



# JIM OTT

STATE REPRESENTATIVE • 23<sup>rd</sup> ASSEMBLY DISTRICT

(608) 266-0486  
District: (262) 240-0808  
Toll-Free: (888) 534-0023  
Rep.Ottj@legis.wi.gov

P.O. Box 8953  
Madison, WI 53708-8953

Good Morning Mr. Chairman and Committee Members. Thank you for holding this hearing on Assembly Bills 15, 16, 17 and 18.

Following is a short description and history of the four bills:

Assembly Bill 15 (SB 7) would require those accused of first offense OWI to personally appear in court. Since first offense OWI is a civil forfeiture in Wisconsin some counties allow first time offenders to send their attorney to court on their behalf or simply mail in the required fine. The purpose of this bill is to ensure that first time offenders would appreciate the seriousness of their offense and be encouraged to not reoffend. This bill passed the full Assembly in two previous sessions but was not taken up by the Senate.

Assembly Bill 16 (SB 6) would impose a mandatory minimum of 18 months incarceration for 5<sup>th</sup> or 6<sup>th</sup> OWI. Fifth and sixth offense is a class G felony and carries a sentence of 6 months to 10 years in prison, with many of these repeat offenders often receiving the minimum sentence or even probation. This bill was passed by this committee last session on a 7-5 vote but was not taken up by the full Assembly.

Assembly Bill 17 (SB 8) would impose a mandatory minimum of 5 years incarceration for committing homicide while driving drunk. While many judges sentence appropriately, there is no mandatory minimum. We sometimes hear of sentences of as little as a year or two being delivered, and at least one case of less than a year. This bill was passed by this committee last session on an 8-4 vote but was not taken up by the full Assembly. The bill allows the judge to use discretion and sentence less than five years if the court finds that it is in best interest of the community, the public will not be harmed and the court puts its reasons in writing.

Assembly Bill 18 (SB 9) is the most important bill we are taking up today, since it would make first offense OWI a class C misdemeanor with a fine of up to \$300 and up to 30 days in jail. This bill would bring Wisconsin law in line with the other 49 states and the District of Columbia, all of which treat first offense OWI as a criminal offense. The bill includes a provision that would allow those convicted of petitioning the court to have their conviction revert to a civil forfeiture if the person does not reoffend for a period of five years, thus removing the criminal conviction from their record. If the person does reoffend within the 5 year period the first offense would remain a criminal misdemeanor conviction, and the second offense would also be a criminal offense. If the person does not reoffend within the 5 year period but does have a second offense at a later time the first offense would remain a civil forfeiture but the second would be a criminal misdemeanor. Under current law a second offense OWI in Wisconsin counts as a civil forfeiture if it occurs more than ten years after the first. This bill removes the 10 year lookback no matter when the second offense occurs.

# **Alberta Darling**

## **Wisconsin State Senator**

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

TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY  
Assembly Bills 15, 16, 17, and 18  
Thursday, April 4, 2019

Thank you Chairman Spiros and committee members for holding a public hearing today on Assembly Bills 15, 16, 17, and 18. 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 2017 alone we had over 22,000 OWI convictions. In the past, I have worked to address this chronic abuse of driving while intoxicated by introducing legislation to provide harsher penalties, while also expanding access to treatment for these individuals. Due to some of these measures, the state of Wisconsin has continued to see a decrease in overall OWI convictions.

Unfortunately, there are instances where an individual's irresponsible act of driving drunk kills someone. In some of these cases, the driver is only incarcerated for two or three years. Assembly Bill 17 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.

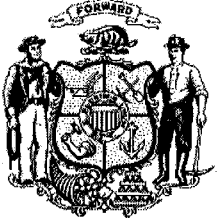
Even though we have seen a decrease in overall OWI convictions in the past few years, one group of individuals that have not seen as much of a decrease in convictions is the 5<sup>th</sup> and 6<sup>th</sup> OWI offenders. Currently, OWI offenders in this category are at minimum required to be incarcerated for six months. It is my hope that Assembly Bill 16 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 16 will never have to be used.

Currently, Wisconsin is an outlier when it comes to first time OWI convictions. In Wisconsin, if a person is convicted of their first OWI, it's considered a civil violation and that person does not have to make an appearance before the court. The final two bills before you take steps to address those issues.

First, AB 15 would require all first time offenders to make a court appearance. Second, AB 18 would change the classification for first time offense by making it a Class C misdemeanor, bringing us in line with other states. An important aspect of AB 18 is the second chance provision. Under this bill, if a person does not commit any other OWI related offenses within a five year period after their first conviction, they may petition the court to have the first offense amended to a civil violation.

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 15, 16, 17, and 18

I urge you to support these important bills.



# CHRIS LARSON

## STATE SENATOR

April 4, 2019

### Testimony Regarding Assembly Bill 15 and Assembly Bill 18

Thank you, Chairman Spiros, and members of the Assembly Committee on Criminal Justice and Safety for considering Assembly Bill (AB) 15 and AB 18 in today's hearing.

Like most Wisconsinites, my life has been permanently affected by a drunk driver. On Christmas Eve 1998, I woke up to find out that my good friend and classmate at Thomas More High School, Jennie, had been killed by a drunk driver the night before. It was a devastating blow to each of us who knew her. It was a horrible, preventable tragedy and something that shaped each of our lives going forward. I've heard countless personal stories like this from neighbors across our state as the death toll from drunk driving continues to rise. I am sure each of you have experienced the impact of drunk driving.

These incidents are preventable.

The latest numbers from the Wisconsin Department of Transportation (2015) show that Wisconsin adjudicated 23,931 individuals for operating while intoxicated (OWI). Sixty-two percent of these adjudications were a result of first offense OWIs. Previous data sets published by WisDOT indicate that our first offense OWI rate is not significantly decreasing. We, as leaders, must show our state takes drunk driving seriously.

Currently, Wisconsin is the only state in the nation that treats OWI first offense as a civil forfeiture and not as a crime. This means that until we change the law, an individual found guilty of their first offense OWI is subject to \$150 to \$300 fine along with a driver's license suspension of six to nine months, with an option for an occupational license. There is no statutory mandate that an offender appears in court.

AB 15 would change that with the simple act of requiring a court appearance for OWI offenses. Standing before a judge to account for your actions can be a wakeup call for would be buzzed drivers from getting on the road in the first place. According to MADD, a person drives drunk an average of 80 times before they are first pulled over. Unfortunately, 26% of our population self-admit to driving under the influence, demonstrating that we are in need of a culture change.

Assembly Bill 18 is another bipartisan piece of legislation that addresses the serious nature of drunk driving by criminalizing the first offense with the ability to have that criminal conviction amended to a civil violation after 5 years if they do not reoffend and the offender petitions the court.

I am a proud cosponsor of both AB 15 and AB 18 and will continue to work to make sure we get a rare but necessary bipartisan accomplishment in going after first offense drunk driving this session. I encourage you to schedule an executive session, vote for them here in committee, and vote for them in final passage on the floor.

WISCONSIN STATE CAPITOL  
P.O. Box 7882 • MADISON, WISCONSIN 53707-7882  
(608) 266-7505 • (800) 361-5487 • FAX: (608) 282-3547  
SEN.LARSON@LEGIS.WI.GOV • SENATORCHRISLARSON.COM

It is beyond time that we address the need to strengthen our laws in order to curb the cultural apathy toward drunk driving. OWI poses a danger to our community. In 2017 alone there were 7,090 alcohol-related crashes on Wisconsin roads. During the same year, 179 of our neighbors lost their lives due to drunk drivers. We must do more to change our culture. Our goal should be to make sure that no one in our state drives drunk. Period. I am encouraged by the recent growth in concern in meaningfully tackling drunk driving in Wisconsin, as demonstrated by the new legislation proposed this session, by the rise in coverage of our laws by TMJ4's Project Drive Sober, and by Governor Ever's support for moving to strengthen our laws around first offense OWIs. These two pieces of legislation, AB 15 and 18, as well as others not up today, aim to bring more awareness and accountability to Wisconsin's problem with drunk driving. This is a bipartisan issue that we can finally get right for our neighbors.

Thank you, Mr. Chairman, and members of the committee for your time and consideration.

###

MILWAUKEE NEWS

# In an instant, drunken driver claims man in front of family



Paula Patoka's husband, Roger, was killed in August by a repeat drunken driver. She and her children, Sara, 16, and Ryan, 12, who were following in the family car behind Roger's Harley, witnessed his death and also were hit themselves. They talk about their loss and about the continuing carnage caused by drinking and driving in Wisconsin. Credit: Rick Wood

Sept. 05, 2015

First there's the horror. A pickup truck crosses the highway centerline and hits Roger Patoka on his motorcycle, killing him right in front of his family as they follow close behind in their SUV, which is also struck head-on.

Then there's the crushing grief of missing this loving husband and father, and knowing life will never be the same.

And finally there's the anger of learning the driver of the truck was extremely drunk and that he was behind the wheel despite four

previous OWI arrests and a revoked license. Tony Garvey also was killed that day, so the rage is directed at a ghost and at the lenient Wisconsin laws giving impaired drivers like him too many chances.

"It's just a horrific nightmare," said Roger's widow, Paula. "Roger didn't want to die that day. The other guy chose to kill him that day when he got into his car when he was drunk."

Last week, I met Paula and her children, Sara, 16, and Ryan, 12, at the family's home on Milwaukee's northwest side. Less than three weeks after this tragedy occurred, their grief and shock are still fresh and raw. Paula's sisters and mother were there for support.

"I feel there's this void and nothing can fill it. The moments we had, and we can never have again. It's so unfair," Sara sobbed.

We began by talking about Roger, a 55-year-old teddy bear of a guy who worked at Rexnord and before that Harley-Davidson, Allis Tool & Machine and Inland Diesel. He grew up here and went to James Madison High School. He could fix anything. And from the time he was a kid on a minibike until he moved up to Harleys, he loved to ride.

"Sometimes, I'd say, 'Where are you going?' He'd say, 'I don't know. Everywhere and nowhere.' He often rode alone. It brought him freedom. That was his stress relief," Paula said.

Ryan said his dad was his best friend who taught him to read and fish and boat and work on bikes. It was funny the way he had favorite expressions, like "Lamo!" when something on TV was, well, lame.

Sara said her dad liked eating Swedish Fish candy and watching "Scooby-Doo" with his kids. He surprised her recently when he cried at the end of a movie they watched together. They were the night owls in the family, and one recent night when Sara was stressing about how she would afford college down the road, he consoled her for hours and said everything would work out.

"He made our family whole," Paula said of her partner these past 33 years and the family's breadwinner. "We didn't have much, and yet we had it all. We were all together."

They were heading up to Shawano on Aug. 14 for a joyfully anticipated week of vacation on the lake. Early in the trip, Ryan was riding on the bike with his dad, but switched to the SUV near Holy Hill because it was raining.

They were northbound on Highway 47, Roger's 2012 Harley Street Glide in front and the Suburban right behind, and were just 10 minutes from their destination. By then, shortly after 10 p.m., the rain had stopped, and it was dark and clear. Paula and her kids — Ryan up front and Sara in the back seat — were singing along to Beatles songs, their dad's favorite.

Traffic was light when the pickup truck approached ahead.

"Right when he got to Roger, he turned and went right into him, really fast, really hard and really loud. And we watched it happen," Paula said after her children had left the room to avoid reliving the trauma again. "And as fast as he got hit, we got hit head-on."

She and the kids, all three injured, crawled out of the smoke-filled SUV. Roger and the motorcycle had been thrown 40 feet into the grass along the road, and they could not find him. They called out to him and to God.

Roger was declared dead at the scene. He was not wearing a helmet, but in this instance it would not have helped. Tests showed he had no alcohol in his system.

Garvey, 42, of De Pere, also died at the scene, and his blood revealed an alcohol level of 0.25, more than three times the legal limit. The Shawano County Sheriff's Department has not released its final report yet, so it's not known where Garvey was coming from or going, or

where he drank so much. His family did not return my calls last week, and they have not reached out to the Patokas.

Garvey was convicted of drunken driving in 2013, his fourth time within the past five years, so it was finally charged as a felony. Penalties for the earlier offenses were lighter. He received 14 months in prison for this fourth one, but was freed from minimum security after serving nine months, Wisconsin Department of Corrections records show.

Those records also say he was released on "active community supervision" until 2017, but you wonder how active it was if he was back behind the wheel in a drunken state. He had been busted in the past for driving with a revoked license and for failing to have an ignition interlock device installed on his vehicle, as ordered by the court. He had no insurance and no license until at least 2016. But none of that stopped him on Aug. 14.

"It's so disturbing that you get just a ticket for the first time," Paula said. "Why do we have to be the last state in the United States to figure it out? How many dead people do we have to have before we get it? I guess it's just not the legislators' family members who are killed."

The family vacation was canceled, of course, and Paula and the kids returned home after a night in the hospital, painfully passing the scene of the crash. Other family members retrieved their luggage from their mangled SUV, which rested alongside the motorcycle and pickup truck in the Sheriff's Department impound lot.

Sara and Ryan are back in school, but it's been difficult. They and their mother have flashbacks of that terrible night on the road and the tragedy that Garvey could have so easily prevented.

Memories of Roger are everywhere at home and in the garage and in the shed where his other Harley is parked.



"In my dreams, I'm looking for him. It seems like every night I'm looking for him and I can't find him," Paula said.

"We're just taking one day as it comes, and sometimes one hour, and most of the time one minute. It's too much to even think of tomorrow."

*Call Jim Stingl at (414) 224-2017 or email at [jstingl@jrn.com](mailto:jstingl@jrn.com)*

## **Family Fund**

The Roger Patoka memorial fund has been set up on

YouCaring.com. Roger's job supported his family, so they are now faced with many expenses, college costs in the years ahead, medical expenses and with finding health insurance on their own. Another fund for Paula Patoka and her children has been established at North Shore Bank.

## **JIM STINGL ARCHIVE**

- Jul 30, 2016 | Summer's hot topics: The white pages, religious sighting**
- Jul 26, 2016 | Psychologist uses art to help ease people's fears**
- Jul 23, 2016 | Chudnow Museum a little-known local gem**
- Jul 22, 2016 | Pokémon novice finds latest fad good escape from reality**
- Jul 9, 2016 | Career accomplishment? Playing 49 straight Big Gigs**
- Jul 7, 2016 | Woman calls attention to rare neurological disorder**
- Jul 5, 2016 | Waukesha chamber chief goes out on a wing for quirky birthday idea**
- Jul 2, 2016 | Pediatrician took on toughest of tough cases at Children's**
- Jun 30, 2016 | Wisconsin's many ties to FBI's Most Wanted list**
- Jun 29, 2016 | Electronic artist catches Summerfest scammer in the act**
- Jun 25, 2016 | Menasha man is steward of Vietnam vets' graves**
- Jun 23, 2016 | Big Gig ticket prices creep up for bargain-loving Milwaukee**
- Jun 21, 2016 | Family hits 113 courses in mini-golf marathon**
- Jun 18, 2016 | Woman gets greatest gift by reconnecting with dying father**
- Jun 16, 2016 | Family to grow accustomed to wedding bells ringing**

## Jun 15, 2016 | Standing with the LGBT community: 'Nothing this horrible should happen to human beings'

**Find this article at:**

<http://archive.jsonline.com/news/milwaukee/in-an-instant-drunken-driver-claims-man-in-front-of-family-b99570595z1-324810561.html>

Check the box to include the list of links referenced in the article.

March 31, 2019

My husband's and my son Lukas died as a result of a drunk and drugged driving crash. Lukas was a passenger in the car, the driver crashed his car and left Lukas lying at the scene while he walked away. Lukas spent 13 days in the hospital before he died. The driver spent four weeks in jail immediately following the crash. His bail was then reduced and he was released on bail.

This crash happened on March 31, 2018; we are still awaiting a formal sentence.

Lukas was 19 years old at the time of his death and left behind many family members, friends, and a good steady job with a bright future.

We know that the lack of strict drunk driving laws in the state of Wisconsin contributes to the high volume of drunk driving deaths and injuries. We keep hearing about the high cost involved with stricter penalties. The cost of these crashes seems to be ignored. The high cost of medical bills, funeral costs, property damage, expenses incurred by the families while they are tending their loved ones needs to be considered. Many of these expenses fall back on the state due to inability to pay or due to a resulting disability. So really, there is a greater cost by not creating a stricter penalty. This does not include the cost of human lives and the cost of a lost future to those injured by drunk drivers and to their families. If our son hadn't had insurance, the medical bills would have had to be written off by the medical care providers, and the state would have been responsible to cover our time off work, funeral expenses, and our living expenses while we were staying with him in the hospital because the driver presented no insurance information.

We feel that increased penalties for drunk and drug impaired driving would benefit everyone.

Linda Christofferson

Stoughton, WI



**Municipal Court  
Village of Pleasant Prairie**

Richard Alan Ginkowski, Judge

9915 39<sup>th</sup> Avenue  
Pleasant Prairie, Wisconsin 53158  
(262) 705-3252

April 3, 2019

Rep. Samantha Kerkman  
E-mail: [rep.kerkman@legis.wisconsin.gov](mailto:rep.kerkman@legis.wisconsin.gov)

Dear Sam:

I'm writing to express support legislation that would require a temporary custody "hold" on persons arrested for operating a motor vehicle while under the influence of an intoxicant (OWI) as opposed to the present practice of releasing an arrested person to a "responsible party" without requiring cash bail. The present situation, as you know, does little to guarantee that an inebriated driver who has been so released will not find a way to get behind the wheel of a vehicle and further endanger the public.

I also write to express substantial concerns about the remainder of the present crop of OWI penalty bills which will likely not only have no positive effect on reducing highway carnage but may well actually frustrate holding dangerous drivers accountable. Before addressing this, however, I would like to share something you may not know despite our many years of knowing each other.

To put it mildly, I have no love lost for impaired drivers endangering the public. My mother was very critically injured and her husband killed by a drunken driver. It was a warm summer afternoon in 1984. They were going to Sears in the mall in Boardman, Ohio when an inebriated driver crossed the centerline and struck their car headon. He was driving at 75 miles per hour, 30 miles per hour over the posted speed limit, at the time of impact. The offending driver, who was also killed, had left a "liquid lunch" sales call and had a .16 blood alcohol concentration.

At the time I was the District Attorney of Rusk County. The Wisconsin State Patrol notified me while I was attending a prosecutor training conference in Bayfield County. Upon arrival in Ohio I met with the highway patrolman who investigated the collision. He told me that in his area it was common for OWI defendants to buy their way out of OWI charges and he was surprised when I told him that we did not do that in Wisconsin and, in fact, I had a conviction rate of 95% on the original OWI charge.

You, of course, know that I spent more than 30 years as a prosecutor before being elected to my present position in 2013. You may not know that in 1982, my first full year on the job, I prosecuted the man literally responsible for Mothers Against Drunk Drivers. Clarence

William Busch, who had the audacity to move to Wisconsin after being released from prison in California where he served less than two years of confinement for killing 13-year-old Cari Lightner while driving drunk. Mr. Busch concealed his California OWI history when he applied for (and received) a Wisconsin driver's license. I prosecuted him for fraud in obtaining a license. Ten years after that he was back in Kenosha and convicted again of OWI.

I've trained law enforcement officers, prosecutors and judges on OWI related matters, most recently part of a team at the National Judicial College developing the curriculum to train military judges about OWI. Because of my firm stance in following our state law about amending OWI charges I do have a couple of substitution requests filed against me by attorneys. This is an area of the law in which I am both personally and professionally well-acquainted.

This brings me to the bills which will be before the Assembly Committee on Criminal Justice and Public Safety this week. They are, with the exception of the one you are cosponsoring, revivals of prior attempts to make it look like Wisconsin is getting tough on impaired drivers when, in reality, this legislation might do exactly the opposite. I pointed this out to you and many of your colleagues on October 15, 2015 when then AB352 was up for a hearing. The attached correspondence in the bill file from that time remains valid today and I incorporate it in this response. (Note: Jim Ott has yet to get back to me on this.)

The concern is that Wisconsin is too lenient on drunken drivers. This is premised on the fact that a first offense is a civil, not a criminal, offense and we are the only state where that is the case. The interpretation of this being offered by proponents is not only grossly inaccurate but also seeks to exploit upon the pain and suffering of families, such as mine, who have been impacted by impaired drivers. It's time to move beyond rhetoric, emotion and political opportunism and look at some hard facts.

Let's start with some good news. According to the Wisconsin Department of Transportation. Alcohol-related crashes, injuries and fatalities reached their peak around 1979. After that year, the number of crashes and injuries dropped off considerably. Another considerable drop started occurring in 2008. Public awareness, more responsible drinking habits and legislative initiatives all played a part in this despite Wisconsin's notorious "drinking culture." While any OWI crash, injury or homicide is "one too many" the fact is that it's a far cry from the "blood alley" days.

The other piece of good news is that, at least when it comes to first offenders, the present OWI law, for the most part, is working. Our recidivism rate is around 24% (mostly young male drivers) while, for example, Illinois is at 40% and it's 41% in Minnesota, both of which criminalize a first offense. **The widely-misunderstood part about our first offense OWI law is that it is actually designed to make it easy and efficient to convict first offenders.** Why? Because we want to keep them from becoming repeat offenders and that means getting them assessed and into treatment programs as soon as possible. This isn't a matter of the so-called "tavern lobby" pressuring legislators into ignoring highway carnage but rather a well-reasoned "smart" approach. Making first offense OWI a crime with a possible sentence of up to a \$500 fine and/or 30 days in jail will substantially delay holding offenders accountable and actually compromises public safety. With a 76% success rate our first-offense OWI law is actually a model of an approach that works but requires some fine tuning, especially as drug-impaired driving becomes more common. Nearly four years ago I wrote you about the substantial delays

in getting blood test results from the State Laboratory of Hygiene. The problem has not improved. We also need to tighten loopholes in the OWI laws as I mentioned in 2015. One in particular would be to amend the restriction on plea bargaining to specifically prohibit consideration of collateral consequences of a conviction as a basis for approving amendment or dismissal of an OWI charge. Many defense attorneys try to whitewash OWI convictions for Illinois drivers by claiming that they will face more substantial penalties in their home state. Frankly, they should have thought about that before they got behind the wheel. But then there's another reality check. ***If increased penalties actually worked then we should have few, if any, heroin overdose incidents and deaths because possession of heroin alone is and has been a felony.***

That said, one area where increased penalties should be considered is with repeat offenders. A second offense OWI in Wisconsin is the proverbial "slap on the wrist" with only a five-day minimum jail sentence. That is absurd. Also absurd is the lack of funding for pretrial release monitoring to help guard against repeat incidents. And perhaps the liquor industry should be invited to the table to suggest additional ways to keep intoxicated people from driving. Maybe they have some good ideas, maybe not but we won't know if the conversation isn't started. And expanding ignition interlock device (IID) requirements after an OWI conviction is worth doing.

I think we should ramp up efforts to prevent OWI and make sensible changes to the law but most of the current crop of proposed legislation simply won't do more than make a few headlines and mislead people into thinking that something meaningful has been done. And, Sam, that is what bothers me as a victim. Families who have been ravaged by this behavior should not be exploited and misled. We need laws that work, not grab headlines.

Best regards,



Richard Alan Ginkowski

Municipal Judge

Attachment: October 15, 2015 correspondence

cc: Sen. Van Wangaard



**Municipal Court  
Village of Pleasant Prairie**

Richard Alan Ginkowski, Judge  
Brian M. Sheffler, Clerk of the Municipal Court

9915 39<sup>th</sup> Avenue  
Pleasant Prairie, Wisconsin 53158  
(262) 705-3252  
FAX: (262) 694-1401

October 15, 2015 (via E-mail)

State Representative Samantha Kerkman  
State Representative Jim Ott  
State Representative James Edming  
State Capitol  
Madison, Wisconsin 53702

Re: AB 352 (hearing before Assembly Judiciary Committee today)

Dear Samantha, Jim and Jimmy:

I'm writing because you are sponsors of AB 352 which is scheduled for a hearing this morning before the Assembly Judiciary Committee. Regrettably I am unable to appear at this hearing.

AB352 seeks to require mandatory court appearances appearances by defendants are charged with first offense operating under the influence (OWI). The bill is a noble concept but the logistics are costly, ineffective and may actually lead to fewer impaired drivers being held fully accountable for their actions. That said, I believe the bill can be reworked and not only achieve its goals but actually come out a much better and more effective piece of legislation.

First, I should point out that I have a lengthy history of taking a strong stand on impaired driving. In over 30 years as a prosecutor my conviction rate on the original charge was over 95%. As a judge I have incurred the occasional wrath of defense attorneys because I will not sign off on unlawful plea bargains contrary to the public interest (and this is one of the loopholes that needs additional closure). I prosecuted Clarence William Busch who is the reason Mothers Against Drunk Drivers was founded. I worked with countless victims. I taught prosecutors and police officers on the apprehension and prosecution of impaired drivers. And, on a personal level, my mother was severely crippled and her husband killed by a drunken driver. I've not only "talked the talk" but "walked the walk" and understand this problem far better than most people.

Second, it is no secret that Wisconsin has been criticized – sometimes fairly, sometimes not – for being "too lenient" on impaired drivers. I've spoken with Representative Ott and offered assistance in working on meaningful legislation to close existing loopholes but cannot support this bill in its present form because it actually creates more problems than it solves. However,

we need to understand the Wisconsin approach to OWI to appreciate where improvements are needed.

The main criticism is that first offense OWI in Wisconsin is not a crime which is somehow equated with leniency. The truth is that our approach is centered on making it easy and expedient to convict and hold first offenders accountable as well as to get them into assessment and required treatment sooner rather than later. The hope – which has largely been successful – is that we want to keep as many people as possible from becoming repeat offenders. Making a first offense a crime would sound tough but actually may weaken our ability to keep impaired drivers off the road.

As it stands, when someone is accused of OWI in Wisconsin as a first offense they are not automatically entitled to a jury trial, not entitled to publicly compensated counsel if indigent (though they are able to be represented by self-retained counsel), not entitled to full discovery and the burden of proof upon conviction is clear, satisfactory and convincing evidence – less than proof beyond a reasonable doubt required in a criminal prosecution. Because it's a noncriminal prosecution a defendant may be compelled to testify and, if there is a jury trial, a directed verdict can be ordered. The goal is to make resolution of the case easy and expedient – exactly the opposite of a criminal case.

In a criminal prosecution the traffic cases usually are at the bottom of the jury trial calendar where they compete with everything from murders to sexual assaults and burglary and drug crimes for precious court time. The public pays for jury trials, district attorneys and public defenders. Criminal cases take longer and are more difficult to prove thus making it more difficult to intervene to keep impaired drivers from being a continued threat.

A person convicted of first offense OWI in Wisconsin must pay a forfeiture of \$150-300 plus costs and assessments (roughly \$700-\$1000) and his or her driving privilege is revoked from six to nine months (one year if they refused to submit to a breath, blood or urine test). How does this stack up to neighboring states where the first offense is a crime?

•Illinois: First offenders can avoid “conviction” by being granted supervision. They rarely serve any jail time and may qualify for a monitored device driving permit while allows unrestricted driving after a conviction as long as an ignition interlock device is installed and used. As a practical matter this is more lenient in Wisconsin.

•Iowa: First offenders may spend a couple of days in the county jail but upon conviction the license or driving privilege is suspended (not revoked) for 180 days. Iowa's first offense fines are higher: \$625-1250.

•Minnesota: No mandatory jail time if the alcohol level is below .20. •First time offenders who have an alcohol level under .16 will receive 90 days of no driving privileges. The driver has a choice of the following: (1) 15 days of no driving privileges and a limited license for remaining 90-day period or (2) full driving privileges for 90-day period with use of ignition interlock. The maximum fine is \$1,000 (under .20).

Wisconsin's penalties are in some instances more severe (particularly with respect to loss of license) although an argument can be made that the \$150-300 forfeiture range needs to be revisited. There is no data supporting an argument that making a first offense a crime would



reduce the number of offenses or offenders and certainly would not make it easier and more expedient to convict them. There remain, however, impediments to doing this which need to be addressed.

First, although it would be easier to have OWI defendants in court at all appearances, for the most part it is not critical except for trials – a loophole that needs to be closed. A first offender may appear by counsel and skip showing up for his or her trial. Technically, the prosecutor could subpoena the defendant except that subpoenas can't be enforced across state lines except in felony cases. So, an out-of-state defendant – and we have a lot of them in border counties – can skip showing up for court making it more difficult in some cases for the offense to be proved (i.e., if identification of the defendant is an issue). The solution to this is simple. AB352 needs to be rewritten to provide that **all persons charged with first offense OWI must appear in person for all court appearances, even if represented by counsel, except where the personal appearance has been excused by the judge.** This accomplishes AB352's objectives – and then some by closing a major loophole – while allowing flexibility where either the personal appearance is not critical or would be a hardship.

What if the defendant does not appear? He or she could still be subject to a default finding of guilty or the judge could issue a warrant or summons. Further, under existing law, a default judgment is not appealable. AB352 could be amended to **increase the forfeiture range from \$150-\$300 to \$250-\$500 (plus costs and assessments) and a defendant who does not appear and whose appearance not been excused would be subject to the maximum forfeiture.** A defendant seeking relief from this penalty due to indigence under existing law has the opportunity ask the judge to consider his or her financial circumstances at any time. This eliminate any accusation that the poor are being unfairly targeted plus it places the burden on the defendant to come forward instead of the warrant provisions presently in AB352 where law enforcement agencies would suffer the cost and loss of manpower tracking down and bringing back defendants who failed to appear in court. This is not an insignificant consideration because not only is it costly but takes officers away from other duties – including apprehending impaired drivers – and further can only work inside Wisconsin as the warrants cannot be executed in another state.

Under AB352 a first offense OWI defendant from Kenosha arrested while deer hunting in Ladysmith who subsequently does not appear in the Ladysmith Municipal Court is named in an arrest warrant. The defendant is located at his home in Kenosha and is lodged in the Kenosha County Jail while Ladysmith must send police officers to Kenosha, a 660 mile round-trip taking two officers at least 12-hours to complete. Only Milwaukee and Madison have full-time municipal courts and only a few others, such as Kenosha, are in session every day. When the defendant gets back to Ladysmith he or she has to appear in front of a judge promptly and if the judge is not available one has to be brought in (average minimum cost of \$200) from another jurisdiction for a three-to-five minute hearing. So, not only does Ladysmith have the burden of paying probably 24 hours of police overtime plus perhaps another \$200 for a judge to come in, those officers have been removed from service to do the warrant return. How does this improve the ability to apprehend and hold accountable impaired drivers? The \$300 surcharge in AB352 would hardly cover a fraction of this cost and the benefit, if any, is far outweighed by the reduction in available police resources. *As it stands many municipalities and counties place geographical restrictions on warrant pickups and thus many of these defendants would simply be released if law enforcement chooses not to travel and take officers off the road to make the trip.*

The above illustrates why AB352 as it stands is a logistical and costly nightmare with not only negligible benefits but also the realistic possibility of being counterproductive. The changes I suggest would not only eliminate that but also enhance and strengthen the bill's potential. Further, there are additional loopholes that need to be addressed.

First, in 1982 the door was supposedly closed on plea bargaining in OWI cases except where approved by a judge and then only when in the public interest. Still, in the absence of transparency in many places, these plea bargains continue and one of the claimed reasons is, for example, that an out-of-state defendant may face additional penalties in his or her home state. That door needs to be closed with an amendment that collateral consequences of a conviction are not adequate grounds for the amendment or dismissal of an OWI charge.

Second, the legislature just added a \$50 "safe ride program" surcharge but overlooked a bigger problem: getting timely laboratory testing results – sometimes months in a drugged driving case. Why not a \$50 laboratory surcharge to facilitate faster turnaround on testing? This helps protect the innocent as well as ensnare the guilty.

Third, municipal courts trials are often devalued into a discovery device "dry run" by present statutes allowing for essentially an automatic appeal and new trial, including a jury trial, in circuit court. If a defendant charged with OWI in municipal court wants a jury trial he or she can make a timely demand and pay a jury fee and the case is transferred to the circuit court for a jury trial. Often defendants will bypass this by having a "dry run" in municipal court and then appeal. The right to appeal should remain except that it should be based on the trial record and would require the defendant to show the circuit court why the municipal court judgment should be vacated and a new trial held in the circuit court. If the circuit court grants a new trial for cause the trial will be without a jury. This preserves the right of an erroneously convicted defendant to have a new trial in a different forum while eliminating the present abuses of giving defendants an automatic "second kick at the cat." Defendants could still have a jury trial but must make that choice up front, not later. This also benefits the public interest because a bench trial in circuit court can be scheduled much quicker than a jury trial.

Fourth, with increasing frequency courts are confronted with defendants who were inadvertently convicted of two (or more) first offenses because the respective courts were unaware of the other pending case(s). When facing possible jail time on a criminal OWI case defendants seek to vacate the "second first offense" on jurisdictional grounds, often many years after the cases were concluded. This loophole needs closure. OWI judgments should be final one year after conviction and cannot be vacated or reopened except if a judge finds that the interests of justice (i.e., defendant a victim of identity theft) are served. This closes a loophole of a defendant with two (or more) first offenses "lying in wait" to spring the jurisdictional appeal if he or she is subsequently charged in a criminal OWI case.

Fifth, presently persons who refuse who after an OWI arrest refuse to submit to a chemical test for impairment have to request a "refusal hearing" within ten days of arrest or else the revocation for refusing the test goes into effect. It is not uncommon for defendants to request this hearing and then ultimately plead guilty or no contest to the OWI charge with the additional revocation penalty for refusal vacated. The Wisconsin Supreme Court has upheld this practice because it encourages defendants to accept responsibility and does not prejudice the prosecution. The problem is that defendants who are not represented by counsel often don't request the refusal hearing within ten days of arrest and thus technically lose the opportunity to have the refusal matter dismissed if they subsequently plead guilty or no contest to the OWI. It seems only fair and in the best interests of safer highways to clarify that judges have the discretion to grant a prosecutor's motion to dismiss a refusal matter even if a timely

demand for a hearing was not made if the defendant pleads guilty or no contest to the OWI charge.

All of this leads to this additional suggestion from a 40-year veteran of the criminal justice system. Wisconsin needs to take a hard, comprehensive look at our OWI laws instead of the piecemeal approach we've taken over the years. There are new challenges – such as an increase in drugged driving – and we need to have a comprehensive conversation on how to address this problem in an era of declining resources. Toward that end I would suggest creation of a study committee on impaired driving to make recommendations to the legislature. I volunteer to chair this committee without compensation (except reimbursement for travel/lodging) and suggest a two-year window to collect data and hold hearings around the state. I would suggest that the committee include two municipal court judges, two circuit court judges, the director of the Resource Center on Impaired Driving, a representative from the Wisconsin District Attorney's Association and the State Public Defender, the legal counsel of the Wisconsin Department of Transportation, a police chief and a sheriff, the Attorney General, a victim advocate, the treatment court coordinator of the Wisconsin Court System and the director of the Wisconsin Laboratory of Hygiene.

AB352 is well-intentioned but unworkable, costly and counterproductive. It can be rewritten to be effective but nonetheless there is a need to take a comprehensive look at the problem of impaired driving in Wisconsin and I am more than willing to be part of that process.

Sincerely,



Richard Alan Ginkowski  
Municipal Judge

cc: Assembly Judiciary Committee Members  
Rep. Peter Barca  
Rep. Robin Vos

Marla,

First off, I have to say that stumbling upon the FB page has been a healing experience for me. As a survivor of a crash caused by a drunk driver, I've spent the last two years staying quiet because it seemed that no one wanted to hear my story. What you are doing for all of us is inspirational. It pains me to no end that you and others in the group have had to endure such great loss, but it is also enlightening to see you use this experience to try and make sure it doesn't happen to anyone else. As a survivor, I feel obligated to make my voice heard because so many voices were silenced by drunk driving.

Here is my story- I actually sent this to my attorney when working through the settlement, but you can feel free to use what you would like. I also included pictures of my experience (the wreckage, and my family that I almost was taken away from). Thanks again for all you do.

Dan Evans

On the evening of May 4th, 2017, I was invited to watch a concert in Baraboo that a couple of my former students were performing in. It was kind of a last-minute decision to attend, for I felt it would be nice to see them and I know they would like seeing me there.

The concert ended a little bit after 8pm, and after talking to the parents and students, I headed home to my residence east of the Dells. Approximately 2 miles or so east of the Dells on highway 23 (just past the industrial park water tower), I noticed some headlights up ahead that appeared to be almost turning left, and I lost track of them before getting to a slight crest of the hill. As I went over the crest (just past Wisconsin River plumbing) a pickup truck immediately appeared in my lane heading straight towards me, and wasn't going to get over.

I had limited time to react. I tried to slam on the brakes, and it appears I got over to my right slightly (although, at the time, I didn't think I got over at all), and the truck struck me head on at what appeared to be a high rate of speed (although I slowed down considerably from braking).

All of this happened in slow motion, although it was obviously a very quick process. I remember as I knew I was going to get hit thinking I won't see my wife and 5 kids again, my 2 young boys would never know their dad, my students at school (along with staff and the community) will need to deal with the news of a teacher getting killed (I lost a teacher in HS due to a car accident, and I remember how devastating it was), and thinking of how my friends, family (including my terminally ill Mother), National Guard unit would take the horrible news. It is amazing how many things run through your head in the very short seconds when you know you

are going to die. That is literally what I thought- this is how it is going to be like to die. No fear for myself, necessarily, but immediately experiencing sadness of what all of my loved ones will have to deal with.

I remember, on impact, the deafening crash and the entire front of the car looking as if it was caving in towards me. I also remember being spun around backwards... Violently, although it felt like it was happening in slow motion. At this point there wasn't any sound. I assume either the crash was so loud it was deafening, or it has something to do with the high-impact face plant into the airbag/steering wheel. The car came to rest, and I noticed I was still alive. I felt severe pain in my right ankle, chest, face, hands, wrists, and legs, but strangely was able to still feel everything and move everything. It was dark, although I could see steam coming from the front of the car through the bashed-in windshield.

The most vivid memory of this is looking at my left wrist and seeing what appears to be a severe abrasion (later, it was only a large scrape from my wrist hitting the windshield). As I looked down I saw a crinkled, white looking thing on the steering wheel and on my lap (the steering wheel was very close to my chest). I thought it was my brains sitting on my lap, and I was probably in the process of passing away.

At the same time, I took action to get out of the car while I still could. It was a weird feeling. Thinking I was dead, but still trying to get as far away from the car while still alive. As I tried to open the door and bash through the driver's window, I then realized the white stuff was only the airbag, and I unbuckled the seat belt and moved the airbags out of the way. Lying across the front seat, I tried to kick the window out of the driver's door, but then looked up and decided to try the passenger door. I unlocked it and got it opened, slid across the seats (good thing I am a small dude), and dropped to the ground, immediately standing up and quickly moving away from the car.

I was able to walk! I did not know how much more I could, and it felt like a huge chunk of glass was imbedded on the bottom of my left foot (later on, I found out it was tiny). I was able to move away from the wreckage, and noticed a car coming from the west, around the corner. I flagged her down, she stopped, and was completely freaked out. I told her what happened, and she dialed 911. I went to the ditch and called my wife at home.

I was shaking so bad I could hardly dial my phone. In fact, I did not stop shaking until probably Saturday night (this happened on a Thursday). My hands were so bloody that my fingers could hardly hold the phone. I called my wife and told her what happened, told her I was hurt but probably not too bad (after the fact, I found out I was hurt worse than I initially thought), and since she was at home with my 5 kids (who were sleeping), she had to call my mom and dad to see if my dad could come over to where I was.

She called dad, told him I was okay, but a little hurt, and he should go over there. My mom told me later that she always dreaded getting a phone call like that, and never expected it to be about me since I was such a good driver and never got in accidents. To this day it really bothers me that my mom and dad had to go through that experience. I deal with it by reminding myself that it wasn't as bad as it could've been- at least they got a call where I wasn't dead, but it still really bothers me they were frightened by it.

As the chaos unfolded of people stopping to help in the road, the other driver, Mr. Robert Wanat, plopped out of his truck complaining about his knee. I couldn't help him because I was dealing with my own issues (this is around the point I remembered to grab my nose, and realizing it was not broken- it was bleeding profusely and in considerable pain, but not broken), and I told others to go get him out of the road before he got hit. He started complaining about a large amount of cash that happened to be scattered about the road, which was odd. Regardless, the bystanders pulled him out of the road (he was more concerned about the money than himself, or for me- he kept yelling for help to get the money out of the road). A truck coming from the east almost hit his truck, although someone was trying to flag him down. The truck screeched to a halt, backed up, turned his hazards on, while getting yelled at by the people there.

After I got off the phone with my wife, I heard the sirens. It is a surreal feeling when you hear a bunch of sirens coming, and they are coming for you. Every time I hear sirens, I immediately think of this moment, and I am brought back to the terror of the situation. I was sitting in the ditch at this point when the first responders arrived. They got me into the ambulance for treatment, and went through all of the vitals. All things considered, things were looking okay as far as heart rate, breathing, etc. went. One of the paramedics came in to ask if I wanted anything out of the car. I only needed my keys and glasses. The man came back with the keys/glasses, and was practically white. He asked if I knew I bent the steering wheel in half. Of course, I didn't. Soon, other personnel came into the ambulance to see me, and were shocked that I was able to get out of the wreckage they saw. I started to realize that I was involved in

some sort of miracle, and there could be a possibility I might not be in as good of shape as I thought I was in.

I put my glasses on and saw my reflection in the window of the ambulance. My whole front side was covered in blood. The main pain I noticed at this time was my chest, glass in foot, and right ankle. After they checked me out, I left the ambulance and talked to some of the police. My car looked as if someone took the entire front end off of it. I could see why it was incredible that I was able to get out of the thing.

My dad finally showed up. He told me afterwards while driving west on 23 that he wasn't 100% sure where I was, but when he came around the corner by county O, the whole sky was lit up by the lights on the emergency vehicles. He was thinking to himself that I probably was in bad shape, but was surprised to see me standing in the road talking to people. He was going to take me into the hospital instead of the ambulance (they said it was okay, although looking back they probably should've took me instead). The police officer had me go to his car to fill out a report. On the way to the police car, the firemen by my car stepped back to look at me, and nodded to me... My dad said they talked to him and told him it was a miracle I am still alive.

I remember filling out the report...shaking, and I am not even sure they could read my writing afterwards. On the way to the hospital, I remember every little bump rattled me painfully. This is when I started noticing my necked being pretty jacked up.

We spent several hours in the emergency room. There, I was able to call my principal about what happened and to let them know I would not be at school the next day! I kept in contact with my wife. They Xrayed me (seemed to catch a scapular fracture, but appeared it could heal on its own). I do remember having some issues communicating with the doctors and nurses (from getting railed in the head), but they seemed to think I was doing well enough to discharge me later that night. The worst part I remember was them trying to get the tiny piece of glass out of my foot. They weren't able to do it, but eventually it worked its way out. But it was definitely the most painful thing that night.

We made it home around 3am, and my wife was waiting up for me. I told her about what I remembered, and was very distraught thinking about how I knew I was going to die, and I wouldn't come home. I couldn't stop talking about how that felt, and it still haunts me- the headlights coming towards me, knowing I was going to die.

I eventually went to bed, but made sure to get up around 7:30am to tell my kids what happened. I sat at the table that Friday morning, tired, aching, pale... My youngest daughter (7 at the time) kept looking at my wrist, wondering what happened to it (my wrist was severely scraped and red from the dried up blood). Once my kids were downstairs, I told them about what happened. They seemed more shocked than anything, but my second-oldest daughter (9 at the time) started crying and being sad about how I could've died. I hugged her and told her I was alright and it was going to be okay. I'll never forget how sad I was for her, and how I thought about how painful it would be for the rest of my childrens' lives if I did die. I think about this all the time- this drunk taking away a father of 5 children, a father who only wanted to get home to his family.

We went and looked at the car, and took some pictures. The odd thing is it didn't look as bad as I thought it would- and it looked pretty bad! Seeing the inside...blood splattered on the ceiling, on the dash, all over... The steering wheel only inches (if that) from where my chest was... The caved in windshield... The steering wheel bent... The engine practically pushed into the cabin of the car... and the vents in the interior all popped out.

I layed low that weekend, missing out on a cancer run-walk I was going to participate in, and plus missing out on a couple of gigs from my work as a musician. We had a concert at school that Tuesday, so I was able to get to school all day Monday and Tuesday to participate in the concert/rehearsals. But I hardly remember any of it. I heard it went well! I took a couple days off after that...

During the next couple of weeks, I went to the doctor check up, and things looked to be healing. I also kept a positive attitude and "tough guy" stance to work through pain. Eventually, I improved. However, a visit to my chiropractor discovered I still had a concussion, and my neck was severely out of whack from the crash. My balance was off considerably. She told me that the hospital should've kept me around for a few days. Yikes!

Before the accident, I was in very good shape for my age. I exercised a lot for my Army PT tests, and other than occasional aches and pains from age, I experience no real pain from running, push ups, or sit ups. I was in good enough shape to pass a PT test a month after the accident, but not as well as I expected. I also was experiencing my running deteriorating considerably over the next few months. At first, I just thought I needed to rest more, but things would get a little worse even with a week of rest.



By November, it got to the point where my knee was bad enough I just had to stop running. I never experienced this before. After seeing the doctor and undergoing tests, it was concluded that my right knee had a torn meniscus from planting my right foot hard into the floor of the car while trying to brake during the accident (my right foot ended up going between the gas and brake pedal). I underwent surgery in Jan. of 2018.

The recovery went slow but I was eventually able to run again. However, I am much slower than before because both knees experience more pain than before the accident. I anticipate that I will still experience problems in the future with my knees.

I also started getting headaches more and more frequently during the months after the accident. At first, I thought they were attributed to the mild case of sleep apnea I have, or some other issue. They got so bad, I finally went to see the doctor, and he stated that I still had the effects of severe whiplash. I was ordered intensive physical therapy, which led to much improvement, especially when using the dry needle treatment. I have not been experiencing as much neck pain lately, but I do occasionally have issues when I get up in the morning with neck headaches. I foresee this being an ongoing issue, and needing to have the needle/physical therapy treatments in the future.

I take pride in my physical recovery from the ordeal. I am trying to work my way into one of the most physically fit soldiers in my Guard unit (as I was before the accident), and it is great to be able to play with my kids, work as a musician, teach at school, and work on our small 5 acre farm without too much pain. But I still experience more pain in the knees, neck, sternum (which probably came from the force of bending the steering wheel, straining the ribs apart), and shoulders (again, possibly from the steering wheel/crash impact). However, I have recovered leaps and bounds, but still worried about issues in the future. I also am concerned about my concussion and head injury causing issues later- although people tend to recover from concussions/head injuries more often than not, they can still have issues from previous head injuries like I sustained.

Although I have worked through physical trauma with some success, I still deal with the mental trauma this situation has caused. I mentioned a lot of the issues in this narrative. At times, I get very angry and frustrated by how our world works, how people really take things for granted. At times, I look at many of the joys in my life, and if I am not get careful, I am very saddened by

thinking how I almost missed out on all of the things I am experiencing now, especially the joys of my children.

Driving at night terrifies me at times. As a gigging musician, I am out until 1-2am at times, and I still will get on the shoulder of the road and slow down considerably when approached by an oncoming car. There have been some "close calls" since my accident, and it angers me to know end when dealing with dumb drivers who are reckless.

Robert Wanat got off with a slap on the wrist. The sheriff's department, hospital, and District Attorney's office failed to do what they could to hold this man accountable. They did not even come after him for injuring me, did not submit correct paperwork to each other, although I finally got the hospital and chiropractor to send them my records. I've been paying attention to the news stories of the drunk driving cases, and my case is not unusual- even if Robert killed me, he would be in jail for a very minimum amount of time.

I am enraged by the way our state treats these murdering drunks on the road. It has a severe psychological impact on me hearing about how much our justice system does not want to help the victims. Plus, no one seems to want to help, and seem to want me to just "get over it". Even my own wife has expressed this to me, and our marriage isn't quite right since the crash (although, to be fair, we had some issues before it).

My wife is very religious, and has the attitude of "God just takes care of everything, and don't worry about it anymore". I don't believe this, and my faith and spirituality has been strained because of this. I try to see the whole situation as miraculous, but if God really wants to help, I feel He should find a way to hold these criminals more accountable.

I did see a counselor who gave me many strategies to cope with this. It has helped tremendously. However, there are times where I wish I grabbed the tire iron and beat the shit out of the other driver. It angers me that he never was willing to hold himself responsible.

In the end, I am hoping that I can heal from my psychological pain more and more. I feel I made great progress, and I have great strategies to cope with pain. But I am also aware, physically and emotionally, this stuff may never go away.