

## Prayers for Judgment

### ■ What are PJCs?

N.C. law allows judges to give a reprieve – a prayer for judgment continued – on a range of charges involving youths and adults. A defendant must plead guilty, but a PJC withholds punishment.

■ **Who's eligible for them?** For drinking and driving, PJCs are allowed for youths charged with driving after consuming alcohol, but not for DWI. PJCs usually go to first offenders. Some judges give them rarely, for very low alcohol levels. Many judges first require alcohol evaluation, education and treatment.

■ **What's the advantage?** A PJC allows a young driver to avoid fines, probation and year-long loss of driver's license. Youths also can say on job and college applications that they haven't been convicted of a crime.

■ **Why should judges grant PJCs?** Taking a youth's license makes getting to school or jobs difficult and drives up a family's insurance costs. Getting cited, going to court and taking alcohol education classes are enough to rehabilitate most youths, say PJC supporters. "Education is the most effective thing I've found for first-time offenders," says Mecklenburg District Judge Hugh Lewis. "If I can get them to understand the dangers of drinking and driving, I may have prevented an alcohol-related death."

■ **What do critics say?** Young drivers should suffer serious consequences when they make such risky choices. If they think they can get off, they do it again. "I didn't feel a PJC sent a very strong message," says Superior Court Judge David Cayer, who handed out few in District Court. He believes in education, but wants serious consequences, too.

■ **Will PJCs be halted?** The governor's DWI Task Force wants to eliminate PJCs for driving after consuming cases. Judges would follow more definite sentencing guidelines, similar to DWI cases. First-time offenders could avoid a conviction, but would lose driving privileges for a time, perform community service and get treatment. The proposal goes next to Gov. Mike Easley.

— LISA HAMMERSLY MUNN

## Chance After Chance

Most Mecklenburg judges say they give PJCs only to young drivers with clean records. But that isn't always true.

A 19-year-old Davidson resident had five different arrests and citations on his record. Charges included DWI, driving after consuming alcohol, alcohol possession and felonious possession of drugs with intent to distribute. Prosecutors dismissed all of those cases, except one. For that, a Mecklenburg judge gave him a PJC.

The youth was stopped again in March 2003, shortly before midnight, and charged with driving after consuming alcohol. In court, he pleaded guilty. And once again, a Mecklenburg judge granted him a PJC.

# Breaks are common for

## Drinking *from LA*

Houck and a friend, 21-year-old Derrick Keith, were killed.

Keith's mother didn't know Houck had been guilty earlier of drinking and driving until she was interviewed for this article.

"I feel like screaming," said Sarah Keith, also of Waxhaw. "He really shouldn't have had a license. He shouldn't have been driving. Aren't there laws about that?"

When young people make mistakes, society tends to forgive all but the most egregious as part of growing up. Second chances are common from the classroom to the courtroom.

But statistics, experts and even young offenders suggest that leniency toward youthful drinking and driving can go too far. Low punishment rates undermine the law, experts say, and send the wrong message to kids.

The Observer reviewed more than 50,000 drinking-and-driving cases statewide between 1999 and early 2004, all involving drivers under 21.

About 60 percent, or 30,500 young drivers, were convicted and punished. They lost their license for at least a year. A tiny fraction, about 800, were found not guilty at trials.

The rest – about 19,000 young people statewide – walked away unpunished.

The Observer study also found: ■ Mecklenburg punishes just 41 percent of young drivers charged, far below the state average.

■ Punishment is wildly inconsistent statewide. Asheville punishes 80 percent of young drivers; Fayetteville 30 percent. Six counties touching Mecklenburg punish more than 70 percent.

■ Mecklenburg is particularly lenient toward young drivers with relatively low alcohol levels. About 80 percent weren't punished.

"Swift and certain punishment is what gets people's attention – and that's not happening," said Barbara Alvarez Martin, a public health researcher at Wake Forest University's School of Medicine. "Kids are so savvy. They know what they can get away with."

Case dismissals are one major way young drivers slip through Mecklenburg courts, just as adults do. Prosecutors dismiss their charges mostly because witnesses or arresting officers fail to appear in court.

Young drivers also take an avenue open only to those under 21. If their case qualifies, they plead guilty, seek alcohol education or treatment – then persuade a judge to withhold punishment.

The deal is called a prayer for judgment continued. It allows young drivers to avoid the penalty they fear most: Losing their driver's license for a year.

With so many youths going unpunished, experts say the courts are one more institution sending mixed messages about drinking and driving.

Like many cities, Charlotte has heavy drinking at tailgate parties, festivals and concerts. TV commercials glamorize beer. Some parents allow teen drinking parties at home. And surveys show one in five students in Mecklenburg's middle and high schools drink alcohol.

Last week, a North Mecklenburg High wrestler died after drinking at a friend's home. More than a dozen drivers under 21 were arrested for drinking and driving at Charlotte checkpoints.

"The legislature has adopted a zero-tolerance law ... but they're the only ones who have. Parents haven't bought into it. The community hasn't bought into it. The judicial system hasn't bought into it," says Sheryl Findlan of Charlotte's Substance Abuse Prevention Services.

The Observer's study examined youths charged with driving while impaired, which usually involves illegal alcohol levels of 0.08 percent or higher.

The study also looked at those charged with driving after consuming



DAN HALE - STAFF PHOTO

"We forgive Joey. We hold the law responsible," said Sarah Keith, holding pictures of her son Derrick, who was killed in a drinking and driving crash. The driver, Joey Houck, got a PJC in court six months earlier that let him keep driving.

alcohol, which prohibits people under 21 from driving with any alcohol in their bodies.

In Mecklenburg, the study found 3,755 young people were charged with breaking either or both laws. Of those, about 2,200 young people went unpunished.

"That's a lot of young people getting off," said Becky Blackwell, who's on the governor's task force to toughen North Carolina's drinking-and-driving laws. "If you don't give them some consequences for their actions at this age, what's going to happen when they get older? They're going to think they can beat it."

Mecklenburg's Chief District Judge Fritz Mercer isn't sure what to think about so many young drivers avoiding punishment in his county.

He and other court officials weren't aware of their record until informed by the Observer.

Asked if it's appropriate that almost six in 10 avoid punishment, Mercer said: "I don't know."

Asked if kids are getting the message that drinking and driving is unacceptable, Mercer said again: "I don't know."

### Getting breaks in court

About half of the 2,200 young drivers

who weren't punished in Mecklenburg got their cases dismissed by prosecutors.

Dismissals happen in all age groups for many reasons, as the Observer reported in a series last month. It's not usually for lack of evidence. Often, key witnesses don't appear in court because of scheduling problems and other glitches in the system.

"We prosecute every underage drinking and driving case we think we can win," said Mecklenburg District Attorney Peter Gilchrist.

His office dismissed cases at about the same rate as the state average. But Gilchrist says he wants to fix scheduling problems to reduce dismissals.

The other half of drivers who got off in Mecklenburg persuaded judges to give them a reprieve, known as a prayer for judgment continued.

The law allows PJCs for driving-after-consuming charges, but not DWI.

To get a PJC, a defendant pleads guilty and the judge withholds punishment. Many judges first require an evaluation for alcohol problems, plus education or treatment.

Judges who favor PJCs say that's usually enough to keep most young people from drinking and driving again.

"I don't see many second-time of-

fenders," said Mecklenburg District Judge Hugh Lewis. But that impression comes only from courtroom experience, and he and others wish they had solid research.

It's unclear how many young drivers repeat their behavior. The Observer found at least one in seven young people charged in Mecklenburg was stopped again for drinking and driving over five years. But studies show people who drink and drive do so dozens of times before they're caught.

Research also shows a driver's abilities can be diminished at alcohol levels as low as 0.02. That's especially true for novice drivers.

No county gave PJCs at a higher rate than Mecklenburg except Pitt, home to Greenville in Eastern North Carolina.

The Observer study also found that youths from higher-income families got PJCs more often than the low-income. That's because they can afford lawyers to help minimize punishment, experts say.

Chief District Judge Mercer says PJCs fit his goal of education and treatment. He doesn't want to stain a youth's record with a conviction that could hinder getting into college or landing a job.

At sentencing, he considers the defendant's age, attitude, alcohol level and details of the offense. Mercer also relies on parents to punish their children and on insurance companies to hike rates.

"When I see they've completed their tasks – like alcohol classes and community service – I usually just PJC it," said Mercer. "I've given out a heck of a lot of them."

But Sarah Keith, whose son died with a driver who got a PJC, sees it differently.

"I'd like to send the judges a funeral notice that will show what a prayer for judgment can do," she said. "Sometimes you have to hit youngsters in the head. You have to show them what can happen."

Otherwise, she says, "You got scolded but you didn't get punished. Are you going to do it again? Yes you are."

### Striking a deal, again and again

Some drivers get more than second SEE DRINKING | NEXT PAGE

## Young Drivers Can Lose Under 2 Laws

Drivers under age 21 can run afoul of two drinking and driving laws in North Carolina. People found guilty of either one lose their driver's licenses for a year.

■ **Driving while impaired.** Applies to drivers of all ages. Bans anyone from driving under the influence of an impairing substance or with an alcohol concentration of 0.08 or higher.

Most serious of the two offenses. State law lists penalties by level, based on previous offenses, degree of intoxication, etc. First-time offender gets fined up to \$200 and at least 24 hours in jail, though that may be suspended. N.C. Division of Motor Vehicles suspends the driver's license for a year. Judges may grant limited driving privileges to work, school, etc. Judges can't grant prayers for judgment continued, or PJCs, which withhold punishment.

■ **Driving after consuming alcohol.** Prohibits anyone under 21 from driving after consuming alcohol or drugs, however small the amount. One of the toughest such laws nationally; South Carolina allows 0.02 alcohol concentration. Judges have more discretion here. First-time offenders could get just a fine; most Mecklenburg judges order alcohol abuse education and treatment. Worst penalty in most young driver's eyes: suspension of driver's license for a year. Drivers 17 and under can't get limited driving privileges. Judges can grant PJCs, which withhold punishment and let the young driver keep his license.

## Judges sentencing in the dark?

### Prosecutors don't provide prior records on all cases

BY LISA HAMMERSLY MUNN  
Staff Writer

The teenager stands before a judge and pleads guilty to drinking and driving.

It's time to pronounce judgment.

But what if the judge doesn't know whether the teen has broken the law for the first time in his life – or been cited for drinking and driving before?

Mecklenburg judges don't have easy access to driving records and criminal histories in many cases involving underage drinking and driving.

"We have no way of getting anybody's records in the courtroom," said District Court Judge Tom Moore. "It's pitiful."

Some judges say they try to get those records, even if it means stopping a busy courtroom and sending someone to find the information. But that's not always possible. And when it isn't, they are sentencing blindly, they say.

In Cabarrus County, where such records are provided in court, Chief District Judge William Hamby says he "can't imagine sentencing in most cases without some idea of what the prior record is."

State law requires prosecutors to supply previous records in cases of driving while impaired, which usually involve alcohol levels of 0.08 and higher.

But it's not required for cases of driving after consuming, the law that forbids drivers under 21 from consuming any alcohol. And that's the law most young drinking drivers are charged with in Mecklenburg.

District Attorney Peter Gilchrist said his office supplied prior records in driv-

ing after consuming cases – and other traffic cases – until about four years ago.

But it took many hours of staff time. And often after the records were pulled and prepared, cases were continued or never went to trial, he said.

Prior records aren't provided consistently to judges across the state's 39 judicial districts. Sometimes prosecutors supply them, sometimes it's police. Some districts provide statewide information, others do only local background checks.

Gilchrist has made two trips to the N.C. Administrative Office of the Courts in Raleigh to lobby for an improved computer system. He wants courtrooms to be able to quickly call up prior records across the state.

Members of the governor's DWI task force plan to propose a better information system in January when they submit their recommendations to Gov. Mike Easley.