

## Restoring Drivers' Licenses Removes a Common Legal Barrier to Employment

By Barbara Corkrey

We the people appear to have decided that those who can work should do so, and, through our representatives, we have enacted laws requiring that anyone who seeks public assistance must also seek work. But our representatives have also enacted laws that create legal barriers to employment for many people. Laws that make obtaining or restoring drivers' licenses difficult constitute one of the most common of these barriers and can render employment nearly impossible, especially for low-income people.

The laws often deny, suspend, or revoke drivers' licenses for reasons unrelated to public safety. Given the costly fines and time penalties attached, these laws impose a significant financial burden on those "who can least afford not to work and who, in some cases, must work in order to comply with public assistance rules or with a condition of parole or probation."<sup>1</sup> Consequently some low-income people continue to drive, thereby exposing themselves to even greater fines and other penalties for driving with a suspended or revoked license or no license at all and making eventual restoration of their licenses even less likely.

Drivers' licenses were required originally to protect the public by ensuring that anyone who operated a motor vehicle did so with a basic level of competence. National policy shifts in two areas—drug enforcement and child support collection—

expanded this purpose during the late 1980s.

In 1989, responding to increased political pressure to "get tough on drugs," the first President Bush initiated a drug policy that included, among other requirements, suspending the drivers' licenses of casual drug users. In amendments to the Federal Highway Apportionment Act, Congress authorized the withholding of a portion of federal highway funds from any state failing to suspend the drivers' licenses of drug offenders unless the state documented opposition to the policy on the part of its governor and both houses of its legislature—an exception neither likely in nor met by any state.<sup>2</sup>

Drivers' licenses became a child support enforcement mechanism when Congress passed the Family Support Act in 1988. The Act encouraged states to use administrative procedures, such as suspending drivers' licenses, to meet requirements for enforcing child support orders against noncustodial parents.<sup>3</sup> In 1996, in the Personal Responsibility and Work Opportunity Reconciliation Act, Congress made the policy mandatory; it required each state to adopt a driver's license suspension law for child support arrearages in order to continue receiving its full share of federal funds.<sup>4</sup>

States hopped on the bandwagon of using driver's license suspension to enforce federal laws that had nothing to do with pro-

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<sup>1</sup>KEN ZIMMERMAN & NANCY FISHMAN, N.J. INST. FOR SOC. JUSTICE, ROADBLOCK ON THE WAY TO WORK: DRIVER'S LICENSE SUSPENSION IN NEW JERSEY 8 (2001), available at [www.njisj.org/reports/roadblock\\_report.html](http://www.njisj.org/reports/roadblock_report.html).

<sup>2</sup>23 U. S. C. § 159 (2003).

<sup>3</sup>ZIMMERMAN & FISHMAN, *supra* note 1, at 5.

<sup>4</sup>42 U. S. C. § 666 (a)(16) (2003).

protecting the public from unsafe drivers. States began suspending drivers' licenses to enforce a multitude of state laws unrelated to public safety; these laws penalized actions ranging from economic offenses (e.g., failure to appear on or pay parking tickets and fines) to such juvenile offenses as graffiti and school truancy.<sup>5</sup>

No national study has examined the impact of driver's license suspension laws on low-income persons, but studies in New Jersey, Washington, and Wisconsin suggest that the overwhelming majority of persons whom the laws affect have low incomes and are penalized largely for economic reasons.<sup>6</sup> For example, in New Jersey, the largest number of driver's license suspensions in 2000 was for failure to pay insurance surcharges, followed by failure to appear on or pay parking tickets.<sup>7</sup>

Similarly the Wisconsin study shows that 58 percent—from 1992 to 1996—of the driver's license suspensions among adults between 18 and 55 were for failure to pay fines rather than for unsafe driving.<sup>8</sup> For teenagers 16 to 18, the percentage was even higher: 93 percent of driver's license suspensions were for failure to pay fines imposed for reasons other than unsafe driving; most unpaid fines were for juvenile offenses such as curfew violations.<sup>9</sup>

Data from the driver's license clinics conducted by the Legal Aid Foundation of Los Angeles since January 1999 support these studies. More than half of clinic clients' drivers' licenses are suspended for failing to appear on or pay fines for reasons unre-

lated to unsafe driving; most unpaid fines are imposed for lack of insurance.

### Legal Aid Approaches to Restoring Drivers' Licenses

In response to the impact of driver's license denial, suspension, or revocation on low-income persons, or in response to requests from job placement or training programs to remove this barrier to employment for low-income persons, at least eight legal aid programs have used one of two approaches to driver's license restoration.<sup>10</sup> Five of the eight offer individual representation, primarily on a referral and appointment basis.<sup>11</sup> The others, all in California, offer driver's license restoration clinics or workshops, primarily for job placement or training programs.<sup>12</sup>

Individual representation on a referral and appointment basis ensures that low-income persons unable to follow *pro se* advice, even if the advice is also outlined step by step in written manuals, receive the help needed to restore their drivers' licenses and thus remove a barrier to employment or job training. This advantage is why five of the eight programs chose this approach. The main disadvantage of individual representation is that, due to budget and staff constraints, fewer clients can be served. Indeed, all five of the programs that provide individual representation have had no more than one staff attorney per office working on driver's license restoration.

<sup>5</sup>ZIMMERMAN & FISHMAN, *supra* note 1, at 5.

<sup>6</sup>*Id.* at 8; OFFICE OF PORT JOBS, WORKING WHEELS: A GUIDE TO OVERCOMING TRANSPORTATION BARRIERS TO WORK (1999); JOHN PAWASARAT & FRANK STETZER, UNIV. OF WIS., MILWAUKEE, REMOVING TRANSPORTATION BARRIERS TO EMPLOYMENT: ASSESSING DRIVER'S LICENSE AND VEHICLE OWNERSHIP PATTERNS OF LOW-INCOME POPULATIONS (1998), available at [www.uwm.edu/Dept/ETI/dot.htm](http://www.uwm.edu/Dept/ETI/dot.htm).

<sup>7</sup>ZIMMERMAN & FISHMAN, *supra* note 1, at 8.

<sup>8</sup>PAWASARAT & STETZER, *supra* note 6, at 2.

<sup>9</sup>*Id.* at 4.

<sup>10</sup>E-mail inquiries and a search of the Internet by Luis A. Rodriguez (a University of California, Los Angeles, law student and Legal Aid Foundation of Los Angeles summer 2003 law clerk) found, other than the Legal Aid Foundation of Los Angeles, only seven legal aid programs assisting in driver's license restoration. Three are in California: Bay Area Legal Aid, Sonoma County Legal Aid, and Voluntary Legal Services Program in Sacramento; the others are Legal Action of Wisconsin, Legal Aid Bureau in Maryland, Legal Services of Eastern Michigan, and Legal Services of Northern Virginia.

<sup>11</sup>The five are Bay Area Legal Aid in California, Legal Action of Wisconsin, Legal Aid Bureau in Maryland, Legal Services of Eastern Michigan, and Legal Services of Northern Virginia.

<sup>12</sup>Legal Aid Foundation of Los Angeles, Sonoma County Legal Aid, and Voluntary Legal Services Program in Sacramento.

To maximize their impact, the five programs limit their representation to clients whose licenses have been suspended for certain reasons; the programs also use pro bono attorney volunteers to varying degrees. While most represent only clients who have lost their licenses due to failure to appear and pay fines, insurance judgments, and child support arrearages, the Legal Aid Bureau in Maryland, which has fourteen offices, limits referrals and appointments to clients with child support arrearages.<sup>13</sup> The involvement of pro bono volunteer attorneys varies with the reasons for which license restoration assistance is provided and the size of the service area.

The main advantage of offering a driver's license clinic or workshop at a job placement or training program is that a greater number of low-income persons can receive the help necessary to restore their licenses.<sup>14</sup> Furthermore, when the assistance is offered in the context of employment services, clients tend to be motivated more because they can see the potential for license restoration to enhance their employability. Working through job placement or training programs also makes it easier to follow up with clients to determine whether they were able to obtain the licenses and become self-sufficient.

Extensive use of pro bono attorneys to give individual advice enables clinic programs to help many more low-income persons than they could serve if they relied solely on staff resources. In Los Angeles the average number of low-income persons seeking help in restoring their drivers' licenses at a clinic or workshop is twenty-two.<sup>15</sup> A clinic or workshop held once every six weeks, such as the Sonoma County Legal Aid Driver's License Retrieval Workshop,

helped over 175 low-income persons in one year.<sup>16</sup> A clinic or workshop held more than once a week, such as the Voluntary Legal Services Program in Sacramento, helped over 1,200 low-income persons a year in restoring their drivers' licenses.<sup>17</sup>

The main disadvantage of the clinic or workshop approach, which makes extensive use of volunteers, is that low-income persons unable to follow *pro se* advice do not receive the help needed to restore their drivers' licenses and, as a result, do not get the jobs or job training that lead to self-sufficiency. Follow-up data collected from the driver's license clinics conducted by the Legal Aid Foundation of Los Angeles since January 1999 show that less than 22 percent of those attending the clinics fall into this category.

### Recommendations

Legal aid programs that do not currently offer driver's license restoration assistance should consider providing it to low-income persons whose licenses have been denied, suspended, or revoked for economic reasons unrelated to public safety. Such assistance should be considered an employment-related priority service.

The first step is to determine if individual representation or the clinic approach serves the needs of the program's clients better. Programs with small service areas, especially rural programs, may find that individual representation on a referral and appointment basis works better for them. Programs in areas where the courts are not friendly to persons appearing *pro se* may also prefer individual representation. Legal Services of Northern Virginia, which initially used the clinic or workshop

<sup>13</sup>E-mail to Luis A. Rodriguez, *supra* note 10, from Tony St. John, Maryland Legal Aid Bureau Child Support Project (July 3, 2003).

<sup>14</sup>Clinics and workshops are similar; but clinics primarily offer one-to-one advice, while workshops tend to offer one-on-one advice only when participants need further assistance.

<sup>15</sup>Based on data collected by the Legal Aid Foundation of Los Angeles from January 1999 through the present.

<sup>16</sup>E-mail to Luis A. Rodriguez, *supra* note 10, from Casey McChesney, Sonoma County Legal Aid Interim Legal Services Referral Project Manager (June 23, 2003).

<sup>17</sup>Amy Radbill, *VLSP Helps Move Clients Toward Economic Independence*, SACRAMENTO LAW. (Jan.-Feb. 2001), available at [www.sacbar.org/members/saclawyer/janfeb01/index.html](http://www.sacbar.org/members/saclawyer/janfeb01/index.html).

approach, changed to individual representation for this reason.<sup>18</sup>

Driver's license clinics or workshops are best suited for legal aid programs with large service areas, especially metropolitan or urban areas and those where courts are friendly to persons appearing *pro se*. The clinic or workshop approach offered in conjunction with job placement or training programs is also well suited to legal aid programs that focus on securing jobs for their clients, especially from publicly supported projects in their service areas. When these jobs require a valid driver's license, telling low-income persons that such jobs are available is just an empty promise if the job seekers lack licenses. The Legal Aid Foundation of Los Angeles started its driver's license clinics in January 1999. The foundation had worked through the Alameda Corridor and Jobs Coalition to secure construction jobs from the federally funded Alameda Corridor Project for 1,000 low-income corridor residents and then turned toward helping ensure that 1,000 low-income corridor residents with valid drivers' licenses were on hand to fill those jobs.

Legal aid programs in large urban areas should consider a combination of both approaches, conducting clinics for most of the low-income persons referred by job placement or training programs and offering individual representation to those unable to follow the *pro se* advice given at the clinics. In any case, legal aid programs giving restoration assistance should use pro bono attorney volunteers, especially if budget and staff allow only one staff attorney to handle the cases. While the number of pro bono attorneys needed for individual representation varies with the reasons for which assistance is provided and the size of the service area, a large number of

such attorneys are needed for the driver's license clinic or workshop approach, with an even larger number needed if a combination of these approaches is implemented.

Attracting and training a sufficient number of pro bono attorney volunteers can be a challenge. However, advertising and holding two or three group training sessions that offer attorneys free continuing legal education credit, in exchange for the attorneys' agreement to take on a certain number of pro bono cases or conduct a certain number of clinics, can be an effective recruiting tool.

Every legal aid program offering driver's license restoration assistance should strive to assign at least two staff attorneys to provide this representation in order to allow for continuation of the work in the event of staff turnover. For example, Legal Services of Eastern Michigan could not offer this assistance after the only attorney providing it left the program.<sup>19</sup>

If budget and staff do not permit assigning two or even one attorney, programs should seek additional funding, including government funding. The Legal Aid Foundation of Los Angeles' driver's license restoration clinics began with an Americorps grant for 1999, followed by state Equal Access to Justice grants for 2000–2002 and by a combination of the city's Neighborhood Action Program grant and the state's Equal Access to Justice grant in 2003.

Securing stable funding, especially from government sources, requires tracking quantifiable outcomes: the number of low-income persons whose drivers' licenses were restored and, more important, the jobs or job training leading to self-sufficiency that these clients acquired as a result. For programs that offer individual

<sup>18</sup>Fax to Luis A. Rodriguez, *supra* note 10, from Peyton Whitely, Legal Services of Northern Virginia Attorney, Fairfax City Office (June 26, 2003).

<sup>19</sup>E-mail to Luis A. Rodriguez, *supra* note 10, from Legal Services of Eastern Michigan (July 2, 2003).

representation, such tracking will require following up with the individual clients on the jobs (including salary or wage amounts) or job training that they obtained. For the driver's license clinic or workshop approach, tracking requires obtaining similar information from clinic or workshop participants. The Legal Aid Foundation of Los Angeles developed a one-page follow-up form that is mailed with a self-addressed and stamped envelope to facilitate as large a response as possible.<sup>20</sup> Follow-up is conducted by telephone with those who do not respond by the return deadline.

Since most laws that deny, suspend, or revoke drivers' licenses on economic grounds largely unrelated to public safety

are state-specific, legal aid programs within each state should jointly advocate amendments or laws that reduce or even eliminate the impact of such laws on low-income persons. For example, many states offer a driver's license that restricts a person to driving only for employment-related purposes and not for other purposes.<sup>21</sup> Programs within a single state should jointly advocate a broad job-related restricted license if the state does not provide for any job-related restricted licenses, as is true in New Jersey, or restricts job-related licenses to certain suspensions.<sup>22</sup> The concerted efforts of programs within each state can help make their laws much closer to being laws "for the people" than they are now.

<sup>20</sup>Send for a sample copy of the form from [bcorkrey@lafla.org](mailto:bcorkrey@lafla.org)

<sup>21</sup>California's restricted license statute is California Vehicle Code § 16076 (West 2003).

<sup>22</sup>ZIMMERMAN & FISHMAN, *supra* note 1, at 11

