

Looking at why, how of acquittals

TODAY | N.C. judges are acquitting more than a third of drunken driving suspects who test above the state's legal alcohol limit and contest the charges in court. State law says drivers commit DWI if their alcohol concentration is 0.08 percent or higher. But many judges routinely acquit defendants with levels of 0.08 or 0.09. Judges differ dramatically in how often they convict and how much evidence they require. Conviction rates fluctuate widely from county to county.

MONDAY | In Mecklenburg County, DWI conviction rates vary dramatically among the county's judges, from over 80 percent to as low as 40 percent.

TUESDAY | Some drunken driving suspects have discovered a strategy to improve their chances of avoiding conviction.

MADD SURVEY

N.C. conviction rate 19th out of 26

Drivers in North Carolina are more likely than those in many states to escape conviction if they're charged with drunken driving, one recent study suggests. A survey of 26 states by Mothers Against Drunk Driving found that 18 had higher conviction rates than North Carolina. The survey looks at the percentage of drivers charged with impaired driving who are convicted. In North Carolina, the figure was 68 percent for 2000-01. A panel of experts convened by the National Highway Traffic Safety Administration recently recommended that jurisdictions look closely at their systems if fewer than 80 percent of those charged with drunken driving are convicted. Since 2002, all of North Carolina's counties have failed to meet that goal. — AMES ALEXANDER

NORTH CAROLINA

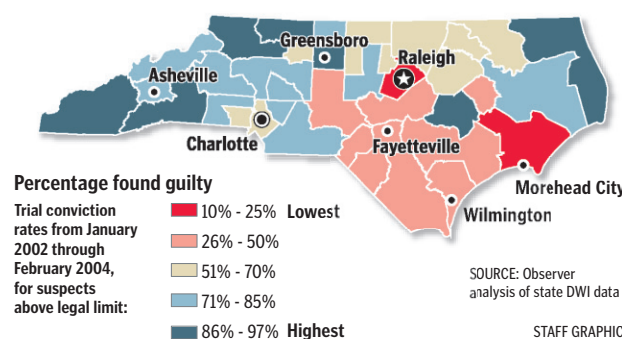
The law: 0.08 is over the limit

"A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street or any public vehicular area within this State: (1) while under the influence of an impairing substance; or (2) after having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more."

— SOURCE: N.C. GENERAL STATUTES

Disparity in Conviction Rates

DWI conviction rates among North Carolina's 39 judicial districts vary widely when suspects go to trial after testing over the legal alcohol limit — 0.08 or above.



SOUTH CAROLINA

Newer law all but being ignored

Four years after S.C. lawmakers passed what they touted as a historic drunken driving law, police and prosecutors are all but ignoring it, preferring to bring charges under an older statute. The reason: The newer law, they say, has no teeth. Lawmakers voted in 2000 to join 48 states with a legal limit for alcohol in a driver's system. They set a 0.10 percent limit, and last year lowered it to 0.08. Supporters touted the measure as an "illegal per se" law, which means a blood-alcohol reading above the limit would be enough for a conviction, as in North Carolina. But highway safety advocates say lawmakers foisted a sham on the public. The legal limit, they say, isn't a legal limit at all. Besides the alcohol level, the S.C. law lets a court consider a suspect's conduct, sobriety tests, and "any other evidence" of a person's driving ability at the time of arrest. And the penalties for refusal to be tested are less than the penalties for conviction.

From Jan. 1, 2001, when the per se law went into effect, to July 15, 2004, state troopers wrote 194 tickets charging drivers with violating the per se law. During that same period, troopers wrote 4,411 tickets under the old drunken-driving law, still on the books, which leaves it to jurors to decide whether someone was too drunk to drive. Under that law, jurors can use a reading of 0.08 or above as an "inference" that the person was impaired.

The primary leader in blocking strict drunken driving legislation was Senate President Pro Tem Glenn McConnell, R-Charleston, who said supporters of a 0.08 per se standard were "declaring war on social drinkers."

He believes per se laws turn the legal system on its head. "People have to have the right to defend themselves," he said.

Sen. Wes Hayes, R-York, who supports enacting tougher drunken-driving laws, said two factors pose a challenge. "The rules of the Senate make it fairly easy to block changing the law," he said. "And we've got a strong strain of libertarian thinking that's against big government telling people what to do." — HENRY EICHEL



DWI: SOBERING

When 0.08 isn't



JEFF SINNER - STAFF PHOTO

A driver is led away after being arrested on a Friday night in July at a DWI checkpoint on South Boulevard in Charlotte. Police officers generally arrest suspects after they perform poorly on sobriety tests. Suspects later blow into an Intoxilyzer, which measures alcohol levels.

DWI from 1A

When drivers in the Charlotte region go to trial after testing over the legal limit, conviction rates vary, from nearly 80 percent in Cabarrus County to just below the 63 percent state average in Gaston and Mecklenburg counties.

Elected District Court judges, not juries, handle most DWI cases in North Carolina.

Cheryl Jones of Charlotte, a national vice president of Mothers Against Drunk Driving, said she's frustrated that judges are letting off DWI suspects who test at 0.08 or higher. And she's worried that those suspects will later go on to kill or injure.

"Something is terribly wrong," Jones said. "We have very good laws. But we have judges who are doing whatever they please. They aren't following the law. ... Every one a judge lets off thinks they have beaten the system and they're going to do it again."

MADD has long credited North Carolina with strong laws and police enforcement. North Carolina arrests more DWI suspects than most states, and most charged with drunken driving plead guilty.

In 1993, North Carolina lowered the alcohol concentration limit from 0.10 percent to 0.08. A typical 170-pound man would reach 0.08 by drinking five beers over two hours on an empty stomach.

The rate of alcohol-related traffic deaths in North Carolina, based on miles driven, has dropped more than 20 percent since 1993.

Legislators who wrote North Carolina's impaired-driving law say they intended a 0.08 alcohol reading to prove guilt, unless there's compelling evidence the reading wasn't accurate.

Today, a decade after the law's passage, many N.C. judges routinely acquit suspects who register 0.08 or 0.09. At those levels, some judges say they need to see other signs of impairment before convicting. They say the Intoxilyzer 5000, the state-approved device used to test alcohol levels, isn't foolproof.

Cumberland County Judge Ed Donaldson acquitted about

500 DWI suspects — more than 70 percent of those tried before him — in the 26-month period. More than 370 of those acquitted tested over the legal limit.

"The Intoxilyzer is just another piece of evidence," Donaldson said. "It may not be a major factor. It may not be. I'm looking at the whole picture."

Experts say the Intoxilyzer errs on the side of the defendant. It generally underestimates alcohol results by 10 percent, says one highway safety expert. Suspects blow into the instrument twice and the lower of the readings is used in court. Results are rounded down. Used in 33 states, the Intoxilyzer meets the accuracy requirements of the National Highway Traffic Safety Administration.

Chief District Judge Robert Cilley, who lives in Transylvania County, works in the five-county judicial district with the state's highest DWI conviction rate. Cilley presided over the trials of more than 300 DWI suspects and, according to state court records, convicted all but 10.

"In general, a .08 is a slam dunk for conviction," he said. "North Carolina's statute says they're guilty. And that's the law I'm sworn to enforce."

Drivers who blow over the limit automatically lose their licenses for 30 days. Those who refuse the alcohol test lose their licenses for a year.

Suspects found guilty of impaired driving could spend from 24 hours in jail to two years in prison and pay fines up to \$4,000. They also lose their driver's licenses for at least a year.

In the 26-month period, prosecutors across the state handled more than 88,000 DWI cases in which defendants tested over the legal limit. Roughly three quarters of them pleaded guilty or were convicted in trials.

More than 19,000 of the suspects avoided court punishment when their cases were dismissed, many because police officers, witnesses or even the drivers themselves failed to show in court.

And more than 3,500 were acquitted, according to state data.

While that's a small percentage of those arrested, the outcomes of those trials help set

the tone for how DWI cases are handled in the criminal justice system. In counties where judges acquit many suspects, defense lawyers will likely plead more of their clients not guilty. They'll also try to put their cases in front of judges with the lowest conviction rates.

And highway safety advocates say letting off DWI suspects who test at 0.08 or above simply encourages them to drink and drive again. And next time, they warn, the consequences could be fatal.

Since 2000, N.C. judges have acquitted more than 120 suspects who later were convicted in DWI cases involving wrecks.

Drivers with an alcohol level between 0.08 and 0.10 are at least 11 times more likely to be killed in a one-car crash than nondrinking drivers, according to a 2000 study published in the Journal of Studies on Alcohol.

Beaufort Police Chief Steve Lewis, who works in coastal Carteret County, where the conviction rate is the state's lowest, said those let off are "learning how to be better drinkers and drivers."

"They know they got away with it," Lewis said. "They think they can get away with it again."

Low conviction rate

From Charlotte to beach towns, police officers say they are tired of arresting drunken drivers, then losing in court.

In the coastal judicial district that includes Carteret County, about 400 DWI suspects went to trial after testing over the legal alcohol limit in the period the Observer studied. Fewer than 40 were convicted.

"We bust our butts out here to make good cases. And they let them go," says police officer James Gaskill, who works for the Carteret County town of Morehead City. "I have no doubt the people smirk and say, 'I'll do it again.'"

Last year, Gaskill testified in trials of five DWI suspects he'd arrested. Judges didn't convict any of them.

Gaskill said in one case, a man repeatedly backed his car into a bush and was found to have an alcohol level of 0.14. A judge found him not guilty.

Judge Paul Quinn, who works in the judicial district

that includes Carteret County, has presided over the trials of more than 130 DWI suspects who tested over the legal limit during the 26-month period. He has convicted about 10 percent of them.

Quinn said he looks at the entire case, not just the Intoxilyzer reading. He says he considers the suspects' field sobriety tests, attitudes and answers to questions.

"It's more than looking at a number and saying guilty or innocent," Quinn said.

Wrenn Johnson, acting Morehead City police chief, knows her officers are frustrated.

"We understand we're not going to win," she said. "...These cases are decided before they get to court."

Judge: Many cases weak

In Raleigh, Wake Chief District Judge Joyce Hamilton doesn't think she has a reputation as a lenient judge.

"I try to be fair," the former prosecutor said. "I listen to all the evidence and make a decision based on that evidence."

During the 26-month period, Hamilton presided over trials of more than 70 DWI defendants and convicted about 10 percent of them, according to state court data.

Wake's judges convicted less than 15 percent of about 450 drunken driving suspects who went to trial after testing over the legal limit.

Hamilton and other judges note that defense lawyers usually plead their clients guilty when the evidence against them is overwhelming.

More than 4,000 defendants pleaded guilty to DWI in Wake County during the study period. In Hamilton's courtroom, nearly 400 DWI suspects pleaded guilty.

"That tells you people are pleading guilty in my courtroom when the state has a good case," Hamilton said.

Many of the cases that go to trial have weak evidence and are the ones defense lawyers believe they can win, Hamilton said. In accident cases, for instance, judges often acquit because prosecutors can't prove the DWI suspects had been driving, she said.

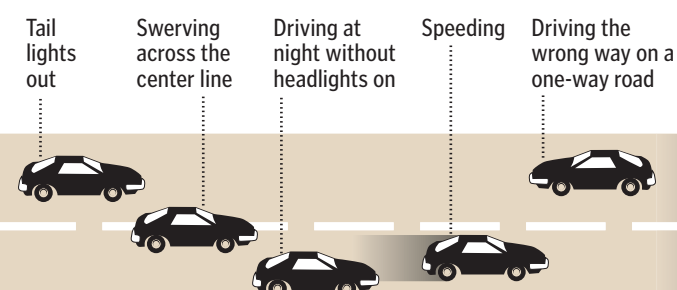
"The DA's policy is to try the DWI cases that can be tried,

SEE DWI | NEXT PAGE

The Road to DWI

THE STOP

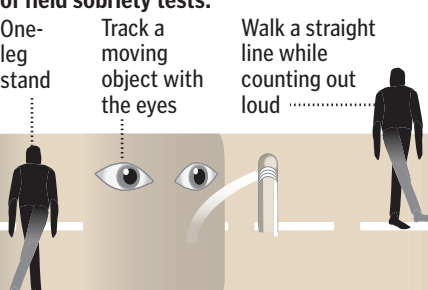
Officers can stop motorists for many reasons, including:



SOURCES: Observer analysis of N.C. DWI data, and interviews with police, prosecutors, defense attorneys and judges.

THE TESTS

Officers can give an assortment of field sobriety tests:



THE TOOLS

Officers also use hand-held instruments allowing them to get a preliminary indication of a suspect's alcohol level.



Officers will decide at this point whether to arrest suspect.