



JIM OTT

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Good Morning Mr. Chairman and committee members. Thank you for holding this hearing today on Assembly Bills 97, 98 and 99.

There is some good news on the issue of drunk driving: Since 1990 in Wisconsin, alcohol-related crashes have declined 61 percent. To me that shows we can make progress in making our roads safer from impaired drivers. But there's still plenty of bad news as well. 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 has a simple amendment that makes absolutely clear we are closing this loophole.

Assembly Bill 99 increases the mandatory minimum sentence for 5th or 6th offense OWI from six months to 18 months incarceration. This would bring the mandatory minimum more in line with the minimums for 7th, 8th and 9th offenses, which are three years, and would also align more with the maximum possible penalty for 5th and 6th offense, which currently is 10 years incarceration.

AB 97 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.

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.

AB 97 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.

Alberta Darling

Wisconsin State Senator

Co-Chair, Joint Committee on Finance

TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

Assembly Bills 97, 98, 99

March 23, 2017

Thank you, Chairman Spiros and committee members for holding a public hearing today on Assembly Bills 97, 98, and 99. To save the committee time and allow others to provide testimony, I will testify on all three bills at once. 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. I am sure this number would be even larger if we were to factor in the number of individuals who drove intoxicated but were never caught. 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.

Despite our advances in fighting OWI abuse in Wisconsin, there is still more work to be done. Unfortunately, there are instances where an individual's irresponsible act kills someone. In some of these cases, the driver is only incarcerated for two or three years. Assembly Bill 97 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 have seen an increase in convictions is 5th and 6th OWI offenders. OWI offenders in this category are at minimum required to be incarcerated for six months. It is my hope that Assembly Bill 98 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 Assembly Bill 98 will never have to be used.

The last bill before you today, Assembly Bill 99, 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 Assembly Bills 97, 98, and 99.

I hope to have your support for these important bills.

Prepared and Submitted by
Representative Evan Goyke

Office of State Representative Evan Goyke
Wisconsin State Legislature

Fiscal Estimate – 2017 Session

Original Updated Corrected Supplemental

LRB Number 17-1384/1		Introduction Number AB-0099	
Description Committing a fifth or sixth offense related to operating a vehicle while intoxicated and providing a criminal penalty			
Fiscal Effect			
State:			
<input type="checkbox"/> No State Fiscal Effect		<input type="checkbox"/> Increase Existing Revenues	
<input checked="" type="checkbox"/> Indeterminate		<input type="checkbox"/> Increase Existing Revenues	
<input checked="" type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Decrease Existing Appropriations		<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriations		<input type="checkbox"/> Decrease Costs	
		<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Local:			
<input type="checkbox"/> No Local Government Costs		5. Types of Local Government Units Affected	
<input checked="" type="checkbox"/> Indeterminate		<input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities	
1. <input type="checkbox"/> Increase Costs		<input type="checkbox"/> Counties <input type="checkbox"/> Others	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
2. <input type="checkbox"/> Decrease Costs			
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory			
3. <input type="checkbox"/> Increase Revenue			
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory			
4. <input type="checkbox"/> Decrease Revenue			
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory			
Fund Sources Affected			
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS			
Affected Ch. 20 Appropriations			
Agency/Prepared By	Authorized Signature	Date	
WSL/Ryan Knocke (608) 266-0645	State Rep. Evan Goyke (608) 266-0645	3/22/2017	

Fiscal Estimate Narratives

Rep. Goyke 3/22/2017

LRB Number 17-1384/1	Introduction Number AB-0099	Estimate Type	Original
Description Committing a fifth or sixth offense related to operating a vehicle while intoxicated and providing a criminal penalty			

Assumptions Used in Arriving at Fiscal Estimate

Under current law, a person who is convicted of operating a vehicle while under the influence of an intoxicant (OWI), with a detectable amount of a restricted controlled substance in his or her blood, or with a prohibited alcohol concentration for a Fifth or a Sixth time is guilty of a felony. Under current law, a person who commits a 5th or 6th offense OWI is guilty of a Class G felony and may be fined up to \$25,000, imprisoned for up to ten years, or both. Under current law, a person who commits a 5th or 6th offense OWI must be fined at least \$600 and imprisoned for at least six months.

Under current law, if a person is sentenced to imprisonment for a felony, he or she is sentenced to serve a portion of his or her sentence incarcerated in prison (period of confinement) and a portion of his or her sentence under extended supervision in the community.

Under this bill, a person who is convicted of 5th or 6th offense OWI must be sentenced to a period of confinement of at least 18 months.

Population Estimates:

For purposed of this fiscal estimate, Rep. Goyke used conviction data related to OWI 5th and 6th convictions occurring during 2014 and 2015.

In 2014, there were 463 OWI 5th convictions and 218 OWI 6th convictions
In 2015, there were 491 OWI 5th convictions and 223 OWI 6th convictions

Under current penalty structures for these offense, a minimum of 6 months confinement must be served. Accordingly, during 2014 and 2015 the minimum number of months served was as follows:

In 2014, a minimum of 2,778 months (463 X 6) for 5th offense OWI and 1,308 months (218 X 6) for 6th offense OWI were served. Together in 2014, the total minimum number of months served was 4,086 months (2,778 + 1,308).

In 2015, a minimum of 2,956 months (491 X 6) for 5th offense OWI and 1,338 months (223 X 6) for 6th offense OWI were served. Together in 2015, the total minimum number of months served was 4,294 months (2,956 + 1,338).

For 2014, 4,086 months equals 340 (4,086 / 12) years of confinement – or – 340 individuals serving one year of confinement. Using FY 2015 cost of one year of confinement in state prison at \$32,800, the cost of the six month mandatory minimum was \$11,152,000 (340 X \$42,800).

For 2015, 4,294 months equals 358 (4,294 / 12) years of confinement – or – 358 individuals serving one year of confinement. Using FY 2015 cost of one year of confinement in state prison at \$32,800, the cost of the six month mandatory minimum was \$11,742,400 (358 X \$32,800).

This bill triples the mandatory minimum confinement period to 18 months, requiring confinement in state prison rather than local county jails. The costs listed above would triple.

For 2014, an 18th month mandatory minimum would cost \$33,456,000, an increase of spending of \$22,304,000.

For 2015, an 18th month mandatory minimum would cost \$35,227,200, an increase of spending of \$23,484,800.

Sentencing Assumptions:

Representative Goyke used only the mandatory minimum when calculating the costs associated with the penalty increase. Because a mandatory minimum sentence strips the judicial branch of discretion, these estimates are sound, as the 18 month prison sentence will be the lowest allowable by law.

The estimates do not take into consideration that many defendants will likely receive a sentence greater than the mandatory minimum, which would increase the cost of the bill.

DOC Adult Institutions:

The DOC would see an increase to its inmate population of several hundred new inmates by the end of the first full year after enactment of this legislation. Once populations are fully annualized, the DOC would see a permanent increase to current populations of several hundred additional inmates.

If the number of 5th and 6th offense OWI offenders remains at 2014-2015 levels, the DOC may receive between 500-750 new prisoners each year. That population increase is more than the entire population of Prairie du Chein prison and roughly the entire population of Columbia Correctional prison.

According to DOC's fiscal estimate for Assembly Bill 97, the following information is critical to this fiscal estimate as well:

“DOC DAI facilities are at capacity and the Department is utilizing contract beds space in county jails. As of February 10, 2017, 185 county beds are being utilized to house DOC inmates.”

In other words, DOC institutions are already over capacity. The additional population increase could not be accommodated in existing DOC facilities.

Summary:

This bill would increase DOC spending by upwards of \$20,000,000 each year. That assumption leaves out the possible need to construct a new prison to accommodate the population, the need to contract with counties for space, or the AODA treatment needs for the offenders and the staff to facilitate those programs.

Proponents will argue the increased penalties will deter future OWI crimes, but even if the number of 5th offense and 6th offense OWI convictions are cut in half, the fiscal impact is substantial, especially in light of the current overcrowding in DOC facilities.

VICTIM:
DYLAN THORNE

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STATE OF WISCONSIN CIRCUIT COURT WAUPACA COUNTY
 BRANCH III

STATE OF WISCONSIN,
 Plaintiff, Sentencing Hearing
 -vs-
HEATHER D. SCHMIDT, Case No. 14-CF-49
 Defendant.
 Date: September 30, 2015

HONORABLE RAYMOND S. HUBER
PRESIDING JUDGE

APPEARANCES:

JOHN P. SNIDER, Waupaca County Assistant District Attorney, appeared on behalf of the State of Wisconsin, Plaintiff;
TROY L. NIELSEN, Assistant State Public Defender, appeared on behalf of the Defendant,
HEATHER D. SCHMIDT, who appeared in person.

JANNELL M. MINEAU
Official Court Reporter, Br. I
(715) 258-6432

1 THE COURT: I will call the matter of State of
2 Wisconsin versus Heather D. Schmidt, Case No. 14-CF-49.
3 She's here represented by Attorney Nielsen. The
4 State is represented by District Attorney Snider.
5 This matter was set for sentencing today. Are
6 counsel prepared to proceed?
7 MR. SNIDER: Yes, Your Honor.
8 MR. NIELSEN: Yes, Judge.
9 THE COURT: The State is in compliance with
10 victim notification consultation?
11 MR. SNIDER: Yes, we are, Your Honor.
12 THE COURT: Have counsel both received the
13 ~~presentence investigation?~~
14 MR. SNIDER: Yes.
15 MR. NIELSEN: Yes.
16 THE COURT: Are there any corrections or
17 additions that need to be noted for the record?
18 MR. SNIDER: None here.
19 MR. NIELSEN: No, Judge.
20 ~~THE COURT: Does anyone wish to present any~~
21 ~~evidence of any kind?~~
22 MR. SNIDER: Your Honor, I just want to make
23 sure the Court has received the same written statements as
24 counsel.
25 THE COURT: Go ahead.

1 MR. SNIDER: Bonnie Thorne, Dylan's grandmother,
2 Zachary Thorne.

3 THE COURT: Just do one at a time, because I was
4 frankly concerned I was missing some statements. They're
5 not in the file, and I thought I remembered seeing some
6 come in. I have one from a Bonnie Thorne.

7 MR. SNIDER: Okay. We have Zachary Thorne.

8 THE COURT: That I don't have. I know I
9 remembered seeing it. I called the clerk this morning,
10 because it wasn't in the file.

11 MR. SNIDER: But you have seen it?

12 THE COURT: I've seen it and read it.

13 MR. SNIDER: ~~You can have mine if you like.~~

14 THE COURT: It probably wouldn't hurt to refresh
15 my recollection. Have you seen that Attorney Nielsen?

16 MR. NIELSEN: Yes. Attorney Snider and I went
17 through the checklist.

18 MR. SNIDER: Tami Thorne.

19 THE COURT: All of those. But as I said, I
20 ~~called the clerk's office because it was not in the file.~~
21 this morning.

22 MR. SNIDER: But you have seen it?

23 THE COURT: I've seen them.

24 MR. SNIDER: Well, I'm going to give you them if
25 you want to refer to them during sentencing. And I also

1 just received an e-mail from some foundry personnel on the
2 defendant's behalf.

3 THE COURT: Mr. Nielsen did just provide that to
4 me as well.

5 MR. SNIDER: And other than the written
6 statements, Dylan's aunt and godmother Tami would like to
7 address the Court followed by his mother Elizabeth.

8 THE COURT: Okay.

9 MR. NIELSEN: And then I just have one witness.
10 I don't know what particular order, how you want to
11 proceed, but I just have one witness.

12 THE COURT: Witness in terms of you're
13 anticipating being sworn?

14 MR. NIELSEN: Yeah. I think it's just easier
15 for me to do it that way with her.

16 THE COURT: Well, perhaps we may as well take
17 that witness first and then move on to the State's
18 witnesses afterwards. Call your first witness.

19 MR. NIELSEN: Judge, I would call
20 Sondra Reierson to the stand.

21 THE COURT: Come forward, ma'am, and remain
22 standing.

23 THE CLERK: Raise your right hand, state your
24 name and please spell it for the record.

25 THE WITNESS: Sondra Reierson, S-O-N-D-R-A,

1 R-E-I-E-R-S-O-N.

2 SONDRA REIERSON, being first duly sworn by the
3 clerk, testified as follows:

4 DIRECT EXAMINATION BY MR. NIELSEN:

5 Q. Good morning.

6 A. Good morning.

7 Q. May I call you Sondra?

8 A. Yes.

9 Q. Sondra, you have a son by the name of Matthew.
10 Correct?

11 A. Yes, I do.

12 Q. And he's an adult; right?

13 A. Yes, he is.

14 Q. How old is Matt?

15 A. You put me on the spot. He's like 32, 33. I can't
16 remember.

17 Q. A grownup?

18 A. He's a grownup.

19 Q. And how many children does your son Matt have?

20 A. He has two.

21 Q. And what are their names?

22 A. Matthew, Jr., we call him M.J., and Kira.

23 Q. And Kira is a daughter that Matthew has with Heather
24 Schmidt. Correct?

25 A. Yes.

1 Q. This is Heather Schmidt seated to my left; correct?
2 A. Yes.
3 Q. At one point your son Matt and Heather were in a
4 relationship. Is that right?
5 A. Yes; that is correct.
6 Q. Been on again/off again over the years?
7 A. It has been; yes.
8 Q. Prior to you meeting Heather through your son,
9 Matthew, did you know Heather?
10 A. No, I did not.
11 Q. So, fair to conclude that your knowledge and
12 relationship with Heather has grown from her
13 relationship with your son Matthew?
14 A. Yes.
15 Q. Is Heather the mother, biological mother of M.J.?
16 A. No; she's not.
17 Q. Over the years how would you describe Heather's role
18 in M.J.'s life?
19 A. Heather came into M.J.'s life at--he was approximately
20 six months old. And she has been the solid mother
21 figure through all this time. M.J. is eight years old
22 at this time. So, he calls her mom. She is that
23 stability as far as that mother figure.
24 Q. And that relationship has been forged even
25 notwithstanding the fact that there's no biological

1 relationship?

2 A. Yes.

3 Q. In periods of time when your son Matt and Heather have
4 been off, so to speak, has Heather maintained that
5 motherly role to M.J.?

6 A. Very much so. She has gone, you know, through the
7 effort to ensure that he gets to spend time with her
8 to maintain that mom connection.

9 Q. I'm not asking you to identify M.J.'s biological
10 mother by name, but as M.J.'s grandma, which you are--

11 A. Um hum (indicating the affirmative).

12 Q. --how would you describe M.J.'s relationship with his
13 own biological mom?

14 A. It's very hit and miss. There have been long periods
15 of time. She's supposed to get him every other
16 weekend, and there were long periods of time where she
17 does not take advantage of that. So, there has been a
18 lot of emotional upheaval, because the expectation
19 that he was going to be spending time with her didn't
20 happen. So, as a family, whether he ended up coming
21 to our house that weekend or staying home we've had
22 to, you know, try to, you know, make it okay, so to
23 speak.

24 Q. In your opinion has Heather been the more stable
25 motherly figure to M.J. than his own biological mom?

1 A. Definitely.

2 Q. Do you know how many biological children Heather has?

3 A. Biological children, four. Five with Kira.

4 Q. So, in your experiences has or does Heather treat M.J.
5 differently than her five biological children?

6 A. No.

7 Q. It's like he's one of her kids?

8 A. Yes. Very much so.

9 Q. And this is, again, even the case when maybe Matt and
10 Heather's relationship isn't going well or they're not
11 even together?

12 A. Yes.

13 Q. ~~Is this the only child, non-biological child that you~~
14 ~~know that Heather has sort of cared for as her own?~~

15 A. No. There's another older young lady from Heather's
16 previous marriage that was not her biological who she
17 treats as her own. She has attended, you know, family
18 functions at our house, Christmas at our house and
19 everything too. So, she's, you know, considered part
20 of her family.

21 Q. As M.J.'s grandmother do you appreciate the role that
22 Heather has taken in M.J.'s life?

23 A. Very much so. I think he would have been struggling a
24 lot more with some of his behavioral opportunities.
25 If it hadn't been that Heather was that constant and

1 having the temperament to be able to talk him through
2 some of his behavioral opportunities.

3 MR. NIELSEN: Nothing further, Judge.

4 THE COURT: Mr. Snider.

5 MR. SNIDER: Nothing. Thank you.

6 THE COURT: You may step down then, ma'am.

7 You have no other witnesses then?

8 MR. NIELSEN: That's correct.

9 THE COURT: You have some individuals who
10 wish to make statements?

11 MR. SNIDER: Yes.

12 TAMI THORNE: Hi, Your Honor. Dylan John

13 Thorne was my nephew and godson. I was there the day
14 he was born and helped his parents Tim and Liz named
15 him. I loved being an aunt to Dylan and to my other
16 nieces and nephews. I was also there the day when
17 Dylan's parents got the news that Dylan was killed in
18 a crash.

19 Just that morning I was with Dylan's mom, and
20 she was talking to Dylan, and he was trying to learn
21 how to do laundry. So, she was coaching him through
22 that. And he shared with us that he passed his
23 accuplacer at Fox Valley Tech, and he was now enrolled
24 in the criminal justice program.

25 As a family we were celebrating this for

1 Dylan. Our whole family at the time was on vacation
2 up in Hayward, five hours away. And Dylan was not
3 able to come with us because he had to work. We were
4 going to be gone for two weeks camping, and after the
5 first week of camping Dylan was going to try to make
6 it up on that weekend and join us for a couple of
7 days. We always went on vacations together as
8 families. We were very close.

9 Just a few hours after we had found the news
10 of Dylan and passing his accuplacer and all, we were
11 so proud, we were notified of the crash. Our world as
12 we knew it would never be the same.

13 Dylan. Dylan had a smile that would light up
14 a room. People often commented on his million-dollar
15 smile. And he had a personality that could win anyone
16 over. He just had a gift. He gave the best hugs
17 ever, and I would give anything to have a hug from him
18 now.

19 As Dylan grew up we celebrated birthdays,
20 ~~watched him play baseball, basketball, football,~~ went
21 on vacations together and everything in between. I
22 was always so proud of him and so proud of being his
23 godmother. I loved watching him play sports. It's
24 something that we definitely shared together. We both
25 have a competitive fire in us, and there was always

1 times where we would get the basketball out and play
2 each other on the court, trying to school each other
3 on our moves that we had mastered.

4 July 19th of 2012 rocked my world and my
5 family's. When we were notified of what had happened
6 we tried to get all of our troops together. And my
7 husband and I had to figure out how do we comfort
8 Dylan's parents, Dylan's brother, our children,
9 Dylan's cousins, Dylan's grandma. How do you comfort
10 them? How do you comfort parents when they have lost
11 their son at such a young age? What do you say? What
12 do you do? All we can do is be there with them.

13 My husband and I were with Dylan's parents
14 all the way through the process of them planning his
15 funeral. We were with his parents the first time they
16 saw him at the funeral home. As we entered that
17 funeral home I can still see him to this day, lying
18 lifeless. Nothing we could do, nothing we could say
19 could bring him back. I wanted to hug Dylan so bad
20 but couldn't. He just laid there. As we helped Tim
21 and Liz plan their son's funeral we had some very
22 difficult decisions to make.

23 And I don't know how Tim and Liz have been
24 able to stay as strong as they have throughout all of
25 this. This is their 18-year-old son who had just

1 graduated high school, just gotten into Tech, had his
2 whole life ahead of him. He never had a chance to
3 discover the world. He never had a chance to be a
4 parent, to be a good role model to his children,
5 because he was robbed of that part of his life. Tim
6 and Liz will never see their son Dylan get married.
7 They'll never have grandkids from Dylan. Nothing.

8 Tim and Liz were robbed of their son. Derek
9 was robbed of his brother. His grandma was robbed of
10 her grandson. My children were robbed of their
11 cousin. My husband and I were robbed of our nephew.
12 This has been a very difficult time for us.

13 I know no words, no acts can bring Dylan
14 back. I do know this though. That July 19th of 2012
15 a decision could have been made to have changed this
16 outcome. Heather Schmidt made the decision that day
17 to consume alcohol and get behind the wheel. She made
18 that choice. Dylan had no choice in this matter.

19 He had no prior things against him.

20 Nothing. He was a good boy. And in one poor decision
21 that may or may not have been made several times
22 before, Heather decided to get behind the wheel and
23 drive, and that day she decided to take Dylan's life.
24 She sits here today and is able to see her children.
25 The only thing we have left are pictures.

1 The love that there is for this young man has
2 come out of the walls. We have found people that have
3 our backs more than ever before, and we appreciate all
4 of them and all of their support through this.

5 I pray for our healing, and I pray that other
6 families do not need to go through this. And I pray
7 that our family can start healing and that my son, who
8 Dylan was his best friend, will be able to actually
9 start talking about Dylan and celebrating the short
10 life that he did have, and that my daughter will be
11 able to continue moving on without her rock, that
12 Dylan's brother as he looks at getting married will be
13 able to figure out how to fill the hole of his brother
14 not being able to be there at his wedding. And I pray
15 for Tim and Liz. No matter what we do we can't bring
16 their son back. No words can comfort. There's just
17 no words.

18 So we are here today, Your Honor, to put the
19 decision into your hands as to what's going to be
20 done. And I pray that you have comfort in your
21 decision making. Thank you.

22 THE COURT: Mr. Snider, we didn't catch her
23 name.

24 MR. SNIDER: Tami Thorne.

25 ELIZABETH THORNE: Your Honor, my name is

1 Elizabeth Thorne. I go by Liz. Dylan Thorne is my son.
2 Now he's my angel. I don't even know where to begin.

3 Dylan was compassionate, caring, funny, cared
4 deeply for his friends, his family and anybody else that
5 he came into contact with. He loved sports, and I was his
6 biggest fan. I loved to watch him out on that football
7 field. I would make my husband drive us to the football
8 field so we could see him get off the bus.

9 He had a smile that would just melt my heart. I
10 could never stay angry with him. Dylan was my life. He
11 was my baby. We had the connection we were both the
12 youngest of our family.

13 The day Dylan died I died too. It has been a
14 constant struggle to get through each day. I pray to God
15 every day for strength, energy, patience and courage.
16 The only thing that keeps me going is my husband and my
17 other son Derek. I try to be strong for them, but inside
18 I'm an emotional wreck. I used to be a happy, carefree
19 person. I've changed, and I don't even like who I have
20 become. I don't tolerate a lot of things like I used to.

21 I was told I had a lot of patience, and my patience has
22 been wearing thin throughout this whole thing.

23 It has been over three years of hell for me and
24 my family. Birthdays, anniversaries and holidays are very
25 hard. Everyone wishing everyone else a happy birthday,

1 happy anniversary, photos on Facebook of their families, I
2 just go through more pain. It's very hard to see that,
3 because I know our family will never have that again with
4 Dylan.

5 Seeing all of his friends on their way to
6 college and getting on with their life is also a constant
7 struggle, knowing that Dylan will never be able to do
8 anything. Gatherings are supposed to be happy, but those
9 bring me pain. I just want my Dylan back.

10 He wasn't even out of high school for two months
11 when he was killed. We will never have any more photos of
12 Dylan other than his last graduation picture. The one
13 photo is of him and his first best friend that he had met
14 when we moved to Iola. And at graduation I was so happy
15 to see that those two were walking down the aisle
16 together. And as you can see, they were hand in hand.

17 Dylan will never be the best man in his brother's
18 wedding. Dylan will never be an uncle, never be a father,
19 a husband, never know what true love is. He had his whole
20 life ahead of him.

21 The pain hurt so bad that at night at times when
22 I've gone to bed I have told God that I am not afraid to
23 die. I want to be with Dylan again. But I don't want my
24 husband and Derek to hurt either. So, I have wished that
25 God would take us all so we could be a family again.

1 I can't take Derek's pain away. After we had
2 the news and made the four-hour trek back home, Derek was
3 still in denial that his brother was dead. When we pulled
4 in the driveway and I got out of the car Derek ran to me
5 crying and said, "It should have been me." And I told
6 him, "No." Where the crash happened, Derek has to drive
7 by it every day on his way to work. Derek was caught
8 after the crash had happened, because Dylan worked second
9 shift where we work. Dylan worked second shift, Derek was
10 on first. Derek was on his way home and had to get
11 rerouted. He didn't even know his brother was killed in a
12 crash.

13 ~~And, Your Honor, not that I have a say in her~~
14 ~~sentence and others may not think it's fair, but I would~~
15 ~~be overjoyed to see her incarcerated for ten years. I~~
16 ~~pray to God that she does not do what she did to our~~
17 ~~family to another young family. With her being out in~~
18 ~~public for the last three years and running into her is~~
19 ~~extremely painful. I pray to God that she does not get~~
20 ~~behind the wheel after drinking again and cause somebody~~
21 ~~else more pain.~~

22 She is still able to see her loved ones no
23 matter what length of time she ends up serving. Even
24 after serving the years that you give her she will be able
25 to spend the rest of her life with her family.

1 I am not asking for life. She sentenced Dylan
2 to death, and she sentenced us to life without him. After
3 all of this is said and done she can just push all of this
4 back deep into her brain and act like nothing has happened
5 after she serves her time. Us, on the other hand, will
6 never forget July 19th, 2012. That is the date that is
7 burned into our memory. We will forever live in this
8 nightmare. We have life without Dylan. Our hearts will
9 never be whole again.

10 I pray that you don't let Dylan's life mean
11 nothing by giving her less than ten years incarceration.
12 No parent wants to hear that their child's life was only
13 worth three or five years.

14 I don't want any family to go through the pain
15 that Dylan's family and friends and community have gone
16 through. Everybody says that I've been strong through
17 this whole thing. I do what I have to do for my family.
18 I try and stay strong for them. I don't want my husband
19 and my other son to try and have to take care of me or
20 worry about me. I've just been coping these last over
21 three years. It's hard every day. I do my crying at
22 night. I do my crying when I'm by myself just to release
23 some of the stress that I go through.

24 And all of this could have been prevented if
25 Heather Schmidt didn't sit in the bar that day and then

1 choose to get behind the wheel. She still gets to see her
2 family. I can only see Dylan not even in my dreams,
3 because he hasn't even come to me in my dreams. I can
4 look at this box.

5 You never think you're going to bury your child.
6 We were not prepared. My sister-in-law Tami and my
7 brother-in-law Steve were pretty much the ones that did
8 the whole funeral, because I could not function. We ended
9 up having him cremated because we had no plot. We had
10 nothing. We thought Dylan's future, he had his whole
11 future ahead of him.

12 And I ask that you take into consideration he
13 was only 18 when he was killed. She was 37. She should
14 have had more responsibilities. She was at the bar, not
15 home with her children. He was on his way to work in the
16 afternoon, being a responsible young adult who had his
17 whole future ahead of him.

18 Thank you.

19 THE COURT: Any other statements?

20 MR. SNIDER: I don't believe so.

21 THE COURT: Do you wish to make an argument?

22 MR. SNIDER: Yes. Thank you, Your Honor.

23 We've reviewed the presentence. And of course,
24 it describes the defendant as a 40-year-old mother of five
25 children. We've heard that she's a de facto mother to

1 more. The presentence describes her as having a good
2 employment history. The Court has the e-mail from a
3 supervisor, I believe, at her place of employment.

4 I want to thank the Thornes and their extended
5 family for acquainting the Court with who Dylan was and
6 what he meant to his family and what he meant to his
7 friends and to his community. The Court now has a better
8 sense of what this defendant took forever from Dylan's
9 community. But we can't fully grasp what the Thornes and
10 their community have gone through.

11 The presentence describes the defendant speaking
12 to the agent as though she understands as a mother what
13 she has taken from the Thornes and their community. But I
14 don't think anyone in this room can begin to fully grasp
15 what they've been through and what the defendant has put
16 them through. She's described as expressing remorse for
17 her actions and empathy for the Thornes. She's described
18 in the presentence as making no attempt to minimize her
19 crime and there is no minimizing her crime. She did take
20 the life of a responsible, loved young man.

21 Looking back, this defendant spoke to the agent
22 about the choices she could have made. She could have
23 gone home after work. She could have left the bar
24 earlier, drank less. She could have gotten a ride home.
25 She didn't mention that she could have stopped anywhere

1 between Waupaca and the crash site. I just, when I think
2 of the driving behavior described, I just can't imagine
3 why she didn't stop. And looking back, it's too late.
4 This defendant made very poor choices, and she killed
5 Dylan Thorne.

6 And in spite of killing this young man and in
7 spite of injuring herself severely, it's reported that she
8 hasn't stopped drinking. It's reported in the
9 presentence, and family and friends who loved and miss
10 Dylan have had to experience that firsthand in public.
11 And I can't imagine what anyone who has been going through
12 what they have felt when they saw her at a bar with a
13 ~~bottle of beer in her hand, drinking.~~ That concerns me.

14 It suggests perhaps a lack of sensitivity at the very
15 least. It suggests perhaps an ongoing danger to the
16 public.

17 But most importantly, it suggests that the
18 defendant needs to be punished for killing Dylan Thorne.

19 Society can not tolerate and rightly expects punishment

20 ~~for those who drive drunk and kill.~~ When recommending a

21 prison sentence the agent wrote, "All other sentences seem
22 insufficient." And in a way, no sentence is sufficient
23 when a life is taken.

24 This defendant told the agent she and her
25 co-workers went to double bubble, two for one, but she

1 apparently had no exit strategy. She then chose to stay
2 at the bar for hours and take that next drink and that
3 next drink, and then she chose to drive at over twice the
4 legal BAC, and she killed Dylan Thorne.

5 As I say, no sentence the Court imposes today
6 can really salve the hurt, the injury. But the State
7 would recommend a sentence of 15 years imprisonment with
8 five years of initial confinement and ten years of
9 extended supervision.

10 This Court's been through too many occasions
11 like this. But having been through it, I am confident
12 that you will impose extended supervision conditions that
13 will maximize protection of the public. I would
14 specifically request that the Court order restitution as
15 submitted and that the Court order costs. I'm aware that
16 courts are not taxing costs of service of law enforcement
17 witnesses, but I would ask that costs of service of
18 non-law enforcement witnesses be taxed. I'd ask that the
19 Court order supervision fees. Certainly require absolute
20 sobriety. No taverns.

21 I'm concerned that the defendant is prescribed a
22 very powerful narcotic. I'd ask that the Court order that
23 if, in fact, that continues she take that only as
24 prescribed, that she limit herself to one pharmacy and
25 that she advise her agent of any health care or

1 prescriptions within 48 hours.

2 Thank you.

3 THE COURT: Mr. Nielsen.

4 MR. NIELSEN: Before I go through the prepared
5 comments I have, Judge, I just sort of want to preface
6 what I'm going to say with this. The impact of this case
7 on my client and her family and friends is not but a drop
8 in the bucket compared to the impact on the Thornes. You
9 know, I know that. My client absolutely knows that. Her
10 family and friends know that. So, if through the comments
11 I make I talk about how this case has impacted Heather,
12 the feelings that she has from this situation or her
13 family's impact, in no way are we trying to compare or
14 measure impacts. Like I said, the Thornes have had to
15 suffer I suspect the worst feeling in the world. If it's
16 not it's got to be right at the top. And so I don't want
17 the comments to be construed as though my client has
18 suffered in any way that's even comparable to, in
19 particular, Mr. and Mrs. Thorne, Dylan's parents. But as
20 we know, the law requires the Court to take everything
21 into consideration. So, these things need to be
22 discussed. Even if they're uncomfortable, it's not an
23 effort to compare. It's just an effort to convey.
24 To state the obvious, this was a very, very
25 terribly tragic day. July 19th, 2012, was, as is today.

1 Nobody wanted this day to happen. Nobody wanted
2 July 19th, 2012, to happen either. Certainly not the
3 Thorne family. Certainly not Dylan. Certainly not
4 Heather. Certainly not her family and friends. But it
5 happened.

6 And the description in the PSI that Heather gave
7 to the PSI writer I thought was very honest and very
8 candid and very insightful. We so routinely see in
9 non-death OWI cases drivers say, "I've had two." It's
10 sort of a point of chuckling at this point. I think
11 everybody says that. Heather said that when she was
12 interviewed by the police for the first time in the
13 hospital in July of 2012. But she's, of course, bright
14 enough and smart enough to understand that while that
15 might be all that she recalls having, she clearly had
16 more. And she doesn't try to suggest that, you know, some
17 crazy idea that she only had two, and "I have no idea how
18 I got so drunk." She was there. She was there for hours.
19 She was there with co-workers. From my understanding a
20 co-worker of hers was, I think, switching positions within
21 the foundry, and they were kind of going to the bar to
22 celebrate or whatnot. And things got way out of hand and
23 way out of control, and Heather knows that. I mean, she's
24 smart enough to realize that she didn't just have two,
25 even if that's all that she can remember.

1 The fact that she can look back and think about
2 all the other choices that were available to her that day
3 other than the choice that she made, I think is also a
4 rare piece of insight, at least rare in my experiences.
5 Because I think a lot of times OWI offenders, in
6 particular the repeat OWI offenders, don't really think of
7 that. They don't realize that even after the fact.

8 So, the facts of the case are terribly
9 egregious. There's no way around it. There's nothing
10 that I can say or that Heather can say that's going to
11 change that. But she has a level of insight and
12 understanding that I think is rare and unique and speaks
13 volumes, I think, about her chance of maintaining a lawful
14 existence for the rest of her life.

15 But when trying to really evaluate the gravity
16 of this offense, you know, I have struggled a little bit
17 with trying to assess it because of the odd sentencing
18 structure that the state of Wisconsin has for OWIs. If
19 everything on July 19th, 2012, had been the same but for
20 the fact, just using some of the comments from the
21 Thornes, Dylan's aunt and mother, if Dylan had gone to the
22 family retreat in Hayward and everything was the same and
23 my client crossed the center line and was arrested that
24 day for OWI, it was her first offense. What would have
25 happened, Judge? We know she would have gotten a

1 citation. Her license would have been revoked for seven
2 months. She would have gotten a fine. Nothing else.

3 But what changes this from a citation, an
4 ordinance violation to a homicide conviction, a potential
5 imprisonment in the Wisconsin state prison system, is the
6 fact that somebody was on the other side of the center
7 line when Heather crossed it. That's terrible. I mean,
8 there's no word to put to it but terrible luck for
9 everybody. But more importantly for Dylan. It was just
10 tragic luck.

11 But when you're trying to assess, in my opinion,
12 the gravity of the offense we routinely get into a
13 situation where we're results orientated. I mean, what
14 happens dictates the punishment one gets imposed. But
15 really, in my opinion, when we're trying to assess the
16 gravity of the offense we need to look at the actual
17 behavior. Consequences or results are important, but they
18 shouldn't control.

19 At the end of the day, Heather's behavior on
20 July 19th, 2012, is behavior that unfortunately is all too
21 common and all too accepted in our community and in our
22 state, going to the bar after work, drinking to excess and
23 driving home, or maybe for the younger crowd going out to
24 the bar or nightclub or whatever drinking until bar close
25 and, you know, playing rock, paper, scissors about who

1 drives home. When you look at the terrible decisions that
2 Heather made on July 19th and the poor behavior that she's
3 exhibited, it's unfortunately all too common and in my
4 opinion accepted within the state of Wisconsin. I can't
5 count how many times I've seen people or been a part of
6 conversations or dialogs where people are online looking
7 at people who tragically fail field sobriety tests to the
8 point that they're falling over or vomiting on the
9 officer's shoes. And everybody laughs and it's funny or
10 cute. It's not funny. It's not cute. That just
11 exacerbates this problem which is acceptance of drinking
12 and driving. And unfortunately, Heather lives in these
13 communities. She grew up in this state. She grew up, you
14 know, in a situation where that behavior is fine. It's
15 okay to drink and drive. Just don't get caught. And if
16 you get caught, well there's a small price to pay. And
17 except for these tragic situations where it's not just
18 crossing the center line, correcting and going home and
19 getting a ticket, it's a kid dying.

20 So, it's hard when you really sort of analyze
21 Heather's behavior, which you have to do in trying to
22 assess how grave it really was when at the end of the day,
23 unfortunately, her behavior on July 19th, 2012, is
24 behavior that I dare to venture a guess that a fair amount
25 of us in this courtroom has done in the past and

1 unfortunately will continue, and unfortunately and sadly.
2 So, while her behavior was unlawful, her behavior was
3 unfortunate, tragic and sad, it's not behavior that's out
4 of the ordinary, unfortunately, Judge.

5 An additional problem when we have these OWI
6 homicide cases is the randomness of it all. When I look
7 back doing sort of my preparation for today I looked back
8 at some older OWI homicide cases in the communities that
9 we live in and the county we live in, and you know,
10 victims' age ranges run the gamut from unfortunately
11 18-year-old Dylan to unfortunately elderly men. And
12 that's just the randomness of it all. Heather didn't pick
13 to kill Dylan on July 19th, 2012. It's random. It just
14 happened. And I don't know if that makes it any more
15 grave or not. I don't think it does, because Heather
16 didn't do anything to pick Dylan. Would this have been
17 less grave if Dylan was a sixty-year-old male? I don't
18 think so. It is what it is. The impact on the family has
19 been great, of course. And age has that effect, on how
20 old someone is. But when we're trying to assess how grave
21 the crime actually is, you know, it's really hard, to me
22 at least, to put a lot of stock or consideration into
23 Dylan's age only because Heather didn't pick Dylan. It
24 was random. It could have been a 50-year-old mother. It
25 could have been a 75-year-old grandma. So, the gravity of

1 the offense, it is whatever the Court thinks it is. And I
2 don't know if it shifts at all dependent upon who the
3 victim is.

4 Drinking and driving, as I've said, is a
5 significant problem. And I don't have the answer. I'm
6 not pretending that I do. But much like the war on drugs
7 for the last 30 some years, in my opinion you can't
8 incarcerate your way out of this problem. You need to
9 educate. You need to teach from as early as we can when
10 kids are getting ready to take their driver's test.
11 There's no circumstance I can think of where there's too
12 much education on this topic. But incarceration,
13 incarcerating all of these people isn't simply going to
14 solve the problem. We know that. We have to consider
15 education. We have to. And I think there's a push and a
16 movement to do that. In fact, there's an article in the
17 Post-Crescent today. It was entitled something about
18 repeat drunk drivers are a hazard to the community. I
19 think the education is starting to filter out more and
20 more heavily to educate people in the dangers of drinking
21 and driving, whether it's after work, after a night with
22 your buddies.

23 Shortly, I shouldn't say shortly, after the
24 crash on July 19th, Heather went and sought and obtained
25 an assessment for her alcohol use. That information was

1 discussed to some degree in the PSI. And the diagnosis
2 that the assessor had come up with was that she suffered
3 from alcohol abuse. It might be the most obvious
4 diagnosis, but she wasn't diagnosed or defined as an
5 alcoholic or suffering from alcoholism. She completed a
6 six-week intensive out-patient program as recommended by
7 the assessor. The PSI writer expresses some frustration
8 or concern that Heather failed to complete the after care
9 component of that treatment. Heather reports to me that
10 it's because insurance stopped paying for it, which is an
11 all too familiar refrain from clients. In talking to her
12 about the after care program she said it wasn't doing a
13 whole heck of a lot for her anyway, because she was
14 sitting there with people who have been convicted of five,
15 six times of OWIs which she hasn't. She has no plans on
16 continuing to drink and drive. Or with individuals
17 suffering from substance abuse, marijuana, cocaine, maybe
18 heroin. I doubt back then it was as huge as it is now.
19 So, she wasn't really gathering a whole lot of
20 information, because the peers in these groups weren't
21 people that were similarly situated to her.

22 But there is, of course, a significant concern
23 raised by the PSI writer, raised by Attorney Snider, that
24 Heather continues to drink. You know, I would acknowledge
25 on the surface that looks like a very bad decision, and

1 maybe it's not the best decision. But I don't know how
2 much ultimately it matters for purposes of today. There
3 was reference by Attorney Snider about my client drinking
4 in public. I can't remember his exact words, but
5 something to the fact that to the point that some of the
6 Thorne family and friends, some of Dylan's family and
7 friends witnessed this. I just want to give some context
8 to the Court about that. In December of 2013 my client
9 went to Silver Lake Lanes in Scandinavia as part of a work
10 Christmas party. She was there. She had a couple beers.
11 She had a driver. Someone drove her to and from. That's
12 the only event that I'm aware of where she's been
13 witnessed by the Thorne family and friends directly
14 drinking. But she admits in the PSI to the PSI writer
15 that she has continued to use alcohol. I commend her for
16 her honesty to the PSI writer. I think a lot of people
17 may have tried to, again, minimize or deflect that issue.
18 But she acknowledged it and admitted it.

19 You know, it's a little bit, I think a little
20 bit disingenuous and concerning that the State makes a big
21 deal about it. Because when Heather appeared at her
22 initial appearance on March 14th, 2014, there was no
23 request for an absolute sobriety requirement. This case
24 has been pending now for, give or take, 18 months.
25 There's never been a request to modify the conditions of

1 the signature bond. So, I'm not saying it's not
2 concerning. But the State's had the opportunity for the
3 last year and a half to try to seek a court order
4 preventing Heather from drinking, and they haven't. So,
5 you know, I'm not saying it's not a concern. I'm just
6 saying I think it's a little unfair for the State at this
7 point to suggest that it puts the community in peril or
8 danger when it had all this opportunity to try to limit
9 that.

10 When, gosh, I think I was a brand new attorney
11 appearing in front of a now retired judge in Wood County,
12 I had a client whose name I still remember being sentenced
13 for an OWI fourth. And I remember preaching on and on and
14 on how my client was an alcoholic and she's trying, you
15 know, kind of giving a standard speech in that situation.
16 And Judge Zappen stopped me in my tracks and taught me a
17 very quick lesson that being an alcoholic doesn't mean you
18 have to drive while drunk. Drinking doesn't mean you have
19 to drive while drunk, that what makes drinking and driving
20 dangerous, what makes drinking and driving illegal is not
21 the drinking. It's the driving after drinking. And it
22 was a quick lesson that he had taught me that I've taken
23 with me in all these years and still remember. I still
24 remember that back and forth with him on that.

25 And that's, you know, that's the issue, Judge.

1 It's not just whether or not Heather is continuing to
2 drink, because the problem with drinking and driving isn't
3 so much--isn't just the drinking. It's the terrible
4 decisions one makes after drinking. But what, you know,
5 what we try to teach young people who are drinking is it's
6 okay to drink. It's okay to go to a bar and drink, but
7 you have to come up with a plan before you start drinking.
8 How are you getting home? Who's driving you home? How
9 are you getting home or wherever you're going after the
10 bar safely without driving under the influence?

11 And that's what Heather has done, Judge. Every
12 situation where she's consumed alcohol has either been at
13 her house pursuant to a family gathering, or if it's been
14 away from her house, at another family member's home or
15 Silver Lake Lanes or elsewhere she's always had a driver
16 there. She's always had a driver back. So, while I get
17 the sort of initial response that it's bad form, she's
18 taking the steps to make better decisions much like the
19 decisions she wished she had taken on July 19th which she
20 mentions to the PSI writer.

21 So, the question that I have asked my client and
22 asked many of my clients is sort of, "Who are you? Who is
23 Heather Schmidt?" Heather Schmidt is the person that
24 killed Dylan Thorne on July 19th, 2012. That's part of
25 who she is. Undoubtedly, that's part of who she is. But

1 that day, that block of time, that five, six-hour block of
2 time is just a sliver in the life of Heather, who presents
3 herself today here as a 40-year-old woman. So, we can't
4 just say that is who she is. That's all that she is, and
5 lock her up and throw away the key. We have to know who
6 she is.

7 Some of this has been talked about, but I feel
8 it's important to discuss. She's a mother of five
9 biological children. She's essentially raised those
10 children as a single mother with very limited involvement
11 from the respective fathers. I've met with the two adult
12 girls I think a couple of times. They seem well adjusted
13 and well on their way to becoming good, law-abiding women
14 in their communities.

15 As Ms. Reiererson testified, Heather has
16 essentially become the mother figure to two non-biological
17 children. The reason I had Sondra testify about that
18 information is two-fold. One, it wasn't in the PSI. It
19 wasn't anywhere else. The Court didn't have that
20 information. And I felt it would be more compelling and
21 powerful, in all honesty, to hear from M.J.'s grandma.
22 And I think Heather's decision and willingness to mother
23 these two non-biological children the way that she has
24 speaks volumes for her character, because I don't know of
25 a lot of people that would necessarily do that.

1 I could have had one of her children speak on
2 her behalf today, and I know they would have said that
3 she's a great mother. And that's good. But being a great
4 mother, a great father, great parent isn't all that
5 exciting. We're supposed to be good parents. We're
6 supposed to be good at that. Your children are supposed
7 to love you, and you're supposed to be good to them. But
8 it's these unique situations that present themselves in
9 life that really test the real character of a person. And
10 it may have been easy, so to speak, for Heather to mother
11 M.J. when she was in a relationship with M.J.'s father.
12 It's not so easy, in my opinion, to maintain that
13 ~~commitment to M.J. even when she's not with M.J.'s father.~~
14 She continues to parent M.J., and has probably had a
15 life-changing impact on M.J. according to Ms. Reierson's
16 testimony.

17 And that speaks volumes of who Heather is.
18 She's not just the person that drove drunk and killed
19 Dylan. ~~She's a mother of five wonderful children. She's~~
20 ~~mothering two children that aren't hers, even though she~~
21 has no legal requirement but, I mean, no relationship-type
22 requirement to these children. That speaks volumes of who
23 she is.

24 She's a hard worker, which matters when trying
25 to decide her character and who she is. That e-mail

1 details that. Also, through the preparation process I've
2 had interviews and met with two of Heather's co-workers,
3 both coincidentally happen to be younger women who were
4 hired after Heather was hired at the foundry. And talking
5 to them was insightful and enlightening, because they
6 spoke glowingly of Heather. They were well aware of
7 what's going on. They knew that Heather had driven drunk
8 and killed Dylan. But these were woman that, when they
9 were hired as new hires, part of the training process was
10 to be mentored and taught and trained by Heather in how to
11 do their jobs. And they spoke well of her ability to
12 teach them and communicate to them and help them. And I
13 think that's significant.

14 What's significant to me is to the point that it
15 impacted one of the aspects of what would ultimately be
16 our recommendation today, Judge, the issue of remorse and
17 empathy and sorrow has come up. I don't think that it has
18 been presented that anybody believes to the contrary about
19 Heather that she is remorseful. I can't put into words
20 how she feels. Maybe she can here when she has the
21 opportunity to speak.

22 And I would agree with Attorney Snider. I mean,
23 if Heather, the PSI writer said, anybody else said that "I
24 can understand where Mr. and Mrs. Thorne come from",
25 nobody can. I can't. Nobody can. Only people that have

1 lost younger children in an OWI accident can have any
2 understanding what Mr. or Mrs. Thorne are going through.
3 That's it. But she's trying to feel the right thing.
4 She's trying, Judge. And there's no way she's ever going
5 to feel exactly how they feel.

6 And this hasn't been suggested, so I'm not
7 saying anybody suggested it, but I want to talk about
8 this. I mean commonly defendants express remorse at the
9 time of sentencing, which of course is always a nice
10 convenient time to express remorse. But Heather's remorse
11 and sorrow and sadness from this whole event has been in
12 place since this happened. I know that in talking to her
13 I know that she's wants to comment on this a little bit,
14 so I don't want to belabor it. But in meeting with
15 Heather in preparation for today she brought to my
16 attention that she had sent a letter, an apology letter,
17 to Mr. and Mrs. Thorne, and I didn't know that. I never
18 heard that. Never saw that in any of the discovery, of
19 course, and when I read the victim impact statements
20 there's no suggestion to that. So, it caught me
21 completely off guard. And Heather indicated to me that
22 she still had a copy of that letter at home. I said,
23 "Okay. Well, e-mail it to me." So, that night she
24 scanned and e-mailed it to me. What I realize or what she
25 realizes, she didn't have an actual copy of the letter

1 because it was handwritten. But she had the draft of the
2 letter that had some scribbling in it that she rewrote
3 without the scribbling and sent it. I don't know if
4 Mr. and Mrs. Thorne ever got it. There's no suggestion
5 that they have. I don't know ultimately how much it
6 matters, only because this helps exemplify to the Court
7 that this sadness and sorrow and remorse isn't being
8 presented to the Court today because she wants you to be
9 lenient with her, because that's really how she feels.

10 I'm going to read this letter. She doesn't know
11 exactly when she sent it, because the draft isn't dated.
12 Her recollection it would have been late 2012, early 2013.

13 But the letter reads as follows. It's a handwritten

14 letter by Heather and it says, "Dear Mr. and Mrs. Thorne
15 and Family, I don't know where to begin to express how
16 sorry I am for the pain I have caused you and your family.

17 I have five children of my own that range from three years
18 to 18 years old and cannot imagine how I would make it

19 through if one of them was taken from me because of

20 someone else's actions. I am so sorry for what I have

21 done. I pray for forgiveness every day. I don't expect
22 to be forgiven, nor do I deserve to be forgiven for all
23 the pain and suffering I've caused you and your family.

24 I'll never be able to find the words to express the pain
25 and sorrow that I feel for you and your family and for

1 what I have done. It should have been me that died that
2 day, not Dylan."

3 So, this is a letter authored by Heather within
4 months of her killing Dylan and long before a criminal
5 complaint was filed, long before September 30th, 2015.
6 This has impacted Heather. And again, I'm not trying to
7 say it even comes close to level with Mr. and Mrs. Thorne
8 and family and friends about the effect it has. But as
9 much as it can, when I've met with the two older daughters
10 of Heather, you know, I've asked them and I met with them
11 individually. I didn't meet with them collectively. I
12 definitely didn't meet with them with Heather in the room.
13 And I just asked them, you know, if they've learned
14 anything. "Heather's children, have you learned anything?
15 Has this impacted you?" And they both expressed,
16 "Absolutely, of course it has." I believe Sabrina is 21.
17 I think Ashley is 20. And I have the name of the others.
18 I forgot the name of the others. There's five of them.
19 But, I mean, they're in their years of drinking. I mean,
20 if they're going to consume alcohol this is kind of the
21 time they're going to do it, and they have learned that
22 they need to come up with a plan of attack. As Attorney
23 Snider said, an exit plan if they're going to drink. So,
24 Heather's situation has impacted her children already in a
25 very positive way.

1 The last point I want to make before moving on
2 to our recommendation, Judge, is this. One of the factors
3 the Court has to consider is protection of the community.
4 I don't view Heather as an ongoing threat to the
5 community. Her criminal record doesn't suggest that.
6 Her behavior and the time that's passed between July 19th,
7 2012, and today hasn't exhibited that.

8 But what I would say, Judge, is that the
9 community does need to be protected from drunk drivers.
10 There's no doubt about that. But as we sit here today,
11 moving forward, I don't think Heather poses a significant
12 or even a slight risk to the community. And history is
13 what we can look at to try to make those determinations,
14 and she's 40. The criminal record that's discussed in the
15 PSI is, I mean, I don't want to say insignificant, but not
16 all that impressive is the best way I can characterize it.
17 And she's a single mother, and she's fully employed, and
18 she's stable. So, I don't think she poses a risk, but
19 drunk drivers do. And as I've said before, to solve this
20 problem of drinking and driving is best done through
21 education and not incarceration.

22 Which moves me to our recommendation, Judge.
23 What we're asking the Court to do today is impose a prison
24 sentence for Heather, but stay execution of that sentence,
25 placing Heather on probation for a period of eight years.

1 As conditions of probation, other than those that have
2 been discussed in the PSI and those that have been
3 discussed by the State, we're recommending the following.
4 We're recommending ten months of conditional jail time
5 commencing today with Huber release privileges.

6 The reason I came up with ten months, Judge, as
7 opposed to maybe an easy simple 12 months, which of course
8 is the maximum period of incarceration that one can be
9 ordered to serve as a condition of probation, is for this
10 reason. There are seven days throughout the year that I
11 think Heather should be ordered to serve in jail
12 notwithstanding the ten months of conditional jail time.
13 January 26th, which is one of her daughters' birthday.
14 February 10th, which was Dylan's birthday. March 27th,
15 which is her other daughter's birthday. April 9th, which
16 is her son's birthday. May 21st, another daughter's
17 birthday. July 19th, the obvious anniversary of this
18 crash. And September 18th, the other daughter's birthday.
19 ~~Those are seven days that I think she should have to serve~~
20 ~~the entirety in jail on over the course of the eight years~~
21 on probation. Seven times eight is 56. Essentially, two
22 months added to the ten that she's already serving, we're
23 at a year.

24 As everybody has commented and as everybody
25 knows and understands there's never a way that Heather is

1 going to understand what it's like to lose a child unless
2 she's ever the unfortunate--ends up being in the
3 unfortunate situation the Thornes are. But taking her
4 away from her children on her children's birthdays, again,
5 a drop in the bucket. I know Heather knows that. But
6 it's a way to remind her over the course of probation what
7 she has caused, what the Thornes have lost.

8 And lastly, as an additional condition, Judge,
9 I'm asking that the Court somehow structure a condition
10 that requires Heather twice a year to meet with, in some
11 organized setting, young teenage or young adults to
12 discuss the dangers of drinking and driving. I hadn't
13 thought of this condition until I met with these two
14 co-workers about two weeks ago, and it really resonated
15 with me that Heather has this ability to teach and mentor
16 and help the young people in situations. She's better
17 served, in my opinion, to help move the issue, because the
18 issue here, Judge, is how do we stop drinking and driving.
19 How do we stop it?

20 The Thorne family, I know, are trying their
21 damndest to do that from their perspective in various
22 ways. And that's great. That's awesome. That's
23 wonderful. But we shouldn't forget or lose sight of the
24 fact that Heather can help push this cause too. Heather
25 can help push this issue. She's bright, articulate,

1 intelligent. She has a history of mentoring and teaching
2 younger people how to do things. She's setting an example
3 for her children. She's setting examples for her
4 co-workers, and I think she can set an example for others.
5 Because at the end of the day can Heather solve this
6 problem? Absolutely not. But I think if she's speaking
7 to these young adults about the behaviors of drinking and
8 driving she'll connect. Something will. She'll reach
9 even if it's only one person, Judge. That's better than
10 no people. But my guess, based on the way as reflected,
11 Heather will reach and connect with a lot of people and
12 push this issue forward, combating the dangers of drinking
13 and driving.

14 So, for those reasons, Judge, taking all the
15 sentencing criteria into consideration, we think the Court
16 should follow our recommendation.

17 THE COURT: Ms. Schmidt, anything you wish to
18 tell the Court before I pronounce sentence?

19 THE DEFENDANT: Yeah. I just want to tell
20 Dylan's family and friends how sorry I am for everything
21 you had to go through for the last three years and the
22 rest of your life. You won't have birthdays and holidays,
23 and I've taken that from you. And I was in the hospital
24 for probably about a week before I got an honest answer
25 what had happened that day. And I was never so horrified

1 in my life. And it was because it was something I had
2 done. And when I was released I looked Dylan up on
3 Facebook, because I wanted to know who he was, not just a
4 name. And I can never give that back to any of you. And
5 I don't expect forgiveness from anyone. I can't even give
6 it to myself. But I will think of Dylan, and my guilt
7 will carry with me for the rest of my life. I'm so sorry.

8 THE COURT: This is a tragic case. These are
9 among the most difficult cases for the courts to handle.
10 And the courts have recognized the consequences of drunk
11 driving for years. Back in 1986, Justice Louis Ceci of
12 the Wisconsin Supreme Court noted that drunk driving is
13 ~~indiscriminate in the personal tragedy of death, injury~~
14 ~~and suffering it levies on its victims. It may transform~~
15 ~~an innocent user of a highway into a victim at any time~~
16 ~~with no advance notice and no opportunity to be heard. It~~
17 ~~is a tragedy where the intoxicated driver and the victim~~
18 ~~are often unwittingly the same person. It is also a~~
19 ~~scourge on society. Drunk driving exacts a heavy toll in~~
20 ~~terms of increased health care and insurance costs,~~
21 ~~diminished economic resources and lost worker~~
22 ~~productivity. It is an affliction which produces no~~
23 ~~offsetting human or economic benefits. It engenders no~~
24 ~~positive human or economic incentive. It destroys and~~
25 ~~demoralizes personal lives and shocks society's~~

1 conscience. It has no legitimate place in our society.

2 In Wisconsin, though, we are somewhat
3 schizophrenic in the way we deal with drunk driving
4 offenses. Certainly, the Wisconsin culture has a
5 tradition of the bar, the family get-together, all of
6 which alcohol consumption takes place. Clearly,
7 consumption of alcohol is legal and condoned by the vast
8 majority of Wisconsin residents.

9 However, the problem arises when someone who's
10 consumed alcohol gets behind the wheel and drives a motor
11 vehicle. The legislature has struggled with this problem
12 and has increasingly exacted more severe penalties over
13 the years. However, Wisconsin is still the only state in
14 the nation where a first offense operating while under the
15 influence of an intoxicant is not a criminal offense.

16 But for Ms. Schmidt's striking Dylan's vehicle
17 on this occasion, had the police stopped her in response
18 to the calls that they had been receiving that she was
19 crossing the center line she would have at that time faced
20 the \$754.50 forfeiture, an eight-month revocation of
21 license, requirement that she operate vehicles equipped
22 with an ignition interlock device for a period of one year
23 and that she submit to and comply with alcohol assessment.
24 But for the crash here, this case would have been long
25 disposed of and that would have been the penalty.

1 So, when a court is asked to sentence on these
2 kinds of cases it is very difficult. The courts are
3 directed to look at a number of factors and go through an
4 analysis when making a sentencing decision.

5 This Court has a personal significant concern
6 about the consequences of driving while under the
7 influence of intoxicants. Shortly after taking the bench
8 I created the Waupaca County Victim Offender Impact Panel
9 that is still being run to this day. I don't know if it
10 helps. I can only pray that it does. But what we do need
11 as a society is to recognize that driving after consuming
12 alcohol is the same as getting behind a gun after
13 consuming alcohol. You lose an ability to control it and
14 adverse and significant consequences can follow. As I
15 indicated, the legislature has over the years consistently
16 increased the penalty, including now the consequences of a
17 Class D felony for which Ms. Schmidt is now facing
18 sentencing.

19 I've had the benefit of arguments of counsel,
20 the presentence writer's recommendation, had the benefit
21 of hearing orally the stories of Dylan's aunt and his
22 mother. I've had the benefit of the written victim impact
23 statements that had been made. I've heard the benefit of
24 Ms. Reierson's testimony today. And I believe all of
25 those reports and collateral sources just demonstrate the

1 true tragedy of this situation.

2 I'm satisfied from the statement of Ms. Schmidt
3 that she recognizes the true tragedy of the situation, and
4 she seemed very sincere to the Court when she was
5 expressing her apologies today. In the presentence
6 investigation she indicated that she regrets getting in
7 that vehicle that day. "Using better judgment, it would
8 have never happened. I could have gone home after work.
9 I could have left earlier. I could have gotten a ride.
10 There's a whole lot of things I could have done."

11 That's why this is such a tragic case. There
12 are so many things that could have been done on that day
13 that would have prevented us being here today. I think
14 when Tami Thorne indicated there are no words that can
15 comfort from a loss of Dylan, that's absolutely true.
16 There's nothing that I can say today that, unfortunately,
17 is going to make Dylan's family and friends feel
18 better.

19 When Ms. Thorne indicated that we need to
20 demonstrate that Dylan's life had worth, there's no
21 question that Dylan's life had great worth. He was a
22 bright young man on his way to school to study law
23 enforcement. His life was just beginning. It's tragic,
24 absolutely tragic, that just when his world was beginning
25 to start he was taken away. And there's no amount of

1 money, no amount of prison, no amount of words that I can
2 say that's going to demonstrate his real value. His value
3 was infinite.

4 And I suspect if there were any sentence that
5 this Court could impose that would bring Dylan back today,
6 I'd do it. And from Ms. Schmidt's comments I think she
7 would certainly agree. But unfortunately, that's not a
8 possibility.

9 When a Court imposes a sentence the Court has to
10 look at a number of factors. Contrary to what many people
11 think, we don't just pick numbers out of the air. We are
12 given guidelines and strictures by the statutes, by prior
13 case law, and we have to apply those to the facts that are
14 before the Court at the time of sentencing. The Court has
15 to consider the gravity of the offense, the protection of
16 the community, the need for punishment, the rehabilitation
17 needs of the defendant and general deterrence of other
18 individuals as well as a whole host of secondary factors.

19 It's difficult to envision an offense that has
20 more gravity than an offense that results in the loss of
21 life. The strictures on the Court when considering
22 sentencing direct that the Court must consider probation
23 as the preferred and first choice if it's appropriate. It
24 would appear to this Court that of all the other factors,
25 gravity of the offense is the one that causes perhaps the

1 most difficult restriction on a probation sentence in this
2 case.

3 Ms. Schmidt has her five natural children plus
4 apparently two other children that she has become
5 emotionally responsible for. She maintains steady
6 employment throughout most of her life. She is employed
7 at the Waupaca Foundry at the present time. She is in a
8 training position there. Her employer, certainly in the
9 report that I received today, views her as a very positive
10 contributor to the business. The presentence writer while
11 using COMPAS - and the Court is certainly aware that there
12 are some concerns about the utilization of the COMPAS in
13 sentencing decisions - basically reaches the decision that
14 Ms. Schmidt's a very low risk to cause any trouble ever
15 again, that she's a positive, basically, contributor to
16 her family and the community, that she lives a stable
17 lifestyle and noted it is difficult to recommend a hard
18 working single parent be sentenced to prison. But this
19 writer concluded that all other sentences seem
20 insufficient.

21 This Court, as I indicated, has the stricture
22 that probation is to be the decision if the needs of
23 sentencing can be met. Clearly, protection of the public
24 is important. The presentence writer thinks the risk is
25 low for any reoffense. I am concerned, frankly, by the

1 stories that I hear she's consuming alcohol, although
2 there was no restriction on her utilization of alcohol
3 when Branch I set the original bond in this matter. I'm
4 told that she, if she does use alcohol, has altered the
5 drivers, and obviously that's the most important issue in
6 this Court's mind for protecting the public.

7 With regard to rehabilitation of the defendant,
8 the presentence investigation seems to indicate she's not
9 in need of much. Perhaps some counseling to deal with the
10 stressors she's feeling from the incident itself.

11 The deterrence of others. I would hope that no
12 matter what type of sentence this Court were to impose it
13 will have some general deterrent effect. What people need
14 to understand and recognize is that anyone can get behind
15 the wheel after consuming alcohol and be sitting where
16 Ms. Schmidt is sitting today.

17 The majority of operating while under the
18 influence homicides that occur in this state are not
19 committed by individuals with prior OWIs. Basically, it's
20 a first-time individual, which again is reflective of the
21 culture of this state and perhaps the lack of recognition
22 of the seriousness of the consequences of drinking and
23 driving.

24 Certainly, because of the seriousness of the
25 conduct here, I think it is certainly appropriate to

1 impose a sentence to the state prison system of five
2 years, and five years of extended supervision. However, I
3 am going to stay that and place her on ten years of
4 probation, because I'm mandated to give her probation if I
5 think the needs of sentencing can be fulfilled by that
6 probation.

7 There's nothing I can do with any type of
8 sentence, I'm afraid, that's going to make the Thornes
9 feel better. What I have to do is punish and protect the
10 public, and I think that probation can accomplish that.

11 As conditions of her probation I will direct
12 that she pay the costs of the action, including
13 appropriate restitution surcharges. I will direct that
14 she pay restitution in the amount of \$11,419.70 to Timothy
15 and Elizabeth Thorne. I will direct that she pay the
16 costs of supervision. I will direct that during the ten
17 years she's on supervision that she not operate a motor
18 vehicle unless authorized to do so by the Wisconsin
19 Department of Transportation Division of Motor Vehicles.

20 Outside of the conditions of probation I will
21 revoke her driving privileges for a period of five years.
22 As a further condition of probation I will direct that she
23 operate vehicles equipped with ignition interlock devices.
24 That's the one way I can absolutely assure she's not going
25 to drive after consuming alcohol.

1 As a further condition of probation, though, I
2 am going to direct that she not possess or consume any
3 alcohol. I am imposing an absolute sobriety requirement.
4 I would hope that that's not going to be an issue, ma'am.
5 But for the next ten years you will not consume any
6 alcohol. You will not possess any illegal substance or
7 drug paraphernalia as defined in Chapter 961. You will
8 take prescription medications only in a manner and method
9 as prescribed by a physician. You will obtain all
10 prescriptions from one pharmacy. You will report any
11 change of prescriptions to your agent within 48 hours.

12 As a further condition of supervision I am going
13 to direct that at least twice annually you do some type of
14 education to the public of the consequences of driving
15 after consuming alcohol. I think Mr. Nielsen's suggestion
16 that it be to the youth would be wise, but I'm not going
17 to restrict it to that. I will allow you to do it in the
18 form of participating in impact panels for impaired
19 drivers. I will allow it to be fulfilled by putting an ad
20 in a local paper indicating that, "I know the consequences
21 of drinking and driving. I killed someone." I don't care
22 how you do it, but you do something to help educate people
23 of the consequences. As a further condition I will direct
24 that you participate in an impact panel for impaired
25 drivers.

1 As a further condition of supervision I am going
2 to require conditional jail time. I think to not impose
3 any would significantly and unduly depreciate the
4 seriousness of the conduct. This is the type of case
5 where it is very easy to send someone to prison, ma'am.
6 But for the decision that the legislature has decided
7 probation is appropriate in this case you would probably
8 have gone to prison. But when I weigh the various types
9 of these cases you fell on the probation side barely.

10 But I'm going to give you the maximum period of
11 confinement in the county jail as a condition of
12 probation, that being one year. I'm going to direct that
13 the last five weeks of that sentence be served each and
14 every Christmas Eve and Christmas Day for the next nine
15 years after you're released from your initial confinement.
16 I want and I believe it's necessary you suffer punishment.
17 There's nothing I can do that's ever going to adequately
18 deal with the tragedy of this situation. But I think you
19 need to suffer at least a little bit. And the punishment
20 is those 18 days.

21 Additionally, on every February 10th, Dylan's
22 birthday, you are going to report to jail. And finally,
23 on July 19th of every year you are going to report to the
24 county jail. Those days are going to be served straight
25 time without any work release. The other roughly

1 11 months you will be entitled to work release.

2 You should be aware, ma'am, you are a convicted
3 felon. You may not possess a firearm. Possession of a
4 firearm by you will be a felony offense that would expose
5 you to a fine and imprisonment. You may not exercise the
6 right to vote until such time as all of your civil rights
7 are restored. I think I neglected to tell you, but you do
8 have to provide a sample of biological material for DNA
9 purposes as well.

10 Do you have any questions about the sentence?

11 THE DEFENDANT: No.

12 THE COURT: You do have a right to seek post
13 conviction relief either in this court or the Wisconsin
14 State Court of Appeals. To perfect the right, though, you
15 would need to file a notice of intent to seek relief
16 within 20 days of today's date. Mr. Nielsen will continue
17 to represent you for the next 20 days and assist you in
18 the process. You will be going straight to jail right
19 now, ma'am.

20 I guess I should indicate for the record that I
21 have Mr. Snider's copies of the victim impact statements.
22 I'm going to direct that the clerk make copies again and
23 return them to his office just so we have a complete
24 record.

25 Anything else for today, counsel?

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MR. SNIDER: No, nothing here.

MR. NIELSEN: We do not.

THE COURT: We will recess then.

(Whereupon, the proceedings ended.)

1 STATE OF WISCONSIN)

2) ss.

3 WAUPACA COUNTY)

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REPORTER'S CERTIFICATE

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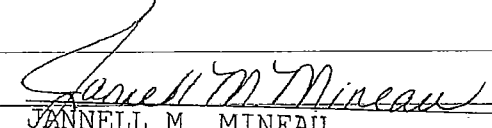
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I, JANNELL M. MINEAU, certify that I am the official court reporter for Branch I of the Circuit Court of Waupaca County, that I made full and accurate stenographic notes of the foregoing proceedings, that the same was later reduced to typewritten form, and that the foregoing is a full and accurate transcript of my stenographic notes so taken.

Dated and signed in the City of Waupaca, on the 22nd day of October, 2015.


JANNELL M. MINEAU
Registered Professional Reporter
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