1. **Role of Driver’s License in Wisconsin and Employment**

Often possessing a driver’s license is a job requirement; either employers require a driver’s license, a lack of public transportation makes it necessary, or both. For many employers, a driver’s license is a symbol of responsibility and employability.

This hurts people with low-incomes and people of color, demographics who are less likely to have a driver’s license and more likely to have a driver’s license suspended. Employment and Training Institute at the University of Wisconsin-Milwaukee studied driver’s license prevalence in 2016 and found that 75% of white 18-year-olds had a driver’s license, compared to just 34% of Black 18-year-olds, and 33% of Latinx 18-year-olds.[[1]](#footnote-1)

Getting a driver’s license is expensive. Losing one’s driver’s license can also be due to cost rather than one’s driving ability. For instance, an inability to pay a ticket can snowball into a driver’s license suspension for failure to pay forfeitures.

1. **Types of Driver’s Licenses**

For many of us, the first driver’s license we received was an **Instructional Permit**. This license requires the holder to be at least 15-and-a-half years old. Those under eighteen must take a driver’s education course; pass knowledge, signs, and vision test; and be sponsored by an adult. The holder of an Instructional Permit must be accompanied by someone riding in the front seat who has had a driver’s license for at least two years, currently has a valid non-probationary license, and is either: a qualified instructor who is at least 19; a parent, legal guardian, or spouse who is at least 19, or a person other than a parent legal guardian, or spouse who is at least 21. An Instructional Permit is valid for one year.

Next, a **Probationary License** is the first full driver’s license issued to everyone, no matter how old they are. With this license, after a first offense, points are doubled for any subsequent moving violations. For driver’s younger than 18, there are additional restrictions under Wisconsin’s **Graduated Driver Licensing** system. A probationary license expires two years after the holder’s next birthday.

A **Regular License** is a driver’s license with full driving privileges.

An **Occupational License** is a restricted license that may be obtained when a driver otherwise has a suspended or revoked driver’s license. The Occupational License restricts where and when the holder can drive. For instance, a holder can only drive: to and from work; to and from school, college, or university; to and from places to maintain a household, such as a grocery store, pharmacy, laundromat, or gas station; to and from a place of worship; and to or from medical appointments. An application for an occupational license must include Wisconsin counties and any other states in which the holder needs to drive. The holder is limited to 12 hours per day and no more than 60 hours per week. An Occupational License holder must also have SR-22 insurance. Operating a motor vehicle outside the specified times and purposes can result in a citation for operating after a suspension or revocation.

1. **Causes of License Revocation and Suspension**

In 2018, 59% of all driver’s license suspensions or revocations were due to failure to pay forfeitures. **FPF, Failure to Pay Forfeitures, suspensions** are one-year suspensions for failure to pay a traffic ticket.

Another common suspension is the **DR, or Driving Record or “points,” suspension**. This occurs when a driver accrues 12 or more points in any twelve-month period. The length of the suspension depends upon the total number of points the driver has and the type of license they hold.

An **OWS, Operating While Suspended, suspension** is a discretionary court-ordered suspension based on an operating while suspended conviction. These can last up to six months.

Similarly, there are **OWS, Operating While Suspended** or **OAR, Operating After Revocation revocations**. These are discretionary, court-ordered revocations upon a fourth subsequent OWS or OAR ticket within a five-year period. This revocation may last up to six months and will result in an SR-22, that is Safety Responsibility, insurance for three years from the end of the revocation.

An **FCC, Failure to Complete Course, suspension** occurs when an individual fails to complete the Right of Way Course that is required after certain violations. This suspension can be for up to five years.

**An FPS, Failure to Pay Support, suspension** is due to a person’s failure to pay child support. These suspensions can last up to two years when court-imposed and up to five years when imposed by the Department of Workforce Development.

An **SR, Safety Responsibility, suspension** is due to an uninsured accident with damages greater than $1,000, failure to provide proof of insurance, failure to post a bond, or failure to prove not at fault. The length may be listed as indefinite, but it is actually one year. SR-22 insurance is required for three years from the end of the suspension.

A **DJN, Damage Judgment, suspension** is a suspension due to damages greater than $500 from an uninsured accident where the individual was found liable in court. The suspension begins on the date of the court judgment. SR-22 insurance is required for 3 years from the end of the suspension.

An **HTO, Habitual Traffic Offender, revocation** is a revocation for four major violations or 12 minor violations in a five-year period. The length of the revocation is five years, but an occupational license could be granted through a court order after two years of the revocation. SR-22 insurance is required for three years from the end of the revocation.

**OWI, Operating While Intoxicated, revocations** occur for different lengths of time based upon the number of previous OWI tickets the individual has received.

A **BAC, Blood Alcohol Content, suspension** is an administrative suspension imposed by the DMV for a period of six months when a chemical test result is at least .08.

There are three types of driver’s license removal that must be dealt with prior to any other suspension or revocation.

First, an **NCI, Non-Compliance with Assessment Interview, revocation** must be dealt with before addressing other suspensions or revocations. This revocation is due to failure to complete an alcohol assessment following an OWI ticket. The length of the revocation is indefinite and lasts until the assessment is completed.

Second, an **NCF, Non-Compliance with Assessment Fee, suspension** must be dealt with prior to other suspensions or revocations. This suspension occurs due to failure to pay an alcohol assessment fee after receiving an OWI ticket. The length of the suspension is indefinite unless/until the assessment is completed.

The third revocation that must be dealt with prior to any other suspension or revocation is an **NCP, Non-Compliance with Safety Plan, revocation**, which is due to failure to complete a driver safety plan following an OWI ticket. This revocation is indefinite until the assessment is completed.

1. **Traffic Citations**

Receiving a traffic citation occurs due to a traffic ordinance or law violation. Often, the clients you will see have received traffic citations from operating while their license was already suspended.

Traffic citations are dealt with in either municipal court or state circuit court. When a person is pulled over by municipal police, the ticket goes to municipal court. If a person is pulled over by a sheriff, state patrol, or municipal police in a jurisdiction without its own municipal court, the ticket will be in circuit court. Additionally, for a criminal traffic ticket, it will be in circuit court regardless of who issued it.

Statutes vary based on whether the ticket is in municipal or circuit court. For instance, poverty protections, something we’ll talk more about later, are more robust in municipal court.

Traffic tickets may result in a forfeiture. Debt resulting from a traffic citation is often referred to as a “fine,” but it is more accurately a forfeiture because it is non-criminal debt. Deposit amounts for forfeitures are uniform and set by judicial conference.

A traffic ticket will stay on a person’s driving record for five years; except OWIs, which stay on for 55 years. Additionally, moving traffic violations result in demerit points on a person’s driver’s license.

1. **Traffic Cases in Municipal and Circuit Court: Overview of what a traffic case looks like from start to finish**

The process of a traffic case varies based upon whether it is in circuit court or municipal court, so we will discuss both.

**Circuit court** traffic cases are governed by sections §§ 345.21 to 345.53 and ch. 799. Neither party is entitled to pretrial discovery, but the defendant may move for discovery and must do so within 10 days of the alleged violation. § 345.421. A defendant may file a written request for a judge substitution within seven days of the initial appearance. § 345.315. A defendant can also request a jury trial and must do so within ten days from a “not guilty” plea. § 345.43 Under Wis. Stat. § 345.42, any pretrial conference may be conducted on the trial date. The process, of course, concludes with the trial and judgment. If a person fails to appear in court, a default judgment will be entered finding the person guilty of the offense. § 345.26(b)2.

**Municipal court** traffic cases are governed by ch. 800. Like in circuit court, a defendant may make a written request for a judge substitution within seven days of the initial appearance. § 800.05(1). Unlike in circuit court, in municipal court, a jury trial is only available for OWI tickets. § 800.035(5)(c). The discovery deadline is 30 days from the initial appearance. § 800.07. A municipal judge may schedule a pretrial conference, which can also be waived upon agreement by the parties. § 800.045. If the defendant is found guilty, the court may render judgment by ordering a forfeiture, plus costs, fees, and surcharges; community service work; an operating privilege suspension or revocation when authorized by law; or other authorized dispositions. § 800.09.

1. **Losing a Driver’s License**

As you have learned, individuals can lose their driver’s license for many reasons. Loss of driving privilege can take the form of a suspension or a revocation. Perhaps the most common reason for loss of license that you will see is Failure to Pay Forfeiture.

For many of our clients, this is a compounding problem. Clients with a suspended license due to an inability to pay forfeitures may still drive out of necessity––to get to and from work and to take care of their children. When these individuals are driving without a driver’s license, the problem can be exacerbated.

Anytime someone is pulled over when they don’t have driving privileges, they will receive additional tickets for Operating While Suspended or Operating After Revocation, adding additional costs to the existing forfeitures they face.

Moreover, a person can lose eligibility to obtain a driver’s license. For instance, a person can have a suspension or a revocation before they have ever had a license. This requires the individual to work through the Department of Motor Vehicles to obtain a driver’s license after any barriers have been addressed. The DMV will require the person to take a written test, often times a road test, though this can be waived, and pay fees associate with obtaining a driver’s license.

When you work with clients through LIFT Dane’s Driver’s License Clinic, you will be provided with an **abstract** from the DOT that outlines the reasons a person has lost their driving privileges and what barriers stand in the way to reinstatement. We’ll be talking more about barriers and drivers abstracts soon.

1. Analyzing Barriers to Driver’s License Privilege
2. Driver’s Abstracts and DMV Tools for Checking Driver’s Status and Reinstatement
3. **Assisting with Suspensions for Nonpayment of Forfeiture**

When a client has lost their license due to nonpayment of forfeitures, there are several options for them. **First, they could pay the ticket**; this is often an inaccessible option for our clients who have low incomes.

**Second, they could seek a payment plan** to pay off the forfeiture over time. **Third, they could seek a modification of the judgment, such as a permanent stay**, based on a poverty hearing. A request other than a payment plan requires that the client include an affidavit and justification for the request. We will be learning more about payment plans and asserting poverty soon––these are paths that often require a client to have the continued assistance of a volunteer lawyer like you.

**Fourth, the client could simply allow the suspension to expire.** Sometimes, you will encounter clients whose suspension due to failure to pay forfeitures have *already* expired. In these cases, the only barrier to recovering a driver’s license is paying the DMV’s $60 license fee. Critically, if a client chooses to wait until the suspension expires, this does not resolve the underlying unpaid forfeiture. Additionally, if the client continues to drive, it means they are still at risk of receiving more tickets for driving with a suspended license.

1. **Assisting with Demerit Point/Driver Record Suspensions**

When a client has lost their driving privilege due to a demerit points or driver record suspension, one resolution is to reopen the case, and usually there is a 6-month deadline to reopen. For convictions of some violations, an individual is required to take a Right of Way safety course. Wis. Stat. § 343.31(2t) contains a list of the violations that require a Right of Way course.

If the person fails to take it within six months of the conviction, the person’s driver’s license will be suspended until the course is completed. This suspension can last up to five years.

Typically, you will see “Right of Way Course Required” listed at the top of the client’s abstract. Then, calculate six months from the conviction date to determine the deadline for completing the course.

1. **Assisting with Safety Responsibility Suspensions**

Safety Responsibility suspensions result from uninsured accidents. An **SR, Safety Responsibility, suspension** is an administrative suspension lasting one year if not addressed. A **DJN, Damage Judgment, suspension** results from a court judgment and lasts five years if not addressed.

These suspensions have long-term consequences for clients because they require the individual to have **SR-22 insurance** for three years after the suspension ends. Drivers need to file proof of SR-22 insurance for three years to avoid re-suspension.

To resolve a Safety Responsibility or Damage Judgment suspension, the client must pay off the debt, enter into a payment plan, file for bankruptcy, or reopen the case. Often paying off the debt is unrealistic or impossible, especially when a judgment is for tens of thousands of dollars. The other solutions typically require further assistance from a volunteer attorney.

1. Assisting with OWI and other Revocations
2. Reopening Traffic Cases

**13.5. Asserting Poverty in Municipal Court**

**Wis. Stat. § 814.29(1)(d) defines poverty.** Under this statute, the court **shall** make a finding of poverty if the person shows in an affidavit that: (1) the person receives means-tested public assistance such as relief provided to families with dependent children, medical assistance, supplemental security income, Food Share (SNAP), veterans benefits, etc.; (2) the person is represented by an attorney through a legal services program for indigent people; or (3) the person is otherwise unable to pay costs of the action due to poverty. For our clients, being represented by a LIFT Dane or Legal Action volunteer attorney would meet the second criterion, of being represented by an attorney who serves indigent people.

1. **Asserting Poverty in Municipal Court**

UnderWis. Stat. § 800.09(1g), **for forfeitures prior to any sanctions for nonpayment**, if the defendant is present and the court has found the defendant is unable to pay the judgment due to poverty under Wis. Stat. § 814.29(1)(d), the court **shall** provide the defendant to pay the judgment in installments or perform community service instead.

Wis. Stat. § 800.09(3)(b)covers **payment plans after a suspension**. If the person’s operating privilege is suspended, for failure to pay, the court **shall** terminate the suspension and substitute an installment payment plan for the payment of the amount of the judgment, taking into account the defendant’s income, if: (1) the defendant is unable to pay due to poverty as defined in Wis. Stat. § 814.29(1)(d) and (2) the defendant has not previously failed to comply with an installment payment plan ordered under this section.

If a defendant fails to pay a monetary judgment ordered by the court, the court may order suspension of the defendant’s operating privilege for up to one year. However, under **Wis. Stat. § 800.095(1)(a)5**, during the suspension, the defendant may request the court reconsider based on an inability to pay due to poverty as defined in Wis. Stat. § 814.29(1)(d). **If nonpayment is due to poverty**, the court shall withdraw the suspension and grant defendant time to pay and order one or more other sanctions including community service.

**Wis. Stat. § 800.095(4)** serves as a **catchall**. “The court **may**, at any time, authorize payment of the monetary judgment by installment payments, or may modify, suspend, or permanently stay the monetary judgment, or order that the judgment be satisfied by community service”

1. **Appealing from Municipal Court**

**Wis. Stat. § 800.14** provides that appeals from municipal court judgments or determinations of whether the defendant is unable to pay due to poverty can be made to the circuit court of the county where the offense occurred. An appellant must provide written notice to the municipal court and other party within 20 days of the judgment or decision. No appeal is allowed from default judgment.

The final disposition shall be stayed pending appeal. If the appeal is from a judgment or decision in which a trial has not been held, the appeal shall be based on a review of the proceedings in the municipal court, and the municipal court shall transmit to the circuit court a copy of the entire record. A defendant claiming inability to pay the transcript fee, appeal fee, or jury fee may petition the circuit court for a fee waiver. The disposition of the appeal shall be certified to the municipal court by the circuit court within 30 days of the judgment of the circuit court. If the disposition requires payment of a forfeiture by the defendant, the forfeiture and all costs, fees, and surcharges shall be payable to the municipality.

1. **Asserting Poverty in Circuit Court**

Now, we will move on to asserting poverty in circuit court. Under Wis. Stat. § 345.47(1), prior to suspension, if the defendant is present and the court, using the criteria in § 814.29(1)(d), determines that the defendant is unable to pay the judgment because of poverty, the court **shall** provide the defendant with an opportunity to pay the judgment in installments, taking into account the defendant's income. You will notice that unlike the municipal court statute, this statute does not acknowledge the possibility of community service in lieu of payment

After a suspension, under Wis. Stat. § 345.47(4)(b), the court **shall** terminate the suspension and substitute in an installment payment plan if (1) defendant can’t pay because of poverty (under § 814.29(1)(d)) and (2) defendant hasn’t defaulted on previous payment plan.

Although the circuit court statutes do not mention community service, modifications, or stays, you can advocate for these based on public policy and the court’s inherent authority.

1. Reinstating the Driver’s License
2. Relevant statutes and caselaw—Kelsey to edit

1. <https://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/> [↑](#footnote-ref-1)