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Issues Related to Wisconsin "Failure to Pay Forfeitures" Driver's License Suspensions

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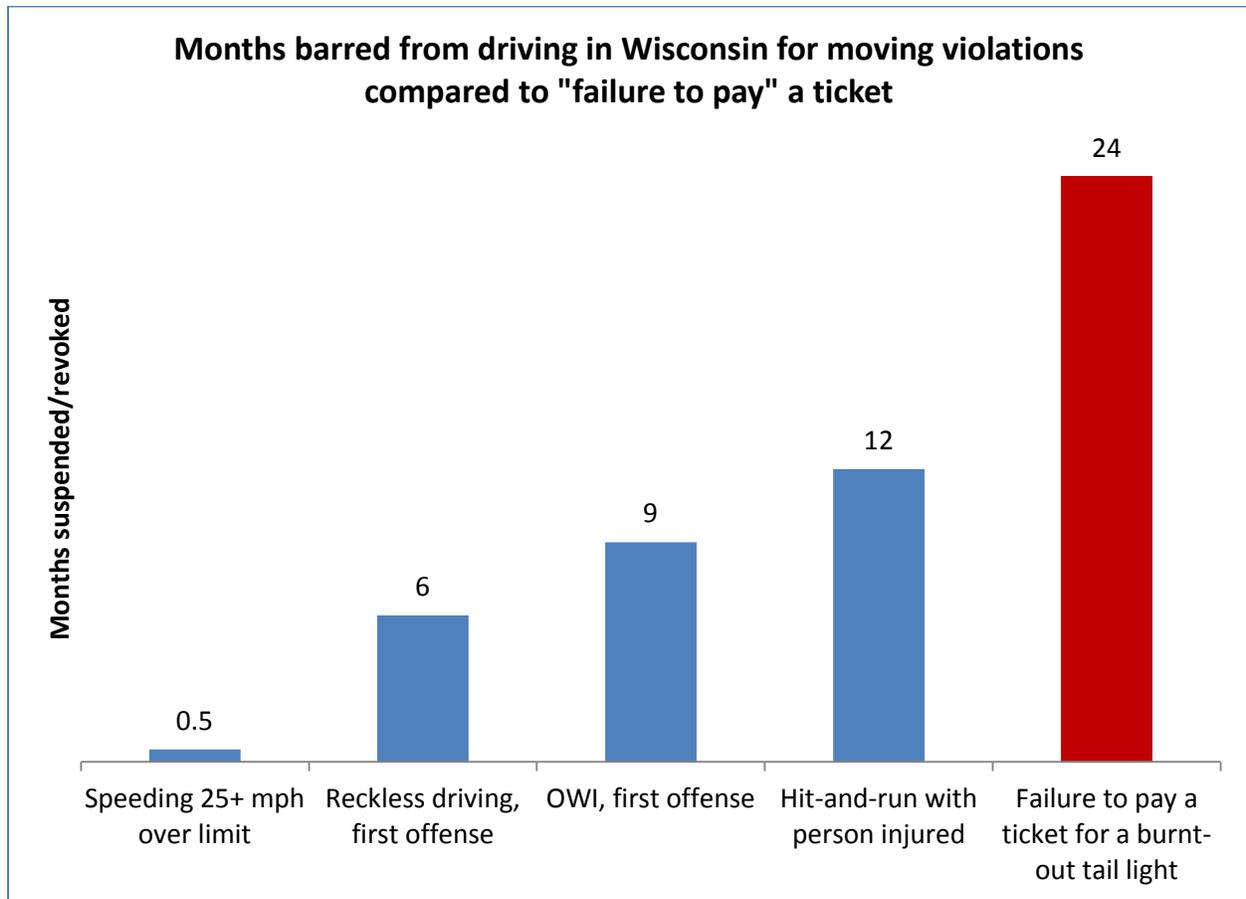
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Issues Related to Wisconsin “Failure to Pay Forfeitures” Driver’s License Suspensions



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Research by the University of Wisconsin-Milwaukee Employment and Training Institute over the last two decades for the Milwaukee Area Workforce Investment Board (and its predecessor the Private Industry Council of Milwaukee County), the city of Milwaukee, and Milwaukee Public Schools found the two barriers to employment most problematic for Milwaukee County men: (1) a record of incarceration in state prison and (2) the lack of a valid driver's license.¹ This paper examines the compounding problems resulting from court-ordered removal of driving privileges for low-income residents in Milwaukee County and Wisconsin as a "tool" for spurring payments of municipal fines, forfeitures and fees (including charges for violations unrelated to driving). The analysis is based on data from the Wisconsin Department of Transportation Division of Motor Vehicles (DOT/DMV), the Milwaukee County Sheriff's Office, and Branch A of the Milwaukee Municipal Court (i.e., handling municipal cases incarcerated in county jail).

Police and court actions taken in Ferguson, Missouri brought national attention to one suburban municipality's routine use of traffic stops, arrest warrants, debtors' jail, and racial targeting.² This study considers race, class and criminal justice consequences of suspending driver's licenses as a debt collection tool in Wisconsin where the barring of driving privileges based on FPF/FPJ ("failure to pay forfeitures" and "failure to pay forfeitures-juveniles") suspensions falls most heavily on men and boys of color and residents in lower-income Milwaukee zipcodes.

I. Employment Consequences of 2-Year Driver's License Suspensions

In a "catch-22" scenario, Wisconsin residents unable to pay their judgments for municipal citations and the additional fees attached to them are denied their right to drive – further jeopardizing their employment options and placing them at risk in the criminal justice system when found "driving while suspended" to and from work. Lack of a driver's license is a particularly serious barrier to employment for workers in the Milwaukee metro area where the majority of job openings are at worksites not served by public transportation and the driver's license is used as a qualifying credential for access to apprenticeship training and as a screening device by many employers. Residents that drive without a valid license further place themselves at high risk within the criminal justice system – for illegal driving, increased police scrutiny, vehicle searches during police stops, and potential violations of state Department of Corrections supervision requirements.

Teenagers and young adults from low-income neighborhoods receive driver's license suspensions sometimes even before they begin driving. Those who do not pay municipal tickets, often issued for infractions unrelated to driving (e.g., loitering, underage drinking, shoplifting) are blocked from obtaining their driver's license for two years – during the critical period when many are first seeking employment and when inner city youth often have early encounters with police.

In testimony supporting their use of "failure to pay forfeiture" license suspensions, the **Wisconsin Municipal Judges Association** described the two-year FPF suspension as "perhaps the most valuable tool available to the municipal courts" for inducing payments from past-due accounts. They described alternative collection techniques using the Wisconsin State Department of Revenue tax intercept program (to obtain unpaid forfeitures from employed violators) and use of collection agencies as having "an inconsistent response," but provided no research to substantiate their claims for the success or cost-benefits of FPF suspensions.³

The Suspended and Revoked Working Group of the **American Association of Motor Vehicle Administrators** disagrees, recommending that "legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations." They argue that driver's license suspensions should be focused on

dangerous drivers rather than for non-safety goals, citing research indicating that suspending driving privileges for non-safety reasons is not effective and warning that “the costs of arresting, processing, administering, and enforcing social non-conformance related driver license suspensions create a significant strain on budgets and other resources and detract from highway and public safety priorities.” They further caution, “Unfortunately, the dramatic increase in suspensions has led to changes in public perception of the seriousness of this action. Consequently, law enforcement, courts and society in general view suspensions less seriously. As a result, the system is less effective in keeping dangerous drivers off the road, which was the original intent of driver license suspensions.”⁴ Wisconsin was identified as one of 18 states suspending licenses of persons failing to appear/comply/pay court fines for non-moving violations.

The chart below shows the conflicting values at play in Wisconsin laws allowing longer suspension of driver’s licenses for failure to pay forfeitures (FPF) than for most dangerous driving. The state’s DMV demerit system expects drivers to change their behavior after being ticketed for speeding before a suspension on their driving rights is imposed. Only when the driver accumulates 12 demerit points within 1 year is a two-month license suspension imposed and even then, the driver may apply immediately for an occupational license to still drive to and from work.

This approach to controlling dangerous driving contrasts sharply with the FPF practices of the courts where a person failing to pay a judgment on a municipal citation (or to make all monthly payments if placed on a payment schedule) has his/her license suspended immediately – and usually for a period of two years. No provision is made to allow workers to obtain an occupational driving permit to get to work or to take their children to necessary day care.

In most situations, “driving while poor” in Wisconsin (that is, not paying off court-imposed judgments) has more serious consequences than leaving the scene of an accident, passing a school bus with flashing red lights, or driving more than 25 miles per hour above the legal limit. As a result, thousands of low-income residents of Milwaukee and other communities are barred from legally driving – even for minor vehicle infractions, petty crimes, and nuisance citations.

<u>Violation</u>	<u>Length of Wisconsin Driver’s License Suspension/Revocation*</u>
Driving with a burnt-out tail light	Ticket, no suspension, 0-3 demerit points
Passing a school bus with its red lights flashing	No suspension, 4 demerit points
Speeding more than 25 mph over the legal limit	15 day suspension, 6 demerit points
Accumulation of 12 demerit points for unsafe driving in 1 yr.	2 mo. suspension, eligible for occupational license immediately
Reckless driving, first offense	6 month suspension, 6 demerit points
Driving while intoxicated (OWI), first offense	9 month revocation, 6 demerit points
Failure to stop after accident involving a personal injury	1 yr. revocation, eligible for occupational license after 15 days
Failure to pay a ticket for a burnt-out tail light	2 year suspension

*Source: Wisconsin Department of Transportation Division of Motor Vehicles, **Driver License Withdrawals: Revocations, Suspensions, and Disqualifications**, January 1, 2014; Wisconsin Administrative Code “Chapter Trans 101.” *Note: Penalties may be more severe for youth under age 18 and for drivers with probationary licenses.*

II. Wisconsin's Use of FPF Suspensions: "Major Credit Cards Accepted"

Municipal courts throughout Wisconsin use both driver's license suspensions and jail time as tools for increasing forfeiture collections from low-income residents, while middle and upper income violators can simply pull out a credit card or their checkbook to handle citations they are issued. Typical municipal court procedures are outlined on the Village of Menomonee Falls website, for one.

*"Once a forfeiture has been ordered by the court, payments can be made as follow: * At the Menomonee Falls Municipal Court; * With cash, personal check, or money order; * With MasterCard, VISA or Discover credit/debit cards; * Telephone. If you need more time to pay the forfeiture, a one time thirty (30) day extension may be approved by the court via telephone or in person. All other requests need approval in-person before the Municipal Judge at 6:00 pm on due date. Citation fines that are not paid or contested before the court date will result in a guilty finding. A default notice will be mailed to your house advising fine amounts owed and due dates. If you fail to pay a forfeiture as scheduled: * Your driver's license can be suspended for up to two years or until the fine is paid. * A commitment warrant can be issued for your arrest/jail sentence. * A tax intercept of state refunds may be imposed. To reinstate your [suspended] driver's license: * Pay the outstanding forfeiture at the municipal court. * Pay the reinstatement fee at the DMV. * With no other pending suspensions, your license will be reinstated.*

A warrant issued for your arrest is statewide. If a law enforcement officer for any reason stops you, a record check will alert the officer of the outstanding warrant. The forfeiture must be paid immediately in order to cancel the warrant. If you are unable to pay the amount due, you will be transported to the County Jail."⁵

On its website the City of Brookfield Municipal Court addresses issues of legal representation of accused municipal violators and treatment of juveniles in its impositions of driver's license suspensions and use of jail to collect payments.

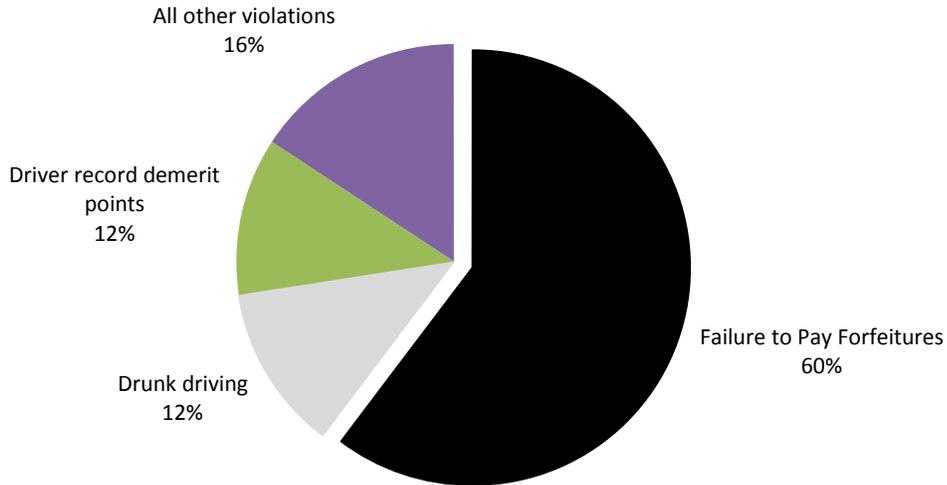
"The court has jurisdiction of traffic and non-traffic ordinances in this municipality. You have a right to be represented by an attorney or you may go ahead without one. If you want an attorney, you must retain one at your own expense. The court will not provide you with an attorney.... Upon a finding of Guilty, a forfeiture plus costs may be imposed.... If you fail to pay your forfeiture and do not appear at the extension time, you may be committed to jail or, in some cases, your driver's license shall be suspended for up to two (2) years.... The Municipal Court has jurisdiction of persons between 12 and 16 years of age charged with non-traffic ordinance violations. Juveniles have the same rights as adults with respect to pleas. They have a right to a private (closed) hearing, but may waive this right. A money judgment may be entered against a juvenile found guilty of a non-traffic ordinance violation. If the juvenile fails to pay the judgment, his/her driver license may be suspended for up to 2 years."⁶

Suspending Licenses of the Indigent

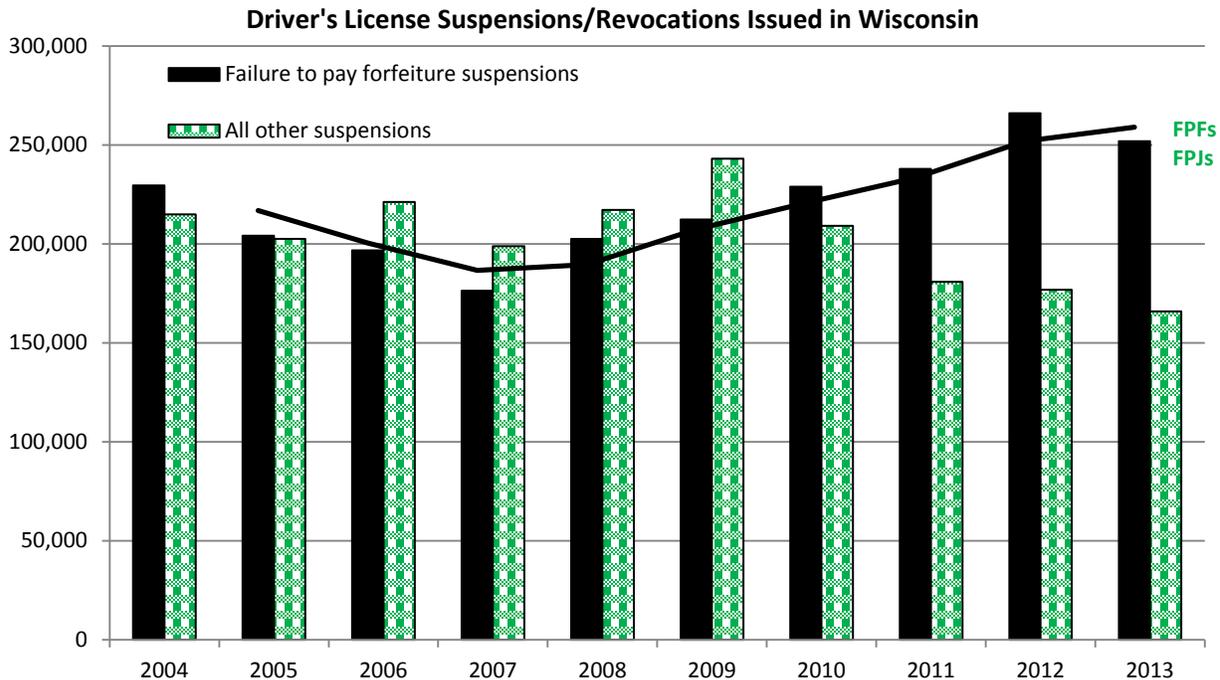
The courts often request separate driver's license suspensions from the DMV for each unpaid forfeiture, resulting in multiple suspension orders for one individual. Even if the violator pays off some judgments and court fees, other driving suspensions may remain and continue to bar legal driving. If the violator is **indigent**, the court must first provide that the person be allowed to pay off the forfeitures in scheduled installments. Only after the person misses installment payments may the court issue a license suspension or put the indigent person in jail. Notably, it remains incumbent on the individual to appear in court and to document such indigence. For example, participation in FoodShare (or other public assistance programs) is considered proof of indigence, but the courts do not conduct simple data matches of their violator populations prior to submitting FPF suspensions to the DMV or incarcerating non-payers in jail.

Wisconsin has reached the point where 60 percent of all driver’s license suspensions in the state are for “failure to pay forfeitures” (FPFs/FPJs) rather than for unsafe, illegal driving. Of 417,954 suspensions and revocations issued statewide in 2013, 251,987 were for the debt collection FPF/FPJ suspensions. By contrast, 51,260 license suspensions were issued for drunk driving (OWI and BAC) and 48,956 for driver record (DR) demerit points (for multiple citations for speeding and other dangerous driving).

60% of License Suspensions Are for Failure to Pay Forfeitures Rather than Unsafe Driving



The number of FPF suspensions in Wisconsin has risen since the economic recession hit while total suspensions for dangerous driving have declined. The FPF suspensions totaled 176,426 in 2007 and then rose to above 250,000 in 2012 and in 2013.



Racial Profiling

In addition to imposing “failure to pay forfeiture” license suspensions on Milwaukee residents cited for violating non-driving ordinances, city and suburban police in the metro area frequently stop males of color – even when they are driving to and from their jobs. If these men do not pay their fines on time, the various courts in the area submit FPF traps at the DMV against the worker’s license. Many central city residents ignore municipal court notifications, out of indigence, limited resources, frustration, or fear of contact with law enforcement; others who move frequently may not receive the mailed notification of court deadlines or the notification that an FPF suspension or warrant has been issued against them.

The Task Force on Racial Profiling, appointed by Governor Tommy Thompson in 1999, and the Commission on Reducing Racial Disparities in the Wisconsin Justice System, appointed by Governor Jim Doyle in 2008, recommended that law enforcement agencies throughout the state conduct studies of their traffic citations and arrest data by race/ethnicity to identify disparities and situations where changes are needed. The problems of “driving while poor” are compounded when traffic stops and arrests are targeted at racial minorities (“driving while black/brown”).

III. Suspending Licenses of People Who Don’t Have Them

At the request of the courts, the DMV records suspensions and revocations issued against residents without licenses by assigning these individuals their unique “license” numbers. Data on these individuals are entered into the DMV system so that they are shown to law enforcement as suspended “drivers” and so that they are not allowed to obtain a permit to drive for the next two years unless all court costs are paid.

Assigning Wisconsin Driver’s License Numbers to Residents Not Allowed to Drive

At the request of the courts, the Division of Motor Vehicles will assign a driver’s license number to any resident without a license (and found to be in arrears for payments of municipal fines) and to block that resident from getting a driver’s license. These Wisconsin residents, including very young teens, are then barred from obtaining their learner’s permit or driver’s license for two years, unless they or their parents can pay off all the municipal costs due (“credit cards accepted”). If they drive while unlicensed, they face charges of “operating while suspended” and if they don’t pay their new OWS suspension costs, additional “failure to pay forfeiture” suspensions may be submitted to the DMV further extending the two-year ban on their legal driving.

Wisconsin License Code: SSSS-FFFY-YDDD-NN

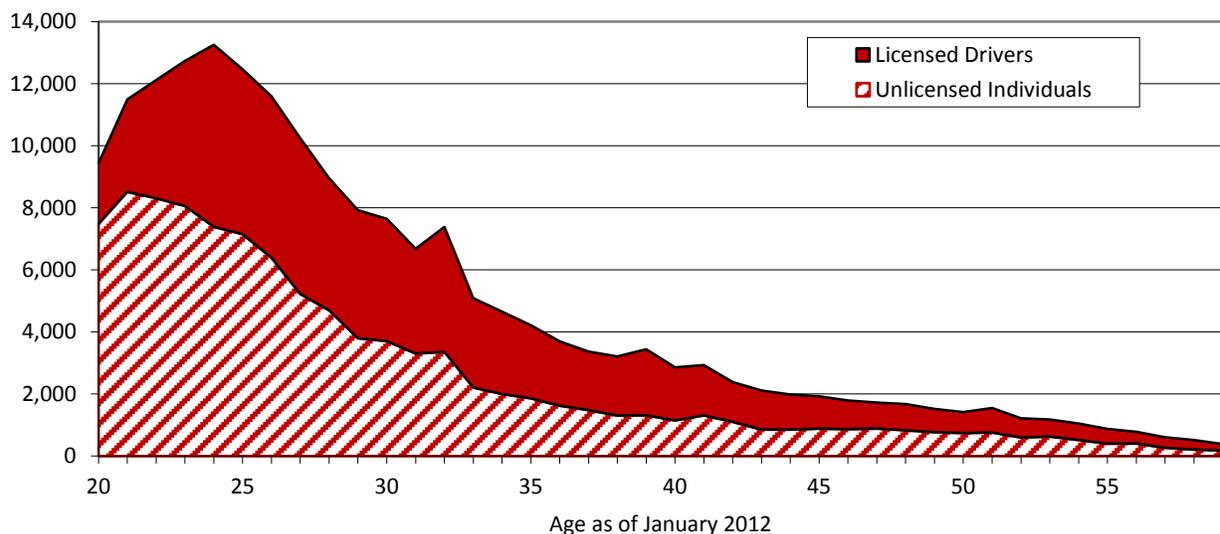
- SSSS is the first four digits of a code based on the sound of the last name. (See the [U.S. Census website](#) for a description of the Soundex code used.)
- FFF is a three-digit code derived from the first name and middle initial.
- YY is the last two digits of the year of birth (e.g., “01” for 2001).
- DDD is (the birth month number minus 1) X 40 + (the day of birth) for males. For females add 500.
- NN is “00” unless someone already has the same SSS-FFFY-YDDD license number, and then an overflow digit is assigned.

Led by Milwaukee, municipal courts in the Milwaukee metro area impose thousands of driver’s license suspensions as part of their punishment and revenue collection strategies and use DMV license suspensions for offenses unrelated to driving or not considered serious enough traffic offenses to warrant a license suspension or revocation. This approach is described on the city of Milwaukee website.

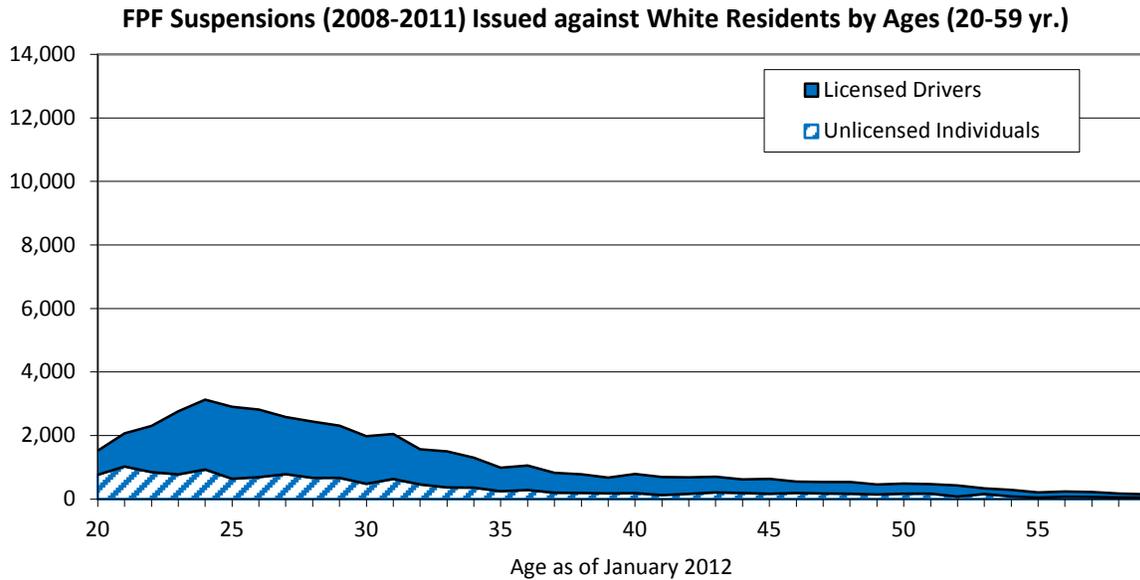
*“Offenses brought before a municipal court are those that occur within the limits of the municipality. Examples of violations handled in municipal court are: traffic, assault and battery, disorderly conduct, vandalism, loitering, theft, shoplifting, building code, health code, and drunken driving. Characteristics of a municipal court include the following: A sentence to pay monetary forfeitures to the City is the primary sentence imposed on a guilty defendant. In addition, a municipal judge may require a defendant's participation in one of several community service or educational programs. **If a defendant does not pay the forfeiture, a judge may suspend the defendant's driving privileges or put him or her in jail.**”⁷ [emphasis added]*

- From 2008 through 2011 a total of 103,341 Failure-to-Pay-Forfeiture suspensions were issued to African Americans in Milwaukee County (20 through 59 years of age as of January 1, 2012) who did not hold licenses, more than 7 times the number of FPF suspensions imposed on unlicensed whites (N=13,954). Additionally, 5,606 suspensions were issued to unlicensed residents with no race/ethnicity code in the DMV files.
- The largest numbers of FPF suspensions were given to unlicensed young African Americans.
- Over half (54%) of the FPF suspensions issued against African Americans (ages 20 through 59) were issued to residents who did not possess a driver’s license.

FPF Suspensions (2008-2011) Issued against African American Residents by Ages (20-59 yr.)



From 2008-2011 most of the FPF license suspensions issued to whites in Milwaukee County (70%) were to individuals who had a driver’s license.



IV. Keeping Teens from Legally Driving

Of particular concern is the number of FPF/FPJ suspensions issued to teenagers in Milwaukee who have not obtained their driver’s license, effectively barring them from legally driving for the next two years unless they clear up all their court fees and costs.

Four years of FPF suspensions (from 2008 through 2011) were examined for the Milwaukee County teen population ages 16 through 19 as of January 1, 2012. Some 8,723 teens received driver’s license suspensions for failure to pay court fines and forfeitures. Most of the youth (7,428 teens, or 85% of the total) did not have driver’s licenses.

**Milwaukee County Youth Issued Driver’s License Suspensions (2008-2011)
for Failure to Pay Municipal Court Fines and Forfeitures**

<u>Age as of Jan. 2012</u>	<u>Unlicensed Youth</u>	<u>Youth with Licenses</u>	<u>Total</u>	<u>% Unlicensed</u>
16	968	38	1,006	96%
17	1,670	152	1,822	92%
18	2,226	373	2,599	86%
19	<u>2,564</u>	<u>732</u>	<u>3,296</u>	78%
Total	7,428	1,295	8,723	85%

A total of 28,349 FPF/FPJ driver’s license suspensions were issued against 7,428 teens that did not have licenses, averaging 3.8 suspensions per unlicensed teen. In addition, 1,295 licensed drivers had accumulated 3,548 FPF suspensions, or an average of 2.7 suspensions per youth.

**FPF/FPJ Driver's License Suspensions Issued to Milwaukee County Youth (2008-2011)
for Failure to Pay Municipal Court Fines and Forfeitures**

<u>Age of Those Receiving Suspensions</u>	<u>Suspensions to Unlicensed Youth</u>	<u>Suspensions to Youth with Licenses</u>	<u>Total Suspensions</u>	<u>% to Unlicensed Youth</u>
16	3,217	75	3,292	98%
17	6,235	373	6,608	94%
18	7,922	981	8,903	89%
19	<u>10,975</u>	<u>2,119</u>	<u>13,094</u>	84%
Total	28,349	3,548	31,897	89%

The youth receiving FPF/FPJ suspensions are required to wait for two years after their most recent suspension before becoming eligible for their license (i.e., to legally drive) unless they can come up with the funds to clear up all their outstanding municipal tickets and court fees, including fines and forfeitures imposed for municipal violations unrelated to driving.

Of serious concern is the culture of non-licensed driving that has evolved in low-income city neighborhoods. A growing population of minority youth and adults drive without licenses, facing frequent traffic stops and arrests (in both the central city and in predominantly white suburban communities where many of the current jobs are located).

V. Interplays between Jail and License Suspensions

As noted, the municipal courts may suspend the driver's license of ordinance violators for failure to pay their bills AND also place the violators in jail. To help understand the interplays between driver's license suspensions and local incarceration the Employment and Training Institute analyzed data from the Milwaukee County Sheriff's Office on incarceration in county jail, data from Branch A of the Milwaukee Municipal Court on jailed populations, and driver's license records from the state Department of Transportation DMV. For this analysis individuals were excluded who had state prison records.⁸

There were over 9,600 African American men from Milwaukee County in the state DMV file (drivers and non-drivers) who had no history in state Department of Corrections facilities but who spent time in local jail from January 2008-October 2013 – sent there by the courts because of municipal warrants for unpaid fines (with jail time euphemistically referred to as an “alternative” to paying forfeitures) or on hold for crimes.

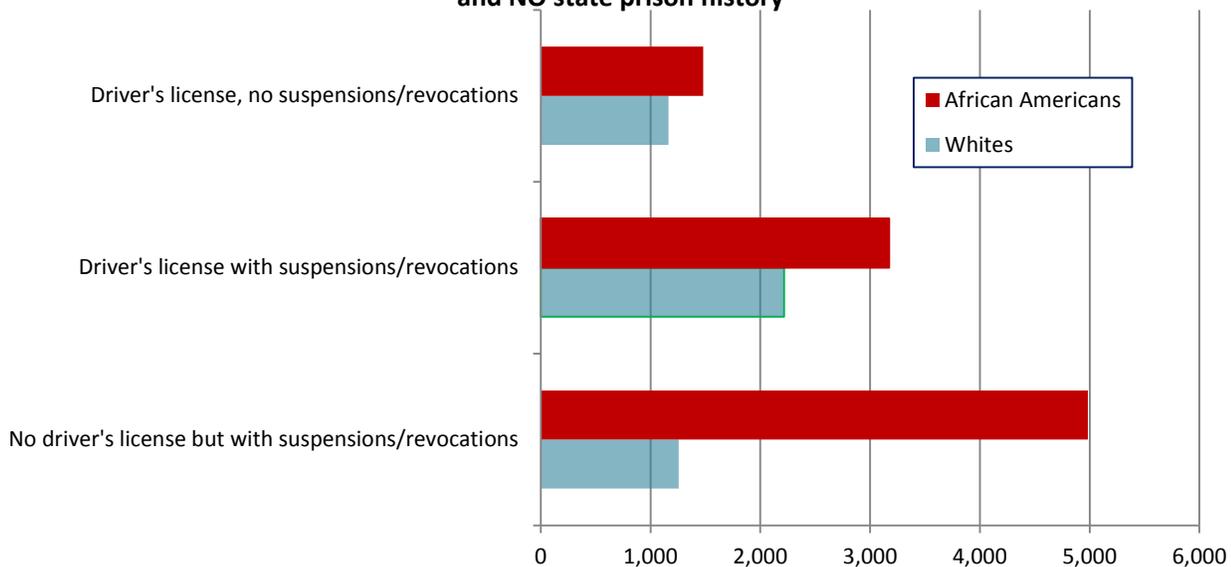
- Only 15% of the men had valid driver's licenses with no suspensions or revocations, while 33% had suspensions/revocations (including the court-imposed FPF suspensions), and the majority (52%) had suspensions/revocations but no driver's license.
- Over 80% of the African American men in this jailed population were issued “failure to pay forfeiture” suspensions removing their right to legally drive.
- Of the African American men in the jailed population with license suspensions, 96% had 1 or more FPF suspensions.

- For this locally jailed black male population, 7,829 of the men were issued 48,837 FPF suspensions. These high levels of FPF suspensions (an average of 6 FTF suspensions per person) suggest the escalating costs required from low-income workers to get out from under the court’s FPF fee collection approach.

The white male jail only population (i.e., with DMV records and county jail history, but no state prison history) had similar problems on a lesser scale. 4,640 white men from Milwaukee County were in the DMV file, had local jail history and no state prison history. *Again, the time served in jail was because of unpaid judgments or for holds for crimes.*

- A fourth of the jailed men (25%) had valid driver’s licenses with no suspensions or revocations, while 48% had driver’s licenses but with suspensions/revocations (including the court-imposed FPF suspensions), and 27% had suspensions/revocations but no driver’s license.
- Two-thirds (66%) of the men in this jailed population (or 3,085 of the men) were issued FPF suspensions, removing their right to legally drive.

Milwaukee County men in the DMV file with time served in local jails and NO state prison history



VI. Using License Suspensions and Jail Penalties against Low-Wage Workers

Many of the cases in Branch A of Milwaukee Municipal Court (which handles jailed populations) involved individuals with only one municipal citation and reported as employed at the time of their booking. For example, 330 individuals (80% males, 20% females) who reported that they were employed as laborers at the time of their single citation booking were jailed for unpaid judgments and also had their driver's licenses suspended for FPF (failure to pay forfeitures).

- Just over a fourth (28%) paid part of their municipal court judgments, with \$12,910 paid on judgments of \$31,695.
- 72% of these low wage workers paid none of their fines on judgments of \$50,690 and spent an average of 5 days in jail.

While the local jail time was imposed as an “alternative” to the court judgments, the worker's FPF license suspension still remains for the entire two-year suspension period unless all related costs are paid – a devastating barrier to employment for a low-wage worker.

¹ See “Publications” on the [Employment and Training Institute website](#).

² Joe Shapiro, “In Ferguson, court fines and fees fuel anger,” National Public Radio, August 25, 2014; Frances Robles, “Ferguson Sets Broad Change for City Courts,” **New York Times**, September 8, 2014.

³ Testimony of Judge Scott R. Letteney, President, Wisconsin Municipal Judges Association, before the Wisconsin Senate Committee on Judiciary and Labor, March 4, 2014, posted at <http://legis.wisconsin.gov/lc/comtmats/files/sb0653.pdf>. The testimony was made in opposition to legislation (2013 Senate Bill 653 and 2013 Assembly Bill 829) seeking to reduce the maximum length of Wisconsin “failure to pay forfeiture” suspensions from two years to one year.

⁴ American Association of Motor Vehicle Administrators Suspended and Revoked Drivers Working Group, **Best Practices Guide to Reducing Suspended Drivers** (2013), pp. 2 and 5. The study estimated that nationally as many as three-fourths of suspended and revoked drivers continue to drive.

⁵ Village of Menomonee Falls website at <http://www.menomonee-falls.org/214/Paying-Forfeitures>.

⁶ City of Brookfield website at <http://www.ci.brookfield.wi.us/DocumentCenter/Home/View/976>.

⁷ City of Milwaukee website at <http://city.milwaukee.gov/WhatWeDo3337.htm#.VEas3U10xdg>.

⁸ The driver's license status of the state imprisoned population was analyzed in the Employment and Training Institute report on **Wisconsin's Mass Incarceration of African American Males**, 2013.

The University of Wisconsin-Milwaukee Employment and Training Institute addresses workforce training, transportation, and education needs of low-income and unemployed workers and families through applied research, policy development, and technical assistance. For more information, see the Employment and Training Institute website at www.eti.uwm.edu.