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## Going easy on DWI?

**Minnesota's worst drunken drivers are not being sent to prison as often as backers of a get-tough sentencing law intended.**

BY SHANNON PRATHER

Pioneer Press



BEN GARVIN, Pioneer Press

Minnesota State Trooper Brian Reu, 27, right, has an unidentified motorist walk a straight line during a field sobriety test along Minnesota 36 in Maplewood on March 31.

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More than 40 percent of felony DWI offenders who go before judges facing three or more years in state prison get county jail terms of a year or less, data from Minnesota courts show.

Some county prosecutors said judges are thwarting a 2002 law aimed at sending chronic drunken drivers to prison.

"The judges unilaterally are engaged in a pattern of undermining the public's will as to how dangerous this crime is," said Ramsey County Attorney Susan Gaertner. "I don't understand why, approximately half the time, the judges are giving these felons yet another break."

But the law gives judges discretion, which they often use to give less time to offenders who promise to treat their alcoholism, said Anoka County District Judge Sharon Hall, a Minnesota District Judges Association past president.

"It isn't simple. That's why judges have sentencing discretion. Many times the prosecution and the defendant will come to a plea agreement," Hall said. "They make arrangements for treatment, and sentencing is set out a couple of months to see how they'll deal with sobriety."

When the DWI law took effect in 2002, supporters hailed the measure as a key step toward getting chronic drunken drivers off the streets. The law capped an intense campaign by anti-DWI activists, lawmakers and others to combat a system they said had no way to deal with repeat offenders.

Under the old law, motorists with multiple DWI convictions who were caught driving drunk again were charged with a misdemeanor, limiting even habitual offenders to a maximum sentence of a year in jail.

The 2002 law makes a person's fourth drunken-driving offense within 10 years a felony. The revised sentencing guidelines recommend a stayed prison sentence and a one-year stint in county jail for offenders convicted of a first felony DWI. The guidelines call for three years in state prison for felony drunken drivers who have a prior criminal history and for those with multiple felony DWIs.

Despite the stiffer sentencing guidelines, many judges shy away from sending drunken drivers to prison, some prosecutors said. In 2004, the most recent year for which statewide courts data are available, 222 offenders stood before judges facing prison time. Of those, 96, or 43 percent, received a year or less in jail. In Ramsey County, the percentage climbs to 69. In Anoka County, it's 83 percent.

From the inception of the law through the first half of 2005, 41 percent of DWI felons got less than the presumptive three-year term, according to the Minnesota Department of Corrections.

Ramsey and Dakota prosecutors, advocates and a former lawmaker who drafted the law say that's not good enough. Gaertner and a victims' advocate suggest that judges are slapping wrists instead of imposing prison because the defendants are perceived as "people like us."

"These people could be your neighbors, your friends, your family members," Gaertner said.

Minneapolis police Capt. Rich Stanek, a former Republican state representative from Maple Grove who sponsored the 2002 law in the House, deplored the percentage of felony DWI offenders who are avoiding prison.

"I believe the judges should have some independent discretion, but I absolutely believe that's unacceptable," he said. "That's not what we intended."

The case of Rodney Steven Richardson is an example of what some prosecutors see as a problem. Richardson, who pleaded guilty to felony drunken driving in Dakota County in May 2004, previously had been convicted of drunken driving in Dakota,

Scott and Hennepin counties. He also had prior convictions for violating a restraining order, theft and burglary.

Prosecutors asked Dakota County District Judge Richard Spicer to sentence Richardson to five years in prison as recommended by state guidelines. Spicer instead ordered a year in jail with work release, a stayed prison sentence, seven years' probation with some electronic monitoring and chemical-dependency treatment. The judge could not be reached for comment.

Probation offices later accused Richardson of violating probation by failing to enroll in treatment. There's now a warrant out for his arrest. Richardson could not be located for comment.

The case of Tony Matthew Villalobos, who has been convicted of felony drunken driving twice in the past two years in Ramsey County, is another example. After his first felony offense in July 2004, Judge Kathleen Gearin sentenced Villalobos to one year in jail with a stayed prison sentence, seven years' probation and treatment — the sentence mandated by state guidelines.

When Villalobos was arrested drunk behind the wheel again in September, prosecutors asked for four years in prison, as recommended by state guidelines. But Villalobos' family and friends wrote letters to Judge George Stephenson pleading for Villalobos, a father of two, to be given another chance.

"In the past two years, I have watched him go through many trials and tribulations. I firmly believe he is trying to get his life on the right track," wrote one friend.

Stephenson sentenced him to 140 days in jail and a stayed prison sentence and again ordered treatment. Stephenson could not be reached. Villalobos did not return a call for comment.

Judges say the numbers don't tell the whole story. Even when guidelines call for prison, judges may struggle when they look at the individual facts surrounding a felony drunken-driving case, said Hall, the Anoka County judge.

"Most people aren't intending to get drunk and drive," Hall said. "That's why we always wrestle with drug and alcohol cases. It's not the same as someone who picks up a gun or knife and shoots or stabs, or breaks into a home. It's a whole different mind-set."

Gearin, assistant chief judge in Ramsey County, said she has examined the issue and doesn't find the 2004 numbers disturbing. She said no single judge is responsible for the trend.

"It really appears to be the unique characteristics of each individual case," Gearin said. "I take it very, very seriously. When I've done it, it's been with a lot of thought. We don't depart lightly on a felony DWI. They are dangerous people."

Gearin said some offenders have never had inpatient treatment for alcohol addiction.

"The treatment is the only way we are going to make sure when they get out of prison, we aren't going to see them back again," Gearin said.

Even when judges opt not to impose a prison sentence, offenders spend an average of more than six years on probation and are required to undergo treatment.

Although judges say prosecutors often agree to lesser sentences, Dakota County Attorney James Backstrom and Gaertner deny that plea deals account for the no-prison sentences in their counties.

In Dakota County, Backstrom said he's not just concerned about cases in which judges opt for jail versus prison. He said first-time felony drunken drivers who, under guidelines, should receive a year in jail are also getting big breaks. More than half of the felony drunken drivers in Dakota County receive a sentence of six months in jail or less.

"These cases are being treated like there were gross misdemeanors in their sentencing," Backstrom said. "This impacts more

people in the public than any other crime we deal with. It happens all the time— crashes involving drunken drivers."

Hennepin County Attorney Amy Klobuchar said she's not thrilled with the 36 percent of felony drunken drivers not going to prison in her county, but she said the felony law is helping make roads safer.

The percentage of Minnesota road fatalities attributed to alcohol has fallen from 52 percent to 31 percent since 1984.

"The vast majority of the worst of the worst are going to prison," Klobuchar said. "I think it can work better, but I think it's a vast improvement over what we had."

Diane Homa, a victims' advocate for Mothers Against Drunk Driving, said she worries judges still view repeat drunken drivers as people caught in the wrong place at the wrong time.

"I think the perception in the public when it came into existence as a felony (was) people would be held more accountable. We are not seeing that," Homa said. "We hope they would be given some consequences that would be more memorable."

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## DWI felons faced prison terms in 2004

96DWI felons got a sentencing break

43%

## of DWI felons avoided prison

**Minnesota State Trooper Brian Reu administers a field sobriety test after pulling over a driver on Minnesota 36 in Maplewood. Prosecutors say judges are thwarting a tougher sentencing law for drunken drivers, but judges say it's not that simple.**



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