



**Frank Harris
State Legislative Affairs Manager
Mothers Against Drunk Driving
Assembly Judiciary Committee
Testimony in Support of AB 69, AB 70 and AB 71
1 August 2013**

Chairman Ott, and distinguished members of the Committee, thank you for allowing me the opportunity to testify on behalf of Mothers Against Drunk Driving in support of AB 69, AB 70 and AB 71. My name is Frank Harris, and I hold the position of State Legislative Affairs Manager for Mothers Against Drunk Driving, or MADD.

MADD thanks you Mr. Chairman for your leadership in authoring these proposals which will help reform Wisconsin's OWI law. The legislation is necessary as Wisconsin has a drunk driving problem. The Wisconsin Department of Transportation estimates there are 46,539 people with three or more OWI convictions and 8,088 with five or more convictions. According to the National Highway Traffic Safety Administration (NHTSA) in 2011, 196 people were killed in Wisconsin in crashes involving a drunk driver. Additionally, according to the Wisconsin Department of Transportation, there were 2,984 alcohol related injuries in 2011. The Pacific Institute for Research and Evaluation estimates the economic impact of these deaths and injuries are over \$1.4 billion. This estimate is made up of costs to taxpayers, cost to state and local governments and in quality of life losses.

AB 69 and AB 70 creating mandatory minimums in fatal or injury OWI crashes makes sense. As you hear the personal experiences from victims and survivors of drunk driving, it is evident that there is a strong need for lawmakers to take action to limit judicial discretion. A lack of guidance from lawmakers enables judges to sentence drunk drivers who kill innocent Wisconsin residents to incarceration periods of only one year. Such sentences do not represent justice.

Enclosed in my written testimony is data gathered by MADD on incarceration periods in fatal and injury OWI crashes in Wisconsin. Although this data may be a few years old, what remains true today is this: depending on the judge, incarceration periods of drunk drivers in fatal or injury crashes vary greatly.

AB 69 allows for mandatory minimums in OWI related injury crashes of at least six months and for higher periods depending on the severity of the injury. AB 70 allows for a mandatory minimum of incarceration of at least ten years if an individual was killed by a drunk driver. Both proposals allow a court to reduce the mandatory minimum if the injured or killed victim is a passenger of the drunk driver, and any reduction in sentence must be noted on the official court record. Mothers Against Drunk Driving understands this provision was put in the bill in cases of a family member killing or injuring another family member. MADD is concerned some judges may abuse this exception in reducing sentences, but we are hopeful this is not the case.

Some may argue that mandatory minimums pose a great fiscal cost and burden to the state. However, when it comes to predicting the cost of drunk driving legislation, such estimates are typically overblown and inflated. Again, there are exceptions where judges do not have to order the mandatory minimum, so not everyone who kills or injures will face a mandatory minimum. What is not taken into account with these fiscal estimates is the deterrence message that mandatory minimums and felony DUI laws may pose to potential drunk drivers.

MADD also supports AB 71 making a third OWI a felony. Currently, twenty-one states make a third OWI non-injury related offense a felony. Wisconsin is one of eighteen states that make a fourth offense a felony. Again, the fiscal estimate with this proposal is inflated. As an October 2008 Milwaukee Journal Sentinel article notes, most “felony drunken driving offenders avoid prison.” The newspaper

Reviewed all Milwaukee County criminal convictions for fifth-offense operating while intoxicated from 1999 through 2006, resulting in a detailed analysis of 161 cases. Just 70 defendants, or 43%, went to prison, receiving an average sentence of 18 months. Seventeen of those had an opportunity to shave substantial time off their sentences by completing boot camp or a treatment program. At least one defendant got out early after petitioning the judge. More defendants were sentenced to probation than prison. Although 70 of the 71 who got probation terms served between three and 12 months in the Milwaukee County House of Correction, about half were allowed to spend their days in the community on work release. Twenty more defendants received jail sentences, 11 with work-release privileges.¹

Just 43 percent, or 71 of 161 of fifth time felony OWI offenders, went to prison. Under AB 71, most third OWI offenders will not see incarceration but instead work release or some other

alternative sentencing. Another option to limit the fiscal note would be to put a ten year look back period on previous offenses of OWI offenders facing only a felony non-injury related third and subsequent offense.

MADD believes these proposals are important and worthy of the legislature to advance as drunk driving kills and injures and leaves victims with an unimaginable loss. These proposals are about justice for victims and making sure the judicial system makes the punishment fit the crime of killing or injuring an innocent person. The third time felony OWI proposal helps hold drunk driving offenders accountable.

But these proposals are just a start, more legislative action is needed to fully reform the drunk driving law in Wisconsin. MADD urges this committee and the legislature to enact legislation requiring ignition interlocks for all convicted drunk drivers with an illegal blood alcohol concentration of .08 or greater.

As part of MADD's Campaign to Eliminate Drunk Driving launched in 2006, our top legislative priority in each state is advocating for legislation that requires or highly incentivizes ignition interlocks for all offenders. When the Campaign launched, only New Mexico had such a law on the books. Today, 20 states require or highly incentivize the use of these devices for all convicted drunk drivers with a blood alcohol concentration of .08 or higher.

Ignition interlocks make a convicted drunk driver demonstrate sobriety before operating a vehicle during their license suspension period. Interlocks cost the offender around \$2.50 a day to lease. If an offender is poor, the interlock is provided at half cost with the interlock companies covering the rest of the interlock fee. An offender is taught to use an interlock and the devices have anti-circumvention technology making it difficult to bypass. These include a camera to verify the user's identity and rolling retests to prevent a friend from starting the vehicle outside a bar.

In Wisconsin, ignition interlocks are required for refusals, repeat and first-time offenders with a blood alcohol concentration of .15 or greater. As of July 2012, 6,069 interlocks are installed in Wisconsin and nearly 280,000 in the United States.ⁱⁱ

States with well implemented interlock laws have seen significant reductions in drunk driving fatalities. Since New Mexico's interlock law was implemented in 2005, drunk driving fatalities are down by 33 percent. Since Arizona and Louisiana implemented their interlock law in 2007, drunk driving deaths have decreased by 46 and 40 percent. In Oregon and West Virginia, as a result of their 2008 interlock laws, OWI deaths are down 35 percent and 36 percent.

Studies by the Centers for Disease Control and Prevention (CDC) found that requiring interlocks for all drunk driving offenders saves lives by reducing rearrests for drunk driving by 67 percent over simply suspending offenders' licenses and hoping they don't drive.

Research shows that 50 to 75 percent of non-interlocked convicted drunk drivers will continue to drive even with a suspended driver's license. Wisconsin lawmakers should consider legislation permitting ignition interlock driving privileges as soon as practical after arrest and requiring the use of ignition interlocks immediately upon conviction to grant otherwise unlimited driving privileges to all convicted drunk drivers during their license suspension periods.

Nebraska is one of 20 states that is moving away from taking away a license of a convicted driver and instead requiring the use of an interlock instead. But Nebraska is doing so in an innovative way. In 2011, Nebraska tweaked their mandatory interlock law to more of an incentivized approach by allowing any arrested drunk driver to waive their administrative license hearing and starting 15 days after arrest being able to drive with no route or time restrictions if the offender goes on an interlock. An offender can still wait out and contest the administrative license hearing to avoid installing the interlock immediately. Nebraska's 2011 law has reduced administrative license hearings by 90 percent saving the state money. The law increased interlock installations for first-time convicted drunk drivers from 17 percent in 2009 when their mandatory all offender interlock law was implemented to at least 50 percent in 2012 of eligible offenders installing an interlock. This model should be used in Wisconsin as it is an effective

OWI countermeasure that saves lives and taxpayers money while allowing offenders to be part of society and provide for their family.

Focusing OWI reform on repeat offenders is important but only part of the approach to dealing with this deadly problem. There must be a focus on laws that stop convicted offenders from driving drunk again and deter potential OWI offenders from committing this violent crime. This focus must include first-time offenders as conservative estimates show OWI offenders have driven drunk at least 80 times before they are first arrested. In Wisconsin, a majority of drunk driving deaths and injuries are caused by drunk driving offenders with no prior convictions.ⁱⁱⁱ Interlocks for first offenders with an illegal blood alcohol concentration of .08 or greater are a fair and necessary tool that will help deter future repeat offenses but also give convicted offenders the opportunity to provide for their families and the liberty to drive safe and sober in Wisconsin.

In conclusion, MADD thanks you Mr. Chairman and members of the Committee for allowing MADD the opportunity to testify in support of setting forth mandatory minimums in fatal and injury OWI crashes and making a third offense a felony. We hope lawmakers consider expanding the use of an ignition interlocks for all convicted drunk drivers. Thank you for the opportunity to testify before this distinguished committee.

ⁱ Milwaukee Journal Sentinel. October 20, 2008. <http://www.jsonline.com/news/wisconsin/31262254.html>.

ⁱⁱ Dr. Richard Roth. Impact DWI. <http://www.rothinterlock.org/2012surveyofcurrentlyinstalledinterlocksintheus.pdf>

ⁱⁱⁱ Wisconsin Department of Transportation. <http://www.dot.state.wi.us/safety/motorist/crashfacts/docs/alcohol-section6.pdf>