Close loophole in OWI statute

Wisconsin lawmaker David Brandemuehl is on target with his goal to have state law amended to close a loophole that prevents police from arresting a motorist driving drunk on private property.

Brandemuehl, a Fennimore Republican, last week said, "It's outrageous to think that a police officer can see a person stumble drunk over to a car in a parking lot, but must wait until that person drives out on to a public highway before a charge of drunking driving can be made."

No argument here.

But, in the wake of a state Supreme Court ruling tossing out an operating while intoxicated charge against a motorist who was stopped in his employer's parking lot, it's obvious that the law needs to be toughened. A drunken driver should be subject to arrest the instant the ignition key is turned — even if it's in the motorist's own driveway. In Wisconsin, private property — which would include a tavern's parking lots — is not "held out to the public," and therefore is not subject to law enforcement.

What's your opinion?
Call CITYLINE at **319/556-7000**, category **7655**. See question on page **3A**.

No such law revisions are necessary in Iowa and Illinois, where authorities can arrest motorists driving drunk anywhere, including private property.

Brandemuehl should have no problem finding colleagues who agree that Wisconsin law should be changed. A drunken driver is no less of a threat in a private parking lot than on a public lot. The change should be made soon.

DAVID BRANDEMUEHL
State Representative
49th Assembly District

TESTIMONY ON ASSEMBLY BILL 283
REP. DAVID BRANDEMUEHL

THANK YOU CHAIRPERSON HUELSMAN AND COMMITTEE MEMBERS FOR THE OPPORTUNITY TO SPEAK IN SUPPORT OF ASSEMBLY BILL 283.

DESPITE FREQUENT EFFORTS TO TOUGHEN WISCONSIN'S DRUNK DRIVING LAWS, A RECENT WISCONSIN SUPREME COURT CASE HAS BROUGHT TO LIGHT A LOOPHOLE THAT SHOULD BE CLOSED.

THE COURT HELD THAT THE LAWS REGARDING DRUNK DRIVING DID NOT APPLY TO PRIVATE PARKING LOTS.

ACCORDING TO THE GRANT COUNTY DISTRICT ATTORNEY, THE COURTS HAVE NOW BEEN CITING CITY OF KENOSHA V. PHILLIPS AS AUTHORITY FOR DISMISSAL OF DRUNK DRIVING CHARGES IN THOSE CASES.

WITH THE HEIGHTENED PUBLIC AWARENESS OF POSSIBLE DANGEROUS HIGH-SPEED CHASES ONCE A DRUNK DRIVER GETS ON A STREET OR HIGHWAY, IT MAKES SENSE TO RESTORE LAW ENFORCEMENT AUTHORITY TO STOP AND ARREST DRUNK DRIVERS BEFORE THEY TAKE OFF DOWN THE HIGHWAY AND ENDANGER PUBLIC SAFETY.

AB 283 CLOSES THE PRIVATE PARKING LOT LOOPHOLE. ALTHOUGH IT IS MORE NARROWLY DRAFTED THAN THE BILL WHICH PASSED LAST SESSION 90-8, THE EFFECT IS TO PROHIBIT DRUNK DRIVING IN PRIVATE PARKING LOTS.

Member: Committees on Education; Criminal Justice & Corrections; Highways & Transportation (Chair); Transportation Projects Commission
Office: State Capitol, P.O. Box 8952, Madison, Wisconsin 53708 • (608) 266-1170
Home: 13081 Pine Road, Fennimore, Wisconsin 53809 • (608) 822-3776
Legislative Hotline: (toll free): 1 (800) 362-WISC (9472) • **Fax:** (608) 266-7038

THE STATE OF ILLINOIS AVOIDS THE PROBLEM ENTIRELY BY STATING THAT "A PERSON SHALL NOT DRIVE OR BE IN ACTUAL PHYSICAL CONTROL OF ANY VEHICLE WITHIN THIS STATE...WHILE UNDER THE INFLUENCE OF ALCOHOL."

IOWA ALSO HAS A SIMILAR LAW WHERE AUTHORITIES CAN ARREST MOTORISTS DRIVING DRUNK ANYWHERE, INCLUDING PRIVATE PROPERTY.

WISCONSIN SHOULD MAKE EVERY EFFORT TO ASSIST LAW ENFORCEMENT PERSONNEL IN KEEPING DRUNK DRIVERS OFF THE ROAD. A DRUNKEN DRIVER IS NO LESS OF A THREAT IN A PRIVATE PARKING LOT THAN IN A PUBLIC LOT.

THE LAW SHOULD APPLY TO ANYONE WHO GETS BEHIND THE WHEEL OF AN AUTOMOBILE AFTER HAVING TOO MUCH TO DRINK, WHETHER THEY'RE ON A HIGHWAY, STREET OR PRIVATE PARKING LOT. THANK YOU.

Private Lots Factory or
any business Lot That has
a sign stating. private Lot
Violators will be Ticketed. etc

USING THE SAME SCENARIO THAT REP. MUSSER USED YESTERDAY AND TAKING IT A STEP FURTHER, WE CAN SEE THE EFFECT OF NOT PASSING THIS BILL.

IF REP MUSSER DID NOT USE GOOD JUDGEMENT AND DECIDED TO LEAVE THE PARKING LOT AFTER HAVING TOO MUCH TO DRINK WHAT COULD HAPPEN UNDER CURRENT LAW?

IF HE WAS LEGALLY INTOXICATED AND BACKED INTO ANOTHER VEHICLE, WHAT WOULD HAPPEN? LET'S SAY SOMEBODY SAW HIM HIT THE OTHER CAR AND JOTTED DOWN THE LICENSE NUMBER.

THE POLICE THEN FIND REP MUSSER AT HIS HOME. THEY SMELL ALCOHOL ON HIS BREATH AND CHARGE HIM WITH OPERATING WHILE INTOXICATED AND LEAVING THE SCENE OF AN ACCIDENT.

UNDER CURRENT CASE LAW, THE OWI CHARGE WOULD BE THROWN OUT BECAUSE OF KENOSHA V. PHILLIPS. IN ADDITION, HE COULD NOT BE CHARGED WITH LEAVING THE SCENE OF AN ACCIDENT BECAUSE THE DUTIES OF A PERSON INVOLVED IN AN ACCIDENT DO NOT APPLY TO PRIVATE PARKING LOTS.

County of Kenosha

ROBERT J. JAMBOIS
DISTRICT ATTORNEY

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Renee B. Mura
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Shelly J. Rusch

September 25, 1995

Representative David A. Brandemuehl
49th Assembly District
Room 317 - North State Capital
PO Box 8952
Madison WI 53708

Re: 1995 Assembly Bill - 283

Dear Representative Brandemuehl:

Please find enclosed photocopies of the original police reports from the Phillips case. I was informed by a legislative aide that another State Representative had alleged on the assembly floor that Phillips had merely crawled into the back seat and started his car to keep warm. I was the Assistant City Attorney in 1985 who prosecuted Mr. Phillips. As you can see, Phillips was arrested at approximately 5:00 a.m., June 26, 1985. Kenosha's weather is not a great deal different than Madison's. Can you recall any Madison evenings in late June that were so cold you needed to turn your car heater on? Phillips was found passed out behind the wheel of his car with the engine running. He was not in the back seat, he was in the driver's seat. When he was tested at 5:20 a.m., his blood alcohol level was .176%. Consequently, at the 2:00 a.m. bar time, his blood alcohol level would have been at least .221% or more than twice the legal limit.

The police officers who arrested Mr. Phillips were responding to neighbors complaints about the vehicle running with the driver passed out behind the wheel. This parking lot was immediately adjacent to a residential neighborhood with a high concentration of small children. The neighbors who called the police were justifiably concerned about the safety of their children with this intoxicated motorist passed out behind the wheel of his running car. While the police reports do not specifically indicate this, it is my recollection that the transmission was in drive and that Mr. Phillip's foot was on the brake.

I strongly support the passage of 1995 AB-283. I am hard pressed to come up with a single sensible argument that would allow drunk drivers to operate their motor vehicles in parking lots.

Mr. Phillips posed no less a danger to the Kenosha Community in that parking lot than he would have 25 feet to the north out on the street. I would be more than happy to answer any further questions you have concerning this matter or even testify before a legislative committee if necessary. Please do not hesitate to contact me if there are any questions.

Sincerely,

Robert J. Jambois
District Attorney

RJJ:ndh

cc: Rep. Cloyd Porter
Rep. Robert Wirch
Rep. James Krueser
Sen. Joseph Andrea

ASSEMBLY REPUBLICAN CAUCUS

BILL SUMMARY

AB 283: Drunk and Reckless Driving

DATE: September 15, 1995

BACKGROUND

Current law prohibits reckless driving and operating a motor vehicle while under the influence of an intoxicant or other drug. These laws are only applicable on highways and "all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof."

In 1988 the Wisconsin Supreme Court ruled in *City of Kenosha v. Phillips*, 142 Wis. 2d 549 1988, that private parking lots with posted signs restricting the use are not "held out" to the public for use of their motor vehicles, and therefore laws regarding reckless and drunk driving do not apply in these areas.

SUMMARY OF ASSEMBLY BILL 283

Assembly Bill 283 expands the premises where drunk driving and reckless driving laws apply to "all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles." The laws regarding accident duties and reporting will also apply to this new definition of premises.

AMENDMENTS

No amendments were offered to Assembly Bill 283 in committee.

FISCAL EFFECT

A fiscal estimate prepared by the Department of Justice indicates that their agency will have no fiscal effect due to the passage of AB 283 because they do not enforce traffic laws. Local governments may see an increase in arrests, however, and district attorneys may take more cases to trial.

A fiscal estimate prepared by the State Prosecutor's Office indicates that an increase in costs will probably occur, however this amount should be able to be absorbed within the agency's budget.

A fiscal estimate prepared by the Department of Transportation indicates that the passage of this law will increase agency costs in a number of divisions. The increased costs should be absorbed within the agency's budget.

PROS

(1) Assembly Bill 283 will allow police officers to stop drunk drivers in certain parking lots before the drunk drivers are able to get onto the highway and put other drivers at risk.

(2) Drunk drivers pose a danger to society whether they are on a highway or in a parking lot.

(3) Current law already includes most parking lots. Assembly Bill 283 will close loopholes that drunk drivers have used to avoid arrest and prosecution.

CONS

(1) The passage of this law may provide a disincentive for an intoxicated person to "sleep it off" in their vehicle before driving home.

(2) Some may object to the expansion of the drunk driving and reckless driving laws to include certain private properties.

SUPPORTERS

Rep. Brandemuehl, author; Sen. Huelsman.

OPPOSITION

No one testified or registered against Assembly Bill 283.

LEGISLATIVE HISTORY

Assembly Bill 283 was introduced on March 21, 1995 and referred to the Assembly Committee on Highways and Transportation. A public hearing was held on April 27, 1995. On May 11, 1995 the committee voted 9-5 (Lehman, Musser, Lorge, Zukowski, L. Young) to recommend passage.

CONTACT: Matt Phillips, ARC

OWI BALLOTING: FINAL RESULTS and SUMMARY OF COMMENTS

Recommendation 1a: *Vehicle seizure/forfeiture should be retained as a sanction for 4th or subsequent Operating While Intoxicated offenses.*

	YES	NO
Do you support this recommendation?	27	15
How strongly do you feel about this proposal?	1.52	1.47

Comments: *For:* Seizure/forfeiture should be optional; it should be available for 3rd OWI; vehicle seizure should occur at time of arrest.

Against: The law is a failure and should be repealed; seizure may punish not only the offender but the offender's family.

Recommendation 1b: *Vehicle seizure/forfeiture should be optional (NOT mandatory) as a sanction for 4th or subsequent OWI offenses.*

	YES	NO
Do you support this recommendation?	38	5
How strongly do you feel about this proposal?	1.45	1.80

Comments: *For:* Should be at the discretion of the court; judges need to be educated; should be optional for 3rd and subsequent OWI; law enforcement should be able to seize at time of arrest.

Against: "I don't think it works in 99% of cases."

drunk driving Task Force

9/11/95

Recommendation 1c: *DOT should conduct an outreach education effort to the law enforcement and judicial community regarding the OWI-related seizure/forfeiture process, with special emphasis on clarification of current authority to impound vehicles (as evidence of a crime) at the time of arrest.*

	YES	NO
Do you support this recommendation?	36	6
How strongly do you feel about this proposal?	1.25	1.00

Comments: *For:* Additional education would certainly help, although law enforcement and the judiciary are already knowledgeable of the seizure/forfeiture process.

Against: Since each jurisdiction and agency differs, it would be a wasted effort; DOJ and the Director of State Courts should be responsible for education efforts, not DOT.

Recommendation 1d: *The arresting agency should have discretion to simply scrap/salvage vehicles that have been ordered seized by the court, instead of placing in secure storage and selling at public auction.*

	YES	NO
Do you support this recommendation?	39	4
How strongly do you feel about this proposal?	1.44	1.75

Comments: *For:* More time and cost effective; makes the process easier; should occur only after due process; distribution of proceeds needs to be clarified.

Against: Lienholders need to be protected; it is unconstitutional and illegal to do anything except keep the vehicle in secure storage.

Recommendation 1e: *Statutory references in S346.65(6) to "a" versus "any" versus "the" vehicle to be seized in repeat OWI cases should be clarified.*

	YES	NO
Do you support this recommendation?	42	0
How strongly do you feel about this proposal?	1.54	N/A

Comments: *For:* The statute is difficult to interpret as currently worded; will help to eliminate confusion as to which vehicle is to be seized; closes "loopholes" which attorneys use to make deals for clients.

There were no comments against this recommendation.

Recommendation 1f: *The OWI-related seizure/forfeiture process should be combined into a secure seizure/confiscation process.*

	YES	NO
Do you support this recommendation?	35	6
How strongly do you feel about this proposal?	1.31	1.20

Comments: *For:* Would simplify, speed up and streamline the system, but needs to be done within the scope of due process.

Against: It should be treated like the weapons confiscation process.

Recommendation 1g: *If the forfeiture process remains a separate civil action, then prosecutors should be statutorily exempt from filing fees normally associated with civil forfeiture actions.*

	YES	NO
Do you support this recommendation?	39	3
How strongly do you feel about this proposal?	1.38	0.50

Comments: *For:* Prosecutors should be statutorily exempt, "unless the defendant is able to pay these court costs."

Against: Filing fees and administrative expense protects against abuse of the procedure.

Recommendation 1h: *The "Informing the Accused" form should be amended to immediately advise a suspected 3rd or subsequent OWI offender of the 5-day notice to surrender the certificate of title to the vehicle subject to seizure; at the same time, the form should be re-written using simple English to address concerns expressed by the Wisconsin Supreme Court and others.*

	YES	NO
Do you support this recommendation?	37	5
How strongly do you feel about this proposal?	1.33	1.25

Comments: *For:* The form needs to be rewritten -- "It's tough enough to understand sober!" However, some respondents who voted to revise the form wished to add *additional* information to it.

Against: "It should be simplified altogether, not made more complicated;" the form is adequate; the form is too long; the Supreme Court has just approved the current form; the Uniform Traffic Citation Committee should be responsible for revising the form.

Recommendation 2a: *Ignition interlock devices (IID) or immobilization should also be options (NOT mandatory) as sanctions for 4th or subsequent OWI offenses.*

	YES	NO
Do you support this recommendation?	37	6
How strongly do you feel about this proposal?	1.53	1.17

Comments: *For:* Should be available for 2nd, or 3rd, or 4th; judges should have discretion to decide on case-by-case basis; low income offenders need to have fees reduced to make more affordable.

Against: An OWI offender's vehicle should be equipped with an IID long before the 4th OWI arrest; should be combined with seizure.

Recommendation 2b: *At least one of the three vehicle sanctions (i.e. seizure, IID or immobilization) must be imposed for 4th or subsequent OWI offense (i.e. court MUST order one of the three).*

	YES	NO
Do you support this recommendation?	27	15
How strongly do you feel about this proposal?	1.48	1.27

Comments: *There were no comments for this recommendation.*

Against: Judges should have discretion in sentencing; should not be mandatory.

Recommendation 2c: *DOT should conduct an outreach education effort to law enforcement and the judicial community regarding the use and availability of IID's and immobilization devices.*

	YES	NO
Do you support this recommendation?	40	3
How strongly do you feel about this proposal?	1.15	1.00

Comments: *For:* There is a public misconception about the effectiveness of IID's; education efforts should be done in concert with IID vendors and law enforcement.

Against: Such an outreach effort is not needed; if done, it should be done completely by the private sector, not DOT.

Recommendation 2d: *IID's should be an option to the court for 1st offense OWI convictions.*

	YES	NO
Do you support this recommendation?	32	11
How strongly do you feel about this proposal?	1.34	0.82

Comments: *For:* Optional; should be used instead of revocation.

Against: "It could be too tempting to use and not needed for the vast majority of offenders"; some municipal courts meet too infrequently to be responsible for monitoring IID sentences.

Recommendation 2e: *IID's should be an option to the court for 2nd offense OWI convictions.*

	YES	NO
Do you support this recommendation?	41	1
How strongly do you feel about this proposal?	1.37	1.00

Comments: *For:* Optional at the 2nd OWI offense is more appropriate because the offender is setting a pattern of disregard for the law.

There were no comments against this recommendation.

Recommendation 2f: *IID's should be considered by judges as a condition of granting an Occupational License to an OWI offender (including 1st offenders).*

	YES	NO
Do you support this recommendation?	36	7
How strongly do you feel about this proposal?	1.36	1.00

Comments: *For:* Judicial consideration on a case-by-case basis; the IID requirement should be tied to the driving privilege instead of the vehicle.

Against: Not for 1st offenders; should be for 2nd and subsequent offense.

Recommendation 2g: *DOT should be given discretion to require IID's as a condition of license reinstatement for repeat OWI offenders.*

	YES	NO
Do you support this recommendation?	32	11
How strongly do you feel about this proposal?	1.28	1.45

Comments: *For:* Would help stop repeat offenders.

Against: DOT should not make this decision; this should be a function of the court. DOT cannot be discretionary - "Either it should be mandatory for all OWI repeat offenders who reinstate or it won't work."

Recommendation 2h: *Judicial district sentencing guidelines should address the appropriate use of IID's and immobilization in OWI cases.*

	YES	NO
Do you support this recommendation?	39	3
How strongly do you feel about this proposal?	1.05	0.67

Comments: *For:* This should be done in a way that does not restrict judicial discretion but broadens it.

Against: Guidelines are not appropriate. Cases need to be decided on an individual basis.

Recommendation 2i: *Courts should have the authority to order vehicle IID installation or immobilization wherever the vehicle is normally domiciled in Wisconsin.*

	YES	NO
Do you support this recommendation?	39	2
How strongly do you feel about this proposal?	1.38	1.00

Comments: *For:* The power of the court needs to be statewide; IID's need to be installed on ALL vehicles driven by the offender (not just a licensing condition); the unique problems implementation in border counties needs to be addressed.

Against: Could be a burden on the local community.

Recommendation 2j: *Violations or court orders regarding use of IID's or immobilization should result in statutorily-defined penalties that are more severe than those currently available to the courts.*

	YES	NO
Do you support this recommendation?	32	6
How strongly do you feel about this proposal?	1.22	1.00

Comments: *For:* The current penalty structure is inadequate; penalties need to be optional, not mandatory.

Against: Courts should be seizing the vehicle; more severe penalties will not deter drunk driving nor be effective punishment in most cases.

Recommendation 2k: *DOT should clarify for prosecutors the range of contempt of court options applicable in cases of non-compliance with IID, immobilization or seizure orders.*

	YES	NO
Do you support this recommendation?	35	6
How strongly do you feel about this proposal?	1.12	1.20

Comments: *For:* Most prosecutors understand this, but clarification of language is needed for judges.

Against: This is not a DOT function. Prosecutors already know what they can do in their own counties.

Recommendation 2l: *There should be specific penalties for anyone who knowingly lends a motor vehicle to someone who has lost their driving privilege due to an OWI conviction.*

	YES	NO
Do you support this recommendation?	28	14
How strongly do you feel about this proposal?	1.37	0.92

Comments: *For:* Need to clarify the penalties and inform the general public.

Against: Proving that someone "knowingly" lent their vehicle is difficult; would an exception be made for cases of coercion? This solution is not practical; next to impossible to prove and prosecute.

Recommendation 2m: *DOT should lead a public awareness effort to draw attention to current penalties for knowingly lending a vehicle to anyone without a valid license.*

	YES	NO
Do you support this recommendation?	38	3
How strongly do you feel about this proposal?	1.24	0.67

Comments: *For:* Public information and education efforts are invaluable.

Against: Hard to prove "knowingly;" a waste of limited resources.

Recommendation 3a: *The court should have the option of imposing "lifetime" revocation of driving privileges after the 3rd OWI conviction, provided: (1) It is optional, NOT mandatory; and (2) A rehabilitated offender can be conditionally reinstated after a given period of time. [Support AB-106 if amended with these conditions.]*

	YES	NO
Do you support this recommendation?	27	16
How strongly do you feel about this proposal?	1.30	1.25

Comments: *For:* Should be mandatory; should be optional.

Against: Lifetime revocations will result in increased OAR violations; the ability to reform and regain one's right to drive is crucial; there needs to be an incentive to "stay clean" in the first place.

Recommendation 3b: *The court should have the option to require a convicted OWI offender to pay all costs directly associated with their OWI-related apprehension, arrest, investigation, and prosecution. [Support AB-110 if amended to make such payments optional.]*

	YES	NO
Do you support this recommendation?	22	20
How strongly do you feel about this proposal?	1.32	1.40

Comments: *There were no comments for this recommendation.*

Against: It is not equitable for OWI offenders to be singled out if all other offenders are not responsible for paying such costs. Will enhanced sanctions further change behavior? Increasing the fines will lead to more OAR violations. The current fines are already too high.

Recommendation 3c: *There should be an OWI penalty enhancement for offenders involving children as passengers in the vehicle of an OWI offender. [Support SB-117 but NOT AB-144.]*

	YES	NO
Do you support this recommendation?	29	11
How strongly do you feel about this proposal?	1.34	1.09

Comments: *For:* Penalty enhancers need to be optional based on circumstances; need to define explicitly as a penalty enhancer and not as a separate offense.

Against: Current laws are adequate; judges already consider aggravating factors at sentencing. Penalty enhancement would not have an impact.

Recommendation 3d: *The OWI per se limit after 3rd offense should be 0.00 AC. [Support AB-153.]*

	YES	NO
Do you support this recommendation?	34	9
How strongly do you feel about this proposal?	1.41	1.25

Comments: *For:* Many expressed preference of 0.00 AC after 2nd offense; need to make sure substance abuse is addressed.

Against: Will not deter repeat offenders; does not allow for rehabilitation.

Recommendation 3e: *The absolute sobriety ("not-a-drop") law for drivers under age 19 should be extended to cover 19-20 year old drivers. [Support AB-181.]*

	YES	NO
Do you support this recommendation?	31	11
How strongly do you feel about this proposal?	1.52	1.27

Comments: *For:* Close the loop-hole; increase fines and forfeitures.

Against: "There are benefits to a transition period."

Recommendation 3f: *The minimum legal age should NOT be lowered to 19. [Oppose AB-153.]*

	YES	NO
Do you support this recommendation?	36	6
How strongly do you feel about this proposal?	1.64	1.50

Comments: *For:* Saves lives and hospitalization costs.

Against: "Why criminalize the conduct of individuals who are adults and will drink anyway?"

Recommendation 3g: *A toll-free cellular phone number for the public to report suspected traffic offenders is already in place. [Support AB-210 in principle, but OPPOSE the bill because of redundancy with the existing statewide cellular 911 system.]*

	YES	NO
Do you support this recommendation?	36	5
How strongly do you feel about this proposal?	1.09	1.20

Comments: *For:* 911 callers should not need to be identified; 911 callers *should* be identified. Public information and education is necessary to promote Cellular 911 for emergency use only.

Against: Strong potential for abuse; anonymous tips on "suspected" OWI drivers sounds like something straight out of Orwell's 1984.

Recommendation 3h: *Public access to OWI-related notations on driver history records more than 5 years old should be retained. [Oppose AB-228.]*

	YES	NO
Do you support this recommendation?	34	8
How strongly do you feel about this proposal?	1.21	1.00

Comments: *For:* OWI convictions are a matter of public record and should be available; insurance companies need this information to identify risk groups and charge them accordingly.

Against: This would not deter the offender, but cause even more problems; "there must be some point for a fresh start." Records are not useful after 5 years; concern regarding maintenance and storage problems.

Recommendation 3i: *The "due care" or "affirmative defense" option for OWI-Homicide, OWI-Great Bodily Harm and OWI-Causing Injury defendants should be statutorily excluded. [Support AB-288, if amended to include OWI-Causing Injury.]*

	YES	NO
Do you support this recommendation?	24	18
How strongly do you feel about this proposal?	1.22	1.22

Comments: *For:* "If a person takes the risk of driving a car while intoxicated they should face the consequences of their action regardless of the "cause of the accident."

Against: "Sometimes the accident truly may have happened even though the driver was OWI." The affirmative defense provides an element of causation. Without the affirmative defense, a "strict liability" criminal offense would be created which would be highly subject to constitutional challenges; would lead to more appeals and a "non-intent" necessary crime.

drunk driving Task Force

Recommendation 3j: *The OWI provisions of state law should be extended to include premises held out of the public for motor vehicle use, all premises provided to employees and all premises provided to tenants of rental housing in buildings of 4 or more units. [Support AB-283.]*

	YES	NO
Do you support this recommendation?	34	8
How strongly do you feel about this proposal?	1.22	1.22

Comments: *For:* OWI drivers are dangerous everywhere, not just on public roadways.

Against: "Will result in more litigation to try to interpret new statutory language."

Recommendation 3k: *The applicability of reckless driving and OWI laws should be expanded to apply to all property, both public and private, whether or not normally used for the operation of motor vehicles. [Support AB-283 if expanded in scope.]*

	YES	NO
Do you support this recommendation?	34	8
How strongly do you feel about this proposal?	1.26	1.25

Comments: *For:* "Driving a motor vehicle while intoxicated is a dangerous activity no matter where it occurs."

Against: Not likely to improve enforcement of compliance.

[w:\hssa\277stuff\comments.owi]

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: September 18, 1995

TO: REPRESENTATIVE DAVID BRANDEMUEHL, CHAIRPERSON, ASSEMBLY COMMITTEE ON HIGHWAYS AND TRANSPORTATION; AND INTERESTED LEGISLATORS

FROM: William Ford, Senior Staff Attorney

SUBJECT: 1995 Assembly Bill 283, Relating to Areas Where Certain Laws Concerning the Operation of Motor Vehicles Apply

A. INTRODUCTION

This memorandum explains 1995 Assembly Bill 283 ("the Bill"), relating to expanding the places where offenses relating to reckless driving, operating a vehicle while under the influence of an intoxicant (OWI) and the duties of a person involved in an accident apply.

B. CURRENT LAW

Under current law, the laws prohibiting reckless driving and OWI and the laws requiring a person involved in an accident to notify the owner of damaged property, render assistance to injured persons and report accidents apply "upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof" [ss. 346.61 and 346.66, Stats.].

In 1988, the Wisconsin Supreme Court held that a private parking lot owned by the American Motors Corporation posted with a sign stating "A.M.C. Parking Only. Violators Will Be Towed at Own Expense" was not "held out to the public for the use of their motor vehicles" within the meaning of s. 346.61, Stats. [*City of Kenosha v. Phillips*, 142 Wis. 2d 549, 419 N.W. 2d 236 (1988)]. As a result of that decision, the Court upheld the dismissal of an OWI charge against a person who had been operating a motor vehicle on the A.M.C. parking lot while intoxicated.

In reaching this decision, the Court examined the language of s. 346.61, Stats., and its legislative history. In its opinion, the Court noted that, in 1957, when the Legislature adopted s. 346.61, Stats., it considered adopting s. 11-101 of the Uniform Vehicle Code ("U.V.C."). The

Court noted that while s. 11-101 of the U.V.C. made OWI provisions applicable "upon highways and elsewhere throughout the state," s. 346.61 adopted narrower language making OWI penalties applicable to highways and "all premises held out to the public for use of their motor vehicles." The Court noted that:

> It can be argued that a reasonable Legislator in 1957 would have intended to make those antisocial acts either on or off the highway subject to state or municipal prosecutions. Nevertheless, it is clear from the statute and the comments to it that the Legislature elected to enact legislation that on its face was less pervasive in its geographical sweep than the U.V.C. proposal it had before it. Instead of making the Rules of the Road applicable on highways and elsewhere (as suggested by the U.V.C.), it rather chose a more limited expansion of the statutory sweep.
>
> ...
>
> Although a good argument can be made that different statutes would more satisfactorily address the problems of drunken driving, it is not the function of the courts to undo the Legislature's work [*Kenosha v. Phillips*, 419 N.W. 2d, page 240].

C. 1995 ASSEMBLY BILL 283

The Bill would increase the areas of the state where laws against OWI, reckless driving and duties following an accident apply to include "all premises provided by employers to employes for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of four or more units for the use of their motor vehicles.

Please contact me at the Legislative Council Staff offices if I can be of further assistance in this matter.

WF:rjl:jt

AB 283 would allow drunk drivers to be prosecuted when when violating drunk driving laws on parking lots held out for private use, the same as existing law on [redacted] lots held out for public use.

Taverns lots — shopping mall

example: a Fa Lot held out for private use would be a manufacturing business Lot used for employee parki

police have better things to do — most cases report

no 16 young
no 11 mom-T

no 69 2
yes 37 ward

Drunk driving task force
law enforcement
~~Court~~ judges

legis
people from madd
people from the tavern league

& more

DAVID BRANDEMUEHL

State Representative
49th Assembly District

October 3, 1995

Senator Joanne Huelsman, Chair
Senate Judiciary Committee
33 South, State Capitol
Madison, WI 53707

Dear Senator Huelsman:

Assembly Bill 283, relating to expanding the premises where the laws regarding drunk or reckless driving apply, passed the Assembly on Monday, October 2, 1995. As the lead author in the Senate, I am asking for your help in seeing this bill through the process.

Since the bill relates to drunk driving, I believe it is appropriate for the Senate Judiciary Committee to receive it. I respectfully request that you contact your leadership and ask to have AB 283 referred to your committee.

If you recall, a similar bill passed the Assembly last session, but died in the Senate on the last day when one Senator objected to passage. I believe a prompt hearing and action on the bill will prevent this from happening again.

Thank you in advance for your attention to this matter. If I can be of any assistance, please do not hesitate to contact me.

Sincerely,

David A. Brandemuehl
State Representative
49th Assembly District

DAB:jt

Member: Committees on Education; Criminal Justice & Corrections; Highways & Transportation (Chair); Transportation Projects Commission
Office: State Capitol, P.O. Box 8952, Madison, Wisconsin 53708 • (608) 266-1170
Home: 13081 Pine Road, Fennimore, Wisconsin 53809 • (608) 822-3776
Legislative Hotline: (toll free): 1 (800) 362-WISC (9472) • **Fax:** (608) 266-7038

WISCONSIN ASSEMBLY ROLL CALL
1995-96 SESSION
SPEAKER PROSSER

SEQUENCE NO. 509
OCTOBER 02, 1995
5:17 PM

AB 283
BRANDEMUEHL, D.
AA 3

TABLE AMENDMENT
AB 283 PREMISES INCLUDED
FOR PURPOSES OF DRUNK DRIVING

AYES - 50 NAYS - 45 NOT VOTING - 4 PAIRED - 0

A	N	NV	NAME	
A			AINSWORTH, J.	(R)
	N		ALBERS, S.	(R)
A			BALDUS, A.	(D)
	N		BALDWIN, T.	(D)
A			BAUMGART, J.	(D)
	N		BELL, J.	(D)
A			BLACK, S.	(D)
A			BOCK, P.	(D)
	N		BOYLE, F.	(D)
A			BRANCEL, B.	(R)
A			BRANDEMUEHL, D.	(R)
	N		CARPENTER, T.	(D)
A			COGGS, S.	(D)
	N		COLEMAN, C.	(R)
A			CULLEN, D.	(D)
	N		DOBYNS, J.	(R)
	N		DUEHOLM, R.	(D)
A			DUFF, M.	(R)
A			FOTI, S.	(R)
A			FREESE, S.	(R)
A			GARD, J.	(R)
	N		GOETSCH, R.	(R)
A			GREEN, M.	(R)
A			GROBSCHMIDT, R.	(D)
	N		GRONEMUS, B.	(D)
	N		GROTHMAN, G.	(R)
	N		GUNDERSON, S.	(R)
	N		HAHN, E.	(R)
	N		HANDRICK, J.	(R)
	N		HANSON, D.	(D)
	N		HARSDORF, S.	(R)
	N		HASENOHRL, D.	(D)
	N		HOVEN, T.	(R)
A			HUBER, G.	(D)
	N		HUBLER, M.	(D)
	N		HUEBSCH, M.	(R)
A			HUTCHISON, D.	(R)
A			JENSEN, S.	(R)
A			JOHNSRUD, D.	(R)
A			KAUFERT, D.	(R)
A			KELSO, C.	(R)
A			KLUSMAN, J.	(R)
A			KREIBICH, R.	(R)
A			KREUSER, J.	(D)
	N		KRUG, S.	(D)
A			KRUSICK, M.	(D)
A			KUNICKI, W.	(D)
A			LA FAVE, J.	(D)
A			LADWIG, B.	(R)
	N		LASEE, F.	(R)
	N		LAZICH, M.	(R)
	N		LEHMAN, M.	(R)
	N		LINTON, B.	(D)
	N		LORGE, W.	(R)
	N		MEYER, M.	(D)
		X	MORRIS-TATUM J.	(D)
	N		MURAT, W.	(D)
	N		MUSSER, T.	(R)
	N		NASS, S.	(R)
A			NOTESTEIN, B.	(D)
A			OLSEN, L.	(R)
A			OTT, A.	(R)
A			OTTE, C.	(R)
A			OURADA, T.	(R)
A			OWENS, C.	(R)
A			PLACHE, K.	(D)
	N		PLOMBON, D.	(D)
	N		PORTER, C.	(R)
	N		POTTER, R.	(D)
A			POWERS, M.	(R)
A			REYNOLDS, M.	(D)
A			RILEY, A.	(D)
A			ROBSON, J.	(D)
A			RUTKOWSKI, J.	(D)
	N		RYBA, J.	(D)
A			SCHNEIDER, M.	(D)
	N		SCHNEIDERS, L.	(R)
	N		SERATTI, L.	(R)
A			SILBAUGH, R.	(R)
	N		SKINDRUD, R.	(R)
	N		SPRINGER, T.	(D)
	N		TRAVIS, D.	(D)
A			TURNER, R.	(D)
	N		UNDERHEIM, G.	(R)
A			URBAN, F.	(R)
	N		VANDER LOOP, W.	(D)
A			VRAKAS, D.	(R)
	N		WALKER, S.	(R)
		X	WARD, D.	(R)
A			WASSERMAN, S.	(D)
	N		WILDER, M.	(D)
A			WILLIAMS, A.	(D)
A			WIRCH, R.	(D)
A			WOOD, W.	(D)
		X	YOUNG, L.	(D)
	N		YOUNG, R.	(D)
	N		ZIEGELBAUER, R.	(D)
		X	ZUKOWSKI, R.	(R)
A			SPEAKER	(R)

VACANT DISTRICT(S) - 0.

WISCONSIN ASSEMBLY ROLL CALL
1995-96 SESSION
SPEAKER PROSSER

SEQUENCE NO. 510 | AB 283 | REFER TO COMMITTEE
OCTOBER 02, 1995 | BRANDEMUEHL, D. | AB 283 PREMISES INCLUDED
5:34 PM | FOR PURPOSES OF DRUNK DRIVING

AYES - 30 NAYS - 66 NOT VOTING - 3 PAIRED - 0

A	N	NV	NAME	
	N		AINSWORTH, J.	(R)
	N		ALBERS, S.	(R)
A			BALDUS, A.	(D)
A			BALDWIN, T.	(D)
	N		BAUMGART, J.	(D)
A			BELL, J.	(D)
	N		BLACK, S.	(D)
	N		BOCK, P.	(D)
A			BOYLE, F.	(D)
	N		BRANCEL, B.	(R)
	N		BRANDEMUEHL, D.	(R)
	N		CARPENTER, T.	(D)
	N		COGGS, S.	(D)
	N		COLEMAN, C.	(R)
	N		CULLEN, D.	(D)
	N		DOBYNS, J.	(R)
A			DUEHOLM, R.	(D)
	N		DUFF, M.	(R)
	N		FOTI, S.	(R)
	N		FREESE, S.	(R)
	N		GARD, J.	(R)
	N		GOETSCH, R.	(R)
	N		GREEN, M.	(R)
	N		GROBSCHMIDT, R.	(D)
A			GRONEMUS, B.	(D)
A			GROTHMAN, G.	(R)
	N		GUNDERSON, S.	(R)
	N		HAHN, E.	(R)
A			HANDRICK, J.	(R)
A			HANSON, D.	(D)
	N		HARSDORF, S.	(R)
	N		HASENOHRL, D.	(D)
A			HOVEN, T.	(R)
	N		HUBER, G.	(D)
A			HUBLER, M.	(D)
	N		HUEBSCH, M.	(R)
	N		HUTCHISON, D.	(R)
	N		JENSEN, S.	(R)
	N		JOHNSRUD, D.	(R)
	N		KAUFERT, D.	(R)
	N		KELSO, C.	(R)
	N		KLUSMAN, J.	(R)
	N		KREIBICH, R.	(R)
	N		KREUSER, J.	(D)
A			KRUG, S.	(D)
	N		KRUSICK, M.	(D)
	N		KUNICKI, W.	(D)
A			LA FAVE, J.	(D)
	N		LADWIG, B.	(R)
A			LASEE, F.	(R)
	N		LAZICH, M.	(R)
A			LEHMAN, M.	(R)
A			LINTON, B.	(D)
A			LORGE, W.	(R)
A			MEYER, M.	(D)
		X	MORRIS-TATUM J.	(D)
A			MURAT, W.	(D)
A			MUSSER, T.	(R)
	N		NASS, S.	(R)
	N		NOTESTEIN, B.	(D)
	N		OLSEN, L.	(R)
	N		OTT, A.	(R)
	N		OTTE, C.	(R)
	N		OURADA, T.	(R)
	N		OWENS, C.	(R)
	N		PLACHE, K.	(D)
A			PLOMBON, D.	(D)
	N		PORTER, C.	(R)
	N		POTTER, R.	(D)
	N		POWERS, M.	(R)
A			REYNOLDS, M.	(D)
	N		RILEY, A.	(D)
	N		ROBSON, J.	(D)
	N		RUTKOWSKI, J.	(D)
A			RYBA, J.	(D)
A			SCHNEIDER, M.	(D)
	N		SCHNEIDERS, L.	(R)
	N		SERATTI, L.	(R)
	N		SILBAUGH, R.	(R)
A			SKINDRUD, R.	(R)
	N		SPRINGER, T.	(D)
A			TRAVIS, D.	(D)
	N		TURNER, R.	(D)
A			UNDERHEIM, G.	(R)
	N		URBAN, F.	(R)
A			VANDER LOOP, W.	(D)
	N		VRAKAS, D.	(R)
	N		WALKER, S.	(R)
	N		WARD, D.	(R)
	N		WASSERMAN, S.	(D)
	N		WILDER, M.	(D)
A			WILLIAMS, A.	(D)
	N		WIRCH, R.	(D)
	N		WOOD, W.	(D)
		X	YOUNG, L.	(D)
A			YOUNG, R.	(D)
	N		ZIEGELBAUER, R.	(D)
		X	ZUKOWSKI, R.	(R)
	N		SPEAKER	(R)

VACANT DISTRICT(S) - 0.

WISCONSIN ASSEMBLY ROLL CALL
1995-96 SESSION
SPEAKER PROSSER

SEQUENCE NO. 511
OCTOBER 02, 1995
5:35 PM

AB 283
BRANDEMUEHL, D.

PASSAGE
AB 283 PREMISES INCLUDED
FOR PURPOSES OF DRUNK DRIVING

AYES - 65 NAYS - 30 NOT VOTING - 2 PAIRED - 2

A	N	NV	NAME	
A			AINSWORTH, J.	(R)
	N		ALBERS, S.	(R)
A			BALDUS, A.	(D)
A			BALDWIN, T.	(D)
A			BAUMGART, J.	(D)
A			BELL, J.	(D)
A			BLACK, S.	(D)
A			BOCK, P.	(D)
	N		BOYLE, F.	(D)
A			BRANCEL, B.	(R)
A			BRANDEMUEHL, D.	(R)
A			CARPENTER, T.	(D)
A			COGGS, S.	(D)
	N		COLEMAN, C.	(R)
A			CULLEN, D.	(D)
A			DOBYNS, J.	(R)
	N		DUEHOLM, R.	(D)
	N		DUFF, M.	(R)
A			FOTI, S.	(R)
A			FREESE, S.	(R)
A			GARD, J.	(R)
A			GOETSCH, R.	(R)
A			GREEN, M.	(R)
A			GROBSCHMIDT, R.	(D)
	N		GRONEMUS, B.	(D)
	N		GROTHMAN, G.	(R)
A			GUNDERSON, S.	(R)
A			HAHN, E.	(R)
	N		HANDRICK, J.	(R)
A			HANSON, D.	(D)
A			HARSDORF, S.	(R)
	N		HASENOHRL, D.	(D)
A			HOVEN, T.	(R)
A			HUBER, G.	(D)
	N		HUBLER, M.	(D)
A			HUEBSCH, M.	(R)
A			HUTCHISON, D.	(R)
A			JENSEN, S.	(R)
A			JOHNSRUD, D.	(R)
A			KAUFERT, D.	(R)
A			KELSO, C.	(R)
A			KREIBICH, R.	(R)
A			KREUSER, J.	(D)
	N		KRUG, S.	(D)
A			KRUSICK, M.	(D)
A			KUNICKI, W.	(D)
A			LA FAVE, J.	(D)
A			LADWIG, B.	(R)
A			LASEE, F.	(R)
	N		LAZICH, M.	(R)
	N		LEHMAN, M.	(R)
	N		LINTON, B.	(D)
	N		LORGE, W.	(R)
	N		MEYER, M.	(D)
		X	MORRIS-TATUM J.	(D)
A			MURAT, W.	(D)
	N		MUSSER, T.	(R)
	N		NASS, S.	(R)
A			NOTESTEIN, B.	(D)
	N		OLSEN, L.	(R)
A			OTT, A.	(R)
A			OTTE, C.	(R)
A			OURADA, T.	(R)
A			OWENS, C.	(R)
A			PLACHE, K.	(D)
	N		PLOMBON, D.	(D)
A			PORTER, C.	(R)
A			POTTER, R.	(D)
	N		POWERS, M.	(R)
	N		REYNOLDS, M.	(D)
A			RILEY, A.	(D)
A			ROBSON, J.	(D)
A			RUTKOWSKI, J.	(D)
A			RYBA, J.	(D)
	N		SCHNEIDER, M.	(D)
	N		SCHNEIDERS, L.	(R)
	N		SERATTI, L.	(R)
A			SILBAUGH, R.	(R)
	N		SKINDRUD, R.	(R)
A			SPRINGER, T.	(D)
	N		TRAVIS, D.	(D)
A			TURNER, R.	(D)
A			UNDERHEIM, G.	(R)
A			URBAN, F.	(R)
A			VANDER LOOP, W.	(D)
A			VRAKAS, D.	(R)
	N		WALKER, S.	(R)
A			WARD, D.	(R)
A			WASSERMAN, S.	(D)
	N		WILDER, M.	(D)
	N		WILLIAMS, A.	(D)
A			WIRCH, R.	(D)
A			WOOD, W.	(D)
		X	YOUNG, L.	(D)
A			YOUNG, R.	(D)
A			ZIEGELBAUER, R.	(D)
A			SPEAKER	(R)

PAIRED AYE:
KLUSMAN, J.

PAIRED NO:
ZUKOWSKI, R.

VACANT DISTRICTS - 0.

WISCONSIN ASSEMBLY ROLL CALL
1995-96 SESSION
SPEAKER PROSSER

SEQUENCE NO. 512
OCTOBER 02, 1995
5:36 PM

AB 283
BRANDEMUEHL, D.

SUSPEND RULES TO IMM. MESSAGE
AB 283 PREMISES INCLUDED
FOR PURPOSES OF DRUNK DRIVING

AYES - 54 NAYS - 42 NOT VOTING - 3 PAIRED - 0

A	N	NV	NAME	
A			AINSWORTH, J.	(R)
A			ALBERS, S.	(R)
	N		BALDUS, A.	(D)
	N		BALDWIN, T.	(D)
A			BAUMGART, J.	(D)
	N		BELL, J.	(D)
	N		BLACK, S.	(D)
	N		BOCK, P.	(D)
	N		BOYLE, F.	(D)
A			BRANCEL, B.	(R)
A			BRANDEMUEHL, D.	(R)
	N		CARPENTER, T.	(D)
	N		COGGS, S.	(D)
A			COLEMAN, C.	(R)
	N		CULLEN, D.	(D)
A			DOBYNS, J.	(R)
	N		DUEHOLM, R.	(D)
A			DUFF, M.	(R)
A			FOTI, S.	(R)
A			FREESE, S.	(R)
A			GARD, J.	(R)
A			GOETSCH, R.	(R)
A			GREEN, M.	(R)
	N		GROBSCHMIDT, R.	(D)
	N		GRONEMUS, B.	(D)
A			GROTHMAN, G.	(R)
A			GUNDERSON, S.	(R)
A			HAHN, E.	(R)
A			HANDRICK, J.	(R)
A			HANSON, D.	(D)
A			HARSDORF, S.	(R)
	N		HASENOHRL, D.	(D)
A			HOVEN, T.	(R)
	N		HUBER, G.	(D)
	N		HUBLER, M.	(D)
A			HUEBSCH, M.	(R)
A			HUTCHISON, D.	(R)
A			JENSEN, S.	(R)
A			JOHNSRUD, D.	(R)
A			KAUFERT, D.	(R)
A			KELSO, C.	(R)
A			KLUSMAN, J.	(R)
A			KREIBICH, R.	(R)
	N		KREUSER, J.	(D)
	N		KRUG, S.	(D)
	N		KRUSICK, M.	(D)
	N		KUNICKI, W.	(D)
	N		LA FAVE, J.	(D)
A			LADWIG, B.	(R)
A			LASEE, F.	(R)
	N		LAZICH, M.	(R)
A			LEHMAN, M.	(R)
	N		LINTON, B.	(D)
A			LORGE, W.	(R)
	N		MEYER, M.	(D)
		X	MORRIS-TATUM J.	(D)
A			MURAT, W.	(D)
A			MUSSER, T.	(R)
A			NASS, S.	(R)
A			NOTESTEIN, B.	(D)
A			OLSEN, L.	(R)
A			OTT, A.	(R)
A			OTTE, C.	(R)
A			OURADA, T.	(R)
A			OWENS, C.	(R)
	N		PLACHE, K.	(D)
	N		PLOMBON, D.	(D)
A			PORTER, C.	(R)
	N		POTTER, R.	(D)
A			POWERS, M.	(R)
	N		REYNOLDS, M.	(D)
	N		RILEY, A.	(D)
	N		ROBSON, J.	(D)
A			RUTKOWSKI, J.	(D)
	N		RYBA, J.	(D)
	N		SCHNEIDER, M.	(D)
A			SCHNEIDERS, L.	(R)
A			SERATTI, L.	(R)
A			SILBAUGH, R.	(R)
A			SKINDRUD, R.	(R)
	N		SPRINGER, T.	(D)
	N		TRAVIS, D.	(D)
	N		TURNER, R.	(D)
A			UNDERHEIM, G.	(R)
A			URBAN, F.	(R)
	N		VANDER LOOP, W.	(D)
A			VRAKAS, D.	(R)
A			WALKER, S.	(R)
A			WARD, D.	(R)
	N		WASSERMAN, S.	(D)
	N		WILDER, M.	(D)
	N		WILLIAMS, A.	(D)
	N		WIRCH, R.	(D)
	N		WOOD, W.	(D)
		X	YOUNG, L.	(D)
	N		YOUNG, R.	(D)
	N		ZIEGELBAUER, R.	(D)
		X	ZUKOWSKI, R.	(R)
A			SPEAKER	(R)

VACANT DISTRICT(S) - 0.

18 R
25 D

WISCONSIN ASSEMBLY ROLL CALL
1995-96 SESSION
SPEAKER PROSSER

SEQUENCE NO. 406
SEPTEMBER 19, 1995
3:07 PM

AB 283
BRANDEMUEHL, D.

PASSAGE
AB 283 PREMISES INCLUDED
FOR PURPOSES OF DRUNK DRIVING

AYES - 43 NAYS - 53 NOT VOTING - 3 PAIRED - 0

A	N	NV	NAME	
A			AINSWORTH, J.	(R)
	N		ALBERS, S.	(R)
	N		BALDUS, A.	(D)
A			BALDWIN, T.	(D)
A			BAUMGART, J.	(D)
	N		BELL, J.	(D)
	N		BLACK, S.	(D)
A			BOCK, P.	(D)
	N		BOYLE, F.	(D)
A			BRANCEL, B.	(R)
A			BRANDEMUEHL, D.	(R)
A			CARPENTER, T.	(D)
	N		COGGS, S.	(D)
	N		COLEMAN, C.	(R)
A			CULLEN, D.	(D)
	N		DOBYNS, J.	(R)
	N		DUEHOLM, R.	(D)
	N		DUFF, M.	(R)
	N		FOTI, S.	(R)
	N+		FREESE, S.	(R)
A			GARD, J.	(R)
	N		GOETSCH, R.	(R)
A			GREEN, M.	(R)
A			GROBSCHMIDT, R.	(D)
	N		GRONEMUS, B.	(D)
	N		GROTHMAN, G.	(R)
	N		GUNDERSON, S.	(R)
A			HAHN, E.	(R)
	N		HANDRICK, J.	(R)
A			HANSON, D.	(D)
	N		HARSDORF, S.	(R)
	N		HASENOHRL, D.	(D)
	N		HOVEN, T.	(R)

A	N	NV	NAME	
A			HUBER, G.	(D)
	N		HUBLER, M.	(D)
	N		HUEBSCH, M.	(R)
A			HUTCHISON, D.	(R)
A			JENSEN, S.	(R)
A			JOHNSRUD, D.	(R)
	N		KAUFERT, D.	(R)
A			KELSO, C.	(R)
A			KLUSMAN, J.	(R)
	N		KREIBICH, R.	(R)
A			KREUSER, J.	(D)
	N		KRUG, S.	(D)
A			KRUSICK, M.	(D)
A			KUNICKI, W.	(D)
A			LA FAVE, J.	(D)
A			LADWIG, B.	(R)
	N		LASEE, F.	(R)
	N		LAZICH, M.	(R)
	N		LEHMAN, M.	(R)
	N		LINTON, B.	(D)
	N		LORGE, W.	(R)
	N		MEYER, M.	(D)
		X	MORRIS-TATUM J.	(D)
A			MURAT, W.	(D)
	N		MUSSER, T.	(R)
	N		NASS, S.	(R)
A			NOTESTEIN, B.	(D)
	N		OLSEN, L.	(R)
A			OTT, A.	(R)
A			OTTE, C.	(R)
A			OURADA, T.	(R)
A			OWENS, C.	(R)
A			PLACHE, K.	(D)

A	N	NV	NAME	
	N		PLOMBON, D.	(D)
	N		PORTER, C.	(R)
A			POTTER, R.	(D)
	N		POWERS, M.	(R)
	N		REYNOLDS, M.	(D)
		X	RILEY, A.	(D)
	N		ROBSON, J.	(D)
A			RUTKOWSKI, J.	(D)
	N		RYBA, J.	(D)
A			SCHNEIDER, M.	(D)
	N		SCHNEIDERS, L.	(R)
	N		SERATTI, L.	(R)
A			SILBAUGH, R.	(R)
	N		SKINDRUD, R.	(R)
A			SPRINGER, T.	(D)
	N		TRAVIS, D.	(D)
	N		TURNER, R.	(D)
A			UNDERHEIM, G.	(R)
A			URBAN, F.	(R)
	N		VANDER LOOP, W.	(D)
	N		VRAKAS, D.	(R)
	N		WALKER, S.	(R)
A			WARD, D.	(R)
A			WASSERMAN, S.	(D)
	N		WILDER, M.	(D)
	N		WILLIAMS, A.	(D)
A			WIRCH, R.	(D)
A			WOOD, W.	(D)
	N		YOUNG, L.	(D)
		X	YOUNG, R.	(D)
	N		ZIEGELBAUER, R.	(D)
	N		ZUKOWSKI, R.	(R)
A			SPEAKER	(R)

VACANT DISTRICT(S) - 0.

trary to a Village of Elkhart Lake ordinance which adopts sec. 346.63(1), Stats.[1]

Borzyskowski was transported to the police department, where he verbally agreed to take a breathalyzer test. Officer Robert Sertich then attempted to obtain a breath sample from Borzyskowski. After several unsuccessful attempts, Sertich determined that Borzyskowski was not cooperating with the test procedures and concluded that Borzyskowski refused to take the breathalyzer test.

The pretrial motion hearing on whether there was probable cause to arrest Borzyskowski was held on October 12, 1983. The trial court, in a decision issued on January 11, 1984, determined that probable cause to arrest existed and therefore it denied Borzyskowski's motion to dismiss the charge. At the conclusion of the refusal hearing on March 26, 1984, the trial court set a briefing schedule. On May 29, 1984, the trial court issued its decision finding that Borzyskowski refused to take the test. The trial court ordered a six-month revocation of Borzyskowski's driver's license. Borzyskowski appeals.

Borzyskowski first claims that there was no probable cause to arrest him for operating a motor vehicle while under the influence of an intoxicant. We agree with the trial court's determination that Officer Spakowicz had probable cause to arrest Borzyskowski.

[1-3] Probable cause to arrest requires that, at the moment of arrest, the officer knew of facts and circumstances which were sufficient to warrant a prudent person to believe that the person arrested had committed or was committing an offense. *State v. Drogsvold*, 104 Wis.2d 247, 254, 311 N.W.2d 243, 247 (Ct.App.1981). This requirement deals with probabilities and need only be sufficient to lead a reasonable officer to believe that guilt is more than a possibility. *Id.* at 254-55, 311 N.W.2d at 247. Where the historical facts are undisputed, the question of whether there was probable cause for arrest is a question of law which this court may subject to an independent review. *Id.* at 262, 311 N.W.2d at 250.

[4] The thrust of Borzyskowski's argument goes to whether there was probable cause to believe that he was operating the motor vehicle. To "operate" a motor vehicle is to physically manipulate or activate any of the controls of a motor vehicle which are necessary to put it in motion. Sec. 343.305(11)(b), Stats. Operation of a motor vehicle occurs either when a defendant starts the motor or leaves it running. *Milwaukee County v. Proegler*, 95 Wis.2d 614, 628-29, 291 N.W.2d 608, 614 (Ct.App. 1980). Restraining the movement of a running vehicle constitutes physical manipulation of a vehicle's controls. *Id.* at 627-28, 291 N.W.2d at 614.

[5] Here, Officer Spakowicz observed Borzyskowski sitting behind the steering wheel of a motor vehicle whose engine was running. The vehicle was parked along a roadway in a place not designated for parking. It was reasonable for Officer Spakowicz to believe that Borzyskowski was physically manipulating the controls either by leaving the engine running or by restraining its movement. Both of these actions constitute "operation" as it is defined in the statute and in *Proegler*. The trial court therefore properly denied Borzyskowski's motion to dismiss for lack of probable cause.

Next, Borzyskowski argues that the trial court erroneously concluded that he refused to take the breathalyzer test. The trial court found that Borzyskowski refused to take the test because he refused to cooperate in the administration of the

1. Section 346.63(1), Stats., provides in part:

Operating under influence of intoxicant or other drug. (1) No person may drive or operate a motor vehicle while:

(a) Under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance ... or

(b) The person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

The issuance of a formal charge therefore does not occur at the same time that defendant is arrested.

Second, the statute in question specifically refers to "city or village attorney or district attorney" as well as enforcement officers. The former do not become involved until the initial appearance stage of criminal proceedings.

Finally, the nature of defendant's procedural due process claim does not demonstrate lack of notice, a hearing, an opportunity to present evidence, or any other procedural protection which the fourteenth amendment might require.

II.

[2–4] Defendant further alleges that failure to advise him of the potential revocation of his driving privileges upon conviction constituted an illegal search and seizure. The basis of his argument is that he was not sufficiently advised to allow him to make an "informed or intelligent" decision to submit to a "seizure" of his breath, *i. e.*, submitting to the breathalyzer. This argument is without merit.

Any person who drives or operates a motor vehicle in Wisconsin is deemed to have given consent to a test of his breath, blood or urine. Sec. 343.305, Stats. This consent is not optional, but is an implied condition precedent to the operation of a motor vehicle on Wisconsin public highways. The Wisconsin Supreme Court discussed this aspect of sec. 343.305 in *Scales v. State*, 64 Wis.2d 485, 493–94, 219 N.W.2d 286, 291–92 (1974):

> It is not our understanding, however, that the implied consent law was intended to give greater rights to an alleged drunken driver than were constitutionally afforded theretofore. Rather, its purpose was to impose a condition on the right to obtain a license to drive on a Wisconsin highway. The condition requires that a licensed driver, by applying for and receiving a license, consent to submit to chemical tests for intoxication under statutorily determined circumstances. The refusal to actually submit to such test can result in revocation of the license. It was intended to facilitate the taking of tests for intoxication and not to inhibit the ability of the state to remove drunken drivers from the highway. In light of that purpose, it must be liberally construed to effectuate its policies.

While the taking of a breath sample is a search and seizure within the meanings of the United States and Wisconsin Constitutions, such a search can be conducted if incident to arrest or if a police officer has probable cause to arrest. *Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966); *Waukesha Memorial Hospital, Inc., et al. v. Baird, et al.*, 45 Wis.2d 629, 173 N.W.2d 700 (1970); *State v. Bentley*, 92 Wis.2d 860, 286 N.W.2d 153 (Ct.App.1979). The officers here had probable cause to arrest the defendant. Moreover, the United States Supreme Court has held that it is unnecessary for the state to establish that a person who consented to the search knew that he had a right to refuse. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). Thus the concept of an informed consent to search and seizure under the fourth amendment has been rejected. The defendant here was informed of the consequences of a refusal to submit to the breathalyzer test as mandated by sec. 343.-305, Stats. This statutory scheme does not contemplate a choice, but rather establishes that a defendant will suffer the consequences of revocation should he refuse to submit to the test after having given his implied consent to do so. The defendant's consent is not at issue. The breathalyzer test here represented a reasonable and legal search and seizure under the fourth amendment. We, therefore, again affirm the trial court's ruling.

III.

The defendant alleges that the trial court erred in finding that the defendant "operated" his vehicle on a highway while under the influence of an intoxicant. He argues that sleeping in a car with the motor running on the side of a highway does not fall

within the statutory definition of "operating." Defendant claims that in order to prove operation of a motor vehicle, the state must establish an intent to drive or move the vehicle. He relies on several New Jersey decisions for this proposition. *See State v. Daly*, 64 N.J. 122, 313 A.2d 194 (1973); *State v. Prociuk*, 145 N.J.Super. 570, 368 A.2d 436 (1976).

Section 346.63(3), Stats., defines "operate" and "drive" with respect to a charge of operating while under the influence:

> (3) In this section:
>
> (a) "Drive" means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.
>
> (b) "Operate" means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.

Earlier statutory language used "drive" and "operate" interchangeably, and required movement of the vehicle for violation of the statute:

> Sec. 346.63(4), Stats. (1975). In this section, unless the context requires otherwise, "drive" or "operate" means exercising physical control over the vehicle's speed and direction *while in motion.* [Emphasis supplied.]

In 1977, the legislature changed the statutory scheme to differentiate between "drive" and "operate" as noted above. 1977 Wis. Laws, ch. 193, effective July 7, 1977.

[5–9] This court is of the opinion that the defendant's conduct falls within the definition of "operate" and that the trial court's finding was not against the great weight and clear preponderance of the evidence. *Monroe County v. Kruse*, 76 Wis.2d 126, 132, 250 N.W.2d 375, 378 (1977). In construing a statute, the primary source is the language of the statute itself. *Wisconsin's Environmental Decade, Inc. v. Public Service Commission, et al.*, 81 Wis.2d 344, 350, 260 N.W.2d 712, 715 (1978). In determining the meaning of any single phrase or word in a statute, it is necessary to examine it in light of the entire statute. *State ex rel. Tilkens v. Board of Trustees*, 253 Wis. 371, 373, 34 N.W.2d 248, 249 (1948). Where the statute is ambiguous, we may look to the legislative intent found in the language of the statute in relation to its scope, history, context, subject matter, and object intended to be accomplished. *Wisconsin Environmental Decade, Inc., supra; State v. Wachsmuth*, 73 Wis.2d 318, 324–5, 243 N.W.2d 410, 414 (1976); *Ortman v. Jensen & Johnson, Inc.*, 66 Wis.2d 508, 520, 225 N.W.2d 635, 642 (1975); *State v. Automatic Merchandisers*, 64 Wis.2d 659, 663, 221 N.W.2d 683, 686 (1974); *Wisconsin Southern Gas Co. v. Public Serv. Comm.*, 57 Wis.2d 643, 648, 205 N.W.2d 403, 406 (1973). The object to be accomplished must be given great weight in determining legislative intent. *Town of Menominee v. Skubitz*, 53 Wis.2d 430, 437, 192 N.W.2d 887, 890 (1972).

[10] The language of sec. 346.63(3), Stats., is clear. The prohibition against the "activation of any of the controls of a motor vehicle necessary to put it in motion" applies either to turning on the ignition or leaving the motor running while the vehicle is in "park." One who enters a vehicle while intoxicated, and does nothing more than start the engine is as much of a threat to himself and the public as one who actually drives while intoxicated. The hazard always exists that the car may be caused to move accidently, or that the one who starts the car may decide to drive it. This interpretation in our opinion is consistent with the legislative action in amending the statutes to distinguish between the terms "operate" and "drive." This interpretation is also in conformity with the stricter laws adopted by the legislature with respect to intoxicated drivers in Wisconsin. 1977 Wis. Laws, ch. 193. The severity of Wisconsin's drunk driving law is intended to discourage individuals from initially getting behind the wheel of a motor vehicle while under the influence of alcohol. Defendant would have us condone a drunk driver's attempt to drive a car, encouraging the individual to pull over only if unable to continue operation of the vehicle. Defendant thus argues that our interpretation of the statute penalizes one who has the "brains to get off the road." Such a rule, however, would defeat

the very purpose of our stricter laws and thwart legislative intent. The better rule is to have the brains to avoid any attempt to operate a vehicle while intoxicated, not to have the "brains to get off the road."

Several jurisdictions which have dealt with similar issues have held as we do. In *State v. Webb*, 78 Ariz. 8, 274 P.2d 338, 340 (1954), the defendant was intoxicated and asleep in a truck parked near some barricades in a lane of traffic. The statute involved prohibited the actual physical control of a car while under the influence of intoxicating liquor. The defendant claimed that the wording of the statute was not meant to apply to a parked vehicle but was only concerned with driving and other acts of a positive nature. The court disagreed:

> An intoxicated person seated behind the steering wheel of a motor vehicle is a threat to the safety and welfare of the public. The danger is less than that involved when the vehicle is actually moving, but it does exist. While at the precise moment defendant was apprehended he may have been exercising no conscious volition with regard to the vehicle, still there is a legitimate inference to be drawn that defendant had of his choice placed himself behind the wheel thereof, and had either started the motor or permitted it to run. He therefore had the "actual physical control" of that vehicle, even though the manner in which such control was exercised resulted in the vehicle's remaining motionless at the time of his apprehension.

Accord, Parker v. State, 424 P.2d 997, 999 (Okl.Cr.1967); *Jacobson v. State*, 551 P.2d 935, 938 (Alaska 1976).

In *State v. Ruona*, 133 Mont. 243, 321 P.2d 615, 618 (1958), the court found that "actual physical control" was not limited to putting the car in motion. We feel that their reasoning is applicable to a similar interpretation of the term "operate," and hold that restraining the movement of a running vehicle constitutes physical manipulation of a vehicle's controls which falls within the scope of our statute. Thus one could have "actual physical control" while merely parking or standing still so long as one was keeping the car in restraint or in position to regulate its movements. Preventing a car from moving is as much control and dominion as actually putting the car in motion on the highway. Could one exercise any more regulation over a thing, while bodily present, than prevention of movement or curbing movement. As long as one were physically or bodily able to assert dominion, in the sense of movement, then he has as much control over an object as he would if he were actually driving the vehicle.

[11] Also, we agree with the trial court's finding that the circumstantial evidence in this case was sufficient to substantiate the fact that defendant "operated" his truck within the meaning of sec. 346.63, Stats. The defendant testified that he had driven to the spot where the officers found his truck, stopped there without completely pulling off the highway, left the motor running and the lights on, and then fell asleep. *Commonwealth v. Kloch*, 230 Pa.Super. 563, 327 A.2d 375, 384 (1975) involved a factual situation identical to the case before us. The court there noted that in assessing whether the defendant was operating the car while under the influence of an intoxicant, the troopers who found him "could reasonably infer that the car was where it was and was performing as it was because of appellant's choice, from which it followed that appellant was in 'actual physical control' of and so was 'operating' the car while he slept." We agree.

In light of the above, a finding of intent to drive or move the vehicle is not required to find a defendant guilty of operating a vehicle while under the influence of an intoxicant. "Operation" of a vehicle occurs either when a defendant starts the motor and/or leaves it running. The possibility of danger exists in either case. It is in the best interests of the public and consistent with legislative policy to prohibit one who is intoxicated from attempting to get behind the wheel rather than to make a fine distinction once such a person is in the position to cause considerable harm.

COUNTY OF MILWAUKEE

DISTRICT ATTORNEY'S OFFICE
INTER-OFFICE COMMUNICATION

# of cases merits of bill

DATE : October 1, 1993

TO :

FROM : Bob Donohoo (414) 278-4674

SUBJECT : THE ISSUE OF WHETHER A PLACE IS A PUBLIC PREMISE PURSUANT TO SEC. 346.61, STATS.

In State v. Reveal, an unpublished opinion of the Court of Appeals, the Court denied the defendant's contention that a church and school parking lot was not a public premise pursuant to sec. 346.61. Stats. The opinion of the Court is set forth on the reverse side of this memorandum.

In County of Dane v. Brashears, 92-2300, filed May 20, 1993, an unpublished opinion, the Court denied the defendant's contention that a parking lot at a truck stop was not a public premise pursuant to sec. 346.61, Stats. The opinion of the Court is reproduced in Attachment A to this memorandum.

In State v. Pagel, 93-1086-CR, filed August 18, 1993, an unpublished opinion, the Court denied the defendant's contention that a road that was closed for construction was not a public premise pursuant to sec. 346.61, Stats. That part of the Court' opinion that dealt with this issue is reproduced in Attachment C to this memorandum.

In City of Oak Creek v. Larson, 92-2209, filed May 18, 1993, an unpublished opinion, the Court denied the defendant's contention that a parking lot was not a public premise pursuant to sec. 346.61, Stats. That part of the Court's opinion that dealt with this issue is reproduced in Attachment B to this memorandum.

In City of La Crosse v. Richling, ___ Wis. 2d ___, ___ N.W.2d ___ (Ct. App. 1993), the Court denied the defendant's contention that the parking lot that he was driving in was not a public premise pursuant to sec. 346.67, Stats. A copy of the Court's opinion is reproduced in Attachment D to this memorandum.

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No. 92-0187-CR-FT FILED October 06, 1992

State of Wisconsin,
Plaintiff-Respondent,
v.
David C. Reveal,
Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee county: LOUISE M. TESMER, Judge. Affirmed.

SULLIVAN, J. David C. Reveal appeals from a judgment of conviction for operating a motor vehicle under the influence of an intoxicant (OUI), sec. 346.63(1)(a), Stats. This appeal is determined by one judge as provided by secs. 752.31 (2)(f) and (3), Stats. Pursuant to this court's order dated March 6, 1992, this case was submitted to the court on the expedited appeals calendar. We affirm.

Reveal contends that the trial court improperly denied his motion to dismiss. He argues that the place of his arrest, a church and school parking lot, is not held out to the public for its vehicular use as provided by sec. 346.61, Stats., and that hence, his conviction is invalid.[1] He relies on City of Kenosha v. Phillips, 142 Wis.2d 549, 419 N.W.2d 236 (1988), which determined that sec. 346.61 reflected a legislative purpose to subject OUI committed on private property to the rules of the road only where "it was the intent of the person managing the premises to allow the public as a whole to make use of the premises for their motor vehicles." Id. at 558, 419 N.W.2d at 239.

However, the supreme court stated further, based on its assessment of legislative intent as set forth in the statute, that "a fact question is presented in each case that must be determined by the trier of facts—were the premises, as a factual matter, held out to the public for use of their motor vehicles." Id. The test in a trial or hearing before a court is whether its findings are clearly erroneous. State v. Owens, 148 Wis.2d 922, 927, 436 N.W.2d 869, 871 (1989). Section 805.17(2), Stats., provides in part: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Therefore, our appellate duty is to search the record to determine if the trial court's finding that the lot was held out for public vehicular use commands evidentiary support.

At the dismissal motion hearing, the trial court was presented with the following facts. On Saturday, October 7, 1989 about 4:30 p.m. Reveal operated his auto while intoxicated near Woodland school, a public school and St. Stanislaus church, a Roman Catholic church on Milwaukee's south side. The properties are contiguous. The lot is behind the buildings. To turn his auto from the direction in which he was going, Reveal entered the lot which is owned by the church and leased by the school.[2] Reveal's auto became stuck in a children's sand box when its undercarriage was suspended on railroad ties which encompassed the box. A city police officer came to the scene and arrested Reveal. He saw other motor vehicles parked on the lot. The principal of Woodland school testified that the lot is used as a playground for the children under her supervision or under the supervision of school staff. The lot is fenced and has a gate which is closed only when school children are present. The school uses the lot for playground purposes, and for parking by school staff, by persons having business with the school including parents of the children and by visitors. Church use includes parking for church services, Wednesday night bingo and visitors.

Reveal offered, and the court received into evidence, several photographs of signs which he argues establish that the lot was not held out for public use. One sign at the entrance to the lot read: "PRIVATE DRIVE for CHURCH and SCHOOL USE ONLY." An official red-on-white sign posted on the school wall stated: "NO PARKING EXCEPT FOR AUTHORIZED VEHICLES. $40 Penalty sec. 101-235 Milwaukee Code." Next to this sign was one disclaiming any responsibility for theft or damage to vehicles on the lot. Another sign on the lot stated: "PARKING For Church and School Use Only." Underneath this language the sign continued: "Gate Will Be Locked at Certain Times." Another sign cautioned: "No Parking. For Church and School Use Only. Violations Will be Prosecuted." A closed-in sign, near the church and facing the lot, listed the schedule of masses and included the following: "MASS SCHEDULE Sat. Eve. 4:30." Another sign, apparently on a garage door, stated: "NO PARKING."

The testimony of the principal and the content of the signs present a conflict in the evidence of the intent of the school and church. The lot was under their joint control. The principal testified that visitors, among others, could park in the lot. She did not limit visitors to any particular or discrete group of persons. Anyone could visit. The church's sign announcing the time of mass extended to the world. No person, of whatever religious persuasion, or atheists are barred from attendance. Likewise the evidence reveals no qualification whatsoever for Wednesday night bingo players. All of these persons had free use of the lot. On the other hand, the trial court could infer from the content of the signs that vehicular use of the lot was intended to be limited to those of a class using the school or church facilities and it could consider that no use was permitted while school children used the lot. However, it is solely within the province of the trial court to weigh the evidence and draw reasonable inferences from it. In re Paternity of T.R.B., 160 Wis.2d 840, 842-43, 467 N.W.2d 553, 554 (Ct. App. 1991).

In City of Kenosha v. Phillips 142 Wis.2d at 557, 419 N.W.2d at 239, the supreme court, using a current dictionary, defined the word "public." It means "'of, pertaining to, or affecting a population or a community as a whole.'" We conclude that the trial court's finding that the school and church intended to hold the lot out to the public for its vehicular use was not clearly erroneous in light of this definition.

By the Court.—Judgment affirmed.

This opinion will not be published. Rule 809.23(1)(b)4, Stats.

[1] Section 346.61, Stats., provides:

346.61 Applicability of sections relating to reckless and drunken driving. In addition to being applicable upon highways, ss. 346.62 to 346.66 are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

[2] This lease is not a part of the appellate record.

No. 92-2300 FILED May 20, 1993

County of Dane,
Plaintiff-Respondent,
v.
Garrid H. Brashears,
Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane county: DANIEL R. MOESER, Judge. Affirmed.

GARTZKE, P.J.[1] Garrid Brashears appeals from a judgment convicting him of operating a motor vehicle while under the influence of intoxicants with an alcohol concentration of 0.10% or more, contrary to a county ordinance. The conviction resulted from his arrest in a parking lot at the Trucker's Inn truck stop, located near Madison. The parties stipulated that the manager of the truck stop would testify that the truck stop

is open 24 hours a day, 365 days of the year both as to the truck stop itself and as to the Pine Cone Restaurant, which is located on the same premises and is part of the same building as the truck stop; that there are signs on the Interstate Highway each direction from the truck stop advertising it and indicating that it is open 24 hours a day, 365 days a year; and that there are certain persons that have been essentially barred from the truck stop, such as prostitutes; that there are occasions when individual truckers come and park at the truck stop to sleep or what have you; that the truck stop assumes those persons may transact business with the truck stop at some point during their stay.

The issue is whether the truck stop parking lot was held out to the public, within the meaning of sec. 346.61, Stats. That statute provides in relevant part that the statutes regarding operating while under the influence and reckless driving "are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof."

The question is one of law. In City of Kenosha v. Phillips, 142 Wis.2d 549, 557, 419 N.W.2d 236, 239 (1988), the court said that "a holding out to a defined, limited portion of the citizenry is not a holding out to the public" for purposes of the statute before us.

Because the public is told that the truck stop is open twenty-four hours a day, 365 days a year, and no limitation is made manifest to the public regarding the use of the parking lot, the parking lot is open to the public. Consequently, notwithstanding the insignificant limitations excluding prostitutes and other persons not identified by class or number, the parking lot is held out to the public for the use of their motor vehicles.

Brashears argues that because the parking lot is held out only to those people who are customers, it is not held out to the public. We disagree. First, while the owner "assumes" users will do business at the truck stop, no effort has been made to restrict the use to customers. Second, although in City of Kenosha the parking lot was restricted to employees and was held not open to the public, anyone can be a customer and use the truck stop lot.

Consequently, the judgment of the trial court must be affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. See Rule 809.23(1)(b)4, Stats.

[1] This appeal is decided by one judge pursuant to sec. 752.31(2)(c), Stats.

ATTACHMENT A

B 3.

No. 92-2209 FILED May 18, 1993

City of Oak Creek,
a Municipal Corporation,
Plaintiff-Respondent,
v.
Michael M. Larson,
Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee county: LEE E. WELLS, Judge. Affirmed.

SCHUDSON, J.[1] Michael M. Larson appeals the August 10, 1992 judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, in violation of sec. 346.63(1)(a), Stats., and operating a motor vehicle with a blood alcohol content above the legal limit, in violation of sec. 346.63(1)(b). The judgment followed a trial in which a jury found Larson guilty. He appeals, arguing: (1) the parking lot on which he was driving was not a premises held out to the public for use of motor vehicles; ...

...

The trial testimony established certain undisputed facts. On October 14, 1990, at approximately 2:29 a.m., Oak Creek Police Officer Thomas Peterson was dispatched to the Union 76 truck stop as a result of a complaint from the truck stop manager, Maurice Lilley, that a truck was parked improperly in front of his establishment. When Officer Peterson arrived, Lilley told him that he wanted the truck moved but had been unable to awaken the person who was asleep inside the cab of the truck. Peterson pounded on the cab door and succeeded in waking the occupant, Michael M. Larson. Larson was intoxicated. From this point, the testimonial accounts diverge.

...

Officer Peterson testified that he then returned to the fuel island area of the truck stop to speak with the manager. Shortly thereafter, he noticed the truck moving. He entered his squad, pulled in front of the truck, saw Larson behind the wheel driving, observed that the truck had moved from the grass portion of the truck stop to the paved portion of the public parking lot, and arrested Larson.

...

Larson argues that the portion of the parking lot where he had driven the truck was not "held out to the population or community as a whole," and, therefore, under City of Kenosha v. Phillips, 142 Wis.2d 549, 419 N.W.2d 236 (1988), the lot does not fall within the parameters of sec. 346.61, Stats. Larson's argument borders on the frivolous.

...

Section 346.61, defines where a vehicle must be driven for there to be an intoxicated driving violation:

> In addition to being applicable on highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned, and whether or not a fee is charged for the use thereof.

(Emphasis added.)

In Phillips, the driver had been arrested for operating a motor vehicle while intoxicated after the Kenosha police found him "'passed out'" behind the wheel of his car, which had been parked in the American Motors Corporation (AMC) parking lot. Id., 142 Wis.2d at 552, 419 N.W.2d at 237. The parking lot was posted with a sign that stated, "'AMC parking only. Violators will be towed at own expense.'" Id. at 553, 419 N.W.2d at 237. The Wisconsin Supreme Court concluded that the AMC parking lot was not "held out to the public" under sec. 346.61, stats. Id. at 553, 419 N.W.2d at 239-240. The court reasoned that AMC had only intended to permit its workers to the use the lot and had not intended to hold the lot out to the community as a whole. Id. at 553, 419 N.W.2d at 239-240.

Under Phillips, the intent of the person managing the premises may relate to whether the premises are held out to the public. Larson argues, therefore, that Lilley's complaint about Larson's truck established that "[a] segment of the population which included Larson — all those individuals driving semi-tractor trailers was prohibited from using the lot." This argument has no merit. Lilley's complaint did not establish that truck drivers were "prohibited from using the lot," but rather, only that Lilley believed that Larson's truck was parked improperly.

This case is distinguishable from Phillips. Phillips dealt with a private employee parking lot and this case deals with a public truck stop parking lot. Officer Peterson and the truck stop manager both testified that the lot was open to the public, and Officer Peterson testified that Larson drove the truck on the lot. Merely because one portion of the truck stop parking lot had been designated for autos and another portion designated for semis does not alter the fact that Larson had been driving on a parking lot "held out to the public." Thus, there was credible evidence on which the jury could base its conclusion that the parking lot where Larson drove was a "premises held out to the public for use of their motor vehicles."

ATTACHMENT B

State of Wisconsin,
Plaintiff-Respondent,
v.
Leroy G. Pagel,
Defendant-Appellant.

APPEAL from a judgment of the circuit court for Walworth county: MICHAEL S. GIBBS, Judge. Affirmed in part; reversed in part and cause remanded with directions.

SNYDER, J. Leroy G. Pagel appeals from a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant contrary to sec. 346.63, Stats. He contends that sec. 346.63 is not applicable to the road upon which he was driving because it was closed for construction at the time. Because we conclude that sec. 346.63 is applicable to roadways even if they are closed for construction, we affirm the conviction. Pagel also argues that the portion of the trial court's sentence requiring him to complete forty hours of community service and submit a handwritten copy of several obituaries of victims from an accident in Kentucky resulting from a drunk driver is statutorily improper. We affirm the trial court's sentence, but reverse that portion of the sentence relating to the handwriting requirement.

On June 2, 1991, Deputy Sheriff Timothy Otterbacher of the Walworth County Sheriff's Department, in response to a report of a traffic accident on County Highway ES, observed a pickup truck which was parked partially on the highway and partially in a ditch. Upon further investigation, Deputy Otterbacher discovered Pagel underneath the vehicle. Pagel showed signs of intoxication and failed three sobriety tests. As a result, Deputy Otterbacher arrested him for operating a motor vehicle while under the influence of an intoxicant.

Pagel was convicted of the offense after a jury trial. The trial court imposed a sentence that included a forty-day jail term, payment of a fine and costs, forty hours of community service, and a requirement that Pagel copy by hand obituaries of twenty-seven children killed by a drunk driver in Kentucky in 1988. Pagel appeals his conviction and the community service and handwriting components of his sentence.

The relevant facts in this case are undisputed. This case involves the interpretation of Wisconsin's drunk driving laws and their application to a set of undisputed facts. See secs. 346.61 to 346.655, Stats. Statutory interpretation is a question of law which this court reviews without deference to the trial court's decision. See Gonzalez v. Tenkey, 160 Wis.2d 1, 7-8, 465 N.W.2d 525, 528 (Ct. App. 1990).

When determining the meaning of a statute, our initial inquiry is to the plain meaning of the statute. Schmidt v. Wisconsin Employe Trust Funds Bd., 153 Wis.2d 35, 41, 449 N.W.2d 268, 270 (1990). If the statute is unambiguous, we may not resort to judicial rules of interpretation, and construction is not permitted. Id. Rather, the words of the statute must be given their obvious and intended meaning. Id.

Section 346.61, Stats., the section governing the applicability of the drunk driving laws, states:

In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

Section 340.01(22), Stats., defines a "highway" in part as follows:

[A]ll public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel.

At the time of Pagel's arrest, the portion of County Highway ES where Deputy Otterbacher discovered Pagel was closed to through traffic for repairs but was open to local traffic. Pagel contends that since County Highway ES was not open to the public while under construction, sec. 346.63, Stats., was not applicable. We disagree.

Section 346.61, Stats., expressly states that "[i]n addition to being applicable upon highways," sec. 346.63, Stats., is applicable on "premises held out to the public for use of their motor vehicles." Section 340.01(22), Stats., states that highways include "every way open to the use of the public." County Highway ES was open to local traffic at the time Pagel was stopped. Therefore, it was necessarily open to the public because anyone could conceivably have business along that road. Although travel may have been limited to a certain extent, the road was open to members of the public. Accordingly, County Highway ES must be considered a highway upon which the drunk driving laws are enforceable. Accordingly, we uphold Pagel's conviction of operating a motor vehicle while under the influence of an intoxicant.

City of La Crosse,
Plaintiff-Respondent,
v.
Paul M. Richling,
Defendant-Appellant.

APPEAL from a judgment of the circuit court for La Crosse county: JOHN J. PERLICH, Judge. Affirmed.

Before Eich, C.J., Dykman and Sundby, JJ.

DYKMAN, J. Paul Richling appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OMVWI), contrary to sec. 346.63, Stats. Richling claims the judgment must be reversed because the parking lot where the OMVWI violation occurred does not qualify as premises held out to the public for use of motor vehicles as required by sec. 346.61, Stats.[1] We reject this contention and affirm the conviction.

I. BACKGROUND

The parties stipulated to the facts. On the afternoon of December 10, 1991, Richling was operating his automobile in the parking lot of Schmidty's Bar & Restaurant when he collided with another car. A police officer came to the scene and arrested Richling for OMVWI.

The parking lot, as well as Schmidty's Bar & Restaurant, is owned by Norbert Schmidt. In an affidavit, Schmidt averred that the parking lot was only for the use of Schmidty's patrons. However, no signs are posted restricting the lot's use to customers, and Schmidt has never had an automobile towed from his parking lot.

Richling successfully filed a motion in municipal court to dismiss the charge for OMVWI on the ground that Schmidty's parking lot was not held out for public use.[2] The state appealed to the circuit court where Richling renewed the motion to dismiss. The circuit court denied the motion and subsequently convicted Richling of OMVWI. This appeal followed.

II. STANDARD OF REVIEW

The issue on appeal requires the application of a statute to a set of undisputed facts. This is a question of law which we review de novo. State ex rel. Stedman v. Rohner, 149 Wis.2d 146, 150, 438 N.W.2d 585, 587 (1989).

III. PUBLIC USE

Richling argues that Schmidty's parking lot was not held out for public use within the meaning of sec. 346.61, Stats. He primarily relies upon City of Kenosha v. Phillips, 142 Wis.2d 549, 419 N.W.2d 236 (1988), and Schmidt's averment that the parking lot was intended for his customers' use only.[3]

In Phillips, the defendant was arrested for OMVWI in a parking lot owned by the American Motors Corporation (AMC) and designated for use by its employees.[4] In determining whether the lot was "held out to the public," the supreme court stated that the test was whether the person in control of the lot intended it to be available to the public for use of their motor vehicles. Id. at 557, 419 N.W.2d at 239. The court then resorted to Random House Dictionary of the English Language 1562 (2d ed. 1987), to define "public" as "'of, pertaining to, or affecting a population or a community as a whole.'" Phillips, 142 Wis.2d at 557, 419 N.W.2d at 239. Finally, the court concluded that because AMC's employees constituted a "defined, limited portion of the citizenry," rather than the population or community as a whole, the lot was not held out to the public. Id.

Assuming that Schmidt did in fact restrict the use of his parking lot to his customers,[5] we conclude that the lot was held out to the public for use of their motor vehicles rather than to a defined, limited portion of the citizenry. In our view, it is not necessary that a business establishment's customers form a representative cross section of a city or town's population for them to be considered the "public" within sec. 346.61, Stats. Nor is it necessary that some minimum percentage of the city's population patronize the business.

We believe the appropriate test is whether, on any given day, potentially any resident of the community with a driver's license and access to a motor vehicle could use the parking lot in an authorized manner. Thus, in the case before us, practically any motorist in La Crosse could be a customer and park in Schmidty's lot on any day Schmidty's is open. The lot where Richling was arrested therefore falls under the category of "premises held out to the public."[6] This is in contrast with the lot in Phillips where, on a daily basis, only those motorists who were employed by AMC, a "defined, limited portion of the citizenry," would be authorized to park there.

Finally, we note that if we were to hold that a business establishment's customers do not constitute the public as that term is used in sec. 346.61, Stats., we would essentially render the "owner's intent" test in Phillips meaningless. If customers do not qualify as the public, it would be difficult to conceive of any parking lot in this state as being held out to the public under the statute.

By the Court.—Judgment affirmed.

Recommended for publication in the official reports.

[1] Section 346.61, Stats., provides:

> In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

[2] This information was found in a copy of the municipal court's decision included in the appendix to Richling's brief.

[3] Richling also cites two Texas cases as authority. However, these cases are not persuasive because the language of the Texas statute which they interpret differs significantly from sec. 346.61, Stats.

[4] The sign in Phillips stated: "'AMC parking only. Violators will be towed at own expense.'" 142 Wis.2d at 553, 419 N.W.2d at 237. Richling contends that the sign itself did not limit the lot to AMC employees and that "[c]ustomers, visitors, delivery persons and many others could conceivably have parked in the AMC lot lawfully." Therefore, he concludes that we should not construe the facts of Phillips too narrowly. The argument is without merit as the trial court in Phillips specifically found that the lot was maintained for the benefit of AMC's employees, and the supreme court accepted this finding in reaching its decision.

[5] Although Richling claims that the evidence as to Schmidt's intent to restrict the lot to customers is undisputed, several stipulated facts give rise to an inference that Schmidt did not intend to limit the lot's use in any respect. For example, there was no sign posted stating that the lot was for Schmidty's customers only, and Schmidt had never had any unauthorized vehicle towed away. In addition, Schmidt also indicated that he would permit travelers to use the lot to stop and ask for directions, and that he "would probably not object" to a motorist using the lot to turn around.

We do not address the issue of whether the lot was limited to customers because we are precluded from making factual determinations. Wurtz v. Fleischman, 97 Wis.2d 100, 107 n.3, 293 N.W.2d 155, 159 n.3 (1980). Nor is it necessary to do so because we conclude that Schmidty's customers fall within the Phillips definition of public.

[6] It is not clear from this record whether persons under twenty-one years of age may patronize Schmidty's unaccompanied by a person over twenty-one years old, or if they may enter the establishment at all. Whatever Schmidty's policy is in this regard has no effect on this appeal. We conclude that the segment which would be excluded from parking in the lot, i.e., persons between sixteen and twenty-one years of age, is relatively small compared to the population as a whole, and, therefore, should not affect the outcome of this appeal.

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: September 18, 1995

TO: REPRESENTATIVE DAVID BRANDEMUEHL, CHAIRPERSON, ASSEMBLY COMMITTEE ON HIGHWAYS AND TRANSPORTATION; AND INTERESTED LEGISLATORS

FROM: William Ford, Senior Staff Attorney

SUBJECT: 1995 Assembly Bill 283, Relating to Areas Where Certain Laws Concerning the Operation of Motor Vehicles Apply

A. INTRODUCTION

This memorandum explains 1995 Assembly Bill 283 ("the Bill"), relating to expanding the places where offenses relating to reckless driving, operating a vehicle while under the influence of an intoxicant (OWI) and the duties of a person involved in an accident apply.

B. CURRENT LAW

Under current law, the laws prohibiting reckless driving and OWI and the laws requiring a person involved in an accident to notify the owner of damaged property, render assistance to injured persons and report accidents apply "upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof" [ss. 346.61 and 346.66, Stats.].

In 1988, the Wisconsin Supreme Court held that a private parking lot owned by the American Motors Corporation posted with a sign stating "A.M.C. Parking Only. Violators Will Be Towed at Own Expense" was not "held out to the public for the use of their motor vehicles" within the meaning of s. 346.61, Stats. [*City of Kenosha v. Phillips*, 142 Wis. 2d 549, 419 N.W. 2d 236 (1988)]. As a result of that decision, the Court upheld the dismissal of an OWI charge against a person who had been operating a motor vehicle on the A.M.C. parking lot while intoxicated.

In reaching this decision, the Court examined the language of s. 346.61, Stats., and its legislative history. In its opinion, the Court noted that, in 1957, when the Legislature adopted s. 346.61, Stats., it considered adopting s. 11-101 of the Uniform Vehicle Code ("U.V.C."). The

Court noted that while s. 11-101 of the U.V.C. made OWI provisions applicable "upon highways and elsewhere throughout the state," s. 346.61 adopted narrower language making OWI penalties applicable to highways and "all premises held out to the public for use of their motor vehicles." The Court noted that:

> It can be argued that a reasonable Legislator in 1957 would have intended to make those antisocial acts either on or off the highway subject to state or municipal prosecutions. Nevertheless, it is clear from the statute and the comments to it that the Legislature elected to enact legislation that on its face was less pervasive in its geographical sweep than the U.V.C. proposal it had before it. Instead of making the Rules of the Road applicable on highways and elsewhere (as suggested by the U.V.C.), it rather chose a more limited expansion of the statutory sweep.
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> ...
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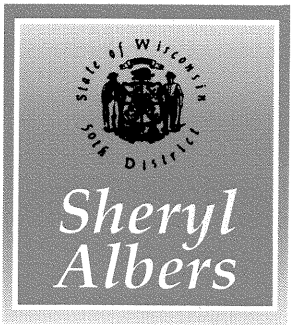
> Although a good argument can be made that different statutes would more satisfactorily address the problems of drunken driving, it is not the function of the courts to undo the Legislature's work [*Kenosha v. Phillips*, 419 N.W. 2d, page 240].

C. 1995 ASSEMBLY BILL 283

The Bill would increase the areas of the state where laws against OWI, reckless driving and duties following an accident apply to include "all premises provided by employers to employes for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of four or more units for the use of their motor vehicles.

Please contact me at the Legislative Council Staff offices if I can be of further assistance in this matter.

WF:rjl;jt



To: Representative David Brandemuehl

From: Representative Sheryl K. Albers

Re: AB 283

Date: April 28, 1995

While I had intended to discuss this with you before AB 283 was up for public hearing, I was not successful in achieving that goal. Nevertheless, I wish to advise you of my opposition to AB 283 and it application to owners of private property.

If the bill were limited to those persons who act recklessly while on the property owned by another person, I would not be adamant or vocal in my opposition. However, this bill applies to all private property and all actions on that property.

If you wish to discuss this further, please contact my office.

Office: P.O. Box 8952 • State Capitol • Madison, WI 53708–8952 • (608) 266–8531
Message Hotline: (800) 362–9472

Home: S6896 Seeley Creek Rd.• Loganville, WI 53943 • (608) 727–5084

WISCONSIN ASSEMBLY ROLL CALL
1995-96 SESSION
SPEAKER PROSSER

SEQUENCE NO. 406
SEPTEMBER 19, 1995
3:07 PM

AB 283
BRANDEMUEHL, D.

PASSAGE
AB 283 PREMISES INCLUDED
FOR PURPOSES OF DRUNK DRIVING

AYES - 43 NAYS - 53 NOT VOTING - 3 PAIRED - 0

A	N	NV	NAME	
A			AINSWORTH, J.	(R)
	N		ALBERS, S.	(R)
	N		BALDUS, A.	(D)
A			BALDWIN, T.	(D)
A			BAUMGART, J.	(D)
	N		BELL, J.	(D)
	N		BLACK, S.	(D)
A			BOCK, P.	(D)
	N		BOYLE, F.	(D)
A			BRANCEL, B.	(R)
A			BRANDEMUEHL, D.	(R)
A			CARPENTER, T.	(D)
	N		COGGS, S.	(D)
	N		COLEMAN, C.	(R)
A			CULLEN, D.	(D)
	N		DOBYNS, J.	(R)
	N		DUEHOLM, R.	(D)
	N		DUFF, M.	(R)
	N		FOTI, S.	(R)
	N		FREESE, S.	(R)
A			GARD, J.	(R)
	N		GOETSCH, R.	(R)
A			GREEN, M.	(R)
A			GROBSCHMIDT, R.	(D)
	N		GRONEMUS, B.	(D)
	N		GROTHMAN, G.	(R)
	N		GUNDERSON, S.	(R)
A			HAHN, E.	(R)
	N		HANDRICK, J.	(R)
A			HANSON, D.	(D)
	N		HARSDORF, S.	(R)
	N		HASENOHRL, D.	(D)
	N		HOVEN, T.	(R)
A			HUBER, G.	(D)
	N		HUBLER, M.	(D)
	N		HUEBSCH, M.	(R)
A			HUTCHISON, D.	(R)
A			JENSEN, S.	(R)
A			JOHNSRUD, D.	(R)
	N		KAUFERT, D.	(R)
A			KELSO, C.	(R)
A			KLUSMAN, J.	(R)
	N		KREIBICH, R.	(R)
A			KREUSER, J.	(D)
	N		KRUG, S.	(D)
A			KRUSICK, M.	(D)
A			KUNICKI, W.	(D)
A			LA FAVE, J.	(D)
A			LADWIG, B.	(R)
	N		LASEE, F.	(R)
	N		LAZICH, M.	(R)
	N		LEHMAN, M.	(R)
	N		LINTON, B.	(D)
	N		LORGE, W.	(R)
	N		MEYER, M.	(D)
		X	MORRIS-TATUM J.	(D)
A			MURAT, W.	(D)
	N		MUSSER, T.	(R)
	N		NASS, S.	(R)
A			NOTESTEIN, B.	(D)
	N		OLSEN, L.	(R)
A			OTT, A.	(R)
A			OTTE, C.	(R)
A			OURADA, T.	(R)
A			OWENS, C.	(R)
A			PLACHE, K.	(D)
	N		PLOMBON, D.	(D)
	N		PORTER, C.	(R)
A			POTTER, R.	(D)
	N		POWERS, M.	(R)
	N		REYNOLDS, M.	(D)
		X	RILEY, A.	(D)
	N		ROBSON, J.	(D)
A			RUTKOWSKI, J.	(D)
	N		RYBA, J.	(D)
A			SCHNEIDER, M.	(D)
	N		SCHNEIDERS, L.	(R)
	N		SERATTI, L.	(R)
A			SILBAUGH, R.	(R)
	N		SKINDRUD, R.	(R)
A			SPRINGER, T.	(D)
	N		TRAVIS, D.	(D)
	N		TURNER, R.	(D)
A			UNDERHEIM, G.	(R)
A			URBAN, F.	(R)
	N		VANDER LOOP, W.	(D)
	N		VRAKAS, D.	(R)
	N		WALKER, S.	(R)
A			WARD, D.	(R)
A			WASSERMAN, S.	(D)
	N		WILDER, M.	(D)
	N		WILLIAMS, A.	(D)
A			WIRCH, R.	(D)
A			WOOD, W.	(D)
	N		YOUNG, L.	(D)
		X	YOUNG, R.	(D)
	N		ZIEGELBAUER, R.	(D)
	N		ZUKOWSKI, R.	(R)
A			SPEAKER	(R)

VACANT DISTRICT(S) - 0.

29 Rep voted No
24 Dem voted No

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: September 18, 1995

TO: REPRESENTATIVE DAVID BRANDEMUEHL, CHAIRPERSON, ASSEMBLY COMMITTEE ON HIGHWAYS AND TRANSPORTATION; AND INTERESTED LEGISLATORS

FROM: William Ford, Senior Staff Attorney

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The Bill would increase the areas of the state where laws against OWI, reckless driving and duties following an accident apply to include "all premises provided by employers to employes for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of four or more units for the use of their motor vehicles.

Please contact me at the Legislative Council Staff offices if I can be of further assistance in this matter.

WF:rjl;jt

2. shall compile, maintain, and make available to the public statistical information relating to traffic accidents involving medical transport vehicles;

3. may conduct special investigations of motor vehicle accidents and may solicit supplementary reports from drivers, owners, police departments, sheriffs, coroners, or any other individual. Failure of any individual to submit a supplementary report subjects such individual to the same penalties for failure to report as designated under Section 11-406.

P.A. 76-1586, § 11-414, eff. July 1, 1970. Amended by P.A. 76-2478, § 1, eff. July 1, 1971; P.A. 78-1244, § 1, eff. Sept. 5, 1974; P.A. 82-488, § 1, eff. Sept. 8, 1981; P.A. 83-831, § 1, eff. Jan. 1, 1984.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-414.

5/11-415. Municipalities may require traffic accident reports

§ 11-415. Municipalities may require traffic accident reports. Municipalities may by ordinance require that the driver or owner of a vehicle involved in a traffic accident file with the designated municipal office a written report of such accident. All such reports shall be for the confidential use of the municipal office and subject to the provisions of Section 11-412.

P.A. 76-1586, § 11-415, eff. July 1, 1970. Amended by P.A. 76-2164, § 1, eff. July 1, 1970; P.A. 83-831, § 1, eff. Jan. 1, 1984.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-415.

5/11-416. Furnishing copies—Fees

§ 11-416. Furnishing copies—Fees. The Department of State Police may furnish copies of an Illinois State Police Traffic Accident Report that has been investigated by the State Police and shall be paid a fee of $5 for each such copy, or in the case of an accident which was investigated by an accident reconstruction officer or accident reconstruction team, a fee of $20 shall be paid.

Other State law enforcement agencies or law enforcement agencies of local authorities, as defined under Section 11-100 of this Code, may furnish copies of traffic accident reports prepared by such agencies and may receive a fee not to exceed $5 for each copy or in the case of an accident which was investigated by an accident reconstruction officer or accident reconstruction team, the State or local law enforcement agency may receive a fee not to exceed $20.

Any written accident report required or requested to be furnished the Administrator shall be provided without cost or fee charges authorized under this Section or any other provision of law.

P.A. 76-1586, § 11-416, eff. July 1, 1970. Amended by P.A. 76-2742, § 1, eff. July 1, 1971; P.A. 77-584, § 1, eff. July 31, 1971; P.A. 83-810, § 1, eff. Sept. 14, 1983; P.A. 84-25, Art. IV, § 27, eff. July 18, 1985; P.A. 84-1044, § 1, eff. July 1, 1986; P.A. 84-1308, Art. II, § 96, eff. Aug. 25, 1986.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-416.

Article II of P.A. 84-1308, the First 84th General Assembly Combining Revisory Act, resolved multiple actions in the 84th General Assembly and made certain technical corrections.

ARTICLE V. DRIVING WHILE INTOXICATED, TRANSPORTING ALCOHOLIC LIQUOR, AND RECKLESS DRIVING

5/11-500. Definitions

§ 11-500. Definitions. For the purposes of interpreting Sections 6-206.1 and 6-208.1 of this Code, "first offender" shall mean any person who has not had a previous conviction or court assigned supervision for violating Section 11-501, or a similar provision of a local ordinance, or a conviction in any other state for a violation of driving while under the influence or a similar offense where the cause of action is the same or substantially similar to this Code or any person who has not had a driver's license suspension for violating Section 11-501.1 within 5 years prior to the date of the current offense, except in cases where the driver submitted to chemical testing resulting in an alcohol concentration of 0.10 or more, or any amount of a drug, substance, or compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act [1] or a controlled substance listed in the Illinois Controlled Substances Act [2] and was subsequently found not guilty of violating Section 11-501, or a similar provision of a local ordinance.

P.A. 76-1586, § 11-500, added by P.A. 84-272, § 7, eff. Jan. 1, 1986. Amended by P.A. 86-929, § 2, eff. Sept. 21, 1989; P.A. 86-1019, § 7, eff. July 1, 1990; P.A. 86-1475, Art. 2, § 2-25, eff. Jan. 10, 1991.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-500.

[1] 720 ILCS 550/1 et seq.

[2] 720 ILCS 570/100 et seq.

P.A. 86-1475, Art. 2, resolved multiple actions in the 86th General Assembly and made certain technical corrections in P.A. 86-1 through P.A. 86-1435.

5/11-501. Driving while under the influence of alcohol, other drug, or combination of both

Text of section as amended by P.A. 87-1073, § 2; P.A. 87-1074, § 2; P.A. 87-1075, § 2; and P.A. 87-1198, § 6.

§ 11-501. Driving while under the influence of alcohol, other drug, or combination of both.

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

(1) the alcohol concentration in the person's blood or breath is 0.10 or more based on the definition of blood and breath units in Section 11-501.2;

(2) under the influence of alcohol;

(3) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

(4) under the combined influence of alcohol and any other drug or drugs to a degree that renders the person incapable of safely driving; or

(5) there is any amount of a drug, substance, or compound in the person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act,[1] or a controlled substance listed in the Illinois Controlled Substances Act.[2]

(b) The fact that any person charged with violating this Section is or has been legally entitled to use alcohol, or

other drugs, or any combination of both, shall not constitute a defense against any charge of violating this Section.

(c) Except as provided under paragraph (d) of this Section, every person convicted of violating this Section or a similar provision of a local ordinance, shall be guilty of a Class A misdemeanor and, in addition to any other criminal or administrative action, for any second conviction of violating this Section or a similar provision of a local ordinance committed within 5 years of a previous violation of this Section or a similar provision of a local ordinance shall be mandatorily sentenced to a minimum of 48 consecutive hours of imprisonment or assigned to a minimum of 10 days of community service as may be determined by the court. Every person convicted of violating this Section or a similar provision of a local ordinance shall be subject to a mandatory minimum fine of $500 and a mandatory 5 days of community service in a program benefiting children if the person committed a violation of paragraph (a) or a similar provision of a local ordinance while transporting a person 16 years of age or younger. Every person convicted a second time for violating this Section or a similar provision of a local ordinance within 5 years of a previous violation of this Section or a similar provision of a local ordinance shall be subject to a mandatory minimum fine of $500 and 10 days of mandatory community service in a program benefiting children if the current offense was committed while transporting a person 16 years of age or younger. The imprisonment or assignment under this subsection shall not be subject to suspension nor shall the person be eligible for probation in order to reduce the sentence or assignment.

(d) Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol or drugs or a combination of both which shall be a Class 4 felony if:

(1) the person committed a violation of paragraph (a) for the third or subsequent time;

(2) the person committed a violation of paragraph (a) while driving a school bus with children on board;

(3) the person in committing a violation of paragraph (a) was involved in a motor vehicle accident that resulted in great bodily harm or permanent disability or disfigurement to another, when the violation was a proximate cause of the injuries; or

(4) the person committed a violation of paragraph (a) for a second time and has been previously convicted of violating Section 9-3 of the Criminal Code of 1961[3] relating to reckless homicide in which the person was determined to have been under the influence of alcohol or any other drug or drugs as an element of the offense.

(e) After a finding of guilt and prior to any final sentencing, or an order for supervision, for an offense based upon an arrest for a violation of this Section or a similar provision of a local ordinance, individuals shall be required to undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of the problem. Programs conducting these evaluations shall be licensed by the Department of Alcoholism and Substance Abuse. The cost of any professional evaluation shall be paid for by the individual required to undergo the professional evaluation.

(f) Every person found guilty of violating this Section, whose operation of a motor vehicle while in violation of this Section proximately caused any incident resulting in an appropriate emergency response, shall be liable for the expense of an emergency response as provided under Section 5-5-3 of the Unified Code of Corrections.[3]

(g) The Secretary of State shall revoke the driving privileges of any person convicted under this Section or a similar provision of a local ordinance.

(h) Every person sentenced under subsection (d) of this Section and who receives a term of probation or conditional discharge shall be required to serve a minimum term of 30 days community service as a condition of the probation or conditional discharge. This mandatory minimum term of community service shall not be suspended and shall not be subject to reduction by the court.

P.A. 76-1586, § 11-501, eff. July 1, 1970. Amended by P.A. 76-1738, § 1; P.A. 77-575, § 1, eff. July 31, 1971; P.A. 77-2720, § 1, eff. Jan. 1, 1973; P.A. 78-255, § 61, eff. Oct. 1, 1973; P.A. 80-1495, § 36, eff. Jan. 8, 1979; P.A. 82-221, § 3, eff. Jan. 1, 1982; P.A. 82-311, § 1, eff. Jan. 1, 1982; P.A. 82-783, Art. III, § 37, eff. July 13, 1982; P.A. 83-204, § 2, eff. Jan. 1, 1984; P.A. 83-1281, § 1, eff. July 1, 1985; P.A. 84-272, § 7, eff. Jan. 1, 1986; P.A. 84-899, § 1, eff. Jan. 1, 1986; P.A. 84-916, § 2, eff. Jan. 1, 1986; P.A. 84-1308, Art. II, § 96, eff. Aug. 25, 1986; P.A. 84-1394, § 5, eff. Sept. 18, 1986; P.A. 85-303, § 1, eff. Jan. 1, 1988; P.A. 86-581, § 2, eff. Jan. 1, 1990; P.A. 86-1019, § 7, eff. July 1, 1990; P.A. 86-1475, Art. 2, § 2-25, eff. Jan. 10, 1991; P.A. 87-274, § 2, eff. Jan. 1, 1992; P.A. 87-1073, § 2, eff. Jan. 1, 1993; P.A. 87-1074, § 2, eff. Jan. 1, 1993; P.A. 87-1075, § 2, eff. Jan. 1, 1993; P.A. 87-1198, § 6, eff. Sept. 25, 1992.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-501.

[1] 720 ILCS 550/1 et seq.

[2] 720 ILCS 570/100 et seq.

[3] 720 ILCS 5/9-3.

[4] 730 ILCS 5/5-5-3.

For text of section as amended by P.A. 87-1073, § 2; P.A. 87-1075, § 2; P.A. 87-1198, § 6; and P.A. 87-1222, § 1, eff. July 1, 1993, see 625 ILCS 5/11-501, post.

For final legislative action, see note following 625 ILCS 5/11-501, post.

5/11-501. Driving while under the influence of alcohol, other drug, or combination of both

Text of section as amended by P.A. 87-1073, § 2; P.A. 87-1075, § 2; P.A. 87-1198, § 6; and P.A. 87-1222, § 1, eff. July 1, 1993.

§ 11-501. Driving while under the influence of alcohol, other drug, or combination of both.

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

(1) the alcohol concentration in the person's blood or breath is 0.10 or more based on the definition of blood and breath units in Section 11-501.2;

(2) under the influence of alcohol;

(3) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

(4) under the combined influence of alcohol and any other drug or drugs to a degree that renders the person incapable of safely driving; or

(5) there is any amount of a drug, substance, or compound in the person's blood or urine resulting from

the unlawful use or consumption of cannabis listed in the Cannabis Control Act,[1] or a controlled substance listed in the Illinois Controlled Substances Act.[2]

(b) The fact that any person charged with violating this Section is or has been legally entitled to use alcohol, or other drugs, or any combination of both, shall not constitute a defense against any charge of violating this Section.

(c) Except as provided under paragraph (d) of this Section, every person convicted of violating this Section or a similar provision of a local ordinance, shall be guilty of a Class A misdemeanor and, in addition to any other criminal or administrative action, for any second conviction of violating this Section or a similar provision of a local ordinance committed within 5 years of a previous violation of this Section or a similar provision of a local ordinance shall be mandatorily sentenced to a minimum of 48 consecutive hours of imprisonment or assigned to a minimum of 100 hours of community service as may be determined by the court. Every person convicted of violating this Section or a similar provision of a local ordinance shall be subject to a mandatory minimum fine of $500 and a mandatory 5 days of community service in a program benefiting children if the person committed a violation of paragraph (a) or a similar provision of a local ordinance while transporting a person 16 years of age or younger. Every person convicted a second time for violating this Section or a similar provision of a local ordinance within 5 years of a previous violation of this Section or a similar provision of a local ordinance shall be subject to a mandatory minimum fine of $500 and 10 days of mandatory community service in a program benefiting children if the current offense was committed while transporting a person 16 years of age or younger. The imprisonment or assignment under this subsection shall not be subject to suspension nor shall the person be eligible for probation in order to reduce the sentence or assignment.

(d) Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol or drugs or a combination of both which shall be a Class 4 felony if:

(1) the person committed a violation of paragraph (a) for the third or subsequent time;

(2) the person committed a violation of paragraph (a) while driving a school bus with children on board;

(3) the person in committing a violation of paragraph (a) was involved in a motor vehicle accident that resulted in great bodily harm or permanent disability or disfigurement to another, when the violation was a proximate cause of the injuries; or

(4) the person committed a violation of paragraph (a) for a second time and has been previously convicted of violating Section 9-3 of the Criminal Code of 1961[3] relating to reckless homicide in which the person was determined to have been under the influence of alcohol or any other drug or drugs as an element of the offense.

(e) After a finding of guilt and prior to any final sentencing, or an order for supervision, for an offense based upon an arrest for a violation of this Section or a similar provision of a local ordinance, individuals shall be required to undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of the problem. Programs conducting these evaluations shall be licensed by the Department of Alcoholism and Substance Abuse. The cost of any professional evaluation shall be paid for by the individual required to undergo the professional evaluation.

(f) Every person found guilty of violating this Section, whose operation of a motor vehicle while in violation of this Section proximately caused any incident resulting in an appropriate emergency response, shall be liable for the expense of an emergency response as provided under Section 5-5-3 of the Unified Code of Corrections.[4]

(g) The Secretary of State shall revoke the driving privileges of any person convicted under this Section or a similar provision of a local ordinance.

(h) Every person sentenced under subsection (d) who receives a term of probation or conditional discharge shall serve a minimum term of 48 consecutive hours of imprisonment or shall be assigned a minimum of 30 days of community service as a condition of the probation or conditional discharge. This mandatory minimum term of imprisonment or assignment of community service shall not be suspended or reduced by the court.

P.A. 76-1586, § 11-501, eff. July 1, 1970. Amended by P.A. 76-1788, § 1; P.A. 77-575, § 1, eff. July 31, 1971; P.A. 77-2720, § 1, eff. Jan. 1, 1973; P.A. 78-255, § 61, eff. Oct. 1, 1973; P.A. 80-1495, § 86, eff. Jan. 8, 1979; P.A. 82-221, § 2, eff. Jan. 1, 1982; P.A. 82-811, § 1, eff. Jan. 1, 1982; P.A. 82-783, Art. III, § 37, eff. July 13, 1982; P.A. 83-204, § 2, eff. Jan. 1, 1984; P.A. 83-1281, § 1, eff. July 1, 1985; P.A. 84-272, § 7, eff. Jan. 1, 1986; P.A. 84-899, § 1, eff. Jan. 1, 1986; P.A. 84-916, § 2, eff. Jan. 1, 1986; P.A. 84-1308, Art. II, § 96, eff. Aug. 25, 1986; P.A. 84-1394, § 5, eff. Sept. 18, 1986; P.A. 85-303, § 1, eff. Jan. 1, 1988; P.A. 86-581, § 2, eff. Jan. 1, 1990; P.A. 86-1019, § 7, eff. July 1, 1990; P.A. 86-1475, Art. 2, § 2-25, eff. Jan. 10, 1991; P.A. 87-274, § 2, eff. Jan. 1, 1992; P.A. 87-1073, § 2, eff. Jan. 1, 1993; P.A. 87-1075, § 2, eff. Jan. 1, 1993; P.A. 87-1198, § 6, eff. Sept. 25, 1992; P.A. 87-1222, § 1, eff. July 1, 1993.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-501.

[1] 720 ILCS 550/1 et seq.

[2] 720 ILCS 570/100 et seq.

[3] 720 ILCS 5/9-3.

[4] 730 ILCS 5/5-5-3.

For text of section as amended by P.A. 87-1073, § 2; P.A. 87-1074, § 2; P.A. 87-1075, § 2; and P.A. 87-1198, § 6, see 625 ILCS 5/11-501, ante.

P.A. 87-1073, which incorporated the amendment by P.A. 87-274, made nonsubstantive changes.

P.A. 87-1074, which incorporated the amendment by P.A. 87-274, added subsec. (h).

P.A. 87-1075, which incorporated the amendment by P.A. 87-274, in subsec. (c), inserted the second and third sentences; and in the fourth sentence, inserted "under this subsection".

P.A. 87-1198, which incorporated the amendment by P.A. 87-274, in subsec. (d), added par. (4); and made other nonsubstantive changes.

P.A. 87-1222, which incorporated the amendment by P.A. 87-274, in subsec. (c), substituted "100 hours" for "10 days"; and added subsec. (h).

Final legislative action, 87th General Assembly.

P.A. 87-1073—June 30, 1992

P.A. 87-1074—June 26, 1992

P.A. 87-1075—June 26, 1992

P.A. 87-1198—July 1, 1992

P.A. 87-1222—June 18, 1992

See 5 ILCS 70/6 as to the effect of (1) more than one amendment of a section at the same session of the General Assembly or (2) two or more acts relating to the same subject matter enacted by the same General Assembly.

See also, 32 C.J.S., Evidence, §649; 20 Am. Jur., Evidence, §430.

I conclude that there are a number of good reasons why public records should not be subpoenaed from their proper depository for use in legal proceedings. They may be lost or destroyed. Until such time as they are returned they are not available for public inspection. Lack of such public records may disrupt the orderly flow of business of the public agency involved. Any person may inspect the public records and obtain certified copies. Any attorney who desires to prove the contents of a public record may do so by obtaining a certified copy in advance of the trial date. It is not proper for an attorney, who fails to prepare his case in advance by obtaining such copies, to attempt to obtain original public records at the last minute by subpoena duces tecum. This is an unwarranted imposition upon the public officer involved. The courts refuse to allow this where certified copies could be obtained instead.

Whenever you are served with such subpoenas duces tecum, they should be promptly brought to our attention. We will move to quash such subpoenas and ask for costs where appropriate.

BCL:AH

Motor Vehicles—Snowmobiles—Secs. 346.57 and 346.62, Stats., relating to speeding and reckless driving by motor vehicles, are not applicable on the frozen surface of lakes. Applicability of secs. 941.01 (1), 350.10 and 30.81, Stats., is discussed.

September 10, 1968.

THOMAS J. FINK
District Attorney
Winnebago County

You have informed me that many persons drive automobiles and snowmobiles on the ice of Lake Winnebago in the

winter time in a reckless and careless manner. In some cases, only one vehicle is involved and the only injury likely to occur would be to the individual vehicle and its passengers. In other cases, several vehicles are involved in a game which approximates "tag", where the vehicles come as close to each other as possible without actually colliding. You ask whether such conduct violates any state law.

Similar conduct by the operator of a motor vehicle would involve elements of reckless driving, failure to have the vehicle under control, imprudent speed, and traveling too fast for the conditions involved. Such conduct upon a highway would clearly violate secs. 346.57 and 346.62, Stats. The question arises whether these rules of the road apply on the frozen surface of a lake.

Sec. 340.01, Stats., provides, in part:

"340.01 Words and phrases defined: In chs. 340 to 349, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

"* * *

"(22) 'Highway' means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the state, county or municipal parks and in state forests which have been opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of institutions under the jurisdiction of the board of regents of state colleges, but does not include private roads or driveways as defined in sub. (46).

"* * *"

Chs. 340 to 349, Stats., constitute the motor vehicle code. I conclude that the above statutory definition of "highway" applies to public ways on land only. I am aware that Art. IX, sec. 1, Wis. Const., declares that navigable waters in this state "shall be common highways", but it does not appear that the legislature intended to include such highways within the definition of highways given in the above quoted statute. Sec. 346.02 (1), Stats., reads:

"(1) APPLIES PRIMARILY UPON HIGHWAYS. Chapter 346 applies exclusively upon highways except as otherwise expressly provided in this chapter."

Reading these two statutes together, it is clear that the rules of the road provided in CH. 346, Stats., are intended to apply only to highways on land, with certain exceptions.

One exception is found in sec. 346.61, Stats., which reads:

"Applicability of sections relating to reckless and drunken driving. In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof."

Sec. 346.62, Stats., defines and prohibits reckless driving. Thus, it is clear that the reckless driving statute is applicable both on highways and on premises held out to the public for the use of their motor vehicles, such as driveways, parking lots, unloading areas, and other places designed for motor vehicle traffic, but not strictly a part of a highway itself. Since the legislature was here dealing with the conventional use of land vehicles, I conclude that the word "premises", as used in the above quoted statute, was never intended to include lakes or the frozen surface thereof. There is no general statute making the rules of the road, contained in CH. 346, Stats., applicable on such lakes.

You have also called my attention to sec. 941.01 (1), Stats., which reads:

"(1) Whoever endangers another's safety by a high degree of negligence in the operation of a vehicle, not upon a highway as defined in s. 340.01, may be fined not more than $200 or imprisoned not more than 6 months or both."

This statute punishes negligent operators of a vehicle not upon a highway. It is my opinion that this would apply to the operation of a motor vehicle on a frozen lake. Also, sec. 941.03, Stats., punishes the placing of an obstacle in or upon a highway or otherwise interfering with the orderly flow of traffic. Here, highway is defined to include a navigable waterway. Obstructing such waterway in either summer or winter would be prohibited.

A part of your question is directed at the reckless use of snowmobiles. Such vehicles are not allowed to operate upon the highways, with certain exceptions. Secs. 350.10 (1) and (2), Stats., 1967, read as follows:

"350.10 MISCELLANEOUS PROVISIONS FOR SNOWMOBILE OPERATION. No person shall operate a snowmobile in the following manner:

"(1) At a rate of speed that is unreasonable or improper under the circumstances.

"(2) In any careless way so as to endanger the person or property of another."

There is no reason why such regulations should not be enforced against snowmobiles upon frozen lakes.

Your attention is also directed to sec. 30.81, Stats., which authorizes local municipalities to adopt local regulations as to the use of motor vehicles on icebound inland lakes. In the absence of such local ordinances, counties can so regulate motor vehicles on such frozen lakes.

BCL:AH

Certificate-Card—Nonresidents—The register of deeds need not issue a certificate-card to out-of-state residents unless they come within the exceptions provided for in sec. 66.054 (22), Stats.

September 19, 1968.

DANIEL J. MIRON
District Attorney
Marinette County

You have asked for my opinion as to whether the register of deeds of a county must, on request, issue a certificate-card as provided for by sec. 66.057, Stats., to a person who is not a resident of Wisconsin.

Sec. 66.057 (2) and (3) provide:

"(2) Any person at least 18 years of age desiring such certificate-card shall make application therefor to the regis-

TELEGRAPH HERALD EDITORIAL

We don't get it

Drunken driving a second-class crime?

Too many Americans just don't get it.

Despite education campaigns, thousands of tragedies and stricter laws against the crime, too many people still don't acknowledge the seriousness of drunken driving. They consider it a second-class crime.

Kill with a gun and expect to do some major prison time — if not a life sentence or execution. Get drunk and kill with a car and what happens? No more than a dozen years in prison — cut about in half with good behavior.

But what is the public doing about drunken driving *before* a tragedy? Often, they're complaining about enforcement.

At least that was the sentence imposed Monday on David Feltes for vehicular homicide. Feltes spent much of July 3 drinking and driving around the county, ignoring warnings from family members. He ended up getting in an accident and killed two teenagers and injured three others. Fred McCaw, as is common with prosecutors, sought the maximum prison term: 26 years in this case, including *consecutive* terms instead of the *concurrent* terms judges usually impose. That left room for criticism of the judge, Alan Pearson, a thoughtful judicial veteran and no soft touch, who sentenced Feltes to roughly half that term.

It's convenient for the public to criticize a judge here and there for this sentence or that after a tragedy. It's easy when somebody else's family is involved. But what is the public doing about drunken driving *before* a tragedy? Often, they're complaining about enforcement.

For example, officials in Galena, Ill., scheduled a town meeting last night to address rumors and complaints that police are staking out taverns to catch intoxicated drivers. The police say the accusation is ridiculous. When authorities ran sobriety checkpoints in Dubuque, there were similar complaints of "excessive" enforcement.

What's your opinion?
Phone "It's Your Call," on CITYLINE at **319/556-7000**, category **7655**.
See question on page **3A**.

See how the crime remains a second-class offense? We don't get serious about it until somebody is dead or maimed. Never mind that an arrest for drunken driving may prevent a killing or maiming — including that of the driver himself.

If citizens knew about a room full of armed people who were going out and could harm folks encountered at random, they would demand immediate police presence. But if the room is a bar room and the "weapon" a motor vehicle operated by an intoxicated driver, many of those same citizens would express concerns about overzealous cops.

Police shouldn't have to explain or apologize for enforcing the laws. People should explain why they don't want the laws enforced.