

TWO KINDS OF DISMISSALS

More than 20 percent of DWI cases statewide are dismissed in these two ways.

WITHOUT LEAVE

■ N.C. prosecutors usually dismiss cases "without leave" when they lack key evidence needed to obtain a conviction. When charges are dismissed without leave, the cases are closed and prosecutors can't simply reinstate them. The Observer refers to these as "permanent dismissals."

■ The Observer studied more than 340 of these dismissals in Mecklenburg, and found at least two-thirds happened because officers weren't in court to testify.

■ Statewide, prosecutors permanently dismiss about 10 percent of DWI charges involving defendants who test over the alcohol limit or refuse alcohol tests. In Mecklenburg County, it's about 13 percent.

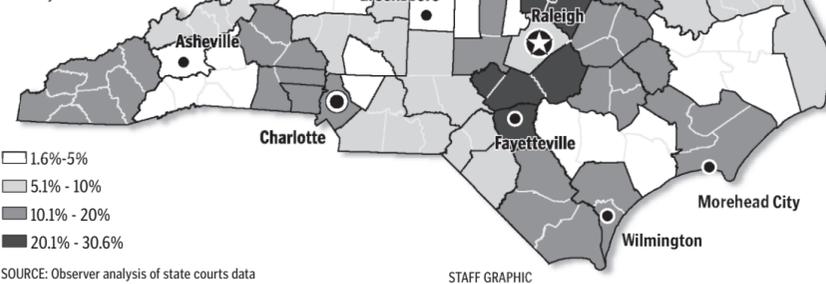
Today's stories focus mainly on this type of dismissal.

DWI Permanent Dismissals

Statewide, N.C. prosecutors permanently dismiss about 10 percent of DWI cases in which defendants test over the legal alcohol limit or refuse alcohol tests.

Percentage of Cases Permanently Dismissed

By judicial district,
January 2002 -
February 2004.



WITH LEAVE

■ Prosecutors dismiss cases "with leave" when suspects don't show up for court.

■ These cases remain open for prosecution if authorities ever find the suspects. But that rarely happens. Nearly 9,300 defendants across the state failed to appear in court to face DWI charges in 1999, according to the state Division of Motor Vehicles. Since then, only about 31 percent of them have been convicted, DMV says.

■ Statewide, about 11 percent of DWI charges involving suspects who test over the alcohol limit or refuse alcohol tests are dismissed after the defendants don't appear in court. In Mecklenburg, it's about 7 percent.

Stories in Monday's Observer will focus on dismissals with leave.

Court dismissals have power to wreck lives

DWI from 6A

he failed to show in court, records show.

The cases included one defendant who tested at 0.19 and had at least four prior DWI convictions, and another who repeatedly drove into a lane of oncoming traffic. In at least six cases, Ashby failed to appear in court more than once, documents show.

Ashby said he tries to appear in court when needed. He said he has missed court only when he was unaware a case had been scheduled. In some instances, he said, he might not have received a subpoena. In others, he might have gotten a subpoena, but failed to notice that the case wasn't scheduled for his regular, twice-monthly court date, he said.

In many of the dismissed cases, Ashby spotted drunken driving suspects and called in other officers to arrest them. Usually, when two officers are involved in a stop, both are subpoenaed and the case is scheduled for the regular court date of the arresting officer.

But when Ashby gets a subpoena, he said, he generally assumes it's for his next regular court date.

"Nine times out of 10, I don't look at the subpoena. I know it's for my next court date," he said. "...I am a human being. Therefore I will make errors."

A question of manpower

The Charlotte-Mecklenburg Police Department tries to keep close tabs on how often its officers miss court.

During the first half of 2004, the department warned officers in 148 cases about their failure to appear in court, according to police Sgt. Sharron Riley, who works to ensure officers make their court dates.

The punishment for CMPD officers who repeatedly miss court usually ranges from reprimands to suspensions. Since 2002, 22 CMPD officers have been suspended for failing to appear in court on all manner of cases, according to Capt. Libby Buchanan, who works in the department's internal affairs unit.

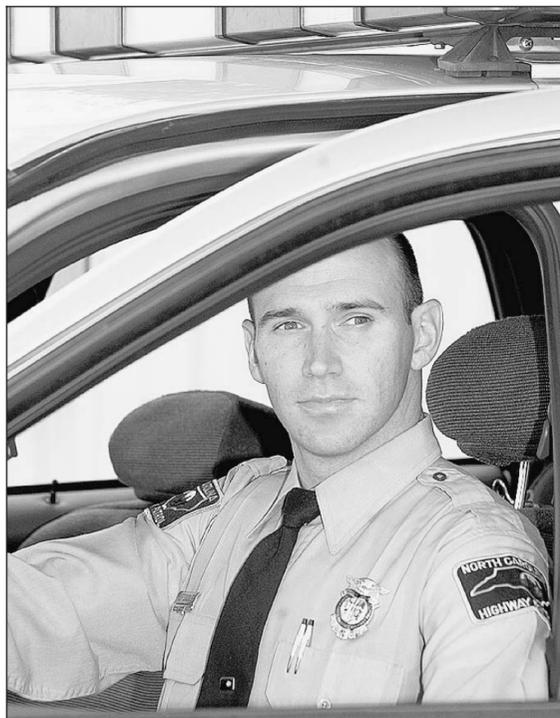
The number of missed court appearances is dwarfed by the thousands of times officers show up when called, Riley said.

Many smaller law enforcement departments, such as the Cleveland County Sheriff's Office, don't keep track of how often their officers miss court.

"We don't have the luxury of having enough employees to do that," said Cleveland County Sheriff Raymond Hamrick.

Strapped for manpower, some law enforcement agencies face a dilemma on days when many officers are needed in court.

Hamrick said one day this year he had just five officers available to patrol the county - and all five had cases scheduled. He wanted his officers on patrol, but ready to come into court when called. But the judge wasn't happy about the arrangement, and ordered all five officers into court, Hamrick



GAYLE SHOMER - STAFF PHOTO

At least 20 of state Trooper Brian Huffstickler's DWI cases were dismissed early this year when he resigned from the Highway Patrol. Huffstickler said no one called or subpoenaed him for those cases. If they had, he said, he would have gone to testify.

"It's like a kid. If they got caught and not punished, what is the deterrent from doing it again?"

STATE TROOPER BRIAN HUFFSTICKLER

said.

Mecklenburg court officials are trying to address such problems. Huffstickler, the Highway Patrol trooper, serves on a committee of court and law enforcement officials trying to improve Mecklenburg's courts. He said the courts have noticed there's a problem and are trying to deal with it.

Riley, of the Charlotte-Mecklenburg police, has made it harder for officers to be excused from court for vacation if they don't give at least six weeks notice. And District Attorney Peter Gilchrist has asked the state Highway Patrol not to schedule troopers for training on their court

dates.

More could be done, officials say. Menser, of the Mecklenburg District Attorney's Office, said busy court officials haven't looked closely enough at why DWI cases are dismissed and how to prevent it.

"If we're saying they're that big a priority, we ought to be paying attention to them," Menser said. "...But our system is based on paper rather than automated records, so it would be incredibly time-consuming."

'Too many things overlooked'

Lives are at stake, highway safety advocates say.

Ryan Yoho, the youth from

Mint Hill, was a bright student and an athlete with a room full of baseball trophies. He was attending Central Piedmont Community College and working full time as a waiter.

On Oct. 16, just before 2 a.m., he was driving toward his Mint Hill home on Idlewild Road when Zeplin Hopper's SUV entered his lane.

Hopper was traveling well over the 45 mph speed limit when the cars collided, police said.

Hopper smelled strongly of alcohol and admitted he was impaired, according to Mint Hill Officer J.W. Weatherman, who investigated the crash. His driving, his speech and his answers to questions also indicated he was under the influence, Mint Hill Police Chief Brian Barnhardt said. Police are awaiting the results of an official blood test.

Hopper has had at least five other charges dismissed besides DWI, including assault and cocaine possession.

He declined to talk to the Observer.

"I think there were too many things overlooked," Barnhardt said, referring to Hopper's record. "When you look at a record like this, you think, 'What went wrong?'"

In September 2002, police in Spring Lake, near Fayetteville, charged Hopper with DWI and speeding. An officer reported Hopper was driving 54 mph in a 35 mph zone. Hopper refused an alcohol test.

The charges were dismissed two months later because the arresting officer had left the department, court records show.

When defendants refuse alcohol tests, they lose their licenses for a year. But if they're not convicted, they avoid other court sanctions, such as mandatory alcohol treatment.

Officer Weatherman questions whether the crash would have happened if Hopper had been convicted on the first DWI charge.

"Had he gotten a good punishment for that (first DWI), maybe he would have thought twice," he said.

Police are now considering more serious charges against Hopper.

Ryan's death hurt many. His two parents. His three younger brothers. His steady girlfriend. The friends who had always looked to him for homework help and laughs.

On a boulder at Independence High, friends painted a tribute - "In Loving Memory of Ryan." At a nearby elementary school, students donated nickels and dimes to MADD. Friends put a cross along the roadside where he made his last turn.

His father said the courts should have paid more attention to the other driver.

"He had too many chances," Robert Yoho said. "And Ryan paid the price."

— STAFF WRITER GARY L. WRIGHT AND STAFF RESEARCHER SARA KLEMMER CONTRIBUTED.

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CONVICTION RATE UP, BACKLOG DOWN

Wake running tighter ship in DWI court

BY AMES ALEXANDER
Staff Writer

Wake County has set up a new DWI court that prosecutors say is chipping away at the case backlog, vastly increasing trial conviction rates and reducing chances that cases will be dismissed.

More than two-thirds of trials in the new court resulted in convictions during the court's first three months, from August through October, according to prosecutors.

That's above the state average and well above the roughly 12 percent conviction rate in all DWI trials in Wake County from 2002 through February 2004, the Observer found.

One reason prosecutors have been so successful: They've had more time to prepare, says Wake Assistant District Attorney Adam Moyers, who ran the court for the first month and a half.

In busy counties like Mecklenburg and Wake, where Raleigh is located, misdemeanor prosecutors are in court five days a week. They typically handle several hundred cases a day, and rarely have more than 10 minutes to prepare for a DWI case.

Wake's DWI court, funded with a grant from the Governor's Highway Safety Commission, runs three days a week, giving prosecutors two days a week to prepare their cases. On those two days, prosecutors assess the evidence, look for legal issues that will likely arise and call key witnesses to make sure they will be in court. The personal appeal from a prosecutor often persuades witnesses involved in wrecks to show up, Moyers said.

"It's a luxury to have the two days," Moyers said. "You don't get ambushed."

Moyers called it a "no excuses court" where requests for postponements are rarely granted. Prosecutors call defense attorneys and tell them to be ready to dispose of cases

Other Efforts

Some programs that have worked to ensure DWI offenders don't avoid treatment and punishment:

■ In Cabarrus County, prosecutors permanently dismiss about 2 percent of DWI cases involving defendants who test over the alcohol limit or refuse tests, compared with 10 percent statewide.

Prosecutors there say they rarely dismiss cases in which officers have resigned or retired. If an officer is preparing to leave a police force, prosecutors try to deal with many of his cases in advance. If an officer has already left the force, prosecutors will get his new address and issue a subpoena. "We'd rather have an officer make an out-of-town trip than have a drunk driver go free," DA Roxann Vaneekhoven said.

■ Guilford County, where Greensboro is located, also has a relatively low dismissal rate. Prosecutors there permanently dismiss about 5 percent of DWI cases involving defendants who test over the alcohol limit or refuse tests. There, the district attorney's office assigns a staffer to try to make sure officers are in court. Officials with the Mecklenburg DA's office say they don't have the staff to do that.

Kathryn Pomeroy, an assistant in the Guilford DA's office, recently called an officer on his cell phone to get him into court. It wasn't the officer's regular court date, and he was half an hour away, but he made the drive. The defendant was convicted.

that day.

"The important thing about the court is it's working," Moyers said. "We're making the roads safer."

THE SERIES

TODAY: N.C. prosecutors dismiss thousands of DWI cases per year - often because police officers fail to show up in court.

MONDAY: DWI defendants frequently avoid court punishment and treatment by refusing to appear in court to face charges.

A Charlotte Observer investigation, "DWI: Sobering Acquittals," published in August, found judges in North Carolina let off more than a third of drunken driving suspects who test over the legal alcohol limit but fight the charges in court.

The Observer found the odds of escaping conviction depend largely on where a driver is arrested and who the judge is.

Since then, a series of changes have occurred:

■ North Carolina's chief Supreme Court justice has issued a memo to the state's chief District Court judges, instructing them not to make prosecutors' burden of proof on DWI cases unnecessarily high.

■ The Mecklenburg judge with the lowest DWI conviction rate has announced he won't return to the bench this year.

■ Mecklenburg's chief district judge has announced details of a plan to change which judges regularly hear DWI and most other criminal cases - a step aimed at resolving cases faster and discouraging "judge shopping" by attorneys.