



# Van H. Wanggaard

Wisconsin State Senator

October 3, 2023

## TESTIMONY ON SENATE BILL 404

Thank you committee members for hearing Senate Bill 404 (SB 404) today. To put it plainly, the penalties for operating a motor vehicle without a license (OWL), operating and revoked (OAR), and operating while suspended (OWS) in Wisconsin are nothing more than a slap on the wrist that provide no deterrent what-so-ever, and no recourse for frustrated law enforcement. SB 404 strengthens our laws and closes administrative loopholes in order to help law enforcement do their job, improve public safety, and hold habitual criminals accountable.

First, I would like to make it clear that this bill is not a knee-jerk reaction to any one news story, or any one incident. My colleague, Representative Spiros, and I, have been working on this legislation for about 3 years now. It has gone through countless versions, and we are excited to finally bring it forward today.

The issue initially brought to our attention by law enforcement was a loophole that allowed individuals, who never had a license, to have their hypothetical license suspended or revoked, thereby circumventing the penalties for driving without a license.

If someone receives a citation for driving without a license, and does not pay their fine, their license is suspended. The next time they are stopped by the police, the officer sees that their license is suspended and issues them an OWS citation (another forfeiture) which they likely will also not pay, and that process continues on forever. Earlier this year, TMJ4 News in Milwaukee, as part of their "Project: Drive Safer," reported that because of this loophole, one Milwaukee resident was cited 36 times.

The current penalties for operating without a license increase incrementally, with the 3<sup>rd</sup> offense being criminal and requiring 10 days to 6 months in prison. However, the current penalty for operating with a suspended license, whether it's your 1<sup>st</sup> ticket or 100<sup>th</sup> ticket, is a simple forfeiture.

As Representative Spiros and I began reviewing the statutes, it became clear that Wisconsin's OWL, OWS, and OAR laws were unnecessarily convoluted and the penalties were woefully inadequate.

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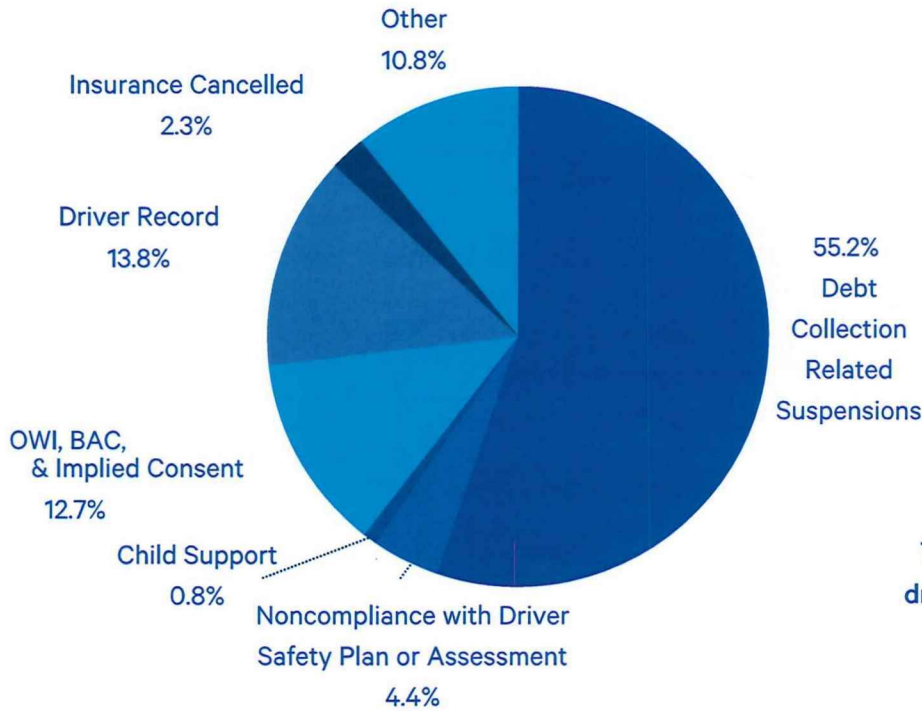
We have brought this bill forward to create parity among OWL, OWS, and OWR, so that OWL and OWS have the same penalties, and OWR has a slightly stronger penalty. In doing so, this bill will ensure that habitual traffic offenders are held accountable by increasing the penalties from a forfeiture to a misdemeanor, and in extreme cases, potentially a felony.

Additionally, I would like to address one other thing this bill does. A few years ago in Kenosha County, we had an instance in which an individual had their license revoked due to committing homicide by use of a vehicle. A little over one year following their release from prison this dangerous individual clearly did not learn his lesson, and was cited for OWR, which was only punishable by a fine. This bill will strengthen the law so that if someone is cited for OWR and they were revoked for: being a habitual traffic offender; a DUI conviction; or a violation of Chapter 940 (crimes against life and bodily security), they are guilty of a Class I felony.

Motor vehicle thefts in Milwaukee County have more than doubled since 2020. Reckless driving is simply out of control. It is out of control because there are literally no penalties for these offenders. They receive a traffic citation, ignore the fine, and continue doing what they've been doing. We can change this by requiring these habitual traffic offenders to show up to court, and receive real consequences for their actions.

This bill will create parity among OWL, OWR, and OWS and close the existing loopholes. Once again this session we are giving police, district attorneys and courts the tools to combat reckless driving. It has earned the support of law enforcement organizations and others and I hope that you will support it as well.

# WI SB 404/AB 421 WILL HARM LEGAL ACTION OF WISCONSIN CLIENTS by criminalizing conduct related to poverty, not traffic safety



**55%**  
**OF DRIVER'S LICENSE  
SUSPENSIONS IN WISCONSIN  
OVER THE LAST TEN YEARS  
HAVE BEEN ORDERED TO  
COERCE PAYMENT OF DEBT  
AND ARE NOT SAFETY  
RELATED.**

The only purpose of "Failure to Pay Forfeiture" driver's license suspensions is to coerce payment of debt.

The chart above is a visualization of the following data points from the last decade in Wisconsin: Debt collection suspensions 2,016,155; Noncompliance with Driver Safety Plan or Assessment 159,999; Child Support 32,498; OWI, BAC, and Implied Consent 463,344; Driver Record 504,554; Insurance Cancelled 82,998; Other 395,011.

## THE IMPACT

### 100,000 new criminal cases could be filed each year as a result of this bill

Over the last decade there were 1,114,549 convictions for Operating While Suspended, Operating Without License, and Operating While Revoked. Most of these were non-criminal. If SB 404 passes, most would be criminal, leading to approximately 100,000 more criminal charges each year. It is likely that more than half of those charges would be filed against people whose underlying suspension was not related to traffic safety.

**If traffic safety is the primary concern, the unintended consequences of SB 404 would be greater than the intended effect of the bill.**

“Debt-related restrictions on driving privileges force an impossible choice: stop driving and lose everything — or keep driving and risk more fines and fees, criminal charges, arrest and jail time. Driver’s license suspensions trigger a decades-long cycle of poverty and punishment — that many people never escape. For the 86% of Americans that drive to work — losing the ability to drive also means losing the ability to work, provide for your family, and get medical care.”

-- The Free to Drive Report

“The number of individuals with a suspended license also places a burden on the limited resources of law enforcement.”

-- The American Legislative Exchange Council (ALEC)

This information is provided by:

**LEGAL ACTION  
OF WISCONSIN**





# Wisconsin State Public Defender

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**Kelli S. Thompson**  
State Public Defender

**Katie R. York**  
Deputy State  
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Senate Committee on Judiciary and Public Safety  
2023 Senate Bill 404  
Tuesday, October 3, 2023

Chairman Wanggaard and members,

Thank you for this opportunity to testify on 2023 Senate Bill (SB) 404. The State Public Defender's (SPD) office has concerns with the workload impact of this legislation and the long term impacts on recidivism and ultimately public safety.

SB 404 creates several new or increased misdemeanor and felony penalties related to operating a motor vehicle without a license, or while suspended or revoked. For many SPD clients, losing their driving privileges is a collateral consequence of their original conviction. When they eventually return to their community, as more than 95% of those sentenced to prison do, most are under community supervision. Key requirements of supervision include meeting with your agent, maintaining employment, or participating in treatment. Having a valid driver's license, particularly in rural areas of Wisconsin where mass transportation is not an option, is not only vital but necessary to meet those supervision requirements. Taking that situation and layering SB 404 on top essentially means that we will be taking people's driver's licenses on conviction, requiring them to follow rules that require a valid driver's license that they will no longer have, and, under the bill, charge them criminally when they drive in an effort to comply with the terms of supervision. It creates a cycle that will ensure that individuals are caught in the criminal legal system.

From a workload and resources standpoint, SB 404 is likely to create a significant number of new cases that will require additional resources for the SPD, prosecutors, courts, jails, and others. A look at available data from the Department of Transportation (DOT) and the Director of State Courts Office suggests that this could be a significant number of additional cases.

DOT data shows that, in 2022, there were 53,265 traffic convictions for operating while suspended entered on driver records files.<sup>1</sup> Court data allows a more detailed look at the potential workload impact. A good example is to use two provisions from SB 404 related to operating while suspended. These two provisions would increase current forfeiture penalties to misdemeanors. The current provision in s. 343.44(1)(a) that is changed on page 4, lines 18-19 of the bill was filed as a forfeiture in 5355 cases in 2022. The current provision in s. 343.44(1)(a) that is changed on page 4, lines 20-21 of the bill was filed as a forfeiture in 1546 cases in 2022.<sup>2</sup>

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<sup>1</sup> <https://wisconsindot.gov/Documents/about-wisdot/newsroom/statistics/factsfig/2022ff.pdf> - page 14

<sup>2</sup> <https://www.wicourts.gov/publications/statistics/circuit/statutereporting.htm>

This is a total of 6901 cases that were not handled by SPD attorneys in 2022. Based on past calculations, it could be expected that approximately 67% of these individuals would qualify for SPD representation. That would result in just over 4600 additional appointments which is the equivalent of 9 attorneys worth of cases based on current caseload standards. A recently released national workload standards that update the 50 year old caseload standards suggest that more than 9 attorneys would be required for 4600 additional cases. There are two ways to address the resource needs highlighted by the new workload report - a "supply" side and a "demand" side. The recent budget made significant strides on the supply side with compensation increases for public defenders and prosecutors to address retention and recruitment, though the workload remains critically high. On the demand side, the need for additional resources can be mitigated by reducing the demand on those resources. SB 404 would instead place a significant new demand on the most valuable commodity that public defenders and prosecutors have - attorney time.

Long term impacts to recidivism and public safety as well as the workload impact without additional resources are cause for concern with Senate Bill 404. Thank you again for the opportunity to testify today. If you have additional questions, please feel free to contact me at 608-264-8572 or plotkina@opd.wi.gov.

**STATEMENT OF JAMES GRAMLING**  
**RETIRED MILWAUKEE MUNICIPAL COURT JUDGE**  
**TO SENATE COMMITTEE ON JUDICIARY AND PUBLIC SAFETY**  
**REGARDING SB 404 OCTOBER 3, 2023**

Good Afternoon, Chairman Wanggaard and Committee Members. My name is Jim Gramling. I appear before you today in opposition to Senate Bill 404. My reasons will follow a brief statement of my experience in the area of traffic and driver's license law.

I was elected to the Milwaukee Municipal Court, the busiest traffic court in the State, in 1986 and soon took an interest in how driver's licensing and traffic law functioned. This interest led to my appointment to the 1995 Governor's Task Force on Suspended and Revoked Drivers. Governor Thompson and his experts wanted us to evaluate the jumbled and counterproductive state of licensing laws at the time. Our work product led to 1997 Wis Act 84 which brought order and balance to this area of the law.

My interest in this area continued and I helped to found the Center for Driver's License Recovery in 2007, the major funder of which, ever since, has been the City of Milwaukee. After I retired in 2007, I began volunteering at the Center representing suspended and revoked drivers in pursuit of valid licenses. My work continues today. I also worked on successful legislative efforts to change licensing laws which had no impact on traffic safety but hindered low-income drivers trying to obtain or retain their licenses. Two of our bills were signed by Gov. Doyle and two by Gov. Walker.

So, you can see I have quite a bit of experience in trying to make our state's licensing system work for drivers at the bottom end of the income spectrum, the fellow citizens you and I would love to see make it to the middle class. Why do I feel, strongly, then, that SB 404 take us in the entirely wrong direction? If I believed it would directly address the problem of reckless driving, which motivates the City of Milwaukee, or the problem of repeat driving on a suspended privilege, which I believe has led the Chair to pursue this bill, I would support it. But it will not.

The bill would make criminal the simple act of driving while in a suspended status. So who does this kind of driving? Well look at the reasons people get suspended in the first place. Nearly 50%, one half, of all suspensions are for

failing to pay a traffic forfeiture on time, not for any act of dangerous driving. And this type of suspension happens nearly 3 times as often as the next highest suspension. In fact, it's higher than the next 12 types of suspension added together, including for drunk driving, speeding, and demerit points. So by and large the suspended drivers out there are people who didn't pay their fines. And this bill would criminalize them, nearly 53,000 last year alone. You would actually be creating debtor prisons. I urge you to think about this – would your constituents want you to act on people driving down the road on a suspended license, or people speeding through their neighborhoods? Why not criminalize the 147,000 drivers convicted of speeding in WI last year?

This bill would also redefine who becomes an Habitual Traffic Offender to include drivers convicted of Operating While Suspended, Operating Without a License, and Operating After Revocation. Without going into the weeds, this would greatly, hugely, increase the number of HTO's which carries an automatic 5-year revocation. But the bill doesn't stop there. Anyone caught driving while HTO would be charged as a Class I felon! Facing up to a \$10,000 fine and up to 3.5 years of imprisonment! You must rethink a proposal which would strip thousands of people not only of their driving rights and freedom but of their voting rights as well, essentially for driving while poor.

I have tried, in this brief statement, to demonstrate to you how this bill would criminalize poverty. Where will you find the prosecutors, defenders, and jail cells to prop up legislation like this? I have worked over the past 16 years with prosecutors, defenders, judges, and legislators – both Democrats and Republicans - to refine the licensing system we have in Wisconsin. While not perfect it captures what I believe is the proper balance between the 2 abilities – accountability on one hand, and the ability of our lesser well-off citizens to drive legally on the other.

So I ask you, do not give in to the myth that you are cracking down on reckless driving by treating suspended drivers as criminals, or that you will stop repeated driving while suspended by sending suspended drivers to jail. You will be creating a system that a legislature some years from now will have to undo .. because it is unnecessarily punitive and counterproductive.

Thank you.



# Wisconsin Justice Initiative



October 3, 2023

Senate Committee on Judiciary and Public Safety  
Sen. Van Wanggaard, Chair  
Room 122 South  
State Capitol  
PO Box 7882  
Madison, WI 53707

Dear Chairman Wanggaard and Committee Members,

At the Wisconsin Justice Initiative we advocate for policies and laws that improve access to justice and increase fair outcomes in the judicial system.

WJI strongly objects to Senate Bills 404 and 410 because they exacerbate unfairness in our judicial system. These bills criminalize and punish poverty.

SB 404 increases penalties for operating while suspended; if passed, operating while suspended would be a criminal offense. SB 410 would permit impoundment of a vehicle for operating while suspended.

The majority of license suspensions are not caused by safety issues. They are caused by a driver's lack of money.

The number-one cause of license suspensions or revocations each year, by a significant margin, is failure to pay a prior court forfeiture. Municipal judges are permitted to suspend a driver's license as a sanction for nonpayment of forfeitures.

In 2022, failure to pay prior forfeitures was the basis for 47.22% of suspensions or revocations according to [Department of Transportation data](#). This percentage does not even include other poverty-adjacent reasons such as failure to pay support or juvenile forfeiture amounts. The next highest reason for suspension or revocation—a poor driving record—caused only 17.22% in comparison.


Moreover, failure to pay is the consistent number-one cause of suspensions/revocations, and it actually dipped during the pandemic. From 2013 through 2019 the percentage of suspensions/revocations due to failure to pay fluctuated between 53.71% and 58.75%. It's also important to note that those whose licenses are revoked for operating-while-intoxicated offenses already face criminal penalties under current law if they drive after revocation.



The vast majority of those with outstanding forfeiture debt lack the means to pay. Losing a driver's license already inhibits one's ability to get to and from work or school or maintain employment that requires driving. Penalizing those who drive on a revoked or suspended license with criminal penalties or impoundment of their vehicles is an excessive punishment not faced by those who are able to afford their forfeiture amounts. And it does little to nothing to keep others safe.

We urge you to reject these bills.

Sincerely,

A handwritten signature in black ink, appearing to read "C.R. Johnson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Craig R. Johnson  
WJI President