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Uneven justice for DUI

How courts deal with drunken drivers varies widely in Colorado

By Burt Hubbard, Rocky Mountain News August 21, 2004

Dennis and Valerie Meyer were driving home from an early Valentine's Day dinner on that February evening in 2001 when Valerie saw the accident.

A girl flew through the air, thrown 93 feet by a white Ford Explorer that crashed into her as she crossed Pierce Street at West Canyon Avenue, just a few blocks from the Meyers' home in Jefferson County.

Dennis pulled over, gave his wife the cell phone to call 911 and rushed to see if he could help.

"I ran towards the little girl," he said. "And when I got within 10 feet, I saw it was my daughter."

A drunken driver had hit 11-year-old Ali Meyer as she was walking with a friend.

It was the beginning of the family's painful ordeal - an ordeal that underscored the unpredictability of the state's judicial system.

Punishment varies by county

Justice is uneven in Colorado when it comes to drunken drivers.

What happens to a motorist charged with DUI varies dramatically from county to county, a Rocky Mountain News analysis of court records found.

- In Boulder County, nine of every 10 drivers facing DUI charges in fiscal 2002-2003 were allowed to plead guilty to the



Maria J. Avila © News

Young life lost: Dennis and Valerie Meyer hold a photo of their daughter, Ali, who was hit by a drunken driver near their Jefferson County home in 2001 when she was 11. She died almost two years later of complications from the accident. The Meyers agreed to a sentence for the driver that was not carried out as intended, adding to their grief.

What can Colorado do to get drunken drivers off the road?

- Tougher sentences
- Less plea bargaining
- Greater use of ignition locks to start cars
- Tag license plates of offenders
- Other

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Tougher sentences
38.6 % (27)

Less plea bargaining
22.9 % (16)

Greater use of ignition locks to start



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lesser charge of driving while impaired. That generally means they regained their driving privileges faster than a DUI would allow. Mesa County, the toughest in the state, plea-bargained only half of its DUI cases. The statewide average was 80 percent, the *News* found.

- In some rural counties, DUI arrests were pleaded down to routine traffic violations, such as having bad brakes or failing to come to a stop at a stop sign.
- Counties vary widely in handing out deferred sentences, which erase the charge if the motorist stays out of trouble for a year or two. After that, a second arrest counts as a first offense.

In Pueblo County, more than 40 percent of first-time DUI offenders got deferred sentences in fiscal 2002-2003. In Larimer County, it was 20 percent.

Denver, Adams, Boulder, Broomfield and Jefferson counties refuse to offer deferred sentences to drunken drivers, and Arapahoe, Douglas and El Paso counties use them sparingly.

District attorneys say overcrowded court dockets and jails leave them little choice when it comes to plea bargains.

"We may have good cases that we feel we can prove, but when you have the number that most of us have, it's a give-and-take proposition," said Larimer County District Attorney Stuart VanMeveren. "There just aren't the resources to take as many cases to trial as you could or should."

But victims advocates say plea bargains, deferred sentences and light sentences send the wrong message to drunken drivers.

"That's just giving people another excuse: 'It was a mistake,'" said Wendy Hamilton, national president of Mothers Against Drunk Driving.

Light or inconsistent consequences are part of the reason the rapid progress in the 1980s in reducing drunken-driving deaths has stalled, Hamilton said.

During those years, MADD and government campaigns highlighted the tragedies of drunken driving, and drinking and driving became less socially acceptable. At the same time, the drinking age was raised to 21 and penalties were stiffened.

The number of alcohol-related traffic fatalities dropped in the next decade and a half. As a percentage of all traffic deaths, they dropped from 50 percent to under 40 percent nationally and in Colorado.

"It was astounding. We never thought we would see it," said John Moulden, president of the National Commission Against Drunk Driving.

But by 1995, other social issues, such as drug use, took center stage, and improvements in the percentage of alcohol-related fatalities slowed or halted altogether.

20.0 % (14)

Tag license plates of offenders

8.6 % (6)

Other

10.0 % (7)

Total: 70

READER'S COMMENTS
(Choice 3) "Outlaw parking lots at bars"

(Choice 5) "Buy them another beer and mind your own business"

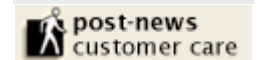
(Choice 4) "There is so much printed about how smoking is so..."

(Choice 1) "Colorado has such lenient laws that these things..."

(Choice 5) "education"

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In Colorado, about 31 percent of all traffic deaths were alcohol-related in 1999 and 2000. The figure climbed to 35 percent by 2002 before falling slightly to about 34 percent last year.

How prosecutors treat a first DUI can be the key to whether motorists continue to drink and drive, said Hamilton.

"Tough sanctions make a difference," she said. "The first-time people stopped for drunk driving are not being prosecuted in a way that has any kind of meaning."

Regret over plea bargain

Dennis Meyer huddled over his 11-year-old daughter in the street, where she lay with internal and brain injuries, a broken leg and cracked ribs.

Paul McNamara, the driver who hit Ali, fled the scene. But the collision had knocked the license plate off his car, and police used it to track him down.

They arrived at his house less than a mile from the accident just as he was calling police, according to the police report. McNamara told police he had been driving to Safeway to buy some snacks.

Officers detected the odor of alcohol on his breath, and he admitted to drinking that evening, the police report said.

A subsequent test measured his blood-alcohol level at below the limit for driving under the influence, which was 0.10 percent at the time, but above the 0.05 level for the lesser charge of driving while impaired.

Ali Meyer was rushed to Swedish Medical Center, then airlifted to Children's Hospital in Denver, where she lay in intensive care for 30 days.

"Literally, we had doctors tell us on two different occasions they didn't think she would make it through the night," Dennis Meyer said.

In the months that followed, she underwent occupational, physical and speech therapy.

McNamara, meanwhile, worked his way through the courts. He would receive a sentence that the Meyers now wish they had never agreed to.

Cases hard to prosecute

Prosecutors are acutely aware of the challenge of dealing with drunken driving.

A repeat DUI offender killed a mother and toddler related to the Pueblo County district attorney.

The man overseeing DUI prosecutions in Arapahoe County says he grew up with a father, now deceased, who drove drunk every Friday night.

And Larimer County DA VanMeveren avoids a stretch of local road.

"I hesitate to drive between Loveland and Fort Collins on Highway 287 on Friday and Saturday nights because a lot of those people are under the influence and are driving," VanMeveren said.

But despite a strong commitment on the part of many DAs, the handling of DUI cases varies dramatically across Colorado.

Mesa County takes the hardest line on plea bargaining DUI cases, according to the *News* analysis. The county accepted plea bargains in just half of its 744 cases in the 2002-2003 fiscal year.

Paul Hautzinger, former deputy district attorney in charge of county court, said Mesa's tough stance is intentional, part of a county philosophy to limit plea bargaining in all criminal cases.

Mesa County generally won't plea bargain down from DUI to driving while impaired if the driver's alcohol level is above 0.15 percent, said Hautzinger, who won the recent Republican Party primary for the county district attorney post. Most counties use 0.18 or 0.20 as the benchmark.

A driver with a blood-alcohol content of 0.05 is considered legally impaired in Colorado. Before July 1, a DUI kicked in with a level of 0.10 or more; now, the minimum level for DUI has been lowered to 0.08.

Mesa County also looks at the driver's cooperation.

"The guy who gets pulled over for weaving and says, 'You got me, I drank a six-pack, and sure, I'll take your test' - that deserves some consideration," Hautzinger said.

The county rarely offers deals to drivers who refuse breath or blood-alcohol tests, however, or to those who file motions requiring a police officer in court, he said.

"As soon as the cop hits the stand, that's it. No more negotiating. You bought yourself a trial," he said.

Boulder County is on the opposite side of the spectrum. Only about 6 percent of its 2,200 DUI cases led to DUI convictions in the 2002-2003 fiscal year. Most were plea-bargained to driving while impaired. Some were dismissed or were still pending.

Boulder County District Attorney Mary Keenan said the county plea-bargains a lot because penalties for DUI and driving while impaired don't differ that much.

A first-time offender charged with driving while impaired gets 8 points against his or her license, a fine of \$100 to \$500, and a potential jail sentence of two to 180 days.

A DUI nets 12 points, which is an automatic suspension of the driver's license, a fine of up to \$1,000, and a potential jail term of five days to one year.

Driving while impaired often leads to a three-month license suspension by the Department of Revenue in cases where the blood-alcohol level exceeded the legal limit for DUI.

Adams County District Attorney Bob Grant pointed out that the sentencing range for two charges of driving while impaired is comparable to two DUIs. His county plea-bargained about 86 percent of 3,000 DUIs in the last fiscal year. A small number of cases were still pending or were dismissed.

Jefferson County plea-bargains or dismisses less than the state average - 73 percent of its 2,800 DUIs, including those dismissed or pending.

Mark Randall, chief deputy district attorney overseeing Jefferson County Court, said he wants to know if the county is too lenient.

"This really matters to us," Randall said. "I've seen the devastation it can cause."

Though advocates generally criticize the broad use of plea bargains, taking a hard line has its pitfalls, said John Bobo, director of the National Traffic Law Center of the American Prosecutors Research Institute, based in Alexandria, Va.

Without negotiations, "you are going to end up dismissing more cases than finding the middle ground," he said.

And he said DUI cases can be tough to take to juries. "It's the only crime I know where the jurors identify more with the defendant than the police officer," he said.

Under Colorado law, prosecutors are not supposed to plea-bargain drunken-driving cases to nonalcohol traffic offenses unless there are major evidence problems.

But it happens, especially in some rural counties.

"We've got people in our files that have three, four, five drunks on their record, but they never get convicted of it," said Capt. Lawrence Martin of the Colorado State Patrol in Lamar. Instead, they get charged with careless or reckless driving, he said.

In Crowley County, in the 16th Judicial District east of Pueblo, a man charged with DUI last fiscal year pleaded guilty to failure to yield the right of way. A woman's DUI charge was dropped to unsafe brakes, and two other motorists pleaded guilty to careless and reckless driving.

"Those would be the exceptions to the rule," said Deputy District Attorney Rodney Fouracre of the 16th Judicial District.

Ali's struggle ends

Dennis and Valerie Meyer thought they had agreed to a reasonable sentence as part of the plea bargain for the drunken driver who hit their 11-year-old daughter.

Paul McNamara got two years in the county jail, with work release that allowed him to support his wife and two daughters. And he was sentenced to 250 hours that the Meyers wanted done at a rehabilitation hospital to constantly remind him of what he had done to their little girl.

For almost two years after the accident, Ali struggled to recover from her injuries. She worked through therapy and was forced to use a wheelchair.

She spoke only two words during those 20 months.

"She said 'Mom' and she said 'Hi,' " her father said.

On Nov. 22, 2002, Ali died in her sleep from a brain seizure. She was 13.

McNamara already had been sentenced, so the county could not bring new charges.

Divided on deferred sentences

While the use of plea bargains varies across the state, prosecutors are divided even more on the use of deferred sentences. Such sentences allow a drunken-driving conviction to be stricken from an offender's criminal record after one or two years of close supervision. Any drunken driving-related points against a driver's license are also erased.

MADD officials hate deferred sentences.

"It stinks," said Jessica Powers, former victims advocate for the metro Denver MADD office. "What kind of message are we sending those people?"

Adds Moulden of the National Commission Against Drunk Driving, "It's a way of dumping cases."

Pueblo and Larimer counties make the most use of one-year deferred sentences - 40 percent of Pueblo's 1,300 DUI cases and 20 percent of Larimer's 2,400 cases in the last fiscal year, the *News* found.

VanMeveren said Larimer County uses deferred sentences for first-time offenders to clear court dockets.

"We feel if we don't hold some carrots out there, we are going to get into speedy-trial problems with the number of DUIs we have," he said.

Pueblo County District Attorney Gus Sandstrom said he uses deferred sentences because offenders undergo intense supervision and face two charges if they reoffend before probation ends.

"Now, you have another one, and now, I'm going put you behind bars," Sandstrom said.

Jefferson, Boulder, Denver, Adams and Broomfield counties don't use deferred sentences. Adams DA Grant said he sees no benefit to taking away an alcohol-related conviction. Neither does Denver DA Bill Ritter.

"You want to track as well as you can people who continue to drink and drive," Ritter said.

'It was a shock to us'

Before their daughter died, the Meyers discovered that the man who hit her had been released from jail after 11 months of his two-year sentence.

Worse, Dennis Meyer said, Paul McNamara had served all his community service by picking up roadside trash instead of working in a rehab hospital. And he did it while serving jail time, instead of doing community service on top of incarceration.

"It was a shock to us," Meyer said.

After Meyer complained, Chief Deputy District Attorney Charles Tingle got involved. He found that a series of mix-ups had sabotaged the carefully crafted sentence.

"Dennis obviously had a lot of heartburn, and I think rightfully so," Tingle said. "So did we when it came to light."

Tingle found that nobody from the probation office had called a rehabilitation hospital to set up McNamara's community service. The sheriff's department allowed him to pick up trash instead.

"It was a reward more than it was a punishment," Dennis Meyer said. "He got to be outside six hours a day on consecutive Saturdays."

Meyer also was upset because no one told him McNamara would get a day knocked off his sentence for every day served.

"If we had known he could get out early, we wouldn't have agreed," Meyer said.

Tingle said the original prosecutor may not have known that the

provision for good time applies to jail as well as prison.

Forest Lewis, McNamara's attorney, said doing community service in a rehab hospital was a request, not a requirement.

"That type of community service was not available," Lewis said. "He wasn't handled any differently."

In April 2003, the Meyers got a new hearing before a judge, who was not happy with events, Dennis Meyer said. But Tingle said the judge could do nothing because McNamara technically had fulfilled his sentence.

Meyer said he persuaded McNamara to do community service voluntarily at Craig Hospital.

Lewis said it was a "good faith gesture to the Meyer family." He "hopes that this would be helpful to them in some way for the terrible loss they suffered."

The probation department calls Meyer monthly with an update.

"I'm not holding my breath," Meyer said.

Situation 'very scary'

One gripe district attorneys have is the misdemeanor status of DUI in Colorado.

"You could have nine DUIs, and it's still just a DUI," said Frank Moschetti, chief deputy district attorney overseeing county court in Arapahoe County.

In some states such as New York, a third or fourth DUI becomes a felony.

Only if a person is classified as a habitual offender can a DUI be elevated to a felony in Colorado.

That's what is happening with two DUI charges from 2002 and 2004 against Victor Gabriel Gallegos in southeast Colorado.

Gallegos, 43, has 16 arrests for DUI since 1980, according to Colorado Bureau of Investigation and court records.

Six times so far, Gallegos has spent up to a year in jail. The most recent charges will be upgraded to felonies because of his record, Fouracre said.

"He's a regular," he said.

Moulden of the National Commission Against Drunk Driving said the Gallegos case is Exhibit A for what's wrong with the judicial system's handling of drunken drivers.

"If that isn't an indictment for a failed justice system, then what is?" he said. "It's very scary."

A small consolation

Meyer said one good thing came out of his vigilance in monitoring the case of the drunken driver who killed Ali.

He and his wife insisted on a 10-year probation for McNamara when he was initially sentenced, so if he's caught driving drunk again, he goes to jail.

McNamara had a previous DUI nine years and nine months before he hit Ali. He lost an eye in that accident.

"Maybe he wouldn't have driven to the Safeway that night if he was in the last months of his probation," Dennis Meyer said.

Colorado law

0.10 Before July 1, the blood- alcohol level at which a DUI charge kicked in.

0.08 The new blood- alcohol level for DUI.

0.05 Blood-alcohol level for the lesser charge of driving while impaired, or DWAI.

How many drinks does it take?

- For a 175-pound man, it takes two drinks in an hour to hit 0.05 percent blood-alcohol level. To reach 0.08, it's about three drinks.
- For a 125-pound woman, it takes one drink in an hour to hit 0.04. To reach 0.08, it's two drinks.

How those levels affect driving

- At 0.05: Thought, judgment and restraint are more lax. Steering errors increase. Vision is impaired.
- At 0.08: Drivers are three to four times more likely to crash than a sober driver. Movements are clumsy. Reaction time slows. *Sources: University Of Colorado And Iowa Alcoholic Beverages Division*

About the series

- Today: How the courts handle DUI offenders varies dramatically from county to county in Colorado.
- Monday: Repeat DUI offenders, some with revoked licenses, present an intractable problem.
- Tuesday: A night in the life of a Colorado State Patrol trooper as he chases drunken drivers.

In Ali's memory

- Dennis and Valerie Meyer have set up a foundation in memory of their daughter, Ali. The foundation raises money to help disadvantaged children who need rehabilitation equipment following accidents. It also will work with Mothers Against Drunk Driving to increase awareness of the dangers of drinking and driving. The foundation's name and address is:
 - The Ali Meyer Foundation, 6886 W. David Ave., Littleton, CO 80128

The findings

A Rocky Mountain News analysis of state and court records for fiscal 2002-2003 found:

- Plea bargains: Counties in Colorado vary dramatically in whether they allow motorists charged with DUI to plead to a lesser charge of driving while impaired. Boulder County plea-bargains 94 percent of its DUI cases. Mesa County, the toughest in the state, plea-bargains half. The statewide average is 80 percent.
- Deferred sentences: Counties vary greatly in the use of deferred sentences for drunken drivers, which involves erasing the charge if the motorist stays out of trouble for a year or two of probation. After that, a second arrest is treated as a first. Pueblo gave deferred sentences in 42 percent of its cases; Larimer in 20

percent. Denver, Adams, Boulder, Broomfield and Jefferson counties do not allow deferred sentences, and Arapahoe, Douglas and El Paso counties use them sparingly.

- Removing alcohol from the charge: In some rural counties, DUI arrests were pleaded down to routine traffic violations such as having bad brakes or failing to stop at a stop sign.

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