

# Detroit-area judge challenged on DUI jail sentences

## Motion claims judge's personal feelings interfere

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BLOOMFIELD TWP. - A Bloomfield Hills attorney and a Wayne State University law professor are challenging 48th District Judge Kimberly Small's policy of sending first-time drunken drivers to jail.

In a motion filed Wednesday in 48th District Court in Bloomfield Township, attorney Robert Larin and professor Kenneth Mogill argued that Small violates the constitutional rights of defendants by sentencing almost all first-time drunken drivers to jail, often for weeks.

Small, the motion says, is legislating from the bench and creating mandatory jail time when Michigan law does not require it. Larin and Mogill argue she should disqualify herself from hearing the cases because she has made public statements showing what they say is a deep bias on drunken-driving cases.

The motion is filed on behalf of one of Larin's clients, Thomas Cygan, a 67-year-old West Bloomfield man who recently was arrested for the first time on charges of operating while intoxicated. The case is assigned to Small.

Small said in a recent interview with the [Detroit Free Press](#) that she believes sentencing drunken drivers to jail sends a message to the community it is a serious crime that should not to be tolerated.

"There are arguments on both sides," said University of Michigan law professor Eve Brensike Primus.

"If a judge is willing to impose a sentence within the statutory limits, then perhaps that is within the judge's province, but if they are compromising fundamental fairness and individual sentencing, that can become problematic."

A Free Press review last month of drunken-driving sentences in metro Detroit and nationwide found Small exceeds most judges when sentencing first-time offenders.

Under Michigan law, first-time drunken driving is a maximum 93-day misdemeanor, but there is no minimum mandatory jail time.

The motion filed by Larin and Mogill first will be heard by Small. If she denies it, they will argue it before Marc Barron, chief judge of the district court. If he also denies it, the case goes to circuit court and can be appealed to the court of appeals and then to the state Supreme Court.