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*Testimony before the Assembly Committee on Judiciary
State Senator André Jacque
October 24th, 2019*

Chairman Ott and Members of the Assembly Committee on Judiciary,

Thank you for the opportunity to testify before you today in support of Assembly Bill 356, legislation Rep. Spiros and I have re-introduced this Session to provide more uniform penalties for intoxicated operation of motor vehicles, ATVs, UTVs, snowmobiles, and motorboats. Operating while intoxicated is a significant contributing factor for fatalities with any motorized vehicle. We have introduced AB 356 to make the provisions of Wisconsin laws relating to the intoxicated operation of an ATV or UTV, intoxicated boating, and intoxicated snowmobiling more consistent. Previous versions of this bill have had solid bi-partisan support and the strong support of law enforcement, including 2017 AB 873, which passed the Assembly Criminal Justice Committee with an 11-0 vote.

Unlike Michigan and Minnesota, which link drunken driving recreational vehicle citations with motor vehicle licenses, in Wisconsin drunken drivers who lose their licenses can still drive snowmobiles, boats and ATVs. AB 356 will close the loophole in Wisconsin law that currently allows a person suspended or revoked for intoxicated driving of a car to drive a snowmobile, boat or ATV/UTV without any restrictions. The proposed bill would add suspension of ATV, snowmobile and boating privileges for 12 to 16 months on first offense and make the penalties the same for all three vehicles. Currently, individuals could commit a first offense OWI on each of these different types of vehicles without any of them counting as a repeat offense. Under this bill, a court must count previous convictions of any of these intoxicated operation or refusal laws that occurred within the previous five years when imposing a penalty for a violation of any of these laws.

Other updates for uniformity include:

1. Adopting the higher penalties for various violations where the penalties for violations of the intoxicated operation of an ATV or UTV law, the intoxicated boating law, the intoxicated snowmobiling law, and the refusal law conflict.
2. Imposing increased penalties for violating the intoxicating boating law or the intoxicated snowmobiling law or related refusal law if the motorboat or snowmobile is operated with a passenger under 16 years of age. The increased penalty already exists for a violation of the intoxicated operation of an ATV or UTV law and the ATV or UTV refusal law.
3. Repealing the provisions that imposed increased penalties for operating an ATV or UTV with an alcohol concentration level that is 0.17 or more. Under current law, these increased penalties are not imposed for violations of the intoxicated boating or the intoxicated snowmobiling laws.
4. Under current law, the sentences of persons who are convicted of certain second, third, or fourth offenses involving the operation of a motor vehicle while under the influence of an intoxicant may be reduced if the violator successfully completes a period of probation that



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includes alcohol and other drug treatment. This bill allows this option to be used for persons convicted of a violation of the intoxicated operation of an ATV or UTV, the intoxicated operation of an OHM, the intoxicated boating, or the intoxicated snowmobiling law or the applicable refusal law.

AB 356 is supported by the Wisconsin Sheriffs and Deputy Sheriffs Association, Badger State Sheriffs' Association, Wisconsin Chiefs of Police Association Inc, and AAA of Wisconsin, and continues to enjoyed strong bi-partisan support this Session as its companion bill, Senate Bill 331, was just recently approved 5-0 before the Senate Committee on Judiciary and Public Safety. We ask that committee members support this common sense legislation to help keep Wisconsinites safe.

Thank you for your consideration of Assembly Bill 356.



Assembly Committee on Judiciary

2019 Assembly Bill 356

Intoxicated operation of all-terrain vehicles, utility terrain vehicles, off-highway motorcycles, snowmobiles, and motorboats

October 24, 2019

Good morning Chairman Ott and members of the Committee. My name is Matt O'Brien, Law Enforcement Policy Officer with the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on Assembly Bill 356 (AB 356).

Under current law, regulatory schemas governing operation while under the influence (OWI) of vehicles are generally unique and limited to particular subsets based upon vehicle type, which means the standards, penalties, and processes associated with motor vehicle OWI are different than those associated with all-terrain vehicle (ATV) OWI, snowmobile OWI, boating OWI, and so on. As a result, the OWI laws for each legally designated vehicle "type" effectively reside within their own silos, which has particular impact for repeat offenses because the only applicable prior offenses are those occurring in the same vehicle type as the present offense. (As an example, an individual who is convicted of boating OWI as a first offense will again be considered a first time offender when they operate their ATV under the influence later that year.) This "silo framework" also means motor vehicle OWI operating revocations do not extend to recreational vehicle operation.

This proposal generally seeks to standardize, align, and simplify the recreational vehicle OWI sections into a consistent framework, and includes a tie-in to motor vehicle OWI provisions to more cohesively and uniformly address OWI violations, regardless of vehicle type. This will ensure all recreational vehicle OWI violations fall into the same counting scheme for purposes of repeater sentencing, and OWI violations will be subject to the same penalties and process regardless of vehicle type.

AB 356, through creation of recreational vehicle operating privilege revocations—as well as the tie-in to motor vehicle operating privilege revocations for repeat offenders—removes a bit of a "loophole" that permits—or even incentivizes—intoxicated operators to operate recreational vehicles to avoid the more stringent penalties associated with operating a motor vehicle while under the influence, or operating a motor vehicle after loss of operating privileges. In short, this proposal will ensure drivers found to be unfit for operation on Wisconsin's roadways, by virtue of their motor vehicle OWI conduct, will truly be required to stay off recreational vehicles and the roadways—without being able to circumvent their restrictions by merely selecting a different vehicle type.

Additionally, the standardization of recreational vehicle penalty and process provisions under this proposal will simplify training, interpretation, and application of the recreational vehicle OWI provisions for members of the criminal justice system (law enforcement officers, district attorneys,

judges, etc.). Because current OWI provisions were created at different intervals over time, generally tied to the launch of the respective vehicle programs (ATV/UTV, OHM, boat, and snowmobile), their laws and processes differ to varying extents, which complicates administration for all criminal justice partners.

In the process of reviewing this proposal, the Department has identified some drafting issues and is appreciative of the ongoing dialog with the sponsors to resolve outstanding questions to ensure the legislative intent is sufficiently captured in the bill's text to effectuate smooth implementation.

From the comparative perspective, states vary in their approaches to align or link penalties for intoxicated operation of motor vehicles and recreational vehicles. Last year, Minnesota closed a loophole in its law by creation of a uniform operating privilege revocation for all types of vehicles for individuals who are convicted of OWI. Michigan also applies its OWI laws uniformly to all types of vehicles, including ATVs, UTVs, snowmobiles, and motorboats.

It's important to recognize that recreational vehicle use in Wisconsin—on the waters, roadways, and trails throughout the state—remains a safe endeavor. The vast majority of citizens and visitors will go a lifetime without ever witnessing or being party to a recreational vehicle incident—and most ride responsibly, without being under the influence of any intoxicants. Nonetheless, Wisconsin law enforcement officers annually arrest hundreds of individuals for operating recreational vehicles while under the influence of an intoxicant, and respond to numerous recreational vehicle crashes where alcohol or drug use are a contributing factor. To that end, modifications to the recreational vehicle OWI laws, which are likely to increase voluntary compliance through specific and general deterrence, will ensure Wisconsin's waterways, roadways, and trails remain a safe recreation destination well into the future.

On behalf of the DNR Bureau of Law Enforcement, I would like to thank you again for your time today. Your partnership and commitment to providing a safe and positive experience for Wisconsin's recreational vehicle users is appreciated. I would be happy to answer any questions you may have.



To: Members, Assembly Committee on Judiciary
From: Badger State Sheriffs' Association (BSSA)
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)
Date: October 24, 2019
RE: Support for Assembly Bill 356

Chairman Ott and committee members. Thank you for the opportunity to testify today in support of Assembly Bill 356. My name is Sheriff Dale Schmidt of Dodge County, 2nd Vice President of the Badger State Sheriffs' Association and member of Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA). BSSA is a statewide organization representing all of Wisconsin's 72 Sheriffs. WS&DSA is a statewide organization representing over 1,000 members, including Sheriffs, Deputies, and jail officers. BSSA and WS&DSA have a joint legislative committee and work closely on public safety issues of concern to our members.

The incidents of Operating While under the Influence (OWI) of a motor vehicle or a recreational vehicle continues to be dangerous and deadly to the citizens of our state. Current Wisconsin laws are inconsistent pertaining to the intoxicated operation of ATV or UTV, intoxicated boating, and intoxicated snowmobiling.

Meanwhile, there is a current push for ATV/UTV operation on Wisconsin streets and highways like never before. Cities, towns, villages, and counties are being approached by ATV/UTV clubs requesting that many roads designed for motor vehicle traffic be opened for ATV/UTV traffic as well. This is becoming a major concern for Sheriffs across the state, as we work to keep not only motor vehicles but also ATV/UTVs safe as they travel down our roadways.

The link of these activities with alcohol continues to expand. Many ATV/UTV routes that have been designated and are being sponsored travel between various locations that serve or sell alcohol. Snowmobile routes are also funded and sponsored by establishments that serve or sell alcohol at their establishments. Many boaters bring coolers of alcohol with them, which creates an environment with easy access to alcohol while operating on our lakes.

OWI continues to be a major contributing factor in serious injury and fatal crashes regardless if the vehicle is a motor vehicle or a recreational vehicle. According to the Wisconsin Department of Transportation so far this year, there have been 16 ATV/UTV fatalities, seven of which involved alcohol and the remainder are still pending results. Out of the 16 snowmobile fatalities in 2019, 10 involved alcohol, 4 did not and 2 are pending results.

It is a well-known fact by law enforcement that individuals who have been arrested for OWI in a motor vehicle use recreational vehicles to avoid being arrested for additional OWI, Operating after Revocation, or Operating while Suspended violations. For example, individuals who are

revoked for an OWI offense may choose to drive their snowmobile or UTV rather than risk being arrested for Operating after Revocation.

This legislation seeks to address this practice by adding the suspension of ATV, snowmobile and boating privileges for 12 to 16 months on the first offense and count them as previous convictions (within the previous five years) as a repeat offense.

In addition, this legislation will cause all OWI offenses to result in a suspension/revocation of DOT operating privileges. This will allow for consistency in enforcement efforts and will assist law enforcement in ensuring that dangerous operators are not placing other citizens at risk on our highways or on our recreational trails that are open to the public. The bill will ensure that DOT suspensions/revocations that are imposed for all OWI offenses to apply to all motor vehicles and recreational vehicles.

These changes will not only make it easier for law enforcement to enforce our OWI laws, but they will also stress that Wisconsin is serious about keeping our citizens safe both on the highways and on our recreational trails open to the public. We need legislation change to help in our efforts of having "Zero in Wisconsin", achieving zero preventable deaths on Wisconsin Roads.

Thank you for your time. I'd be happy to answer any questions.