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Laura Berman

Judges stand tough on youths, booze



Whatever you want to say about the judges in the 48th District Court, they are not a weak-kneed bunch.

Judges Kimberly Small and Diane D'Agostini are especially tough on alcohol-related offenses. Judge Small is known for her policy of sending even first-time drunken driving offenders to jail.

This is a court with a passion for punishment.

But a lawsuit filed last week contends that the judges, including Marc Barron, along with the judges in 52nd District Court, have pushed the punitive limits of the law.

How have they done that?

By jailing young people on contempt charges when they fail the often stringent conditions of their probation.

The misdemeanor statute for minors in possession doesn't provide for jail time as a punishment: "Because jail is not an authorized penalty for a first offense of minor in possession, the trial court has no authority to sentence (a) defendant to jail," ruled Oakland County Circuit Judge Mark Goldsmith, on a contempt case jailing last year.

The state Legislature deliberately created a misdemeanor statute for underage alcohol possession that would discourage the practice without being excessively punitive.

The law recognizes a reality that's been confirmed in studies: Teenagers and college students experiment with alcohol. And if drinking underage is no longer the wink-wink activity it once was, we're still ambivalent as a society about how strictly to enforce the law.

But locking up teenagers whose tethers malfunction, or who can't get to AA meetings as ordered, or who keep imperfect records of their breath tests, takes judicial tough love into questionable territory.

Troy lawyer Jim Williams has found the Oakland County jail holding 30 minors in such cases in a couple of spot checks.

William Maze, a lawyer who specializes in drunken driving cases, characterizes Judge Small as "the toughest sentencing judge in the state" in drunken driving cases. She says: "If you put a litmus test out there, well, yes. I feel very strongly about drunk-driving."

As a nation that's always been of at least two minds about alcoholic consumption, we've tried everything from Prohibition to eras of wild frat parties quietly condoned by college administrators. The laws now on the books help define common sense boundaries: There should be consequences for drinking illegally, because that's one way we signal to our children that we are serious about the dangers posed by alcohol.

But escalating punishment can backfire, creating resentment and anger and backlash rather than the teachable moment a judge might intend.

In one of life's small ironies, Judge Small said her daughter, a high school senior, had pleaded guilty to the charge of minor in possession of alcohol.

Her daughter, she said, got in trouble after phoning police from a University of Michigan dormitory after a friend -- whose stomach had to be pumped -- passed out.


"Am I disappointed? You bet," Small said.

But don't expect Small to do a turnabout. This up close and personal brush with her daughter's fallibility is unlikely to change her behavior on the bench. "I always look at these cases (minors in possession) from the perspective of what would I want from a judge as a parent?" she said. "I'm a mom first."

Laura Berman's column runs on Tuesday and Thursday in Metro. lberman@detnews.com (313) 222-2302 *Laura Berman's column runs on Tuesday and Thursday in Metro. lberman@detnews.com (313) 222-2302*

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