

Arrest location could determine the outcome for a drunken-driving penalty

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First of two parts

More than how much a driver has had to drink or the courtroom skills of his or her lawyer, what most decides the punishment a driver gets for drunken driving in metro Detroit is where he or she gets busted.

South of 8 Mile in Detroit, there's almost no chance a driver will go to jail on a first offense. North of 14 Mile Road in Birmingham and Bloomfield, the same driver can count on a visit to the slammer, a Free Press analysis of local court records shows.

Between the extremes of Detroit and Birmingham, sentencing outcomes run the gamut in metro Detroit. The reason: Michigan law doesn't set guidelines for judges in such cases, beyond limiting the maximum penalty. That gives judges broad discretion to decide the penalty for a crime that led to about 39 arrests a day in Wayne, Oakland and Macomb counties in 2010.

The toughest judges say the consequences of drunken driving can be so great that a strong message must be sent; others say that few first-time offenders repeat and there's no evidence that harsh sentences deter future violations.

Officials of Mothers Against Drunk Driving worry about inconsistent sentences. The group advocates that even first-time offenders be required to have ignition locking devices on their vehicles that won't allow operation if alcohol is detected on the driver's breath.

Such devices are "sure and swift punishment," said Frank Harris, the state Legislative Affairs manager for MADD's national headquarters.

Without sentencing guidelines in state, judge's philosophy could determine outcome in drunken-driving cases

Ford Motor heiress and executive Elena Ford got two years probation and community service for driving drunk in April with her 11-year-old son in the car in Ferndale.

On Wednesday, former University of Michigan and NBA basketball star Jalen Rose faces a likely jail sentence after pleading guilty to driving drunk in a one-car crash in March in West Bloomfield. District Judge Kimberly Small, who has a reputation as the toughest sentencing judge in metro Detroit on drunken-driving cases, will choose his punishment. Even for first offenses, she almost always orders jail time.

Why the difference between Ford and Rose?

Without state sentencing guidelines, judges throughout the state can and do treat the misdemeanor crime differently.

Like Ford, Detroit Lions president Tom Lewand avoided a jail sentence when he was arrested on drunken driving charges last summer near Houghton Lake. He pleaded guilty to impaired driving and was sentenced to six months probation and community service.

A Free Press examination of state and local records and interviews with many judges and attorneys found that more than any other factor in drunken-driving cases, location matters.

"One courtroom away can be totally different," said Robert Larin, a Bloomfield Hills defense attorney who has handled more than 5,000 cases across the state.

"Almost never have I seen a first offender get a jail sentence for a first offense of driving while impaired, except in Bloomfield Hills."

Small said jail time is appropriate even for first-time offenders. Her argument: The difference between a drunken driver who causes death or injury and one who doesn't is luck.

"Either we're serious about this or we're not," Small said. "I don't believe people have the right to roll the dice with other people's lives."

Other judges disagree.

Chief Judge Marylin Atkins in Detroit said she can't recall ever sending a first-time offender to jail.

"There's never a request from the prosecutor for first-time offenders for jail time," Atkins said. "I don't see the problem clearing up by putting them in jail."

The two judges represent two of many views on how to deal with a crime whose offenders cut across all ages, races and income levels.

Major differences

The disparities are stark in some places, where the sentence can change based on which side of a border dividing two cities the arrest is made. Just north of Small's jurisdiction is Pontiac, where jail time for first offenders is rare.

"We all bring our own philosophies and opinions," said Clinton Township District Judge Linda Davis, who recently started a sobriety/drug court in her court. "A judge who has had a drunken-driving death in the family probably looks at it differently than a judge who has an alcoholic or an addict in the family."

Legal experts say the varying punishments aren't surprising.

"This isn't unique to drunken driving, and it isn't unique to Michigan," said Eve Brensike Primus, assistant law professor at the University of Michigan. "It was one of the primary arguments for sentencing guidelines. What people wanted was some formula that would limit discretion and treat people more equally."

Still, Brensike Primus said courts are struggling to balance equality of treatment while still allowing judges the room to tailor a sentence to a specific individual and crime.

Most states don't have sentencing guidelines for misdemeanors -- because the range of penalties are small, compared with felonies, which carry sentences of up to life in prison, she said.

Geography matters

State law requires courts in Michigan to report how they deal with drunken-driving offenses, such as average jail time, fines and community service. Judges insist every case is judged individually, but the data show clear geographic patterns.

Of the 50 district courts in metro Detroit, 20 listed no average jail time for impaired driving, the typical offense a first-time offender faces. Sixteen courts listed three days or fewer for those convicted of impaired driving, according to statistics that the courts provided to the Michigan State Police for the annual Drunken Driving Audit.

Warren logged the highest average jail time at 32 days. The 41B District Court, which covers Clinton Township, Mt. Clemens and Harrison Township, averaged 24.5 days. The 48th District Court, which covers Bloomfield Township, West Bloomfield, Birmingham, Keego Harbor, Orchard Lake and Sylvan Lake, averaged 17.5 days.

But judges say the averages don't tell the whole story.

Davis said she rarely sentences a first-time offender to jail, relying instead on rehabilitation. She said she thinks her average may appear higher because when she does order jail time, it's usually for someone who violated probation.

"I think jailing somebody on a first offense is really a political thing. Look how tough I am," Davis said. "Statistics show that treatment is what works."

Lessons learned

She estimates that 75% of the people arrested for drunken driving are social drinkers who were reckless and got caught. She said most of those people will learn their lesson through the humiliation of being arrested, fined and seeing their insurance rates spike. She recently began a sobriety court to target problem drinkers with intensive education and rehabilitation.

Other judges acknowledge that they use jail time to send a message to social drinkers who might otherwise be law-abiding people.

"You have people who would never steal from a store," said Small, who typically jails first-time offenders. "You have to send a really serious message that there are going to be consequences and that doesn't mean fines and costs, a slap on the wrist and don't do it again."

Jail time isn't the only thing that varies by jurisdiction. Although fines are pretty uniform, other costs levied against the driver, for court time, police officer and prosecutor pay and probation oversight, can vary sharply.

Southgate at \$1,752 and Ferndale at \$1,738 ranked highest in average fines for impaired driving in metro Detroit, according to State Police data. Highland Park at \$112 and River Rouge at \$170, ranked lowest. Detroit ranked fifth-lowest with an average fine of \$681, and Atkins acknowledged that her court deals with lower-income defendants and levies costs accordingly.

Her court focuses on rehabilitation and education classes, which will cost the driver money.

"If you make the fines and costs too high, you are setting up a roadblock to them being able to complete their classes," Atkins said.