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

January 16, 2008

Senator Claire Ayer  
504 Thompson Hill Road  
Weybridge, Vermont 05753

RE: Negligent Operation of a Motor Vehicle with Death Resulting

Dear Senator Ayer:

On January 15, 2008, we sentenced Sammy Jo Wood, a 19-year-old female, on a charge of negligent operation. She had been driving a vehicle on a permit, with passengers in her car, when she lost control and crossed the centerline. Unfortunately a vehicle was coming in the opposite direction and there was a crash. Sammy Jo's 13 year-old passenger was not wearing her seat belt and was thrown from the vehicle and killed.

Years ago I would have charged this as a negligent operation with death resulting-a 15-year felony. In 1995 the Legislature amended the negligent operation law in response to a Supreme Court ruling in State v. Beayon, 158 Vt. 133 (1992). Basically, the Supreme Court said that the Legislature could not have meant to impose a 15-year penalty for conduct that simply violated a motor vehicle law. The Supreme Court said that it would require a showing of criminal negligence before it would allow the imposition of a 15-year penalty. As a result the Legislature amended the negligent operation law that contained the misdemeanor level of ordinary negligence and a second provision dealing with gross negligence. The statute now only allows the State to charge a felony if we have death or serious bodily injury and we can prove grossly negligent behavior. This criminal negligence standard requires the State to prove that the defendant "disregarded a risk of death or injury 'of such a nature and degree that [the] failure to



perceive it, considering the nature and purpose of [her] conduct and the circumstances known to [her], involves a *gross deviation* from the standard of care that a reasonable person would observe in the actor's situation.”

In other words, we need to prove that, under the circumstances, the defendant's conduct was extremely negligent and not just simply negligent.

The Supreme Court is focused on the conduct of the defendant and not the consequences of that conduct. As an example, if someone were momentarily inattentive, crossed the centerline of the highway and hit an on-coming school bus killing several children, we would only be allowed to look at whether the defendant's conduct was simply or grossly negligent. If the conduct is deemed by the prosecutor or the court as simply negligent (momentary lapse or ordinary civil negligence) then the person can only be charged with a misdemeanor carrying a penalty of 1 year or \$1000 or both.

As Deb James points out in her letter, it is difficult to explain to victims who have lost a loved one that we can only charge a misdemeanor because the defendant's conduct was not extremely negligent. They only see that a person is dead due to the defendant's actions and are angry that we didn't charge a felony.

The Legislature can change this if it so desires. The Supreme Court has stated that the Legislature could not have intended to have someone punished for up to 15 years on the basis of ordinary negligence. They were presuming to read the minds of the Legislature. It seems to me that if you're driving a 5000-pound car the potential for disaster exists even when you are less than grossly negligent. The Legislature could impose penalties based upon the outcome of the conduct rather than the level of the defendant's negligence.

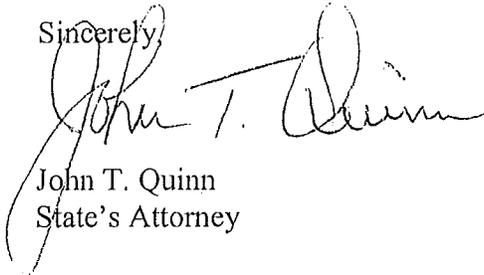
While I would support a change back to the old system where the State only had to prove ordinary negligence and a death resulting to prove a felony, I believe at a minimum we should have some type of enhanced penalty where a death occurs because of the conduct. Deb James has come up with the idea of a two-year misdemeanor for an ordinary negligence case involving death. The parents of the victim in the Sammy Jo Wood case were very upset that we didn't charge her with a felony. Another good idea that Deb has is to have a felony provision with a smaller maximum where the level of negligence is ordinary negligence rather than gross negligence.

In the Sammy Jo Wood case the Court imposed a 6-12 month suspended sentence with 60 days to serve in jail. The Defendant was ordered to perform 500 hours of community service and to speak to school classes about the consequences of making poor driving decisions.

If you have any questions, please feel free to contact me.



Sincerely,

A handwritten signature in cursive script, appearing to read "John T. Quinn".

John T. Quinn  
State's Attorney