



Landmark Legislation Passes New Mexico State Senate

A landmark piece of legislation was passed in late April which promises to provide clear and enforceable legal rights to all direct victims of crime at the federal level.

This bill also sets a new standard for federal victims' rights compliance, giving victims and prosecutors the legal standing to assert victims' rights; clearly authorizing victims and the government to seek writs of mandamus to enforce victims' rights; and calling on the Attorney General to develop regulations to promote victims' rights through training, disciplinary sanctions for violations of rights, and the creation of an office to receive and investigate complaints.

By making new funding available to jurisdictions with laws substantially equivalent to those established in this bill, this legislation will promote a strengthening of victims' rights across the country. By providing funding to promote victim notification and compliance with victims' rights at the state level, this bill will improve the implementation of victims' rights nationwide. We urge Congress to go further, to broaden this funding to support other mechanisms to promote compliance, such as state-level victim

advocates and other authorities to receive and investigate the complaints of victims, and not limit funding for enforcement to one method.

This legislation represents a real Congressional commitment to improve our nation's response to victims of crime. The National Center for Victims of Crime commends Senators Dianne Feinstein (D-CA), Jon Kyl (R-AZ), and Patrick Leahy (D-VT) for their hard work and dedication to this issue, and urges other members of Congress to add their support to S. 2329.

Drunk Driving Increases Traffic Fatalities Worldwide

A study by the World Health Organization (WHO) and the World Bank finds that traffic fatalities, including those caused by alcohol, are a serious world health problem that is often overlooked, the Washington Post reported April 7.

One in every 50 deaths worldwide is associated with road accidents, the study found, and traffic crashes are second only to childhood infections and AIDS as a killer of people between the ages of 5 and 30.

Each year, 1.2 million drivers, passengers, cyclists, and pedestrians are killed in traffic crashes. By 2020, traffic deaths are expected to increase by 80 percent as hundreds of millions of cars are added to the roads.

"It is already huge, but if nothing happens it is expected to rise," said Etienne Krug, director of WHO's department of injuries and violence prevention.

Among the recommendations in the 217-page report are measures for developing countries, such as India, China, and Southeast Asia. They include stricter enforcement of drunk-driving laws, better road designs, increased use of seatbelts, and improved design and inspection of vehicles.

In This Issue:

page 1

Cover Story:
Landmark Legislation
Passes NM Senate

In the News

page 2

Court Observations
Victim Impact Panels

page 3

DWI Statistics
•
Commentary



Court Observations



Case #1

Court Date: 4/23/03

Date of Arrest: 7/17/00

Blood Alcohol Content: Refusal

Victim: Severe injuries.

Charges: Aggravated DWI 3rd, reckless driving, driving on a revoked drivers license and contempt.

Results: On 1/29/03 offender enters guilty plea to Aggravated DWI 1st, reckless driving, failing to appear in court and failure to schedule interview with probation officer. The driving on a revoked driver's license charge was reduced to "no driver's license".

Sentence: On 3/11/03 offender was given 10 days jail (straight time). Balance of jail (80) days to be followed by Jail Community Custody Program, pay court costs and fees of \$203, unsupervised probation, no further violations of the law, incidents, arrests, no illegal drugs. Judge Gentry also ordered a pre-sentence report and ordered the offender to pay restitution to the victim. The \$100 administrative Warrant Fee for his "failure to appear" was dropped. The offender was accepted into "Drug Court" that same afternoon and taken out of the jail's custody program.

Comments: Four months after the crash, I contacted the DA's office to request they review the case as a Great Bodily Injury, a felony. The case was never refiled as a felony. Probation officer was never able to contact victims regarding restitution; their phone number was disconnected. Letters sent to the victims to inform them of the sentencing date were returned, they most likely moved. It took 2 ½ years for this case to come to sentencing of this offender. If the case had moved through the system quicker, perhaps the victims would have stayed in touch with the District Attorney's office and perhaps a different outcome.

Case #2

Court Date: 4/22/03

Date of Arrest: 12/27/02

Blood Alcohol Content: Blood draw, results unknown to writer.

Victim: Ejected from her vehicle after it flipped, suffered severe injuries.

Charges: Aggravated DWI 1st, open container, careless driving, driving on a suspended drivers license and no seat belt use.

Results: Offender entered guilty plea to Aggravated DWI 1st. For the remaining charges, he pleads "no contest", meaning he doesn't admit guilt but the state has enough evidence to prove his guilt.

Sentence: 364 days jail, but 362 days were suspended – leaving a 2-day jail sentence. He was also ordered unsupervised probation, alcohol screening, DWI school, attend a Victim Impact Panel and pay fines totaling \$570.

Comments: Wow, did this offender get a "sweet deal" or what! Victim contacted us and asked for help. They were never notified by anyone in the District Attorney's office about any court proceedings. They didn't know there was a prosecutor involved in the case! Even the probation officer failed to contact them concerning issues on restitution or telling them the sentencing date of their offender. Since they knew nothing about the plea or the sentencing, they did not attend nor did they ask for restitution for "out of pocket" expenses resulting from this crash. Victim's husband took a "leave of absence" for the past 1-½ years to help his wife. Money in their savings account is gone since he wasn't working. This victim was fortunate because workman's compensation has paid all of her medical bills so far. Her road to recovery has been slow, especially dealing with a brain injury. The police report states both victim and offender were transported to the nearest hospital by ambulance, but no one ever followed-up on injuries to the victim. This DWI was treated as a misdemeanor. It should have been refiled as a felony because of the severity of the injuries. Fifty nine days after this crash, offender picked up his second DWI!

I contacted the District Attorneys office in Santa Fe by phone and letter; alerting them to the Victim's Rights violations. I suggested that his office send a letter of apology to the victims and asked that his ADA's and screeners to be more thorough when looking at victim cases that involve injuries so this doesn't happen to another victim. I also wrote the judge who sentenced this offender, asking him to please inquire about victims before he sentences an offender.

Victim Impact Panels

June 8th and July 13th

7:00 – 8:30 PM

UNM Continuing Education Building
1634 University Blvd. N.E.

*Instantaneous Spanish
Translation Provided*

Public is welcome!

DELAWARE DWI'S SENTENCES INCREASED?

How much is life worth?

There are many ways to answer that question, and it doesn't seem that one's answer would be 1 ½ to 4 ½ years in prison. It's not long enough.

But that sentence was given to two defendants who appeared last week in Delaware County Court on drunken driving cases that resulted in fatalities.

Michael Driggs and Steven VanDunk pleaded guilty to manslaughter. In each case, the charge was reduced from criminally negligent homicide. By entering guilty pleas, the defendants avoided trials and longer sentences.

In both cases, restitution was ordered. Driggs was ordered to pay restitution for burial expenses, a plot and headstone for his friend and passenger, David Allen, 18. VanDunk has to pay the wife of the deceased to help with unpaid medical bills.

Court Observations Continued:

Case #3

Court Date: 10/30/03

Date of Arrest: 5/25/002

Blood Alcohol Content: .20/. 20

Victim: No injuries, minor damage to vehicle.

Charges: Aggravated DWI 3rd and reckless driving.

Results: On 9/20/02, offender enters guilty plea to DWI 2nd, the reckless and aggravated charges were dismissed. Prosecutor asked judge for a pre-sentence report, restitution and that the offender be accepted into "drug court" since this was his 3rd DWI conviction. Offender was accepted into drug court 12/30/02. Offender was sentenced by drug court judge on 10/30/03.

Sentence: 364 days jail, 364 suspended, 2 days credit time served. Offender was "successful" in drug court, which includes completing his supervised probation, Victim Impact Panel, community custody program and counseling, all conditions of drug court. Offender was ordered to pay a \$25 screening fee, the remaining \$49 in fees were converted to jail.

Comments: Victim did not request any restitution, she just wanted this repeat offender to be "held accountable" for his actions.

These rulings are meaningful because they individualize the impact of the cases. But what is the answer to finding a sentence to fit the crime of a fatal DWI?

Sometimes a fatal DWI crash takes the life of a passenger who is the driver's best friend or beloved family member. Still, other crashes kill strangers. On July 19, 2002 Sandra Bertsch, then 60, was sentenced to 90 days in county jail for criminally negligent homicide, a felony, and driving while under the influence of alcohol, a misdemeanor. Otsego County Judge Brian Burns said in Bertsch's case, her good works for charitable organizations needed to be considered in sentencing.

Driggs, 19 and VanDunk, 20, are too young to have achieved much credit for good works, but why would they get longer sentences?

In all fatal DWI crashes, the cost is high and the impact hits relatives of the deceased with inexplicable pain and loss. The victim's family faces a permanent void – no sentence will bring back a loved one. The loss of life cannot be translated into a prison term. Even with plea bargains reached to ensure a guilty verdict, the cost of a life shouldn't be minimized by a sentence of fewer than five years. Anyone on the highways, rural routes and community streets is at risk when drunken drivers get behind the wheel.

We also worry about repeat offenders. While out on bail in the Allen case, Driggs was arrested for DWI, charges he still must face in court.

DWI crashes can be avoided. The courts can help in that prevention by increasing penalties for drunken or impaired driving at all levels, from traffic stops to fatal crashes. The judicial system must send a message through long sentences that drunken driving won't be tolerated.

DWI Statistics Year to Date

<u>NM Fatalities</u>	<u>Mar. '03</u>	<u>Mar. '04</u>
Total Deaths	94	84
Alcohol involved deaths	79	22
Alcohol unknown	1	21
% Alcohol involved	52%	26%

Source: NM Traffic Safety