



JOEL KITCHENS

STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

Testimony for the Assembly Committee on Judiciary North Hearing Room October 19, 2023

Thank you Chairperson Tusler and committee members.

According to the Wisconsin Department of Transportation, there were 547 fatal drunk driving crashes in our state, killing nearly 600 people. The deaths are emotionally tragic and also can be a financial disaster for the people left behind.

Assembly Bill 87 is named "Bentley's law" after a drunk driver killed the parents and brother of Bentley Williams in Missouri. After the incident, Bentley and his younger brother had no financial support. Bentley's grandmother, Cecilia Williams, - Who you will hear from soon - approached her state representative in Missouri to introduce Bentley's Law. That bill requires the defendant to pay restitution to the victim's children.

More than 20 states across the country have introduced Bentley's Law. In the spring of 2022, Tennessee became the first state to officially enact it into law. Now Texas, Kentucky, and Maine have followed suit. The vote was unanimous in both houses of the Texas legislature. It's my hope Wisconsin will be next.

Sadly, the bill goes by different names in different states. Kentucky's version is known as "Melanie's Law." Tennessee's version is also known as "Ethan's" and "Hailey's" laws. This situation is all too common. A drunk driver kills a parent or caregiver, leaving dependents with no source of income or support.

AB 87 will assist a child who lost a parent due to the carelessness and recklessness of another individual's decision to drive while intoxicated. This proposal modifies the penalties of an individual who is convicted of vehicular homicide while being under the influence and provides minors restitution for reasonable and necessary costs of maintenance until they turn 18 or until they turn 19 if they are still enrolled in high school.

In Wisconsin, when considering a restitution order, the court looks at the amount of loss sustained by the victim. Under this bill, the court would also consider factors such as financial and resource needs, the standard of living the child is accustomed to, legal custody arrangements, child-care expenses, and the child's emotional and physical needs.

Thank you for your time. I hope you consider supporting Assembly Bill 87. I am happy to answer any questions you might have.



October 19th, 2023

Representative Tusler, Chair
Members of the Assembly Committee on Judiciary

Testimony on 2023 Assembly Bill 87

Relating to: restitution upon conviction of vehicular homicide. (FE)

Thank you, Chairman Tusler and other members of the committee, for hearing my testimony on Assembly Bill 87 today. Our state has a specific culture and reputation when it comes to alcohol. According to the Wisconsin Department of Health Services, the average Wisconsin adult will have on average 2.6 drinks in one sitting. Depending on the individual, this average amount can have an impact on blood alcohol content, which can have negative effects on someone's driving abilities. 72.3 percent of Wisconsin's alcohol-impaired driving fatalities in 2019 included a driver with a BAC of 0.15% or higher. In 2022, there were 6,230 alcohol-related crashes in Wisconsin, 155 of which resulted in a death. Over the last five years, we have lost 788 Wisconsinites in drunk driving accidents. These are our neighbors, friends, and family members.

The decision to drive drunk can have life altering consequences. For some, it could mean losing your parents, like it did for Bentley Williams and his little brother. Both of their parents and older brother were killed by a drunk driver in Missouri, and ended up being raised by their grandmother, with no additional financial support. This is the family that has influenced this legislation across multiple states. These are sudden life changes that have both an emotional and financial toll on surviving family members.

Currently, when determining the amount of restitution for someone convicted of homicide by intoxicated use of a vehicle, the court considers the amount of loss sustained by the victim, the financial capabilities of the defendant, the needs of the defendant's dependents, and any other factors that could be appropriate. AB 87 ensures that if the victim of the crime had a child or children under the age of 18, or 19 if still enrolled in high school, the restitution could include the necessary and reasonable costs to take care of each child. This can include the needs and resources of the surviving parents, the standard of living the child is accustomed to, the physical and emotional needs of each child, and the reasonable child care expenses of the surviving parent.

Losing a prominent member of the family is a tragedy and an adjustment in any circumstance, but losing your parent through an unexpected accident has ripple effects that can last a lifetime. I understand that money cannot fill the void that is left behind, but through this legislation, we are hoping to potentially ease some part of the transition by making sure a family is not left without the proper resources and tools needed to continue raising a child or children. Thank you, and I will take any questions at this time.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse James".

Senator Jesse James
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Frank Harris
MADD Director of State Government Affairs
Testimony in Support of Assembly Bill 87 (Bentley's Law)
Assembly Judiciary Committee
October 19, 2023

Thank you Mr. Chairman and members of the committee for allowing me the opportunity to testify today in support of Assembly Bill 87, also known as Bentley's Law. My name is Frank Harris and I am the Director of State Government Affairs for Mothers Against Drunk Driving.

MADD thanks Representative Kitchens for authoring this important proposal. We also want to thank you, Mr. Chairman, for cosponsoring Assembly Bill 87, and the other co-sponsors including Representative Sortwell, Representative Rettinger and Representative Gustafson.

Bentley's Law is a grassroots and organic movement to seek justice for victims of substance-impaired driving and accountability for those who commit this 100% preventable violent crime.

This measure appropriately requires impaired drivers to pay restitution in the form of child support when an impaired driver causes a crash that kills a parent or guardian of a child under the age of 18.

The idea of this proposal came from Missouri resident Cecelia Williams in 2021. She named the proposal Bentley's Law, for her grandson, Bentley, whose parents Lacey Newton and Cordell Shawn Michael Williams and their 4-month-old son, Cordell Shawn Michael Williams II, were killed in a fiery crash on April 13, 2021.

Two years later, over half of state legislatures in the United States introduced proposals like AB 87. The support and movement around Bentley's Law in a mere two-year span is remarkable. Four states – Tennessee, Kentucky, Texas and Maine – have passed versions of this legislation.

Last month, in the interest of protecting and promoting victims' rights, MADD officially adopted the passage of Bentley's Law as a top state legislative priority in the 46 states without this law.

Also on our list of state legislative priorities:

- 1) **Passage of all-offender ignition interlocks.** We call on Wisconsin to become the 36th state to require ignition interlocks for all convicted drunk drivers or at the very least

close loopholes in the current law. AB 167 by Representative Murphy would close many of these loopholes. Currently, in Wisconsin, these devices are mandated for repeat, refusals and first-time offenders with a BAC of .15 or greater. With this limited law, ignition interlocks have prevented over 410,000 attempts to drive drunk with a BAC of .08 or greater since 2006. 410,000! The current law in Wisconsin, which MADD helped to pass in 2009, is outdated in need of drastic improvement. AB 167 is a good first step towards this goal. MADD would ultimately want Wisconsin to go even further and expand the use of these devices to all first-time offenders.

- 2) **.05 BAC.** MADD calls on all states to lower the illegal blood alcohol concentration from .08 to .05 BAC. A NHTSA study of Utah's .05 BAC law that took effect in 2018 – the only such law in the United States - found a 20% reduction in drunk driving deaths after one year, while causing no change in the sales or consumption of alcohol.¹
- 3) **High-visibility enforcement of impaired driving laws and equitable traffic safety enforcement.** MADD calls on Wisconsin to prioritize funding and resource allocation aimed at equitable enforcement of hazardous driving behavior, like impaired driving and speeding and reckless driving, and pass state legislation to use Federal Section 1906 Racial Profiling Prohibition Grants to develop and implement programs, public outreach and training to reduce the disparate impact of traffic stops on people of color. A recent Crime and Justice Institute study found Black drivers in Milwaukee are 4.5 times more likely to get stopped by police than white drivers.^{2, 3} Additionally, according to a 2023 NHTSA analysis of 2020 drunk driving deaths, NHTSA found people of color are disproportionately killed in traffic crashes,⁴ reinforcing similar findings from previous studies.^{5, 6} What all of this shows is that lawmakers, state leaders, law enforcement, and all stakeholders must reprioritize how we keep our roadways safe from all forms of dangerous driving, including drunk and drugged driving, which is why MADD is including this as a top state legislative priority.
- 4) **Drug-impaired driving prevention.** On measures relating to the legalization of cannabis for people aged 21 and over, MADD takes no position. However, if Wisconsin legalizes the use of medicinal or recreational cannabis, please ensure there is funding for underage prevention, education, high-visibility enforcement and officer training.

But back to what MADD is here for today, AB 87, or Bentley's Law. MADD's hope is that you will pass Bentley's Law and become the fifth state to show support for the most innocent victims of this violent crime: the children left behind. This commonsense proposal is still

¹ "NHTSA: Utah's .05% Law Shows Promise to Save Lives, Improve Road Safety," NHTSA. February 11, 2022. <https://www.nhtsa.gov/press-releases/utah-lower-impaired-driving-law-study>

² "Report finds Black Milwaukee residents still more likely to be stopped and frisked by police," Wisconsin Public Radio. September 26, 2023. <https://www.wpr.org/report-finds-black-milwaukee-residents-still-more-likely-be-stopped-and-frisked-police>

³ "Analysis of 2022 Traffic Stops, Field Interviews, No-Action Encounters, and Frisks," Crime and Justice Institute. September 2023. https://www.aclu-wi.org/sites/default/files/field_documents/final_cji_year_5_data_analysis_report.pdf

⁴ "Traffic Safety Facts 2020 Data: Race and Ethnicity," NHTSA. DOT HS 813 493. October 2023. <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813493>

⁵ Testing for Disparities in Traffic Stops: Best Practices from the Connecticut Model (2020) <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1745-9133.12528>

⁶ Raifman, Matthew A. "Disparities in Activity and Traffic Fatalities by Race/Ethnicity," American Journal of Preventative Medicine. June 7, 2022. [https://www.ajpmonline.org/article/S0749-3797\(22\)00155-6/fulltext](https://www.ajpmonline.org/article/S0749-3797(22)00155-6/fulltext)

active in 2023 in Florida, Illinois, Ohio, New Jersey, Guam, and Puerto Rico. At least 15 proposals will be introduced in 2024. Please support this important law to bring justice for victims and hold drunk drivers accountable for taking the life of a parent or guardian.

Why is Bentley's Law important? It is important because the battle against drunk driving is far from over. In 2021, drunk driving deaths in the United States reached its highest level in 15 years with over 13,000 fatalities. On drunk driving deaths and the enforcement of our laws, the nation is in a crisis as people are dying in drunk driving related crashes at a rate not witnessed in 15 years. This is unacceptable. As a start, state lawmakers must enact proposals like AB 87 to remind people to never drink and drive or consume other impairing drugs and drive.

MADD supports this proposal because it is a victory for victim rights. If a person makes the choice to drive substance-impaired and kills a parent or legal guardian, the impaired driver will encounter another consequence for their deadly decision. To the victims of the impaired drivers, this proposal allows for another avenue of restitution to help ensure justice.

Mr. Chairman and members of committee, thank you for allowing me to testify today on behalf of Mothers Against Drunk Driving. We urge your support of Assembly Bill 87 to make Wisconsin the fifth state to enact Bentley's Law. Thank you.

Q and A on the Implementation of Bentley's Law

Question: Who would determine the child support amount and how? Determining the amount will require additional information and expertise. How often should the amount be reviewed?

Answer: How is child support currently figured out in family law cases? The thought is that these payments would be based off of the person's income level, much like that in child support payment claims.

Question: Is there fairness? e.g. – should the child of a doctor be compensated more for losing a parent than the child of someone who earns a lower wage?

Answer: The goal is deterrence and justice for victims. The issue of fairness could be applicable to current civil cases and whether a third party has insurance or no insurance, is a large corporate restaurant or not.

Question: Is there any consideration of the individual's ability to pay? Traditional child support is determined by the parents' income rather than a child's current standard of living.

Answer: The area to look at initially is child support in family cases and the amount of income should be determined by the drunk driver's income no later than one year after release from incarceration.

Question: If the person owes restitution from previous cases, those would get paid first and it could take a very long time to get to this case.

Answer: How often does an offender have multiple pending restitution cases? The pending other multiple restitutions or debts could be included to determine the offender's ability to make monthly payments (again like child support payments in family law).

Question: Who will monitor the payments? This is not something that Superior Court or Family Court currently does for child support.

Answer: Who currently monitors child support payments in family law cases? I am guessing it is the state? The thought that the state could monitor compliance with the civil suit case like they most likely do for current child support payments in family law cases.

Question: Would this be faster than the current remedy (civil suits)?

Answer: It might be quicker to obtain a remedy from a third party (not the offender) in some cases. The Bentley's Law payment would run concurrently to any third party civil remedies.

Question: Would it limit recovery in wrongful death suits?

Answer: No. A victim could still obtain recovery from third parties (not the offender). The payments made by the offender via Bentley's Law would offset any civil lawsuits against the offender from the Victim Survivors (So the offender would not have Double Jeopardy)

Question: Resources will be necessary for DOJ and and Superior Court due to additional hearings, and to determine the restitution amount. May need expert testimony. I think the bottom line is that restitution and VCAP (Victim Compensation Assistance Program) work very differently than child support. We see this as kind of a hybrid between all of those systems, which would require new processes.

Answer: MADD cannot speak for state or local entities charged with implementing Bentley's Law but there are pathways to utilize to ensure it is implemented already in-place in current law (child support payments in family law cases).

Question: If a defendant is ordered to pay child support through Bentley's Law, will the yearly amount change depending on the offender's wages? Will there be additional hearings as a result if a defendant's ability to pay changes? Will these hearings overburden the court?

Answer: Due process should be afforded to all defendants. If the defendant is unable to pay due to changes in their wages, then the person should have the ability to make such a claim in child support levels as a person currently does in the child support payment system. In current child support payment amounts, how often do payees contest the amount they are ordered to pay through court.