

JOHN T. QUINN
STATE'S ATTORNEY

CHRISTOPHER E. PERKETT
DEPUTY STATE'S ATTORNEY

DEBRA K. JAMES
VICTIM ADVOCATE



211 MAPLE STREET, Unit 215
THE MARBLE WORKS
MIDDLEBURY, VERMONT 05753
(802) 388-7931 (PHONE)
(802) 388-4617 (FAX)

MARCI A. MENDES
ADMINISTRATIVE SECRETARY

PAMELA L. CORREIA
SECRETARY

STATE OF VERMONT
OFFICE OF THE STATE'S ATTORNEY
COUNTY OF ADDISON

January 16, 2008

Senator Claire Ayer
504 Thompson Hill Road
Weybridge, VT 05753

Dear Senator Ayer,

On 1/14/08, there was a sentencing in Addison County on a misdemeanor Negligent Operation charge. While the charge itself sounds minor, in this case, as in many, the negligent behavior resulted in the death of a 13-year old girl who was a passenger in the 18-year old defendant's car.

Victim Advocates and State's Attorneys in every county of the State can tell you how difficult it is to explain to the family or a victim, who was either killed or seriously injured as the result of a misdemeanor Negligent Operation, why the charge doesn't rise to the level of a felony or why the charge doesn't reflect the death or serious injuries of their loved one.

Families and victims do not want to hear that the State can't prove the 'grossly' negligent behavior that is required in order to have the charge reflect death or serious bodily injury (Grossly Negligent Operation with Death or SBI Resulting is a felony). There are no words that can help them understand. As the law is written now in Title 23, subsection 1091(b), "...the standard for a conviction for grossly negligent operation in violation of this subsection shall be gross negligence, examining whether the person engaged in conduct which involved a gross deviation from the care that a reasonable person would have exercised in that situation."

Gross negligence does not include reaching for an object in the car, losing control and ultimately resulting in the death or serious injury to another person. I realize that tragic results are often due to momentary lapses in judgment, such as changing a radio station, reaching for your coffee, and answering a cell phone, but I also believe that if what you do results in the harm of another person, then it needs to be recognized and consequences need to match the behavior.



I would like to suggest two possible resolutions that may help to address the void between a misdemeanor Negligent Operation (if someone was killed or seriously injured) and a felony Gross Negligent Operation with Death or SBI Resulting.

- 1) Add an increased level of severity to acknowledge death or serious bodily injury by creating a misdemeanor Negligent Operation with Death or Serious Bodily Injury Resulting and increasing the maximum penalty to two years in jail and \$3,000 or both – the same penalty for a person who has been previously convicted of a violation in this subsection. The maximum penalty of Negligent Operation is currently up to one year and \$1,000.
- 2) Make any Negligent Operation a felony if the action results in a death or serious bodily injury.

The prosecutors would still have to prove serious bodily injury in either scenario if injuries only.

Thank you for taking the time to consider this change in the law. I thought it might be relevant during this time that the boating laws are also being considered for an increase in penalty if there is a crash and death or serious bodily injury is a result.

Sincerely,

A handwritten signature in cursive script that reads "Debra James".

Debra James, Victim Advocate