JIM OTT

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Good Morning Committee members and guests. Thank you for being here today.

I have introduced this bill in response to an April 11th District IV Wisconsin Court of Appeals decision. Although *State v. Clinton Williams* is an unpublished decision and therefore not a binding precedent, the Court's reasoning will likely have significant influence on lower courts in District IV and possibly across the rest of the state.

In the decision the Court held that the six year confinement for a 7th OWI offense was not mandatory, although that clearly was the intent of the Legislature in passing 2009 Wisconsin Act 100. This is due to a very minor difference in wording between the language for OWI 2nd through 6th, and 7th through 10th and higher OWI offenses.

AB 180 strengthens the language of the State Statutes so that the 3 year confinement and 3 year extended supervision for 7th, 8th and 9th OWI is mandatory, and the same language is applied to 10th and above OWI so that those sentences are also clearing mandatory, as intended by the Legislature.

Two other issues are addressed in this bill that concern Wisconsin's OWI laws.

Currently under 343.305(5) (b) a phlebotomist may only draw blood in OWI arrest cases when "under the direction of a physician". This change simply includes phlebotomist to the list of persons qualified to draw blood, since they are always under the supervision of a physicians in the course of their work.

A second change involves sec. 346.63(2), which states that someone convicted of causing injury while OWI "may be imprisoned for not less than 30 days nor more than one year…" Since the 30 day portion of the sentence was intended to be a minimum, replacing the word *may* with the word *shall* provides clarification.

Making these minor changes to the Wisconsin Statutes will provide important guidance and clarification to Judges and District Attorneys.

WISCONSIN
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TO: Honorable Members of the Assembly Judiciary Committee

FROM: David Callender, Legislative Associate

DATE: May 2, 2013

SUBJECT: Opposition to Assembly Bill 180

The Wisconsin Counties Association opposes Assembly Bill 180.

WCA considers drunken driving a serious offense that jeopardizes the safety of Wisconsin residents. From sheriffs offices' enforcement efforts to intoxicated driver treatment programs, Wisconsin's counties are at the forefront of attempts to prevent drunken driving and protect the public.

However, given recent reductions in state funding for many county programs as well as state-imposed levy limits, counties are facing an increasingly difficult financial picture. AB 180 would add to counties' financial burdens by imposing mandatory minimum jail sentences on individuals with a blood alcohol content of between 0.04 and 0.08 who are convicted of causing injury by intoxicated use of a motor vehicle.

Although it is difficult at this time to quantify how many offenders will be affected by this provision, the average cost of incarcerating an individual in a county jail is $50 per day. A minimum sentence of 30 days would result in an average cost of $1,500 per offender. Absent any corresponding increase in state funding, these costs would be borne entirely by local property taxpayers.

It is on this basis, therefore, that WCA opposes AB 180. WCA respectfully requests the Committee to reject this proposal.

OFFICE OF THE DISTRICT ATTORNEY
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May 2, 2013

Representative Jim Ott
Chair, Assembly Judiciary Committee
State Capitol
Post Office Box 8953
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Dear Representative Ott:

Please feel free to share this letter with members of the Judiciary Committee.

I would like to echo the comments of Assistant District Attorney Ron Dague in his recent conversation with you, and, as a representative of the Milwaukee County District Attorney's Office, express strong support for the legislation contained in Assembly Bill 180. The following are my/our reasons for this strong support:

1) The addition of "phlebotomist, or other medical professional who is authorized to draw blood" (Sections 1-3 of AB180), will greatly add to the ability of the state to introduce blood testing results. Currently, if blood is drawn by a phlebotomist, the phlebotomist must come to court and testify unless the defense stipulates to a "proper blood draw." She has to testify that she was operating under the "direction of a physician." The failure to have that testimony can result in the state losing legal presumptions that the test results from the hygiene or crime lab are reliable. This was an absurd legal result, in that most blood at hospitals is, in fact, drawn by phlebotomists. This should save time and money. Further, if defense has a valid challenge to the blood draw, they can still subpoena the phlebotomist to testify.

2) Clarifying the legislative intent of 346.65(2)(am) 6&7 (Section 4-6 & 7 of AB180) as to mandatory minimum sentence for OWI 7th to OWI 10 or higher. It is my belief that this is what the legislature intended all along. A recent appellate court decision found that the incarceration was not mandatory, by looking at subtle language difference in the penalty language for OWI 2-5th versus OWI 6th and higher. Since all OWI 2-5 carry mandatory minimum sentences, it only makes sense that the court SHALL impose the minimum sentences set forth in Wis. Stats. Section 346.65(2)(am)6&7, and not place a person on probation with no jail imposed, for those offenses.

3) Clarifying legislative intent of 346.65(3m) (Section 6 of AB180) by making the presumptive sentence for OWI causing injury, misdemeanor, mandatory rather than just a suggestion. The current language, by use of the wording "may impose a sentence" allows

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the court to impose no minimum jail on an OWI causing injury. A further curiosity is that, if the court does impose a jail sentence, it must be at least 30 days. By changing the language from "may" to "shall," the sentencing court will have to impose a minimum sentence of 30 days. I believe that is consistent with other penalties for operating while intoxicated offenses and necessary in view of the severe human toll on both individuals and the community, which is the result of operating while intoxicated driving offense.

Please consider the above comments and as a strong support of every part of AB180 and a statement of appreciation for advancing legislation which will assist law enforcement and prosecutors in addressing the very serious problem of intoxicated driving in Wisconsin.

Respectfully,

Kent Lovern

Kent Lovern
Chief Deputy District Attorney