school or training opportunities--we are unnecessarily defeating our own goals. On top of that, if the offense at issue does not involve any nexus between controlled substance use or trafficking and driving (such as impaired driving), one can further question the utility of this mode of punishment.

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The general or specific deterrent or punishment value in automatic license suspension, beyond the sting of conviction, fines, and other punishment available, is dubious on its face. People who traffic in or carry small amounts of controlled substances generally do not expect to be caught, and they are not a population well known for carefully calibrating the cost/benefit values of their decisions. In any case, moreover, even with a law change we could still count on Wisconsin's able judiciary to look for cases in which license suspension genuinely makes sense to achieve a worthy goal of society.

In addition, the legal costs and complications that arise when persons are caught driving after suspension, perhaps otherwise lawfully and only to get to work or school/training, can be large for the offender and for the system. Our courts are already clogged with serious offenses, such as Operating While Intoxicated, that we have trouble handling adequately given very limited prosecution resources.

Finally, I also believe this is a law that has a disproportionately dire effect, on average, for poor persons and persons of color. Someone living day to day, whether in a challenged urban neighborhood or a poor rural area, is far less likely than a person of means to have access to others able to drive them where they need to go. Driving is a privilege, but it is also a lifeline in both urban and rural settings in Wisconsin.

Thank you very much for considering these thoughts as part of your important deliberations, and I invite you to share them in whole or in part with the Committee as you see fit. I would be happy to discuss any aspect of this issue with anyone.

Sincerely,

Brian W. Blanchard
Dane County District Attorney