

# **Alberta Darling**

## **Wisconsin State Senator**

**Co-Chair, Joint Committee on Finance**

TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY AND PUBLIC SAFETY  
Senate Bills 72, 73 and Assembly Bill 98  
September 5, 2017

Thank you, Chairman Wanggaard and committee members for holding a public hearing today on Senate Bills 72, 73 and Assembly Bill 98. The bills before you today involve Wisconsin's Operating While Intoxicated (OWI) laws.

Getting behind the wheel and driving while intoxicated is a serious problem we face in Wisconsin. According to statistics provided by the Department of Transportation, in 2015 alone we had almost 24,000 OWI convictions. In the past, I have worked to address this chronic abuse of driving while intoxicated by working on legislation to provide harsher penalties, while also expanding access to treatment for these individuals. Due to some of these measures, the state of Wisconsin has continued to see a decrease in overall OWI convictions.

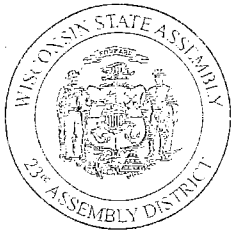
Unfortunately, there are instances where an individual's irresponsible act of driving drunk kills someone. In some of these cases, the driver is only incarcerated for two or three years. Senate Bill 73 creates a mandatory minimum of five years for these instances. When someone takes the life of another, they must be given a sentence that provides justice for the family members who have lost a loved one.

Even though we have seen a decrease in overall OWI convictions in the past few years, one group of individuals that has seen an increase in convictions is 5<sup>th</sup> and 6<sup>th</sup> OWI offenders. Currently, OWI offenders in this category are at minimum required to be incarcerated for six months. It is my hope that Senate Bill 72 will deter individuals from getting behind the wheel intoxicated by increasing the mandatory minimum to 18 months in prison. With the expansion of treatment and diversion programs and other alternatives, it is my hope that Senate Bill 72 will never have to be used.

The last bill before you today, Assembly Bill 98, closes a loophole in the state's ignition interlock law. Currently, first-time OWI offenders whose blood alcohol concentration is 0.15 or higher, and all repeat OWI offenders are required to install an ignition interlock on an automobile registered to them. The law requires that the interlock device is in place on the automobile at the time the driver's license is reinstated and must remain on the automobile until the order expires. However, there is a loophole in current law. Some OWI offenders break the law by driving before their license is reinstated. If this occurs and they are subject to a traffic stop, they will be cited for driving without a valid license, but will not face the more serious offense of violating the court order concerning the ignition interlock. This bill will close the loophole, and the individual will now be cited for driving without the ignition interlock.

I want to thank Representative Ott for his leadership on OWI legislation. It has been a pleasure continuing to work with him on this important matter. Thank you again, Mr. Chairman and members, for listening to testimony on Senate Bills 72, 73 and Assembly Bill 98.

I urge you to support these important bills.



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Good Morning Mr. Chairman and committee members. Thank you for holding this hearing today on Assembly Bill 98 and Senate Bills 72 and 73.

The fact that the number of OWI related crashes in Wisconsin has declined in the last few decades may give some the impression that our current penalties for OWI offenses provide a sufficient deterrent to driving drunk. But consider the following: In 2015 the Department of Transportation reported 5,174 alcohol-related crashes and 2,872 injuries in Wisconsin in alcohol-related crashes in Wisconsin. That amounts to over 14 crashes and nearly eight injuries every single day.

Also in 2015 there were 190 fatalities in alcohol related crashes. Taken together, a person was killed or injured in an alcohol-related crash every 2.9 hours on Wisconsin roadways. In some cases it was the impaired driver who died, but in many cases it was an innocent victim. To me that's unacceptable. Many, many families in our state have been devastated by drunk drivers. You will hear from some of them today.

I will summarize the three bills you are considering today, beginning with Assembly Bill 98, which does not change current law in Wisconsin, but rather correct a serious loophole in 2009 Wisconsin Act 100. Under that law, any driver convicted of first offense OWI with a Blood Alcohol Content (BAC) of 0.15 or higher, and all repeat offenders, must have an ignition interlock device installed on his or her vehicle.

Current law requires that the interlock device be installed at the time the person's driver license is reinstated, and must remain on the automobile until the order expires. The problem is that some drivers choose to drive before their license is reinstated, and if stopped for a traffic violation, the driver will only be cited for driving without a license and not the more serious offense of driving without an interlock.

AB 98 corrects this loophole by requiring that any driver requiring an interlock device cannot drive any vehicle not equipped with the device from the time of conviction until the order expires. The penalty for those convicted of driving without the interlock will remain the same as under current law. The bill also lets the judge set when the interlock device has to be installed, so that people will not be charged for the interlock device in the event they are not capable of driving an automobile. AB 98 was passed by the full Assembly on May 10th.

Senate Bill 72 increases the mandatory minimum sentence for 5<sup>th</sup> or 6<sup>th</sup> offense OWI from six months to 18 months incarceration. This would bring the mandatory minimum more in line with the minimums for 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> offenses, which are three years, and would also align more with the maximum possible penalty for 5<sup>th</sup> and 6<sup>th</sup> offense, which



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currently is 10 years incarceration. The Assembly companion Bill, AB 99, was passed by the Criminal Justice Committee and is now in Joint Finance.

SB 73 imposes a mandatory 5 years for committing homicide while OWI. Currently the maximum penalty for homicide while OWI can range from 25 to 40 years depending on the circumstances. However, there is no mandatory minimum. The Assembly companion bill, AB 97, was passed by the Criminal Justice Committee and is now in Joint Finance.

To be honest, I think 5 years is not a strong enough penalty, and I believe most judges agree with me. That's because a majority of the time the sentences handed out for homicide while OWI exceed five years. However, I have heard of enough instances in which the sentence may be as little as one or two years. This is an outrage.

SB 73 does allow a judge discretion in cases where the person killed was a passenger in the drunk driver's car. In those cases, if the judge finds that the best interests of the community would be served he can sentence for less than 5 years, as long as the judge puts those reasons in writing.

I understand that OWI is a complicated problem often involving addiction, and we are not going to solve the problem by simply passing tougher laws. However, I believe that enforcing tougher penalties is a part of the solution, and it's a part the legislature can work on.

There are plenty of alternatives to driving drunk, including safe ride programs, designated drivers and public transportation. There's no law against driving, or drinking to excess. But when the two are combined the results can be deadly.

My goal in introducing this legislation and other bills I have authored is not to incarcerate more people or impose higher fines. It's simply to make our roads safer. I hope that's a goal we can all agree on.

Again thank you for considering these bill today. I would be glad to answer any questions.

## Colleen Ehle – Deforest, Wisconsin

In February of 2013, I was headed home to Deforest on Hwy 51 and a drunk driver came into my lane hitting me head on. The impact often replays in my head when I'm in a car. I was 10 weeks pregnant.

The drunk driver lost his life and it would have been his 4th OWI. I was pinned in my car as my driver's side tire had crushed my left foot. I remember feeling so terrified, the smoke and chemicals from the airbags made me think my car was going to start on fire and I couldn't get out. Other drivers pulled over, but no one came to me as I was screaming out my window. I had no idea what had happened and all I could think about was losing my child. Eventually, a sheriff arrived and then they used the jaws of life cut my vehicle, and got me out. I was very lucky.

I had emergency surgery and was put under general anesthesia and had to take narcotic pain meds. My only injuries were 3 shattered metatarsals, a broken and dislocated talus (ankle) bone of my left foot. I had 2 plates and 14 screws placed in my foot to put it back together. My surgeon said he had to collect all the bone pieces and then piece them together to make a bone from point A to point B.

In the hospital, I waited for days wondering when and if I would miscarry. I never did. Today, she is a spirited 3-year-old who reminds me every day of what I could have lost.

I spent the next 12 weeks unable to walk and every time I did need to move my foot would get this intense pressure, feeling as if it was about to explode. I woke up in night sweats after nightmares of the impact and me being unable to get out. Sheets completely soaked and I would scream and wake my family. I couldn't have the hardware removed until I delivered my miracle. For 9 months, I was either in a cast or a boot, with crutches. I had graduated from nursing school 2 years prior. 4 years later and I deal with chronic pain every day. I was unable to return to my job that required so much waking and was recently blessed with a job working for my local school district as a nurse, where the patients mostly come to me. I went through a deep, dark depression and struggled for a long time, requiring 3 different mental health medications to get me through.

Today, I wear a semi colon tattoo on my wrist to show mental health issues are real and can happen to anyone. While I never thought about suicide, I struggled with PTSD, my life completely changed and not understanding what to do. When all the sirens, casts were gone, I was left with so much to deal with. On the outside, I looked healthy but inside I was full of pain and feelings I didn't understand. Today, I am doing much better.

I have come to accept a life of pain and refuse to take narcotic pain meds. I have gone through a ton of PT and finally found a doctor who has made a difference in my pain by injecting my scars to loosen them up. These painful procedures have come from heaven as has this doctor. This week my provider and I presented to a committee with my insurance to appeal their denial to cover prolotherapy for my foot. Although they cover knees and elbows, they don't cover ankles. They denied it again. I don't drive much and when I do, it's a pretty big deal. It was struggle to get me in the car, home from the hospital. We bought our house 2 months before the accident

moving from Madison and after the accident I told my husband we had to sell and move back, I couldn't drive 51 again. Luckily, they have changed it to have 2 lanes each way separated or I would have continued my move plan. I've lost friends, a job and other things as a result of my pain. But I am blessed to be here as so many don't make it.

- *Colleen Ehle*

Deforest, WI

## Melodee Pasqualini

I have found it very hard to put into words how the events of November 2, 2016 have changed my life and the life of my family and friends. On November 2, 2016, a terrible crash that took the life of my beautiful 26-year-old daughter Katey Lynn Pasqualini. Katey and three of her co-workers were coming home from a recruiting event for RitzHolman CPAs, in Dane county on their way back to Milwaukee. When a drunk driver murdered three of them and severely injured the driver of the vehicle. When he decided to drive on I-94 the wrong way going 93 miles an hour hitting them head on, and also killing the young man in the car behind them while under the influence of alcohol.

Katey was a bright star, kind, loving, generous, hardworking, and a friend to everyone that she knew. Katey graduated, Summa Cum Laude, with a Masters Degree in Accounting at University of Wisconsin Whitewater and was working on her CPA certification. She was to take her first CPA exam the Monday following the crash. She interned at RitzHolman CPAs in downtown Milwaukee, before graduating and was offered a full-time job, where she met Clenton Hall, who became the love of her life and who was also taken that night. So how has it affected me, my hearts forever broken, I have gone through all the emotions of loss, grief and anger. Anger that I will never be able to hug and kiss her again, talk to her on the phone, coming to visit me over my birthday as the first one just past and she was not here to enjoy it with me. I get angry to know that she will not be able to get married, have children, move forward in her career. Take vacations, Katey and Clenton liked to travel, the next trip they were planning was going to Seattle to check out the cost of living there. They were talking about buying a house. Going to the Brewer games or just walking three miles on a

Sunday for breakfast, and then walking back to work off breakfast. They belonged to a running club, they did Yoga together. I look at her pictures and I wish someone would pinch me and it just be a bad dream, but I know that is not the case here. I have in the beginning put my feelings aside, and was trying to be strong for her twin sister and her older sister, in February of 2017 my body and mind had taken its toll and now sadness has set in. I have to take one day at a time and know that our lives have been changed forever and will always be missing two people at the Christmas table. What is more frustrating is that I know right now the law is not on Katey and Clenton's side as the drunk is still free to live his life. I had a reporter ask me at the one court hearing I went to, would this be over for me if Brysen went to jail? My answer was, I want to see Brysen go to Jail and pay for what he the decision he made that night, as I would never want another family to have to go through this. The next thing I said was this will never be over for me as I lost my daughter, a sister, a granddaughter, a life cut short and my heart will be broken forever.

Melodee Pasqualini – Hollywood, Florida

## Jill Miyagawa

Friday Sept 24, 2010.

My (now husband) and I were headed up north on our annual duck hunting trip. We usually leave early in the day on Friday and head to our camp ground in Gordon WI. Northern zone duck hunting starts a week earlier than in southern WI, where we live. We normally take the entire next week and visit my husband's family then towards the end of the week, head back to Montello WI for southern zone duck hunting.

We started our trip later than normal but regardless, we were on the way. We fueled up our truck in Rice Lake about 10:00 pm and continued on Hwy 53 north towards Gordon. We were getting close.

It's all kind of a mix now since it's been some years since our accident happened but I'll try my best.

As we got close to Trego, I recall seeing some sort of emergency light- like a cop on the side of the road but I didn't really pay much attention to it, just noticed it as there was also construction in the area where the 4 Lane divided highway was down to 2. As we started leaving the area, about to head up the hill, we noticed cop cars on the other side of the divided highway coming south bound. Next thing we know, they were coming directly at us, as that is where the road was changing over - due to the construction. We couldn't see the car heading straight at us as we were looking at the cop cars trying to figure out what was going on. My husband was driving and was trying to get outta the way but there were also barrels on the side of the road due to the construction. We were also pulling our boat. He pulled over as far as he could and in the second as we finally realized a car was coming straight at us, the other driver drove to the left of us towards the other barrels, but somehow lost control and ended up hitting us on the passenger side. With a car, he took out a F150 and a boat. Everything was totaled in an instant. We were loaded for camping and everything in the back of the truck and boat ended up in the road.

We also had our 2 dogs with us.

Miraculously, none of us were seriously injured although we were in pain. Later I found out I had a broken rib. My husband still has neck issues that creep up in the winter. It ruined our vacation. My husband's sister came and picked us up and took us to Duluth where we were able to rent a car. It was just a disaster.

So, here's the gist.

The guy that hit us was drunk, had 5th/ 6th drunk driving. Apparently, the vehicle was stolen, he had no insurance, wasn't wearing a seat belt and was driving against traffic for I believe 13 miles. He was also evading police. The police had tried to get him to stop and had attempted spike strips but he had gotten around them and nearly took out a few other cars in his escapade. We were also in a construction zone. He went directly to jail from the accident scene and was in jail for a while but got out and was seen drinking in a bar so he was taken back to jail. I believe he got a year minus what he had already sat so maybe in total a year and half. I'm not totally sure. He also paid us restitution for a while, which is what we claimed- our insurance deductibles.



We were present for the trial on the phone. The judge was giving him good comments for being a high school graduate and had served in the military. I understand the military congrats but he wasn't getting any praise from me for being a high school graduate. I said what I had to say to the judge, and that was I believed that he would do this again and I hoped next time no one was killed. I asked for him to be put in a program where he had to go to schools to explain his situation. I don't think it ever happened.

His name is Jason Roy.

I pray that no one ever meet him drunk on the road.

The only good thing that I can think of that possibly came from this event is that if it hadn't been us, it may have been the cars behind us. I don't believe they would have fared off as well physically.

I don't wish this event upon anyone.

Thank you for listening.

Jill Miyagawa

