

ANDRÉ JACQUE

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TO: Members of the Senate Committee on Judiciary and Public Safety
FROM: Rep. André Jacque
DATE: Aug. 23, 2017
RE: Senate Bill 202

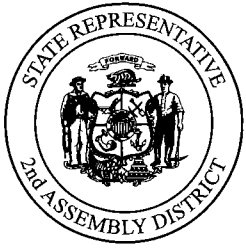
Chairman Wanggaard and members of the Senate Judiciary and Public Safety Committee,

Thank you for holding this hearing on Senate Bill 202 and the opportunity to appear before you today as the Assembly's lead author of this common sense, bi-partisan legislation to restore Wisconsin's social hosting prohibition and reduce underage access to alcohol. I first began working on this legislation with former State Rep. Penny Bernard Schaber at the request of law enforcement, and I am pleased to have Sen. Wanggaard's leadership on this issue in the State Senate.

Current law prohibits adults over 21 from allowing minors to drink on "premises" they own or control. However, the definition of "premises" under state law has been interpreted in recent years to be limited to establishments with alcohol licenses, beginning with the 2008 Nichols v. Progressive decision by the Wisconsin Supreme Court and most recently in the 2016 Fond du Lac County v. Muche decision by the 2nd District Court of Appeals. SB 202 eliminates this "social hosting" loophole and clarifies the intent of the existing statute to restore the ability of law enforcement to cite the individuals who host underage drinking parties on their property, which was the understanding when the original statutory language this bill modifies was enacted in 1985. As of 2016, there are 30 other states with prohibitions on hosting underage drinking parties.

People under the legal drinking age of 21 have the nation's highest rate of alcohol dependence, and thousands of people in the United States are killed or injured each year as a result of alcohol-related crashes involving teenage drivers. Surveys of youth show that the most common sources of alcohol for them are the young person's own home or from persons over the age of 21 who purchase alcohol for them. While citizens are increasingly familiar with the "Parents Who Host Lose the Most" slogan championed by DHS, law enforcement and community organizations, that phrase is not presently backed up in state statute. It is also important to note that it is not just parents who are providing alcohol for youth, but other acquaintances and family as well.

This legislation provides clear meaning to a statutory provision that has been subject to differing court interpretations, and will help deter parents and other adults from hosting underage parties and purchasing or providing alcohol for underage youth. Research has shown that social host legislation is effective, and associated with reductions in impaired driving and binge drinking amongst youth, and of course reduced underage drinking. SB 202 is supported by the Wisconsin Medical Society, the League of Wisconsin Municipalities, the Wisconsin Professional Police Association, the Wisconsin Chiefs of Police



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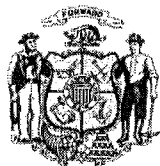
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Association, the Badger State Sheriffs Association, the Wisconsin Association of Sheriffs and Deputy Sheriffs, and the State Troopers Association.

I am pleased by the strong bi-partisan support for this legislation, including co-sponsorship by a bi-partisan majority of this committee. The Assembly companion bill to SB 202 passed the Assembly State Affairs Committee by a 13-2 vote earlier this session, including a unanimous vote in support of a minor clarifying amendment. Thank you for your consideration.



Van H. Wanggaard

Wisconsin State Senator

Testimony of Senate Bill 202

Thank you members of the committee for hearing me today about Senate Bill 202, relating to the prohibition against adults knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by underage persons.

As you know, it is illegal for an adult to allow minors to drink on “premises” that they own or control. However, recent court cases, including a 2016 Fond du Lac county case, have defined “premises” as establishments with alcohol licenses. This has made Wisconsin’s existing “social hosting” law unusable against adults who host underage drinking parties.

This bill closes this loophole by clarifying that an adult may not knowingly fail to prevent underage drinking on their property and occupied by an adult. In short, law enforcement will be allowed to cite individuals for hosting underage drinking parties in their homes. This was the original intent of the bill in 1985.

I will note that although it is not before you currently, I will be offering an amendment identical to the one adopted by the Assembly clarifying that a person who rents a hotel room, and not the hotel itself, is the individual liable under the social hosting law.

It is important to note that this does not change the existing law that allows a parent to let their child drink alcohol in their presence. It merely states that you cannot allow another child to drink on your property.

I hope you will join me in cleaning up our social hosting law by supporting SB 202. Let’s make the saying “Parents Who Host Lose the Most” true again.

Thank you.

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"...meeting community needs...enhancing quality of life."

POLICE DEPARTMENT

222 South Walnut Street • Appleton, WI 54911-5899
(920) 832-5500 • Fax: (920) 832-5553
<http://www.appleton.org/police>

August 22, 2017

Honorable Andre Jacqué
State Representative 2nd Assembly District
Room 123 West, State Capitol
P.O. Box 8952
Madison, WI 53709

Representative Jacqué,

I am writing you on behalf of the City of Appleton Police Department in support of Senate Bill 202. Our concern over this issue started several years ago after our officers encountered a large underage alcohol party. A complaint was made about loud noise and juveniles congregating outside a residence. Our officers were confronted with a street full of vehicles, a DJ playing loud music, and over one hundred juveniles attending a party at a private residence. Over thirty municipal citations were written for underage alcohol consumption. More tickets were not written because most of the over one hundred juveniles had run from the residence. Many of them returned to their vehicles and fled the scene. The most troubling part of this call was that the owners of the home were present and sponsored the party. Unfortunately because of the wording of the current statute we were unable to take action against the homeowners.

Several situations similar to this have occurred within our city since and I am sure across Wisconsin. These circumstances pose a public safety hazard. Those who knowingly allow the consumption of alcohol on property either owned or within their control do so without suffering the consequences or any of the potential penalties. As in the situation I described it is unknown how many of the juveniles that fled drove off in vehicles while under the influence of alcohol. Underage parties can and do occur in our neighborhoods and do affect the individuals and families in those areas. There is typically increased vehicle and foot traffic, excessive noise, garbage left outside, and damage to property. These create a quality of life issue for our law abiding citizens. We as a law enforcement agency merely ask for the ability to hold violators accountable for their actions.

We respectfully request the consideration of the Judiciary and Public Safety Committee in accepting the proposed bill.

Respectfully,

Lt. Michael Frisch
Appleton Police Department

8/23/2017

To: Senate Judiciary Committee

Re: Public hearing on SB 202

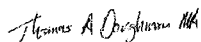
Greetings,

I am offering my written support of SB 202 the companion bill to AB 275. As with AB275, if this bill is enacted into law, it will make it illegal to provide a location for underage drinking on property an individual controls or owns and occupies. It restores some portions of the local social host ordinances that were rendered unenforceable by court decision last year. I was able to testify in the assembly committee, but will be unable to do so before the Senate Judiciary Committee. Please accept this written statement as my testimony.

- Youth who begin drinking before age 14 have a 41% chance of becoming alcohol dependent as an adult.
- Research shows most young drinkers obtain alcohol from unlocked cabinets and fridges at home.
- Studies show that our brains develop until the age of 25 and youth who drink alcohol have loss of volume and damage to their prefrontal cortex, which impacts our decision making.
- In Wisconsin, 33% of high school students report using alcohol. 15% of students under the age of 13 reported using alcohol.

It is my belief that enacting this bill will improve the health of our youth, and provide clear direction for adults on responsible alcohol use in the state of Wisconsin. Social hosting ordinances are an evidenced based way to promote responsible consumption of alcohol by limiting access to minors. Thank you for addressing this vital issue for the youth of Wisconsin.

Respectfully,



Thomas A Doughman MA LMFT
St. Norbert College
Assistant Director of Counseling & Psychological Services

(920)403-3045

8/23/2017

To: Senate Judiciary Committee

Re: Public hearing on SB 202

As a resident of De Pere, Wisconsin and as a parent of a 16 year old and 12 year old daughter, I am writing today to express my support of SB 202 the companion bill to AB 275. As with AB275, if this bill is enacted into law, it will make it illegal to provide a location for underage drinking on property an individual controls or owns and occupies.

I want to first start by saying how important it is to protect our youth from the harmful effects of underage drinking. Studies show that youth who drink under the age of 15 are 5 times more likely to have issues with alcohol as adults. Studies show that our brains develop until the age of 25 and the last part to develop-the prefrontal cortex which impacts our decision making- is also the first to be affected by alcohol consumption. In Wisconsin, 33% of high school students report using alcohol. 15% of students under the age of 13 reported using alcohol.

This bill will encourage parents to prevent underage drinking in their homes and allows parents to be assured that their children will not be able to drink in other people's homes.

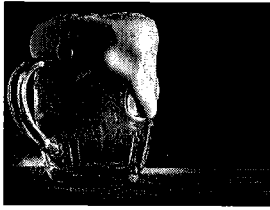
Thank you for your consideration,

Terri Zahorik

Editorial: Hold parents accountable for underage drinking

Published 5:16 p.m. CT Oct. 27, 2016 | Updated 5:21 p.m. CT Oct. 28, 2016

A glass of wine at dinner for older teens may be one thing. Hosting a party at which kids get drunk is quite another.



(Photo: TNS)

A state appeals court ruled this week ([/story/news/local/wisconsin/2016/10/26/parent-beats-ticket-over-teens-drinking-party/92767242/](http://www.jsonline.com/story/news/local/wisconsin/2016/10/26/parent-beats-ticket-over-teens-drinking-party/92767242/)) that local "social host" ordinances aimed at curbing underage drinking don't apply to private residences because such ordinances are tougher than the state statute covering such behavior. We think the ruling is a mistaken reading of the statute, and that the state Supreme Court and the Legislature need to ensure that parents who serve drinks to kids or allow drinking on their premises are held accountable.

Underage drinking remains a scourge across the country. According to the [National Institute on Alcohol Abuse and Alcoholism \(http://pubs.niaaa.nih.gov/publications/UnderageDrinking/UnderageFact.htm\)](http://pubs.niaaa.nih.gov/publications/UnderageDrinking/UnderageFact.htm), by age 15, about 33% of teens have had at least one drink, and by age 18, about 60% percent of teens have had at least one drink. The institute also reported that in 2015, 7.7 million young people ages 12 to 20 reported that they drank alcohol beyond "just a few sips" in the past month.

And it noted that: "5.1 million young people reported binge drinking ... at least once in the past month" that "1.3 million young people reported binge drinking on 5 or more days over the past month" and that more teens use alcohol than cigarettes or marijuana.

Parents who allow kids to drink at parties in their homes are only abetting such behavior, sending a signal that underage drinking is acceptable in certain settings. A glass of wine at dinner is one thing. Hosting a party at which kids get drunk is quite another. The argument that the kids would do it anyway and a home is safer than a car or a park is only an excuse. The consistent message from parents and authorities should be that underage drinking is never acceptable.

[Parent beats ticket over teens drinking at party \(http://www.jsonline.com/story/news/local/wisconsin/2016/10/26/parent-beats-ticket-over-teens-drinking-party/92767242/?from=global&sessionKey=&autologin=\)](http://www.jsonline.com/story/news/local/wisconsin/2016/10/26/parent-beats-ticket-over-teens-drinking-party/92767242/?from=global&sessionKey=&autologin=)

In the case at hand, a Fond du Lac County parent was fined \$1,000 for holding a high school graduation party where underage guests were caught drinking in 2015. In [the ruling \(https://wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=176587\)](https://wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=176587), two of three appellate court judges said that Fond du Lac's ordinance was invalid because the state "statute does not penalize social hosts for conduct in private residences."

The third judge disagreed with that conclusion (although he would have invalidated the ordinance because of another issue), arguing that the portion of the state law that reads, "No adult may knowingly permit underage persons to consume alcohol on premises owned by the adult," clearly was meant to apply to homes, despite the meaning of "premises" in other subsections of the same law, the Journal Sentinel reported.

We think the third judge got it right, and the other two are splitting hairs. The state Supreme Court could fix that through a reinterpretation of the ordinance, as could the Legislature by writing more precise language for the law. We encourage both bodies to do that. We also encourage local governments to make any necessary adjustments to their laws to avoid future problems.

Teens and parents need to understand that underage drinking is unacceptable, and that they will be held accountable.

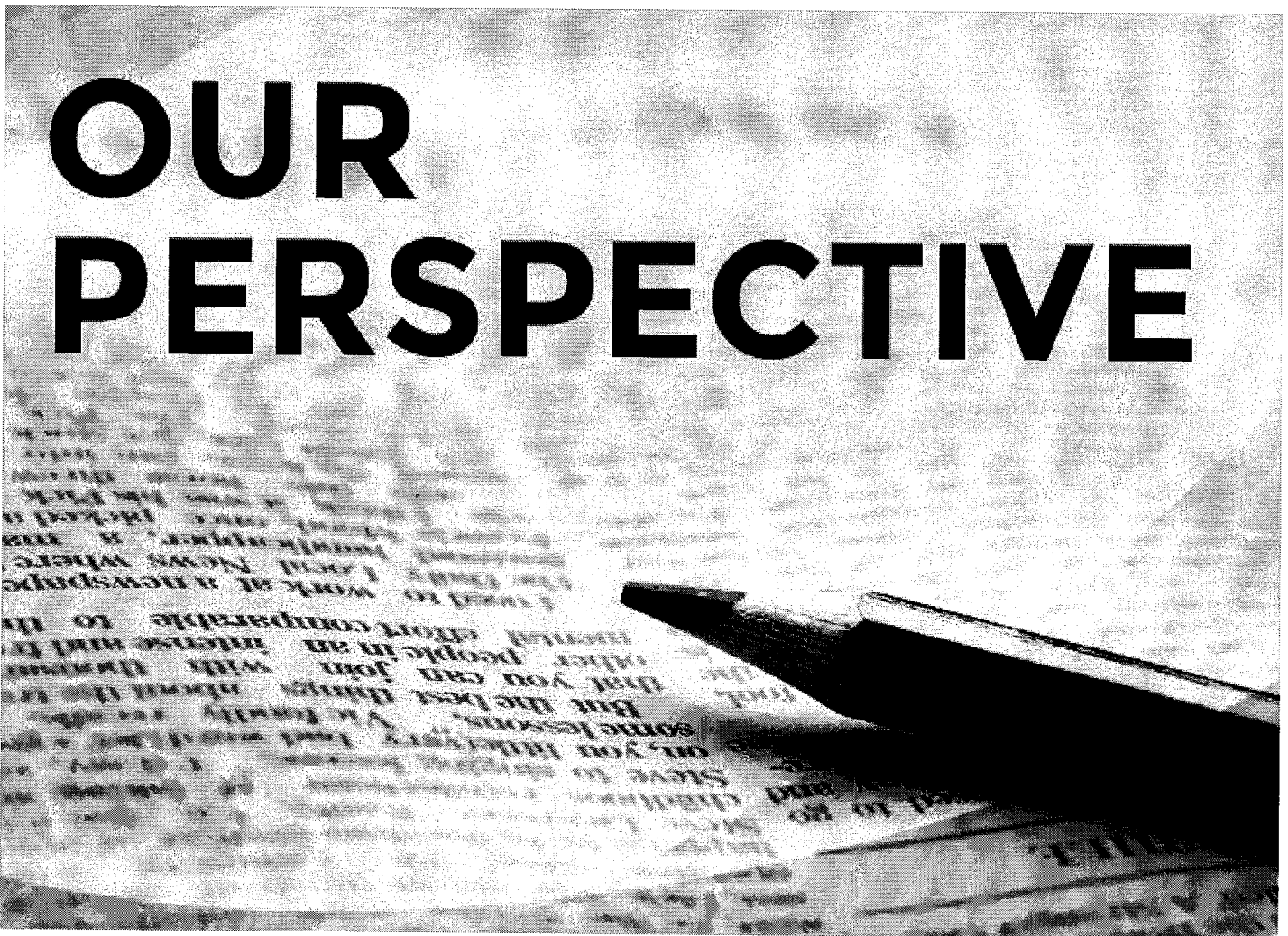
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http://journaltimes.com/news/opinion/editorial/journal-times-editorial-hosting-ordinances-stumble-in-court/article_61aa6e81-2457-51f2-9363-69dbf78da9f9.html

Our Perspective

Journal Times editorial: Hosting ordinances stumble in court

The Journal Times Editorial Board Oct 28, 2016



The Wisconsin Legislature pumps out laws on a regular basis and legislators are fully aware of the need to dot their i's and cross their t's when it comes to the wording of those laws.

But in the case of a state law prohibiting adults from hosting alcohol parties for underage drinkers, the Legislature apparently crossed its i's, instead.

That was the conclusion this week of the 2nd District Court of Appeals as it tossed the conviction of a Fond du Lac area man and his \$1,000 fine for hosting a high school graduation celebration at his home for his son.

The ruling could undermine local “social hosting” ordinances against serving alcohol to minors across the state.

The parent, Stuart Muche, of Van Dyne, fought the fine and lost in Circuit Court before winning a 3-0 decision from the Court of Appeals. According to the opinion, Muche hosted a graduation party at his home for his son at which alcohol was served. Later that night, young people who had not been invited arrived with their own beer and began drinking.

According to the court records, Muche didn't stop the youths from drinking or make them leave, but he did collect their car keys. Deputies arrived at the party and gave Muche a citation.

Instead of paying the fine, Muche went to court and argued on appeal that the Fond du Lac County ordinance was invalid because it doesn't conform with a state law that bars adults from hosting underage drinkers on premises that the adult owns or controls. He argued that “premises” as defined by state law applies to an area described in a license or permit — a tavern or a liquor store — and not to a home.

He further argued that the local ordinance was invalid because the \$1,000 ticket he was given exceeded state law which proscribes a \$500 fine for first offenses and escalates to jail time and fines for subsequent violations.

The 2nd Court of Appeals agreed with him on both counts. Their opinion stated, the “statute does not penalize social hosts for conduct in private residences.” One judge said the court shouldn’t have addressed the premises issue and the intent of the Legislature was clearly meant to apply to homes — but said he would have reversed the conviction solely on the penalty issue.

The ruling may well have resulted in a celebration at the Muche residence.

But for the myriad of counties that have adopted social hosting ordinances and for the state Legislature it will mean back to the drawing boards to craft new wording that carries out their intentions.

They might want to run spell-checker on those proposed laws and ordinances. Legal checker, too. If you can’t get the law right, you can’t enforce it.

We hope they get it right this time. June, and another round of graduations, is just around the corner.

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Lawmakers target adults who host underage drinking parties

By [Greg Neumann](#) [CONNECT](#)
Posted: Apr 25, 2017 6:26 PM CDT
Updated: May 10, 2017 6:47 PM CDT

MADISON (WKOW) – Wisconsin law enforcement officials are turning to the state legislature for help to prohibit adults from hosting underage drinking parties, after a court ruling made 54 local government prohibitions unenforceable.

On October 26, 2016, the Wisconsin Appeals Court ruled a social hosting ordinance in Fond du Lac County could not apply to a high school graduation party at a home where adults allowed other people's underage children to drink alcohol, because it was not consistent with state law.

The court ruled state statute only prohibits adults allowing other people's underage children to drink at places they own that also require a license or permit to sell alcohol.

Rep. Andre Jacques (R-De Pere) believes it is time to close that loophole statewide for a number of reasons.

"Underage access and involvement with alcohol leads to greater dependence, the younger the age of onset is with drinking," said Rep. Jacques. "And along with that, we've also found a very high propensity of people who drink underage admit to getting behind the wheel drunk."

A number of other Republicans and Democrats have signed on to Rep. Jacques's legislation, which would set a penalty of \$500 for any adult who allows other people's underage kids to drink at their home while they are present.

There is an existing statute that prohibits adults from purchasing alcohol for someone underage to consume, but Rep. Jacques said that doesn't address the problem.

"What law enforcement will tell you is, in the absence of receipts and direct testimony - as to who exactly purchased the alcohol - it's very difficult to prove the case," said Rep. Jacques.

Experts at UW Law School's Wisconsin Alcohol Policy Project told 27 News this is actually a crucial time for the state when it comes to underage drinking.

According to Project Coordinator Julia Sherman, Wisconsin had highest incidence of underage drinking in the country just one decade ago, but is now closer to the national average.

"You know, the first social host ordinance was adopted in 2009. I don't think it's the sole reason. There was a lot going on in the nation. But one thing we know for certain - when you reduce youth access to alcohol - underage drinking drops," said Sherman.

Passage of Rep. Jacques's bill isn't a sure thing.

He's introduced the same legislation in three previous sessions, only to see it stop short of Gov. Walker's desk each time.

But Rep. Jacques he feels the amount of bipartisan support and the Appeals Court ruling could be enough to finally get it passed.

"I do think it's something we'll be able to get over the hump this session," said Rep. Jacques, who hopes to get a hearing on the bill in May.

Both the Wisconsin League of Municipalities and the Wisconsin Medical Society also support the legislation.

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To: Senate Committee on Judiciary and Public Safety
From: Curt Witynski, J.D., Assistant Director, League of Wisconsin Municipalities
Date: August 22, 2017
Re: SB 202, Prohibiting adults from allowing underage drinking on property they own or control

The League of Wisconsin Municipalities supports SB 202, which is aimed at preventing adults from hosting underage drinking parties at private residences. This bill solves a flaw in current law and has the additional positive effect of allowing municipalities to adopt and enforce social host ordinances.

Last fall, the Wisconsin Court of Appeals ruled that Fond du Lac County lacked authority to impose a forfeiture against a parent who violated the county's social host ordinance by hosting his son's graduation party at their residence where alcohol was consumed by underage persons. The court concluded that the county's ordinance did not strictly conform to state law and therefore exceeded the county's authority.

Wisconsin Statute §125.07(1)3 currently prohibits adults from knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by an underage person on "premises" owned by the adult or under the adult's control. Wis. Stat. §125.10(2) allows a municipality or county to enact an ordinance regulating certain conduct regulated by 125.07 only if the ordinance strictly conforms to the statute. The court of appeals held that the term "premise" as used in §125.07(1)3 means "the area described in a license or permit," as defined in § 125.02(14m), and that Fond du Lac County's social host ordinance was not in strict conformity with Wis. Stat. § 125.07(1)3 because it regulated private property and therefore "forbids what the statute does not forbid"

As a result of this decision, at least 46 municipalities and counties with social host ordinances similar to Fond du Lac County's found those ordinances unenforceable.

SB 202 expands the scope of 125.07(1)3 to include private property owned, occupied, and under the adult's control; thereby making municipal social host ordinances enforceable once again. We urge you to recommend passage of this sensible bill. Thanks for considering our comments.

YOUR VOICE. YOUR WISCONSIN.



August 23, 2017

Testimony of Julia Sherman, Wisconsin Alcohol Policy Project
SB 202

Thank you for this opportunity to provide background on SB202. While this proposal is not new, there is new urgency to the issue. Beginning in 2009, Wisconsin communities began to adopt ordinances making it illegal to provide a location for underage drinking, regardless the source of the alcohol. By October 2016, at least 46 municipalities and 8 counties (listed below) had adopted the Two Rivers model ordinance or a very similar measure. These ordinances created an effective deterrent for individuals inclined to allow underage youth to consume alcohol illegally on their property.

The October 26, 2016 Court of Appeals decision in *Fond du Lac County v. Muche* made many of Wisconsin's social host ordinances unenforceable. Municipalities lost their best tool to hold individuals who provided a location, but not the alcohol, accountable for underage drinking. Citing youth for underage drinking while allowing adults who permit and even facilitate the event, to avoid sanctions fails to get at the root problem.

Alcohol is a contributing factor in the leading causes of death among youth, accidents, homicides and suicides,ⁱ and the prelude to numerous tragedies including, sexual assault, falls, drowning or vehicular injury. The tragic March 2012 events in Slinger began with an underage drinking party. Media accounts indicate a hosting parent advised youth to flee the police, precipitating a young man's attempt to hide nearby with tragic consequences.ⁱⁱ

Because preemption of existing ordinances is no longer an issue, community and law enforcement leaders are looking for a workable alternative. There are lingering concerns that SB 202 has a narrow definition of the host and circumstances that could result in a citation. There is some concern that the term "property" is not as expansive as the list of locations (docks, hotel rooms, outbuildings, etc.) enumerated in local social host ordinances. However, law enforcement and coalition leaders tell me the need for an enforceable social host law is greater than their concerns about this draft.

Wisconsin's underage drinking rate dropped significantly in the past decade to near the national average. Wisconsin's rate of alcohol initiation before age 13 dropped from 24% in 2005 to 15% in 2013. Early alcohol use generally occurs in noncommercial settings, this bill reduces youth access to alcohol in those settings.

Interventions including alcohol age compliance checks, social host ordinances and active community coalitions all contributed to recent decreases in underage drinking.

Research has confirmed that alcohol is the primary gateway drug for children and teens. Research published in the *Journal of School Health* (January 2016) reported that alcohol, more often than either marijuana or tobacco, was the gateway drug for youth leading to illicit drug use.ⁱⁱⁱ Preventing and reducing underage drinking and especially early alcohol initiation today is drug abuse prevention for 2025.

We cannot risk backsliding. Thank you.

ⁱ American Academy of Pediatrics, October 1998, child health month promotional material.

ⁱⁱ Milwaukee Journal Sentinel, Homeowner knew police were nearby before firing. Bruce Vielmetti, March 25, 2012

ⁱⁱⁱ Barry, A. King, J., Sears, C., Harville, C., Bondoc, Irina, Joseph, K. Prioritizing Alcohol Prevention: Establishing Alcohol as the Gateway Drug and Linking Age of First Drink with Illicit Drug Use, *Journal of School Health*, January 2016, Vol. 86, No. 1. Page 31-38.

Municipalities that adopted social host ordinance

1. Ashwaubenon, village
2. Bangor, village
3. Beaver Dam
4. Campbellsport
5. Coleman, village
6. Cudahy
7. Deerfield
8. De Pere
9. Edgerton – including other intoxicants
10. Evansville
11. Florence County – no incorporated municipalities in the county
12. Fond du Lac, city
13. Holman, village
14. Kenosha , city
15. Kronenwetter, village
16. La Crosse, city
17. Manitowoc ,city
18. Montello
19. Neshkoro, village
20. New Holstein
21. North Fond du Lac, village
22. Oakdale, village
23. Oakfield, village
24. Onalaska
25. Oregon, village
26. Oregon, town
27. Oxford, village
28. Plainfield, village

-
29. Plover, town
 30. Prairie du Chien, city
 31. Racine
 32. Rosendale, village
 33. Rothschild
 34. Schofield
 35. Sparta
 36. Stoughton
 37. Stevens Point
 38. Stratford, village
 39. Two Rivers
 40. Union , town
 41. Valders, village (no draft)
 42. Wausau
 43. West Salem, village
 44. Westfield
 45. Weston
 46. Wisconsin Rapids

Counties: Applies only to unincorporated areas of the county.

1. Barron County
2. Fond du Lac County
3. Florence County
4. La Crosse County
5. Manitowoc County
6. Marathon County
7. Marquette County
8. Waushara County