



U.S. Department  
of Transportation

**National Highway  
Traffic Safety  
Administration**

---

DOT HS 806 995  
Final Report

September 1985

# **Evaluation Support for Innovative Alcohol Projects:**

Evaluation Support for Assessing the Effectiveness  
of Videotaping Persons Arrested for DWI

The United States Government does not endorse products or manufacturers. Trade or manufacturers' names appear only because they are considered essential to the object of this report.

1. Report No. DOT HS 806 995		2. Government Accession No.		3. Recipient's Catalog No.	
4. Title and Subtitle EVALUATION SUPPORT FOR INNOVATIVE ALCOHOL PROJECTS: Evaluation Support for Assessing the Effectiveness of Videotaping Persons Arrested for DWI				5. Report Date September 1985	
				6. Performing Organization Code	
7. Author(s) R. O. Brackett, K. C. Hogue, and J. M. Orozco				8. Performing Organization Report No. RF7025	
9. Performing Organization Name and Address Texas Transportation Institute, Texas A&M University Human Factors Division College Station, Texas 77843				10. Work Unit No. (TRAI)	
				11. Contract or Grant No. DTNH 22-84-R-05051 *	
12. Sponsoring Agency Name and Address U. S. Department of Transportation National Highway Traffic Safety Administration Washington D.C. 20590				13. Type of Report and Period Covered	
				14. Sponsoring Agency Code	
15. Supplementary Notes * This report also fulfills contract number 85-02-01-E1-AA for State Department of Highways and Public Transportation requirements.					
16. Abstract The use of videotaped evidence in the prosecution of DWI cases in Texas became widespread after legislative changes that became effective in 1984. An evaluation of the effect of the use of videotaped evidence on the prosecution process of nine counties indicated that there were no significant changes in the percentages of bench trials or guilty pleas. There was, however, an increase in time required for booking. It was recommended that steps be taken to minimize the cost of this unproductive method.					
17. Key Words DWI Videotaping Breath Tests Booking Process			18. Distribution Statement Document is available to the U.S. public through the National Technical Information Service, Springfield, Virginia 22161		
19. Security Classif. (of this report) unclassified		20. Security Classif. (of this page) unclassified		21. No. of Pages 56	22. Price



DEPARTMENT OF TRANSPORTATION  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

TECHNICAL SUMMARY

CONTRACTOR Texas Transportation Institute, Texas A&M University Human Factors Division, College Station, Texas 77843	CONTRACT NUMBER DTNH 22-84-R-05051
REPORT TITLE EVALUATION SUPPORT FOR INNOVATIVE ALCOHOL PROJECTS: Evaluation Support for Assessing the Effectiveness of Videotaping Persons Arrested for DWI	REPORT DATE September 1985
REPORT AUTHOR(S) R.O. Brackett, K.C. Hogue, and J.M. Orozco	

In May of 1983, the Texas Legislature changed the statutes that apply to the offense of driving while intoxicated (DWI). Section 24 of the revised law required that, effective January 1, 1984, counties with populations over 25,000 purchase electronic devices capable of visually recording suspected DWI offenders.

Though videotaped evidence of the behavior of persons arrested for DWI had been used in Texas prior to the legislative action, its use was not extensive. The new law has increased usage, and since a full year has passed since the law change, the effect of videotaping on the prosecution process can be assessed. The objective of this project was to evaluate the effect of the use of videotaped evidence on the efficiency of the adjudication process, and not the effectiveness of DWI adjudication in reducing accidents.

From January through April 1985, the project staff collected DWI data from nine counties in Texas. These counties were selected on the basis of population, location, videotape usage, and the videotaping methods used. Two counties were selected as control counties because no videotaped evidence was used in DWI cases. The populations of these two counties were just under 25,000.

The remaining seven treatment counties had populations over 25,000 and used videotape in some manner. These counties collected videotaped evidence in one of two ways: videotaping all suspects arrested for DWI, or only those who refused breath or blood tests. The treatment counties were selected based on information from the Traffic Safety Section of the State Department of Highways and Public Transportation (SDHPT).

Productivity comparisons were done using percentages of bench trials, guilty pleas, and convictions to determine if the use of videotaped evidence increased the number of bench trials (as opposed to jury trials), guilty pleas, and convictions. Estimates of the times required to process drivers arrested for DWI were collected and used to determine the relative manpower cost associated with videotaping.

(Continue on additional pages)

"PREPARED FOR THE DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION UNDER CONTRACT NO. DTNH 22-84-R-05051 THE OPINIONS, FINDINGS, AND CONCLUSIONS EXPRESSED IN THIS PUBLICATION ARE THOSE OF THE AUTHORS AND NOT NECESSARILY THOSE OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION."

The three methods of collecting evidence (no videotape, videotaping everyone, and videotaping refusals only) were compared on the basis of the desired output variables: bench trials, guilty pleas, and the estimated cost associated with each method. Arrest, booking and adjudication operations varied greatly from county to county, so comparisons were made between counties that used two different methods in two distinct time periods. Thus, the comparisons made were: no videotape versus videotaping everyone, no videotape versus videotaping only breath and blood test refusals, and videotaping refusals only versus videotaping everyone. Only one county, El Paso, used all three methods.

The only significant increase in a productivity measure was an increase in the percentage of guilty pleas using the method of videotaping refusals only, in El Paso county (see Table 1). No other comparison indicated a change, and the data set for El Paso is small so the significant increase may be an artifact of the large percentage of cases carried over to the next year for disposition.

Using videotaped evidence in DWI cases did not increase the productivity of the prosecution process as measured by the change in percentage of bench trials and guilty pleas. There were no delays in the court system nor did police officers spend more or less time in court as a result of videotaping. The costs associated with the booking operation did increase primarily as a function of the increase in time required of the arresting officer and the officers serving as witness in the booking operation.

The estimated cost comparison indicates an increase of approximately 15 minutes in officer time associated with using videotape equipment in the booking operation. When everyone is videotaped, estimate of the cost per year can be obtained by multiplying the number of cases by 15 minutes. When refusals only are videotaped, the additional time is significantly less.

The loss of time associated with the use of videotape can be minimized by using it only in those cases where the person arrested has refused a breath or blood test. This recommendation would also: minimize off-the-street time for officers; provide supporting evidence to officers' testimony in cases where the breath test was refused; make equipment available for other uses like child abuse or molestation cases, training, police brutality cases, evidence collection, or collecting evidence when driver impairment is created by something other than alcohol; provide visual documentation that the breath or blood test was offered and refused by the suspect; and prevent contradictory evidence between the videotaped appearance of sobriety and a BAC of .10 or higher.

TABLE 1. PRODUCTIVITY COMPARISONS

Method	Counties	Cases Disposed	Percentage of Bench Trials	Percentage of Guilty Pleas	Estimated Cost
No Videotape	Kerr, Smith, Tom Green, Victoria (1983)	2491	99.72%	93.42%	18-20 minutes per case
Videotape Everyone	Kerr, Smith, Tom Green, Victoria (1984)	2217	99.59%	90.75%	33-45 minutes per case
No Videotape	Travis (DPS), (1983)	550	99.64%	89.64%	18-20 minutes per case
Videotape Refusals Only	Travis (All Agencies) (1984)	2271	99.56%	86.83%	15-25 minutes per case
Videotape Everyone	Lubbock (1984)	635	97.64%	75.59%	33-45 minutes per case
Videotape Refusals Only	Lubbock (1983)	616	98.54%	79.55%	15-25 minutes per case
No Videotape	El Paso (1983)	1322	99.47%	68.91%	18-20 minutes per case
Videotape Everyone	El Paso (Jan.-July 1984)	1104	99.64%	69.66%	33-45 minutes per case
Videotape Refusals Only	El Paso (July-Dec. 1984)	317	99.68%	89.27%	15-25 minutes per case

## TABLE OF CONTENTS

	PAGE
1.0 INTRODUCTION.....	1
Background.....	1
Objective.....	2
Process Evaluation.....	2
2.0 EVALUATION APPROACH.....	4
Selection of Counties.....	4
Identification and Collection of Data.....	10
Statistical Tests.....	12
3.0 ANALYSES AND RESULTS.....	13
Input Data.....	14
Output Data.....	21
Cost Data.....	25
Productivity Comparisons.....	30
Anecdotal Data.....	32
4.0 CONCLUSIONS AND RECOMMENDATIONS.....	33
APPENDICES	
A. Videotape Survey.....	A-1
B. Media.....	B-1
C. Felony Data.....	C-1
D. Data Collection Form.....	D-1

## LIST OF TABLES

	PAGE
TABLE 2.1 DWI Evidence Collection Methods For Selected Counties (1983-1984).....	9
TABLE 3.1 Misdemeanor Data Summary For: Kerr, Smith, Tom Green and Victoria Counties.....	15
TABLE 3.2 Misdemeanor Data Summary for: Milam and Washington Counties.....	16
TABLE 3.3 Misdemeanor Data Summary For: El Paso, Lubbock and Travis Counties.....	17
TABLE 3.4 BAC and Breath Test Refusals For: Kerr, Smith, Tom Green and Victoria Counties.....	18
TABLE 3.5 BAC and Breath Test Refusals For: Milam and Washington Counties.....	19
TABLE 3.6 BAC and Breath Test Refusals For: El Paso, Lubbock and Travis Counties.....	20

TABLE 3.7	Frequency and Percentage of Misdemeanor Cases by Type of Trial: Kerr, Smith, Tom Green and Victoria Counties.....	22
TABLE 3.8	Frequency and Percentage of Misdemeanor Cases by Type of Trial: Milam and Washington Counties.....	23
TABLE 3.9	Frequency and Percentage of Misdemeanor Cases by Type of Trial: El Paso, Lubbock and Travis Counties.....	24
TABLE 3.10	Dispositions of Cases For: Kerr, Smith, Tom Green and Victoria Counties.....	26
TABLE 3.11	Dispositions of Cases For: Milam and Washington Counties.....	27
TABLE 3.12	Dispositions of Cases For: El Paso, Lubbock and Travis Counties.....	28
TABLE 3.13	Approximate Time Required by Each Method.....	29
TABLE 3.14	Productivity Comparisons.....	31

#### LIST OF FIGURES

	PAGE
FIGURE 2.1	No Video Method.....5
FIGURE 2.2	Videotape Everyone.....6
FIGURE 2.3	Videotape Refusals Only.....7
FIGURE 2.4	Adjudication Operation.....8



## 1.0 INTRODUCTION

In May of 1983, the regular session of the 68th Legislature in Texas produced changes in the statutes that apply to the offense of driving while intoxicated (DWI). These changes included, increased penalties and fines, elimination of deferred adjudication, and a change in the number of prior DWI convictions required for felony prosecution. In addition to these and other changes, Section 24 of the revised law required each county with a population greater than 25,000 to purchase and maintain electronic devices capable of visually recording suspected DWI offenders. All changes in the law were effective January 1, 1984.

Although videotaped evidence of the behavior of persons arrested for DWI had been used in a few locations in Texas prior to the legislative action, its use was never extensive. The new law however, has increased usage, and since a full year has passed since the inception of the change, the effect that videotaped DWI evidence has on the process of prosecuting persons arrested for DWI can be assessed.

### BACKGROUND

The reasons for the inclusion of the videotape requirement with the other revisions to the law are somewhat difficult to discern. However, a review of the minutes of the legislative committee that promulgated the change and discussions with officials from the Department of Public Safety and various Sheriff's offices and Police Departments suggest the following possibilities:

1. That videotaped evidence could be useful in obtaining convictions in those DWI cases in which the person arrested refused a breath or blood test.
2. That the possibility of being videotaped might encourage consent to blood or breath testing.
3. That the use of videotape evidence would eliminate some claims of misconduct against arresting officers.

Although the new legislation required county officials to purchase videotaping equipment, there was no action specified to be taken against those that did not. There was also no requirement for the equipment to be used for DWI or any other types of arrests. Conversely, there was nothing in the law to prohibit counties with populations less than 25,000 from purchasing and using videotaping equipment in DWI cases. There are 83 counties, out of the 254 in Texas, that have populations in excess of 25,000. According to a survey by the Traffic Safety Section of the State Department of Highways and Public Transportation (SDHPT) conducted in September of 1984, at least five of these 83 had not acquired videotaping equipment. In addition, eight of the 79 counties reporting use of videotape equipment had populations less than 25,000 (see Appendix A).

The law also did not establish guidelines for the use of videotape equipment. Consequently, in some counties all DWI cases are videotaped while in others only those DWI suspects who refuse to take a breath or blood test are videotaped. In addition, the law did not specify what was to be videotaped. Most counties are videotaping some form of the field sobriety test. Although procedure and presentation sequences may vary, most sobriety testing on camera requires the subject to walk a triangle or straight line, touch their nose with their eyes closed, count backwards standing on one foot, and read a selection of written materials.

Widespread experience with the use of videotape evidence has produced mixed reaction from police officers and prosecutors. Some law enforcement personnel have expressed the opinion that the use of videotape is increasing DWI booking time thus reducing time available for patrol. Others have maintained that this lost time is compensated for by reduced time in court resulting from the increased number of guilty pleas. Some County and District attorneys have complained that the number of DWI cases dismissed has increased because subjects do not appear "drunk" despite breath test results. These complaints have received some media attention (see Appendix B). Other attorneys, ones that have had more experience with this type of evidence, suggest that this will change when juries are taught to distinguish between the common perception of being "drunk" and being legally intoxicated. A number of attorneys and police officers have suggested that some other form of sobriety test, one that can demonstrate reduced fine motor coordination, be developed for videotaping.

## OBJECTIVE

In order to resolve some of the controversy surrounding the use of videotaped evidence in DWI cases, and to gather information that might be useful in guiding this and other states in establishing or changing procedures for using such evidence, it is necessary to evaluate the changes that have resulted from the implementation of the new law. Therefore, the objective of this project was to evaluate the effect of the use of videotaped evidence on the process of prosecuting persons arrested for DWI.

## PROCESS EVALUATION

The term process evaluation is borrowed from the field of Industrial Engineering. It can be defined as an assessment of productivity to determine if method improvement has taken place or needs to take place. A method is simply the way something is done; like the way a bookcase is assembled, or, in the present case, the way DWI evidence is gathered. Although it is not absolutely imperative to use this particular evaluation concept, it provides a convenient conceptual model for the evaluation at hand, primarily because the intent of the law change was to improve the productivity of the DWI prosecution process.

The distinctions between a process evaluation and other, more traditional, forms of evaluation are those of objectives and technique. Unlike impact evaluation, a process evaluation is not concerned with the effectiveness of the product, just that its creation is efficient. In the present case, the concern is not with the effectiveness of DWI adjudication in reducing accidents, but rather the efficiency of the adjudication process. Efficiency means that more cases are tried and/or more convictions are being obtained with a new evidence gathering technique while using the same or fewer resources.

Process and administrative evaluations share a common interest in performance or outputs; however, process evaluation is not concerned with progress toward predefined objectives, just maximizing efficiency. This difference is clear when one considers that an administrative evaluation is conducted on a project that was preplanned while a process evaluation usually examines an ongoing activity, the resources of which may be outside the control of the evaluation.

The application of this approach in evaluating the change in process of prosecuting persons arrested for DWI is described in the following sections.

## 2.0 EVALUATION APPROACH

There are now three ways in which evidence is collected in the booking procedure: the use of breath or blood testing only (Figure 2.1); the use of both breath or blood testing and videotape (Figure 2.2); and the use of either videotape or breath or blood testing (Figure 2.3). As can be seen in Figure 2.2, there are actually two methods of videotaping everyone. The first, or concurrent method, allows the videotaping to take place during the 15 minute observation period before administering the breath test. The observation period is required to ensure the subject does not ingest anything that could effect the result of the breath test. The second method involves videotaping, observing the subject for 15 minutes then administering the breath test in consecutive order.

The method of presenting evidence in court has had to be adapted to the changes in the booking procedure. Now, prosecutors may be forced, by defense attorneys, to make use of the videotape if it is available, or be prepared to explain why, if it is not. In addition, County and District Attorney Offices have had to develop procedures for maintaining the chain of evidence for videotapes and to provide storage for them.

There is no general procedure for allowing council to view videotapes. In Texas council may view the tapes when ever they need to. There are no restrictions so long as the chain of evidence is maintained. A generalized model of the adjudication procedure is presented in Figure 2.4 to provide an idea of the steps involved.

In order to determine the effect that these method changes have had on the productivity of the DWI prosecution process, it was necessary to select counties which employed each method, to identify and collect the appropriate input and output data from each county, and to analyze and compare the productivity (output vs. input) for all.

### SELECTION OF COUNTIES

County selection was based on information obtained from the previously mentioned survey conducted by the SDHPT. Using the results of this survey, counties were selected that had not used videotaped evidence (No Video Method), that had videotaped everyone arrested for DWI (Videotape Everyone), and that had videotaped only those who refused a breath or blood test (Videotape Refusals Only). The final selection of counties and their evidence collection methods are presented in Table 2.1.

Washington and Milam counties were selected as examples of the No Video Method and are used as control counties. They each have populations slightly less than 25,000 and did not use videotaped evidence in either 1983 or 1984.

In Tom Green, Victoria, Smith and Kerr counties, videotaping was implemented in January 1984 and all persons arrested for DWI were

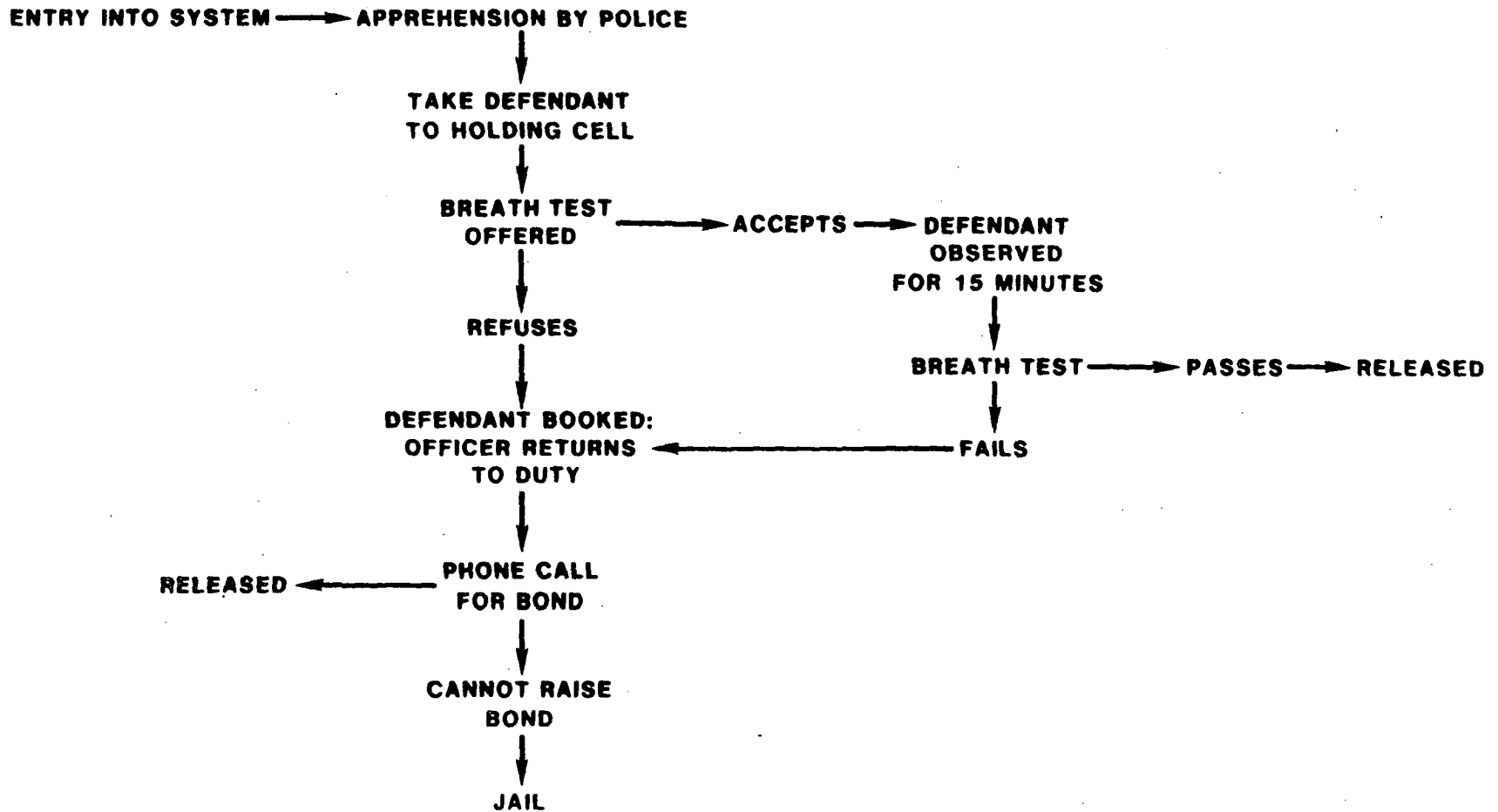


Figure 2.1 No Video Method

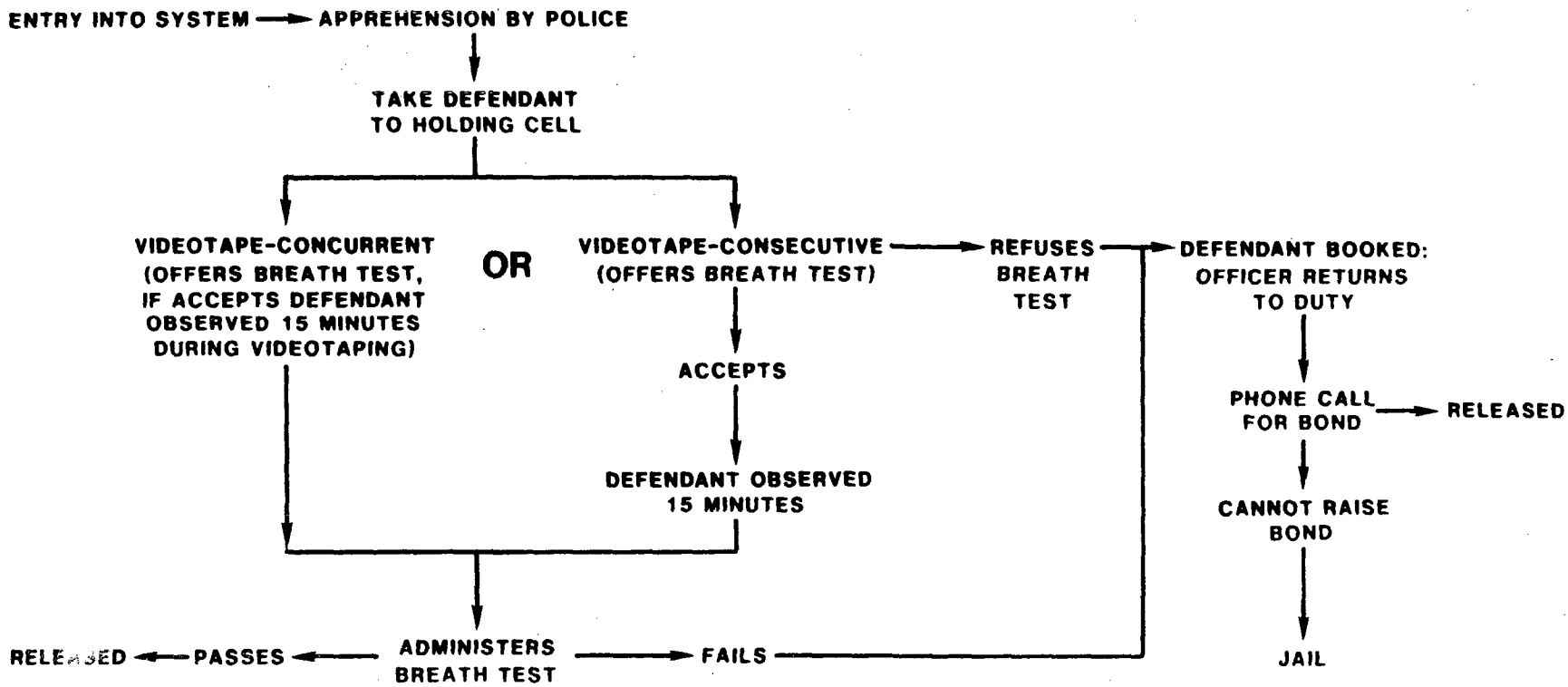


Figure 2.2 Videotape Everyone

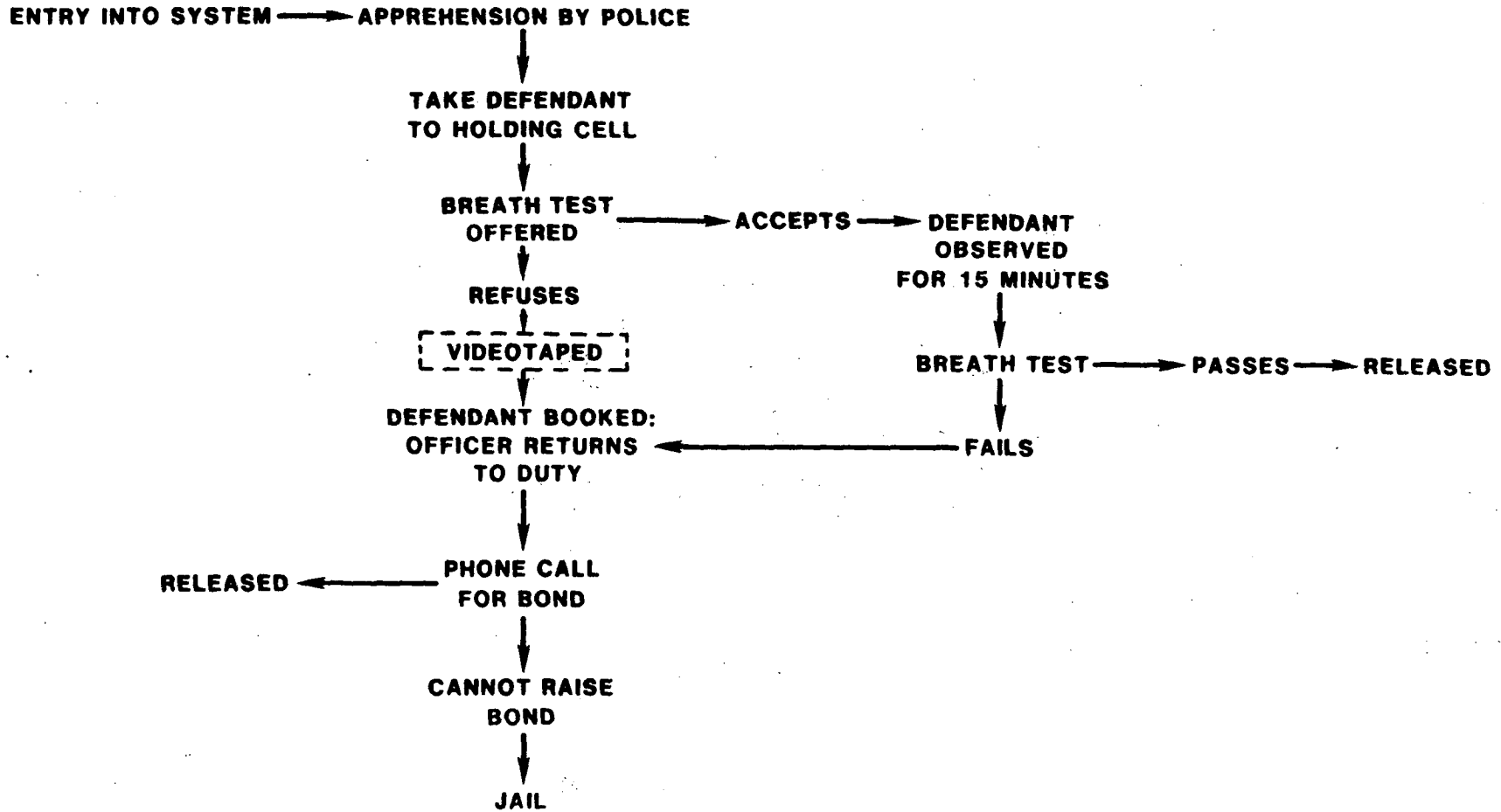


Figure 2.3 Videotape Refusals Only

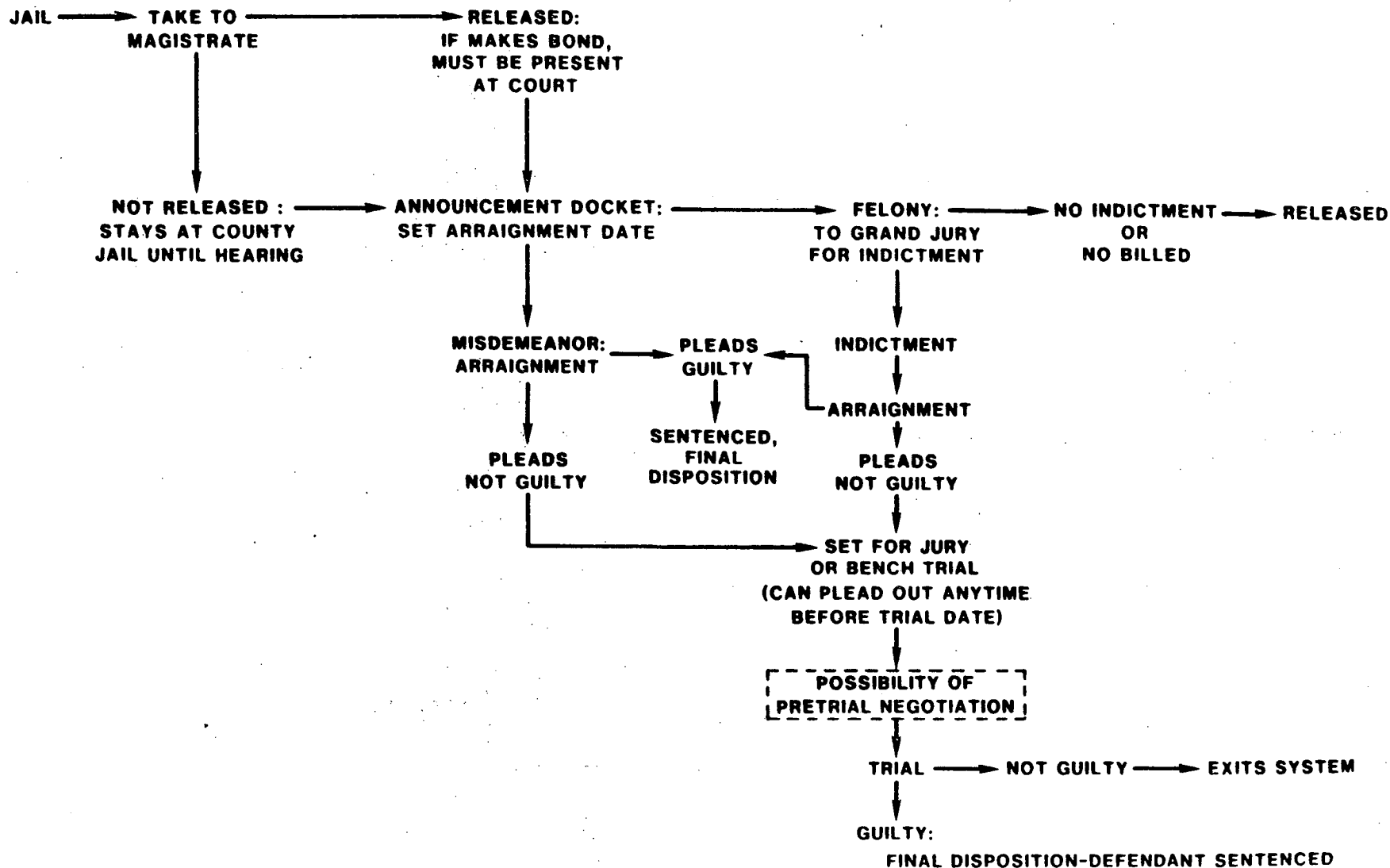


Figure 2.4 Adjudication Operation



TABLE 2.1  
 DWI EVIDENCE COLLECTION METHODS  
 FOR SELECTED COUNTIES  
 (1983-1984)

YEAR	I NO VIDEO	II VIDEOTAPING EVERYONE	III VIDEOTAPING REFUSALS ONLY
1983	El Paso Kerr Milam Smith Tom Green Victoria Washington		Lubbock Travis*
1984	Milam Washington	El Paso(Jan-July 14) Kerr Lubbock Smith Tom Green Victoria	El Paso(July 15-Dec) Travis

\*Austin police department has been videotaping refusals only for several years. Records of this activity prior to 1984 are not readily available.

videotaped. In El Paso county videotaping of all DWI suspects was implemented in January 1984, and as of July 1984 only those persons arrested who refused a blood or breath test were videotaped. Lubbock and Travis are two counties in which videotape equipment has been used for more than one year. Lubbock switched from videotaping refusals only in 1983 to videotaping everyone in 1984. Travis county videotaped refusals only in both years.

## IDENTIFICATION AND COLLECTION OF DATA

Four kinds of data were of interest for the process evaluation; input, output, cost of processing and anecdotal.

The term input data refers to the dimensions of the quantity and quality of DWI cases in a given county during a given time period. Quantity, or the number of cases filed, was needed to provide a base to assess the productivity (output/input) of a particular method. The quality of those cases, measured in terms of the average blood alcohol content (BAC) and breath test refusals, was needed to insure that the strength of the cases remained the same from one booking method to another.

The term output data refers to the dispositions of the DWI cases. The dispositions include: the number of guilty pleas and dismissals of bench trials, and the number of convictions and acquittals of jury trials. Output data were used only for misdemeanor cases. Data on felony cases were collected for informational purposes and are included as Appendix C. These data could not be used as an output measure because they were generated from several surrounding counties that may have used different evidence gathering methods, and because they were relatively few in number.

Cost of processing refers to the amount of resources required to produce an output from an input. Resources include time and money expended as result of using one method versus another in the booking procedure.

Anecdotal data refers to the observations made by the staff, based on the experience they gained in collecting data, and the comments that were recorded from interviews with prosecutors, clerks, and law enforcement officials.

In order to be sure complete data were available for the cases used in the study, only those cases where the arrest and disposition occurred within each sample year were selected for analysis.

There were four sources of the needed data: county and district courts or clerks, the Texas Department of Public Safety, the Texas Judicial Council, and law enforcement agencies in each county selected for study.

Texas is an open records state, therefore, all the information needed from county or district clerks' offices was accessible. However,

the county and/or district attorney's office for each county was asked to sign a form indicating their willingness to participate in the study. Thus, the project staff was provided an additional measure of cooperation. Adjudication records were reviewed and collected for 1983 and 1984.

To insure consistent data collection, appropriate forms were developed to record the information needed. In addition, the personnel assigned to collect these data were trained to review and record pertinent information as efficiently as possible.

Data collected from the court docket or record files were transferred to the data sheet presented in Appendix D. This information included:

- (a) Case number - the number assigned to the case by county or district clerk.
- (b) Videotape used - yes or no.
- (c) Arrest date - date of apprehension by law enforcement agency.
- (d) Arrest code - indicates whether the classification of the offense is a misdemeanor or felony.
- (e) Type of trial - there were two types of hearings. One was before a judge, the other was before a jury. The cases that were counted as "bench trials" were those with any proceedings or appearances before a judge. Note that most guilty pleas were counted as bench trials, as were dismissals, other dispositions, and those that did not include a jury.
- (f) Disposition date - the day the sentence was delivered, whether it was a jail sentence, probation, etc.
- (g) Disposition - the types of dispositions were: defendant was considered in another case, plea agreement to lesser charge, guilty plea to DWI, acquitted, dismissed, or other. Only those cases where the arrest and disposition occurred in the same year were used in the study.
- (h) Sentence - this includes penalties, such as; probation, fine, jailtime or deferred adjudication/pre-trial intervention. There could be a different combination of these sentences on any given case.

Other data available from state, county, and municipal law enforcement agencies collected included: arrest records, radio logs, and anecdotal information. The data collected are summarized in the following section.

## STATISTICAL TESTS

The statistical test used to assess differences in output variables between years was a form of the binomial test, called the test of proportions. A two-tailed version of this test was used in the next section. The probability level of 5% was used to determine statistical significance.

### 3.0 ANALYSES AND RESULTS

The function of the process evaluation was to determine if the methods of collecting evidence during the booking procedure had increased the productivity of the DWI prosecution process. Improved productivity could be achieved by increasing the number of cases tried by bench trial rather than by jury trial and by increasing the number of cases where a guilty verdict was the outcome. This corresponds to savings in court expenses and time, while increasing conviction rates.

The input variable of number of cases filed per given time period was used to convert the output variables to rates. This was done to normalize differences in arrest activities among the counties, and fluctuations between time periods within counties. These rates provide the productivity measures that are the basis for comparing different methods of collecting evidence in the booking procedure. The average BAC level and the percentage of blood and breath test refusals for each time period were checked to insure comparability in terms of quality of arrest.

The cost of processing includes the time and money necessary to use one booking method or another. Since there was no direct way to determine the value of a DWI conviction, the cost effectiveness of any productivity improvement had to be addressed using a relative comparison of the cost of booking with and without the use of videotape equipment. Productivity measures were used to make comparisons between different methods of collecting evidence within a given county. The cost information was used to allow some assessment to be made concerning the cost effectiveness of each method.

The following sections present information concerning input variables, output variables and cost of processing. These sections are followed by the results of the productivity analysis. The data presented in each of these sections are generally grouped according to the methods used to collect evidence during the booking operation. The counties that videotaped everyone in 1984 (Kerr, Smith, Tom Green and Victoria) are presented separately from those that at some point videotaped refusals only (El Paso, Lubbock and Travis). Data from Milam and Washington counties, which did not use videotaped evidence in either 1983 or 1984, are presented for comparative purposes. Data from these counties provide some insight about the effects of other changes in the DWI law that occurred in 1984.

The last section of this chapter presents a summary of anecdotal information collected during the course of the project.

## INPUT DATA

The summaries of the data gathered from misdemeanor cases in the three groups of counties are presented in Tables 3.1 - 3.3. These tables display information in the following categories:

- o Total cases on file in sample year - cases filed in previous years plus cases filed in the sample year.
- o Total cases disposed in sample year - cases disposed (adjudicated or handled in some fashion) in that year regardless of the date of filing.
- o Cases filed in sample year - corresponds to slightly less than the arrests made in a given year.
- o Cases disposed in sample year - those cases filed and disposed in the same year.
- o Cases carried forward from sample year - cases filed in the sample year that were not disposed in that year.
- o Average number of days from arrest to disposition - this average is based on only cases disposed in the sample year.

With the exception of sample year cases disposed in sample year, these informational categories are intended to provide an overview of the levels at which the county courts in the various counties process DWI cases. As can be readily seen, the cases filed exceed the capacity to process them. The resulting backlog is probably a function of increased emphasis on arresting DWI offenders by law enforcement agencies coupled with fixed resources in county courts and county attorneys' offices.

The input variable of primary interest is the number of cases disposed in the sample year. It is this variable that is the base for the output rates used in the productivity analysis.

As can be seen in the three tables, the number of cases disposed in the sample year did not vary greatly in individual counties from year to year. The large differences among counties were probably a function of county population. The greater the population, the greater the number of cases disposed in the sample year.

The summary numbers at the bottom of each table were derived by collapsing data across the county within each year. These values are intended to show the changes in each data category that occurred from 1983 to 1984. They are not intended as aggregate representations of the effectiveness of one method of collecting evidence relative to another. In fact, the summary at the bottom of Table 3.3 is a mixed presentation of several methods and could not be used in such a manner.

In general, the summaries indicate slight increases in case backlogs, and also in average number of days from arrest to disposition. However, there also seems to be an increase in cases disposed with only a slight increase in cases filed in the sample year.

The median BAC level and the percentages of breath and blood test refusals (Tables 3.4 - 3.6) were intended to show that the quality of

TABLE 3.1 MISDEMEANOR DATA SUMMARY FOR: KERR,  
SMITH, TOM GREEN AND VICTORIA COUNTIES

County	Period	Method	Total Cases On File In Sample Year	Total Cases Disposed In Sample Year	Cases Filed In Sample Year	Sample Year Cases Disposed	Sample Year Cases Carried Forward	Average No. Days From Arrest To Disposition
Kerr	1983	No Video	329	266 80.85%	221	168 76.02%	53 23.98%	63.70
	1984	Videotape Everyone	253	219 86.56%	189	157 83.07%	32 16.93%	76.47
Smith	1983	No Video	3163	1102 34.84%	1566	926 59.13%	640 40.87%	72.78
	1984	Videotape Everyone	4206	1954 46.46%	1605	901 56.14%	704 43.86%	80.17
Tom Green	1983	No Video	1659	1275 76.85%	1029	787 76.48%	242 23.52%	40.14
	1984	Videotape Everyone	1340	1185 88.43%	945	723 76.51%	222 23.49%	41.69
Victoria	1983	No Video	1021	894 87.56%	745	613 82.28%	132 17.72%	46.53
	1984	Videotape Everyone	752	657 87.37%	625	437 69.92%	188 30.08%	47.95
All	1983	No Video	6172	3537 57.31%	3561	2494 70.04%	1067 29.96%	56.1
	1984	Videotape Everyone	6551	4015 61.29%	3364	2218 65.93%	1146 34.07%	62.1

TABLE 3.2 MISDEMEANOR DATA SUMMARY FOR: MILAM,  
AND WASHINGTON COUNTIES

County	Period	Method	Total Cases On File In Sample Year	Total Cases Disposed In Sample Year	Cases Filed In Sample Year	Sample Year Cases Disposed	Sample Year Cases Carried Forward	Average No. Days From Arrest To Disposition
Milam	1983	No Video	277	165 59.57%	199	119 59.80%	80 40.20%	60.00
	1984	No Video	304	223 73.36%	210	157 74.76%	53 25.24%	69.19
Washington	1983	No Video	259	171 66.02%	170	143 84.12%	27 15.88%	22.76
	1984	No Video	314	218 69.43%	226	151 66.81%	75 33.19%	25.64
All	1983	No Video	536	336 62.69%	369	262 71.00%	107 29.00%	39.74
	1984	No Video	618	441 71.36%	436	308 70.64%	128 29.36%	47.77



TABLE 3.3 MISDEMEANOR DATA SUMMARY FOR: EL PASO,  
LUBBOCK, AND TRAVIS COUNTIES

County	Period	Method	Total Cases On File In Sample Year	Total Cases Disposed In Sample Year	Cases Filed In Sample Year	Sample Year Cases Disposed	Sample Year Cases Carried Forward	Average No. Days From Arrest To Disposition
El Paso	1983	No Video	7613	1873 24.60%	3334	1321 39.62%	2013 60.38%	84.15
	1984	Everyone/ Refusals *	10407	3696 35.51%	4667	1421 30.45%	3246 69.55%	96.88
Lubbock	1983	Refusals Only	4942	1480 29.95%	1937	616 31.80%	1321 68.20%	171.27
	1984	Videotape Everyone	5085	1861 36.60%	1623	635 39.13%	988 60.87%	168.7
Travis	1983	Refusals only	8532	4919 57.65%	4829	2310 47.84%	2519 52.16%	135.12
	1984	Refusals Only	8532	4106 48.12%	4418	2268 51.34%	2150 48.66%	131.8
All	1983	Varied	21087	8272 39.23%	10100	4247 42.05%	5853 57.95%	118.58
	1984	Varied	24024	9663 40.22%	10708	4324 40.38%	6384 59.62%	125.74

\*El Paso changed from videotaping everyone to videotaping refusals in July 1984.

TABLE 3.4 BAC AND BREATH TEST REFUSALS FOR: KERR,  
SMITH, TOM GREEN AND VICTORIA COUNTIES

County	Period	Method	Median BAC Level In Percent	Estimated Percentage Of Breath Test Refusals
Kerr	1983	No Video	0.18-0.19	9.46
	1984	Videotape Everyone	0.15	20.24+
Smith	1983	No Video	0.13-0.14	18.35
	1984	Videotape Everyone	0.13-0.14	19.01
Tom Green	1983	No Video	0.13-0.14	22.86
	1984	Videotape Everyone	0.16-0.17	18.46
Victoria	1983	No Video	0.12-0.13	13.29
	1984	Videotape Everyone	0.13-0.14	14.74
All	1983	No Video	0.13-0.14	17.14
	1984	Videotape Everyone	0.14-0.15	18.09

(+)Significant increase (P<.05)

(-)Significant decrease (P<.05)

TABLE 3.5 BAC AND BREATH TEST REFUSALS FOR: MILAM  
AND WASHINGTON COUNTIES

County	Period	Method	Median BAC Level	Estimated Percentage Of Breath Test Refusals
Milam	1983	No Video	0.13-0.14	10.37
	1984	No Video	0.13	18.59
Washington	1983	No Video	0.13	8.74
	1984	No Video	0.14	10.84
All	1983	No Video	0.13-0.14	9.51
	1984	No Video	0.13-0.14	15.07

(+)Significant increase (P<.05)  
(-)Significant decrease (P<.05)

TABLE 3.6 BAC AND BREATH TEST REFUSALS FOR: EL PASO,  
LUBBOCK AND TRAVIS COUNTIES

County	Period	Method	Median BAC Level	Estimated Percentage Of Breath Test Refusals
El Paso	1983	No Video	0.13-0.14	19.92
	1984	Everyone/ Refusals *	0.15	17.71-
Lubbock	1983	Refusals Only	0.14-0.15	20.31
	1984	Videotape Everyone	0.14-0.15	26.56
Travis	1983	Refusals only	0.11	25.59
	1984	Refusals Only	0.13-0.14	21.1
All	1983	Varied	0.12-0.13	22.9
	1984	Varied	0.13-0.14	21.95

\*El Paso changed from videotaping everyone to videotaping refusals only in July 1984

(+)Significant increase (P<.05)

(-)Significant decrease (P<.05)

arrest remained consistent from one year to the next. There were also slight variations in median BAC levels within and among counties. The ranges of these variations were small; less than .035% within and less than .075% between counties. It is unlikely that such minor changes affected the quality of the arrests being made or subsequent dismissals.

The percentage of breath test refusals was based on the number of people arrested rather than the number of cases disposed. The data were estimated from records maintained by the Texas Department of Public Safety (DPS) for each county for the two years of interest. As can be seen in tables, there was a slight tendency for breath test refusals to increase in 1984. Two of the nine counties showed statistically significant ( $p < .05$ ) increases, four showed non-significant increases and one showed a significant decrease. The increases occurred in counties that used videotaped evidence as well as those that did not, and probably reflect the effects of other aspects of the DWI law change or normal fluctuations.

## OUTPUT DATA

The output variables under consideration are the percentages of bench trials and the percentages of guilty pleas and convictions. An increase in the value of these two variables represents improvement in production quantity and quality. An increase in the percentage of bench trials would indicate a corresponding reduction in the more expensive jury trials, thus an increase in quantity of the desired, low cost output. An increase in the percentage of guilty pleas corresponds to an improvement in quality of output because it should be accompanied by reductions in dismissals and acquittals.

The frequencies and percentages of bench and jury trials for each group of counties are presented in Tables 3.7 - 3.9. As can be seen from these tables, very few cases require jury trials. With the exceptions of Milam and Lubbock counties, in excess of 99 percent of DWI cases were disposed by bench trials in both 1983 and 1984. Using tests of proportions, it was determined that Victoria and Milam counties experienced significant increases ( $p < .05$ ) in bench trials in 1984.

In Table 3.9, the distribution of bench and jury trials for El Paso county can be split at mid year in 1984. In July, this county switched from videotaping everyone to videotaping refusals only. The small number of cases in the refusal only category can be attributed to limitations of the court to process cases causing them to be carried over to the next calendar year.

This table also indicates that Travis county did not use videotaped evidence in 1983. In fact, The Austin Police Department, which provided the greater number of DWI cases, videotaped refusals only. However, arrests made by the DPS were not videotaped. For purposes of productivity comparisons this arrangement of data was more appropriate.

TABLE 3.7 FREQUENCY AND PERCENTAGE OF MISDEMEANOR CASES BY TYPE OF TRIAL: KERR, SMITH, TOM GREEN, AND VICTORIA COUNTIES

County	Period	Method	Case Disposed	Type Of Trial	
				Bench	Jury
Kerr	1983	No Video	168	167 99.40%	1 0.60%
	1984	Videotape Everyone	157	157 100.00%	0 0.00%
Smith	1983	No Video	923	921 99.78%	2 0.22%
	1984	Videotape Everyone	900	892 99.11%	8 0.89%
Tom Green	1983	No Video	787	787 100.00%	0 0.00%
	1984	Videotape Everyone	723	722 99.86%	1 0.14%
Victoria	1983	No Video	613	609 99.35%	4 0.65%
	1984	Videotape Everyone	437	437 100.00%+	0 0.00%
All	1983	No Video	2491	2484 99.72%	7 0.28%
	1984	Videotape Everyone	2217	2208 99.59%	9 0.41%

(+)Significant increase (P<.05)  
 (-)Significant decrease (P<.05)

TABLE 3.8 FREQUENCY AND PERCENTAGE OF MISDEMEANOR CASES BY TYPE OF TRIAL: MILAM AND WASHINGTON COUNTIES

County	Period	Method	Case Disposed	Type Of Trial	
				Bench	Jury
Milam	1983	No Video	119	110 92.44%	9 7.56%
	1984	No Video	156	154 98.72% +	2 1.28%
Washington	1983	No Video	143	143 100.00%	0 0.00%
	1984	No Video	151	151 * 100.00%	0 0.00%
All	1983	No Video	262	253 96.56%	9 3.44%
	1984	No Video	307	305 99.35%	2 0.65%

(+) Significant increase (P<.05)  
 (-) Significant decrease (P<.05)

TABLE 3.9 FREQUENCY AND PERCENTAGE OF MISDEMEANOR CASES BY TYPE OF TRIAL: EL PASO, LUBBOCK AND TRAVIS COUNTIES

County	Period	Method	Case Disposed	Type Of Trial	
				Bench	Jury
El Paso	1983	No Video	1322	1315 99.47%	7 0.53%
	1984	Everyone/ Refusals *	1422	1417 99.65%	5 0.35%
	(Jan.-July)	Everyone	1105	1101 99.64%	4 0.36%
	(July-Dec.)	Refusals Only	317	316 99.68%	1 0.32%
Lubbock	1983	Refusals Only	616	607 98.54%	9 1.46%
	1984	Videotape Everyone	635	620 97.64%	15 2.36%
Travis	1983	No Video**	550	548 99.64%	2 0.36%
	1984	Refusals Only	2271	2261 99.56%	10 0.44%
All	1983	Varied	2488	2470 99.28%	18 0.72%
	1984	Varied	4328	4298 99.31%	30 0.69%

\*El Paso changed from videotaping everyone to videotaping refusals only in July 1984.

\*\*Department of Public Safety DWI arrest only.



The outcomes of the disposed cases for each group of counties are presented in Tables 3.10 - 3.12. The disposition categories for bench trials include plead guilty, plead guilty to a lesser charge, and dismissed. Although the reasons for dismissals were not recorded, the most common were; too long in the system (difficult to locate witnesses and sometimes defendants), insufficient evidence, cases refiled under another cause number, and extenuating circumstances. The dispositions for jury trials include convictions and acquittals. The disposition category of "other" contains cases from both bench and jury trials where adjudication was deferred, pre-trial intervention occurred, the person being tried was already serving a sentence for a more serious offense, or the outcome was unknown or not available. Since the majority of cases are disposed by pleading guilty in a bench trial, that outcome was used for comparisons between years. Only two of the nine counties experienced statistically significant changes from 1983 to 1984. Smith county experienced a significant decrease ( $p < .05$ ), and El Paso experienced a significant increase ( $p < .05$ ) in guilty pleas. The method of acquiring evidence for these counties differed; Smith county changed from not using videotape in 1983 to videotaping everyone in 1984. El Paso changed from not using videotape in 1983 to videotaping everyone in the first half of 1984 and videotaping refusals only in the second half. It is the refusals only period that created the significant increase in 1984.

The distribution of convictions in jury trials from 1983 to 1984 decreased for four counties, increased for three and remained the same for two.

#### COST DATA

The quantifiable costs of using of videotaped evidence include equipment and facilities costs and increased manpower costs. The equipment and facilities costs that have been identified are:

- (1) Equipment: Camera, Video Cassette Recorder, Microphones, Monitor, etc., \$2,200 to \$6,200;
- (2) Videotape per tape costs: \$4.00 to \$14.00;
- (3) Videotape room: No Estimate.

Equipment costs vary according to the quality of equipment bought. Tape costs vary according to volume and quality bought. The cost of setting up a videotape room depends on the space available, how it is used, what remodeling is required and several other factors.

The primary cost seems to be increased manpower. Table 3.13 presents the approximate times required for administering the breath test or videotaping within each method of collecting evidence. These times reflect the increased manpower requirements of videotaping. They were estimated from radio logs of officers "out of service" time for arrests that did or did not involve videotaping. Where radio logs were not available, simulated arrests were timed.

TABLE 3.10 DISPOSITIONS OF CASES FOR: KERR, SMITH,  
TOM GREEN AND VICTORIA COUNTIES

County	Period	Method	Case Disposed	BENCH TRIALS				JURY TRIALS	
				Plead Guilty	Plead Guilty To Lesser Charge	Dismissed	Other	Convictions	Acquitted
Kerr	1983	No Video	168	158 94.05%	4 2.38%	5 2.98%	0 0.00%	1 0.60%	0 0.00%
	1984	Videotape Everyone	157	144 91.72%	2 1.27%	10 6.37%	1 0.64%	0 0.00%	0 0.00%
Smith	1983	No Video	923	895 96.97%	0 0.00%	26 2.82%	0 0.00%	2 0.22%	0 0.00%
	1984	Videotape Everyone	900	830 92.22%-	5 0.56%	54 6.00%+	4 0.44%	1 0.11%	6 0.67%
Tom Green	1983	No Video	787	705 89.58%	8 1.02%	67 8.51%	7 0.89%	0 0.00%	0 0.00%
	1984	Videotape Everyone	723	638 88.24%	8 1.11%	70 9.68%	6 0.83%	1 0.14%	0 0.00%
Victoria	1983	No Video	613	569 92.82%	3 0.49%	35 5.71%	2 0.33%	0 0.00%	4 0.65%
	1984	Videotape Everyone	437	400 91.53%	0 0.00%	36 8.24%	1 0.23%	0 0.00%	0 0.00%
All	1983	No Video	2491	2327 93.42%	15 0.60%	133 5.34%	9 0.36%	3 0.12%	4 0.16%
	1984	Videotape Everyone	2217	2012 90.75%	15 0.68%	170 7.67%	12 0.54%	2 0.09%	6 0.27%

(+) Significant increase (P<.05)  
(-) Significant decrease (P<.05)

TABLE 3.11 DISPOSITIONS OF CASES FOR:  
MILAM AND WASHINGTON COUNTIES

County	Period	Method	Case Disposed	BENCH TRIALS			JURY TRIALS		
				Plead Guilty	Plead Guilty To Lesser Charge	Dismissed	Other	Convictions	Acquitted
Milam	1983	No Video	119	103 86.55%	0 0.00%	6 5.04%	4 3.36%	6 5.04%	0 0.00%
	1984	No Video	156	136 87.18%	3 1.92%	10 6.41%	6 3.85%	1 0.64%	0 0.00%
Washington	1983	No Video	143	135 94.41%	3 2.10%	3 2.10%	2 1.40%	0 0.00%	0 0.00%
	1984	No Video	151	147 97.35%	1 0.66%	3 1.99%	0 0.00%	0 0.00%	0 0.00%
All	1983	No Video	262	238 90.84%	3 1.15%	9 3.44%	6 2.29%	6 2.29%	0 0.00%
	1984	No Video	307	283 92.18%	4 1.30%	13 4.23%	6 1.95%	1 0.33%	0 0.00%

TABLE 3.12 DISPOSITIONS OF CASES FOR: EL PASO,  
LUBBOCK, AND TRAVIS COUNTIES

County	Period	Method	Case Disposed	BENCH TRIALS				JURY TRIALS	
				Plead Guilty	Plead Guilty To Lesser Charge	Dismissed	Other	Convictions	Acquitted
El Paso	1983	No Video	1314	911 69.33%	112 8.52%	273 20.78%	11 0.84%	2 0.15%	5 0.38%
	1984	Everyone/ Refusals *	1422	1052 73.98% +	22 1.55%	333 23.42%	11 0.77%	2 0.14%	2 0.14%
	(Jan.-July)	Everyone	1104	769 69.66%	20 1.81%	301 27.26%	11 1.00%	2 0.18%	1 0.09%
	(July-Dec.)	Refusals Only	318	283 88.99% +	2 0.63%	32 10.06%	0 0.00%	0 0.00%	1 0.31%
Lubbock	1983	Refusals Only	616	490 79.55%	1 0.16%	116 18.83%	0 0.00%	3 0.49%	6 0.97%
	1984	Videotape Everyone	635	480 75.59%	0 0.00%	140 22.05%	0 0.00%	8 1.26%	7 1.10%
Travis	1983	No Video	549	493 89.80%	0 0.00%	49 8.93%	5 0.91%	1 0.18%	1 0.18%
	1984	Refusals Only	2271	2068 91.06%	0 0.00%	171 7.53%	22 0.97%	5 0.22%	5 0.22%
All	1983	Varied	2479	1894 76.40%	113 4.56%	438 17.67%	16 0.65%	6 0.24%	12 0.48%
	1984	Varied	4328	3600 83.18%	22 0.51%	644 14.88%	33 0.76%	15 0.35%	14 0.32%

\*El Paso changed from videotaping everyone to videotaping refusals only in July 1984.

(+) Significant increase (P<.05)

(-) Significant decrease (P<.05)

TABLE 3.13  
 APPROXIMATE TIME REQUIRED BY EACH METHOD

Evidence Collection Process Times

METHOD	BREATH TEST TIME*		VIDEOTAPE TIME**
No video method	18-20 min		
Videotape (Refusals only)	18-20 min	or	15-25 min
Videotape (Everyone)	18-20 min	and	15-25 min

\*Includes 15 minutes required to observe DWI suspects + 3-5 min to administer test.

\*\*These times were derived by observing and going through the operation at eight different facilities.

Counties not using videotape have only the breath test administration time for those suspects that did not refuse the breath test.

Counties that videotape refusals only have breath test administration time for individuals that agree to take the test and videotaping times for those that refuse the test.

Counties that videotape everyone have breath test administration time and videotaping times to consider. For those counties that use the videotaped time for the required breath test observation period, the actual increase in time caused by videotaping was approximately 10-20 minutes. Those counties that have the required breath test observation period before or after videotaping, increased total time to 33 to 43 minutes.

Breath test time includes the required 15 minute observation time and the 3-5 minutes needed to administer the test. The breath test observation time may be included in the videotape time for jurisdictions that videotape everyone.

Videotaping time will vary according to what is being videotaped. If a sobriety test is videotaped along with a second reading of the Miranda and DWI warnings, reading the DWI refusal form, and conducting the case report interview, the process will take approximately 20-25 minutes. If no sobriety test is given, and only the reading of the Miranda and DWI warnings, reading the DWI refusal form, conducting the case report interview and other booking activities are videotaped, the time required is 10-20 minutes. However, since most of these activities take place with or without videotape, the average time attributable to the use of videotape is approximately 15 minutes.

## PRODUCTIVITY COMPARISONS

The three methods of collecting evidence in DWI cases were compared on the basis of the desired output variables: bench trials and guilty pleas and the estimated cost associated with each method. Because the arrest, booking, and adjudication operations varied so greatly from county to county, comparisons were made between counties that used two different methods in two distinct time periods. Thus, the comparisons made were: no videotape versus videotaping everyone, no videotape versus videotaping only breath and blood test refusals, and videotaping refusals only versus videotaping everyone. Only one county, El Paso, used all three methods.

The productivity comparisons are presented in Table 3.14. As can be seen in this table the only significant increase in a productivity measure was an increase in the percentage of guilty pleas using the method of videotaping refusals only in El Paso county. Since no other comparison indicated a change, and since the data set for El Paso is small the significant increase may be suspect. This high percentage of guilty pleas may only be an artifact of the large percentage of cases carried over to the next year for disposition.

TABLE 3.14 PRODUCTIVITY COMPARISONS

Method	Counties	Cases Disposed	Percentage of Bench Trials	Percentage of Guilty Pleas	Estimated Cost
No Videotape	Kerr, Smith, Tom Green, Victoria (1983)	2491	99.72%	93.42%	18-20 minutes per case
Videotape Everyone	Kerr, Smith, Tom Green, Victoria (1984)	2217	99.59%	90.75%	33-45 minutes per case
No Videotape	Travis (DPS), (1983)	550	99.64%	89.64%	18-20 minutes per case
Videotape Refusals Only	Travis (All Agencies) (1984)	2271	99.56%	86.83%	15-25 minutes per case
Videotape Everyone	Lubbock (1984)	635	97.64%	75.59%	33-45 minutes per case
Videotape Refusals Only	Lubbock (1983)	616	98.54%	79.55%	15-25 minutes per case
No Videotape	El Paso (1983)	1322	99.47%	68.91%	18-20 minutes per case
Videotape Everyone	El Paso (Jan.-July 1984)	1104	99.64%	69.66%	33-45 minutes per case
Videotape Refusals Only	El Paso (July-Dec. 1984)	317	99.68%	89.27%	15-25 minutes per case

The estimated cost comparison indicates that there is an increase in officer time associated with using videotape equipment in the booking operation. This additional time amounts to approximately 15 minutes per case when the equipment is used. When everyone is videotaped, an estimate of the cost per year can be obtained by multiplying the number of cases by 15 minutes. When only those individuals who refuse a breath test are videotaped, the additional time is significantly less.

#### ANECDOTAL DATA

The following observations were derived from the experiences of the project staff in collecting data from case records and from interviews with prosecutors and law enforcement personnel:

1. The large number of misdemeanor DWI cases carried over from one year to the next is attributable, in part, to inadequate prosecutorial staff in most county attorneys' offices. However, a percentage of the backlog of DWI cases can be attributed to:
  - a. inadequate record systems and procedures,
  - b. poor scheduling of activities, and
  - c. ill defined managerial goals and objectives.
2. There is concern that the activities being videotaped do not adequately demonstrate the degree of intoxication of the person performing them.
3. The opinion was expressed that it takes time for attorneys and jurors to become accustomed to dealing with videotaped evidence. The longer the experience, the more successful the usage.
4. The booking procedures varied greatly among the counties studied. Even though the legal requirements of each county were basically the same, there was little standardization in either paperwork or action.



4. There is a need for a more demonstrative set of sobriety tests. These tests would be more driving skills related and would provide a more accurate visual image of how intoxication hampers the reflexes and coordination of suspects going through the tests.
5. To insure the consistency of application of the existing sobriety test and any new tests that might be developed, a training program is needed on how law enforcement officers should implement sobriety tests on videotape.
6. Prosecutors need to be trained in how to use videotaped evidence.
7. Law enforcement agencies need to review and evaluate their booking operation in order to improve the efficiency of the booking procedures.

#### 4.0 CONCLUSIONS AND RECOMMENDATIONS

The method of using videotaped evidence in DWI cases did not increase the productivity of the prosecution process as measured by the change in percentage of bench trials and percentage of guilty pleas. There were no delays in the court system nor did police officers spend any more or less time in court as a result of videotaping. This change in method however did increase the costs associated with the booking operation. The primary cost increase is a function of the increase in time required of the arresting officer and the officers serving as witnesses in the booking operation.

Since the procedures for using videotaped evidence are now in place, it is unlikely that a recommendation to stop using videotape would be followed. However, the loss of time associated with the use of videotape can be minimized by using it only in those cases where the person arrested has refused a breath or blood test. Additional reasons for this recommendation are:

1. It minimizes off the street time for officers.
2. It provides supporting evidence to officers' testimony in cases where the breath test was refused.
3. The equipment is available for other uses. For example, child abuse or molestation cases, training, police brutality cases, evidence collection, or for collecting evidence when driver impairment is created by something other than alcohol.
4. It provides visual documentation that breath or blood test was offered and was refused by suspect.
5. There is no contradictory evidence between the videotaped appearance of sobriety and the BAC is .10 or higher.

Other recommendations that were derived as a result of the project staff's experience and observations are discussed below.

1. There is a need for the development of a standardized record keeping system for the offices of the county and district attorneys. This system should standardize the information recorded in each case to facilitate filing and summary reporting. If possible, this system should be automated. This recommendation was prompted by the staff's observation of case records that are not correctly filed, or have not been filed at all. This may be a result of the need for additional well trained clerical employees or the implementation of motivational or product improvement strategies.
2. There is a need for some managerial training for county and district attorneys. Specifically this training should deal with case load and personnel management and the development of prosecutorial objectives.
3. Action needs to be taken by the commissioners court in most counties to reduce the under-staffing problem. Due to the backlog of current cases in the court systems many cases are dismissed. More staff are needed to even out case loads and to expedite prosecution of DWI cases.

VIDEOTAPE SURVEY

Symbol Explanation

Under columns: Have videotape, and use videotape  
y = yes - have and or use videotape capability  
n = no - do not have and or use videotape capability

Under column: How used  
a = videotape all DWI suspects  
b = videotape only DWI suspects that refuse other tests  
c = other videotape uses i.e., child abuse, book-in-area, jail, training,  
criminal investigations, all arrests, etc.  
u = no response to this section of questionnaire

Under column: Other videotape  
y = yes other jurisdictions in county have videotape capability  
n = no other jurisdictions do not have videotape capability

VIDEOTAPE SURVEY  
All Counties

County	Pop.	Have VT	USE VT	How Used	Other VT
Anderson	38381	y	y	a	n
Angelina	64172	y	y	a	y
Aransas	14260	y	y	a,c	y
Bastrop	24726	y	y	b	n
Bee	26030	y	y	a	n
Bell	157820	y	y	a	n
Bowie	75301	y	y	a	y
Brazoria	169587	y	y	a	n
Brazos	93588	y	y	a	n
Brown	33057	y	y	a	n
Caldwell	23637	y	n	c	n
Calhoun	19574	y	y	a	n
Cameron	209727	y	n	c	y
Cass	29430	y	y	a	n
Cherokee	38127	y	y	a	y
Collin	144576	y	y	a	y
Cooke	27656	y	y	a	n
Coryell	56767	y	y	a	n
Dallas	1556390	y	y	a	y
DeafSmith	21165	y	n		
Denton	143126	y	y	a	y
Ector	115374	y	y	a	y
Ellis	59743	y	y	a	n
El Paso	479899	y	y	b	n
Erath	22560	y	y	c	n
Fort Bend	130846	y	y	a	y
Galveston	195940	y	y	a	y
Grayson	89796	y	y	a	y
Gregg	99495	y	y	a	n
Hale	37592	y	y	a	n
Hardin	40721	y	y	a	y
Harris	2409547	y	y	a,c	y
Harrison	52265	y	y	a	n
Hays	4594	y	y	a	n
Henderson	42606	y	y	a	n
Hidalgo	283323	y	y	a	y
Hill	25024	y	y	c	n
Hockley	23230	y	y	a	y
Hopkins	25247	y	y	a	n
Howard	33142	y	y	a,c	n
Hutchinson	26304	y	y	a	n
Jackson	13352	y	y	a	n
Jasper	30781	y	y	a	n
Jefferson	250938	y	y	a	y
Jim Wells	36498	y	y	a	n
Johnson	67649	y	y	a,c	y
Kaufman	39029	y	y	a	n
Kleberg	33358	y	y	a	n
Lamar	42156	y	y	a	n

Lamb	18699	y	y	c	n
Lee	10952	y	n	a	n
Liberty	47088	y	y	a	y
Lubbock	211651	y	y	a	n
Martin	4684	y	u	c	n
Matagorda	37828	y	y	a	n
McLennan	170755	y	y	a	n
Midland	82636	y	y	a, c	y
Montgomery	128487	y	y	a	n
Nacogdoches	46786	y	y	a	y
Navarro	35323	y	y	a	n
Nueces	268215	y	y	a	n
Orange	83838	y	y	a	n
Palo Pinto	24062	y	y	c	n
Parker	44609	y	y	a, c	n
Potter	98637	y	u	u	y
Randall	75062	y	y	u	n
Reeves	15801	y	y	a, c	n
Rusk	41382	y	y	a	n
San Patricio	58013	y	y	a	y
Sherman	3174	y	y	a	n
Smith	128366	y	y	a, c	y
Tarrant	860880	y	y	a, c	y
Taylor	110932	y	y	a	y
Tom Green	84784	y	y	a	n
Travis	419573	y	y	b	y
Upshur	28595	y	y	a	n
Van Zandt	31426	y	y	a	y
Victoria	68807	y	y	a	n
Waller	19798	y	y	a	y
Ward	13176	y	y	c	n
Webb	99258	y	y	a	n
Wharton	40242	y	y	a	y
Wichita	121082	y	y	c	y
Willacy	17495	y	n	c	n
Williamson	76507	y	y	a	y
Yoakum	8299	y	y	a	y
Young	19083	y	y	c	y
Edwards	2033	u			
Andrews	13323	n			
Archer	7266	n			
Armstrong	1994	n			
Austin	17726	n			
Bailey	8168	n			
Baylor	4919	n			
Blanco	4681	n			
Borden	859	n			
Bosque	13401	n			
Brewster	7573	n			
Briscoe	2579	n			
Burleson	12313	n			
Burnet	17803	n			
Callahan	10992	n			
Camp	9275	n			

Carson	6672	n
Castro	10556	n
Chambers	18538	n
Childress	6950	n
Clay	9582	n
Cochran	4825	n
Coke	3196	n
Coleman	10439	n
Collingsworth	4648	n
Colorado	18823	n
Comanche	12617	n
Concho	2915	n
Cottle	2947	n
Crane	4600	n
Crockett	4608	n
Crosby	8859	n
Culberson	3315	n
Dallam	6531	n
Dawson	16184	n
Delta	4839	n
DeWitt	18903	n
Dickens	3539	n
Donley	4075	n
Eastland	19480	n
Falls	17946	n
Fannin	24285	n
Fayette	18832	n
Fisher	5891	n
Floyd	98384	n
Foard	2158	n
Franklin	6893	n
Freestone	14830	n
Gaines	13150	n
Garza	5336	n
Gillespie	13532	n
Glasscock	1304	n
Goliad	5193	n
Gonzales	16949	n
Gray	26386	n
Grimes	13580	n
Hall	5594	n
Hamilton	8297	n
Hansford	6209	n
Hardeman	6368	n
Hartley	3987	n
Haskell	7725	n
Hemphill	5304	n
Hood	17714	n
Houston	22299	n
Hudspeth	2728	n
Hunt	55248	n
Irion	1386	n
Jack	7408	n
Jeff Davis	1647	n

y

Jones	17268	n
Karnes	13593	n
Kent	1145	n
Kimble	4063	n
Kinney	2279	n
Knox	5329	n
Lampasas	12005	n
Lavaca	19004	n
Leon	9594	n
Limestone	20224	n
Lipscomb	3766	n
Live Oak	9606	n
Llano	10144	n
Lynn	8605	n
Madison	10649	n
Marion	10360	n
Mason	3683	n
McCulloch	8735	n
Menard	2346	n
Milam	22732	n
Mitchell	19088	n
Montague	17410	n
Morris	14629	n
Motley	1950	n
Newton	13254	n
Nolan	17359	n
Ochiltree	9588	o
Oldham	2283	n
Panola	20724	n
Parmer	11038	n
Pecos	14618	n
Polk	24407	n
Presidio	5188	n
Rains	4839	n
Reagan	4135	n
Real	2469	n
Red River	16101	n
Refugio	9289	n
Roberts	1187	n
Robertson	14653	n
Rockwall	14528	n
Runnels	11872	n
Sabine	8702	n
San Augustine	8785	n
San Jacinto	11434	n
San Saba	6204	n
Schleicher	2820	n
Scurry	18192	n
Shackelford	3915	n
Shelby	23084	n
Somervell	4154	n
Starr	27266	n
Stephens	9926	n
Sterling	1206	n

Stonewall	2406	n
Sutton	5130	n
Swisher	9723	n
Terrell	1595	n
Terry	14581	n
Throckmorton	2053	n
Titus	21442	n
Trinity	9450	n
Tyler	16223	n
Upton	4619	n
Val Verde	35910	n
Walker	41789	n
Washington	21998	n
Wheeler	7137	n
Wilbarger	15931	n
Winkler	9944	n
Wise	26575	n
Wood	24697	n
Atascosa	25055	
Bandera	7084	
Bexar	988798	
Brooks	8428	
Comal	36446	
Dimmit	11367	
Kenedy	543	
Duval	12517	
Frio	13785	
Guadalupe	46708	
Jim Hogg	5168	
Kendall	10635	
Kenedy	543	
Kerr	28780	
King	425	
LaSalle	5514	
Loving	91	
Maverick	31398	
McMullen	789	
Medina	23164	
Mills	4477	
Moore	16575	
Uvalde	22441	
Wilson	16756	
Zapata	6628	
Zavala	11666	



## Police veterans lead crackdown

# Driving errors tattle on drunks

By JERRY WHITE

American-Statesman Staff

An experienced police officer needs only a subtle hint, like the way a driver locks elbows as he grasps the steering wheel, or the way he stops too far from an intersection while waiting for the traffic light to change.

Those clues are enough to make an experienced officer suspect they are watching a drunken driver.

Charley Chipman and Mike Sheffield are experienced officers.

Chipman coordinates the Selective Traffic Enforcement Program, a patrol of 10 officers who look primarily for drunken drivers three nights a week. Sheffield, who was a frequent participant in the program, arrested more people in 1983 for driving while intoxicated than any other Austin officer.

An American-Statesman survey showed that Sheffield, a police officer for nearly five years, arrested 69 people on suspicion of DWI in 1983. That figure represents nearly 2 percent of all the DWI arrests made in Austin last year.

"YOU DON'T really keep track," Sheffield said. "When you're out on patrol, you just train yourself to get into a habit of looking for the drunken drivers. It's a routine for me that when I stop someone, I automatically watch them to see if they're DWI."

Sheffield said that most stops are made after he sees a driver violate a traffic law — like driving left of the center stripe, running a red light, or speeding. If those violations occur between 10 p.m. and 3 a.m., he said, there is a large probability that the perpetrator is drunk.

Chipman said officers on the lookout for drunken drivers depend on other signs as well: "People stopping for green lights, people stopping an eighth of a block back



Staff Photo by Jay Godwin

Charley Chipman, head of selective enforcement for the Police Department, says one drunken driver in 2,000 is caught.

from an intersection to wait for the light to turn green, the way they lock their elbows and their hands are gripping the steering wheel to keep the car from weaving, those are all signs."

CHIPMAN SAID that 20 percent of the DWI arrests made in 1983 were made by officers working in the Selective Traffic Enforcement Program. They were paid for overtime with money from a state grant to the Police Department in October 1982. The purpose of the grant was to put more officers on the street to arrest drunken drivers — an effort to reduce the number of people killed in alcohol-related accidents.

The results were dramatic. Alcohol-related traffic deaths dropped 14.1 percent from 1982 to 1983.

The Police Department received another grant to continue the patrols through 1984. Although there is now just one officer in each car instead of two, the number of arrests has stayed practically even with 1983 figures.

Each DWI arrest by an officer in the selective enforcement program cost an average of \$350 in overtime money in 1983. The program will be more efficient this year because officers are riding alone.

Even though more people were arrested for DWI in 1983 than ever before, Chipman said that the Police Department is not ready to slack off. He cites statistics showing that only one drunken driver in 2,000 is ever caught.

Chipman said that a typical blood alcohol level of drivers arrested in 1983 was 0.18 percent. The law says that anyone with a blood alcohol level of 0.10 percent is drunk.

SHEFFIELD SAID it is easy to guess a novice drinker's blood alcohol count when he is arrested because often he can barely stand.

"It's the alcoholics who throw me off," he said. Sheffield said he has seen people who performed sobriety tests flawlessly and could carry on lengthy, coherent conversations. But when they blew into the Intoxilyzer they registered more than three times the legal limit.

"They seem to build a tolerance so they can be physically agile, but when you put them behind the wheel of a car, it's obvious they're

# Driving drunk — who gets caught

To give readers an idea of who is arrested in Austin on charges of driving while intoxicated, the American-Statesman researched police and Municipal Court records for 1983.

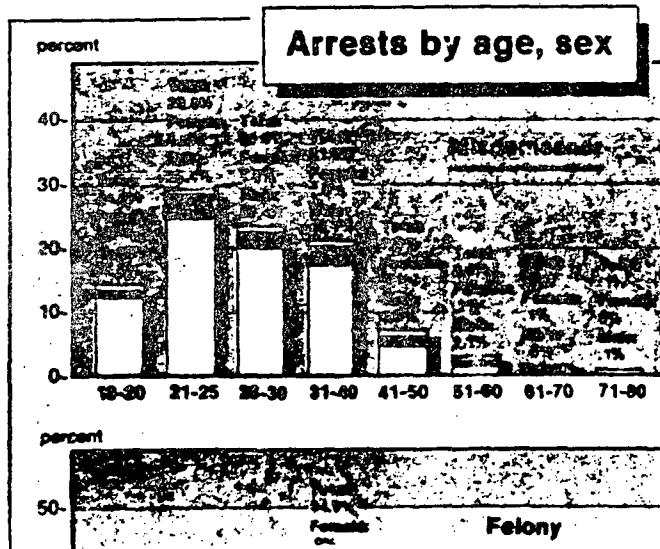
This profile was compiled from the files of the 3,684 people charged by the Austin Police Department with misdemeanor or felony DWI last year. A DWI suspect was charged with a felony only if his record showed at least one previous final DWI conviction.

The statistics show which areas of town yield the most arrests — Southwest Austin

and the area between Burnet Road and Interstate 35. The figures show when most arrests are made — on weekends, after midnight. They also show that most of those charged were in their early 20s, were Anglos, and were students or construction workers.

The records show at least one DWI arrest every day in 1983, and the average was just above 10 a day. The most arrests occurred Jan. 15, when 30 drivers were booked. June 20 and August 23 tied as the day with the fewest arrests — one each.

B-2

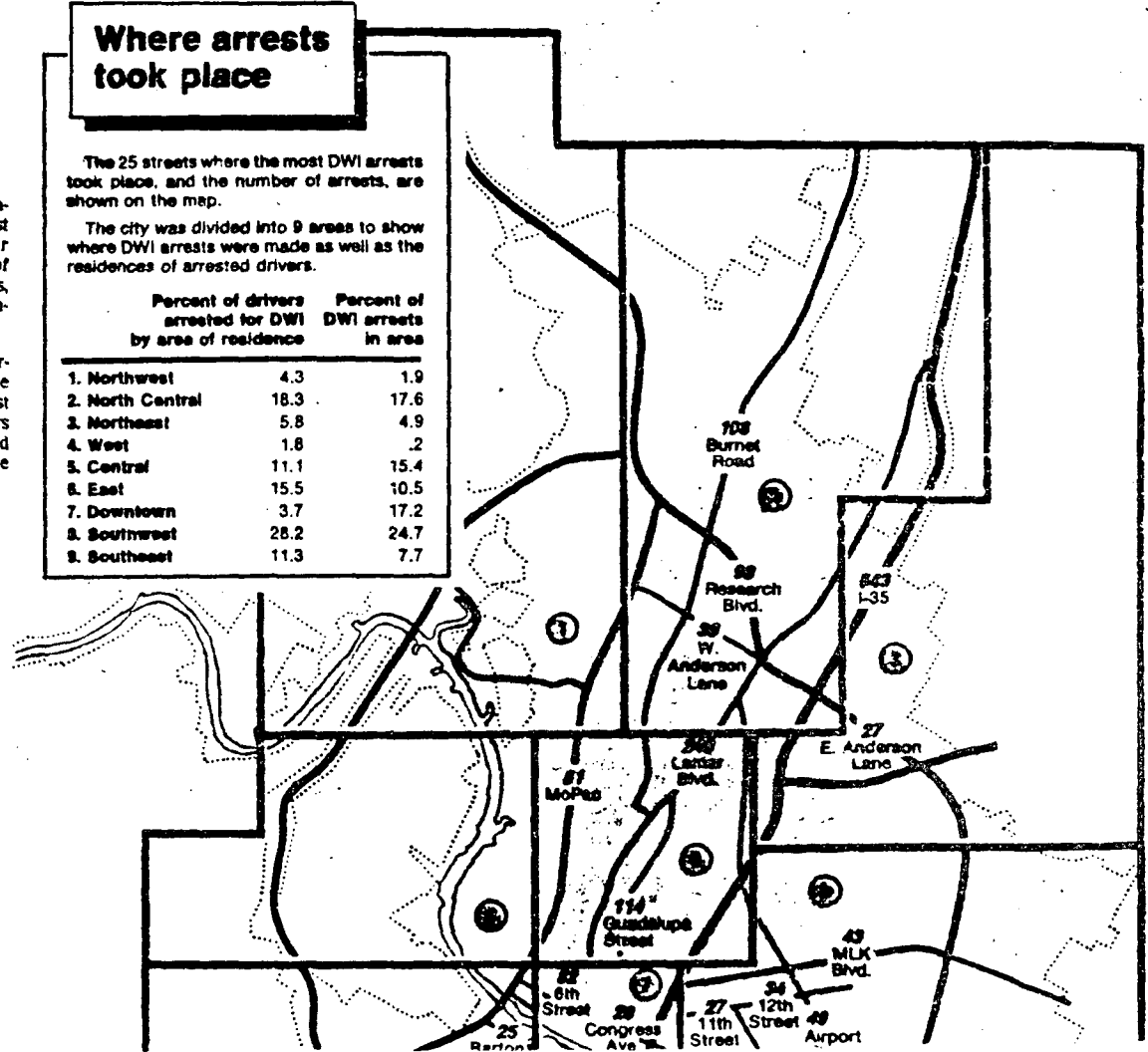


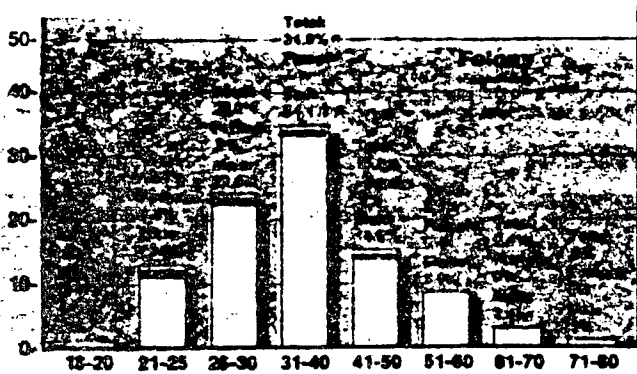
## Where arrests took place

The 25 streets where the most DWI arrests took place, and the number of arrests, are shown on the map.

The city was divided into 9 areas to show where DWI arrests were made as well as the residences of arrested drivers.

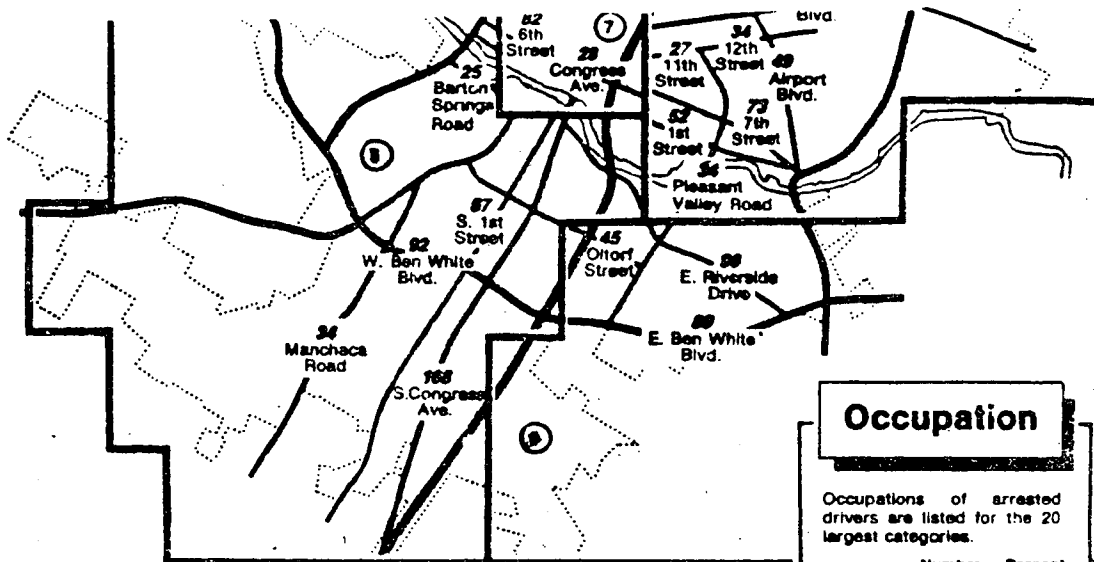
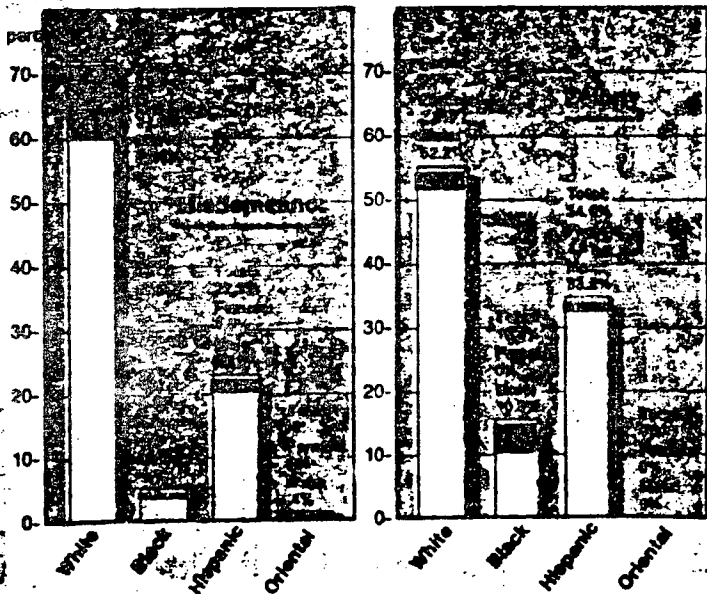
Area	Percent of drivers arrested for DWI by area of residence	Percent of DWI arrests in area
1. Northwest	4.3	1.9
2. North Central	18.3	17.6
3. Northeast	5.8	4.9
4. West	1.8	.2
5. Central	11.1	15.4
6. East	15.5	10.5
7. Downtown	3.7	17.2
8. Southwest	28.2	24.7
9. Southeast	11.3	7.7





### Ethnic breakdown

According to the 1980 U.S. Census report, the ethnic breakdown of the Travis County population is white, 72 percent; black, 10.7 percent; and Hispanic, 17.2 percent.



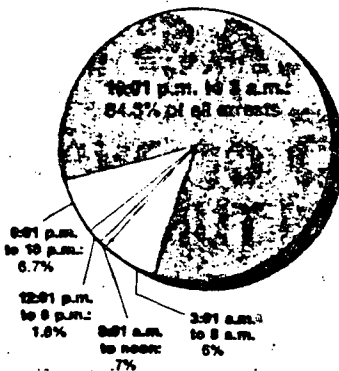
Staff Graphics by James Black and Kate McKenna

### Occupation

Occupations of arrested drivers are listed for the 20 largest categories.

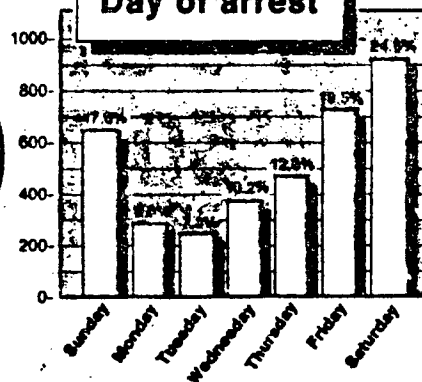
Occupation	Number of arrests	Percent of total
Student	223	13.8
Carpentry, construction workers	199	13.8
Sales	125	8.7
Managers	106	7.4
Unemployed	104	7.2
Laborer	87	6.0
Driver	78	5.4
Waitress, waiter	62	4.3
Cook	61	4.2
Self employed	55	3.8
Clerk	54	2.8
Maintenance worker	41	2.8
Mechanic	38	2.8
Painter	37	2.6
Electrician	32	2.2
Bartender	30	2.1
Plumber	29	2.0
Air Force	28	1.9
Foreman	28	1.9
Secretary	22	1.5

### Time of arrest



Percentages on charts may not add to 100% because of rounding.

### Day of arrest



Staff Graphics by James A. Black

# Bryan-College Station

# Eagle

## Videotapes of DWIs go on trial

### Prosecution loses cases using tapes

By JANN SNELL  
Staff Writer

If this week is an indication, the new system of videotaping persons arrested for driving while intoxicated may work against, instead of for, the prosecution.

Assistant County Attorney Karla Sexton took the county's first two videotaped DWI defendants to trial this week and juries found each not guilty. All persons arrested for DWI are now required to submit to the videotape test.

Sexton said, however, there have been a few "falling down drunk" defendants captured on tape who have already pleaded guilty to the charges they faced.

But those whose videotapes are "weak," which she admitted to be the case with the two this week, may take their case to trial — and apparently have a good chance of winning.

This was the test week, she said, and the results are discouraging for prosecutors.

In Thursday's trial of Eddie Lewis Batts of Bryan, who was arrested March 13, Batts was shown on his tape to wobble only a little as he was instructed to walk back and forth, heel-to-toe down a black painted line.

He missed his nose once — but just barely — when he was instructed to close his eyes, lean his head back, stretch out his arms and bring a finger to the appendage.

He also passed with flying colors when he took the test that requires the suspect to hold his foot out in front of himself 12 inches off the ground while counting backward from 21.

Then, when asked to read a short description of Texas — including such details as the state flower and state tree — Batts read the passage better than the officer who had read it first to demonstrate the test.

Sexton said that Robert Anthony Boggs of Bryan, who was found not guilty Monday on a March 6 arrest, did even better on his screen test.

Sexton said she brought Boggs to trial because he had blown only slightly over the legally drunk limit of .1 percent and she wanted to see how a jury would handle a case with a low breathalyzer test and a weak videotape.

But the breathalyzer evidence was not presented because the lab witness could not make the trial, she said, although the jury was told that the defendant submitted to the breathalyzer test.

Sexton said that Batts was on felony DWI probation for two DWI arrests in 1983 and she felt a trial was necessary. A case to revoke his probation is still pending in district court.

Batts had been under arrest for an hour before he took the video test, Sexton said.

"When somebody's arrested, the initial shock would probably lead most people to pull themselves together and then the time before the test is taken could be significant," she said.

Sexton said, in about one-fourth of the misdemeanor DWI cases prosecuted by the county, evidence does not include a breathalyzer test and the proof presented by the videotape is weak. She said that could mean that the cases will either have to be dismissed or reduced.

"I don't think that was the purpose of the new law," she said.

District Attorney Bill Turner said there are now 10 videotaped felony DWI cases waiting to be tried in district court.

"The tapes are not nearly as damaging as I'd hoped they'd be," Turner said.

Sexton said: "I can just see down the road that the impact will be to force us to plea bargain in some cases where we don't really want to.

"But in all fairness, there may be people arrested who were not intoxicated."

# DWI videotaping will be cut back

By David Landis  
Times staff writer

Texas' 6-month-old law requiring the videotaping of drunken driving suspects has hampered prosecutors more than it has helped them, County Attorney Luther Jones said Wednesday while announcing plans to limit the videotaping in El Paso.

As of Wednesday, Jones said, he no longer would require law officers to videotape drunken driving suspects unless the suspects refused to take a breath test.

Suspects who pass the breath test but nevertheless appear to be drunk still will be videotaped, he said.

The videotaping requirement, part of a toughened drunken driving law approved by the state Legislature in 1983, has been a disappointment statewide, Jones said.

"Most people plead guilty, and you don't need a videotape to get

those guilty pleas when you have an Intoxilyzer," he said. "The point is, if it is voluntary, we can do it when we need it and dispense with it when it is unnecessary."

According to the toughened drunken driving laws, a 0.1 percent blood alcohol level is enough evidence for a conviction, with or without a videotape.

The problem is that suspects who are legally drunk may not appear to be so, and they use the videotape to get acquitted, Jones said.

"People do amazingly well on them (videotapes) when the Intoxilyzer shows them to be intoxicated," he said. "Some are able to appear quite sober when we can actually prove they are legally intoxicated."

If a suspect is not videotaped that can be introduced into evidence at the trial. Jones said he would lead an effort to persuade

the state Legislature in 1985 to make videotaping optional "so the defense can't beat us over the head with the fact that we didn't videotape."

The videotaping requirement also takes up too much of the law officers' time when they can be on the streets catching more drunken drivers, Jones said. He cited waits of up to 1½ hours on Friday and Saturday nights to use the county's videotaping room in the basement of the county jail. The delays also give the suspects time to sober up by the time they are taped.

The accumulation of videotapes, about 2,300 so far, has become expensive and a storage problem, he said. The tapes cost the county about \$4 each.

And so far, not one has been used in court, despite an average of 350 drunken driving arrests since the law took effect Jan. 1.

Assistant County Attorney Frank Cram said about 90 percent of drunken driving cases are

disposed of through a guilty plea or through pretrial intervention, which allows a suspect to avoid conviction by going through a training and counseling program while on probation.

Suspects who appear to be obviously drunk on the videotape tend to plead guilty rather than go to trial, Cram said.

On the other hand, those who appear to be sober on the tapes sometimes are not prosecuted. "Why waste the taxpayers' money and take them to trial?" Cram asked.

Jones said he checked with other county attorneys, law enforcement officials and representatives of Mothers Against Drunk Driving, and he found that all agreed that the videotapes should be made optional.



Judge Robert Blackmon

# Seeing not always believing

## Drunk tank video inconclusive

By **BOB RAMSDELL**  
Staff Writer

County Court at Law Judge Robert Blackmon yesterday said videotaping of suspected drunken drivers is an ineffective prosecuting tool, doing little to enhance chances of conviction.

Blackmon, speaking before the local chapter of Remove Intoxicated Drivers, an anti-drunken driving group, labeled videotaping as "inconclusive" evidence of intoxication.

Beginning Jan. 1 of this year — under a mandate from the state — counties with a population of 25,000 or more were required to purchase and maintain videotaping equipment. The equipment is used to record the actions of persons arrested for driving while intoxicated.

"You can't really tell from looking at the tape whether the fellow, or woman, is intoxicated," Blackmon said. "You can't smell them. You

can't tell whether they're just frightened to death of being in a little room in front of the camera."

People arrested for DWI in Nueces County are filmed in a 14-foot by 9-foot room in the county jail. They are required to answer questions and perform a series of sobriety tests.

County Attorney T.R. Bandy today said prosecutors have had mixed success with videotapes in the courtroom. The rate of conviction has not risen with the introduction of videotapes as evidence, he said.

"There's no substantial difference between the outcome now and before we were using the tapes," he said. "There are some problems with the taping that we are working on."

The problems center on the interrogation of suspected drunken drivers. Such questioning needs to be done "a little more expertly," Bandy said.

Bandy said videotapes are being used in nearly every contested case where they are available. Some cases initiated before taping began still are being tried in the three County Courts at Law.

It is not always the prosecution that uses the tapes, Bandy said. "If the state doesn't use the tape, it's obvious the defense will," he said.

In fact, the first case where videotape was admitted as evidence resulted in the acquittal of a 45-year-old man. The man's defense attorney, not the county prosecutor, introduced the tape as evidence.

Bandy said videotaping of DWI suspects falsely inflated the hopes of prosecutors, who thought the procedure would spur convictions.

"It was perceived to be a remedy to cure all of our ills, but it's just another tool," Bandy said. "It's not a great tool."  
See DWI trials, Page 14A

## DWI trials from 1a

bonanza for the prosecutor, according to our experience to date."

In his talk last night, Judge Blackmon said new, stiffer penalties also have done little to change the outcome of DWI trials.

Blackmon said jury trials in his court during 1983 were split almost evenly between guilty and innocent verdicts. This year, he said, the results are similar, with 11 guilty verdicts and 10 not guilty findings by juries so far.

The percentage of people who

plead guilty and do not face trial has not changed with the harsher sentencing measures passed by the Texas Legislature last year, Blackmon said. He said about 75 percent of all DWI defendants plead guilty and do not face trial.

One change, Blackmon noted, is that cases that come to trial are more time consuming. Additional evidence such as videotapes and breath tests, along with more elaborate witness testimony, have stretched the typical DWI trial from one to two days.

## Videotapes cause backlog

# Action delayed in DWI cases

By JOHN MECKLIN  
Post Reporter

Videotaping drunk driving suspects — one result of legislation intended to improve enforcement of driving while intoxicated laws — is delaying court action in DWI cases here by as much as six weeks.

The problem is not the videotapes themselves, but scheduling appointments for defense attorneys and prosecutors to view the tapes together, said Doug Boyer, administrative director for the Harris County district attorney's office.

Boyer said most DWI tapes cannot be reviewed for at least 30 days — and sometimes as much as 45 days — crowding court dockets that already are absorbing more than 2,000 DWI charges a month in Harris County.

The district attorney's office will ask the Harris County Commissioners Court Tuesday for permission to begin planning to deal with the problem. That plan is expected to include the purchase of additional tape players, but the number and cost of the new machines had not been determined Monday.

The problem, Boyer said, is not



**JACK ZIMMERMANN:**  
Defense attorney

limited to Harris County.

"There are just some horror stories in other counties. They lose the tapes, can't find the tapes," Boyer said.

Jack Zimmermann, a prominent Houston attorney and president of the Harris County Criminal Lawyers

Association, said the lag time for reviewing DWI videotapes causes problems for busy defense attorneys who cannot predict their schedules a month in advance.

One delay in Harris County affected preparation for the defense of Billy Ray Clore, who was given probation in the shooting death of his comatose father but had that probation revoked May 14, Zimmermann said.

The revocation was based partially on allegations that Clore had driven while intoxicated since his probation was assessed.

But Zimmermann said a videotape of Clore after the DWI arrest was erased before defense attorneys could view it — even though defense attorneys asked for the tape within days of the alleged DWI incident.

Zimmermann added that he knows of no DWI cases in Harris County in which tapes have been erased before defense attorneys could view them.

Still, the tape delays add four to six weeks to the 72-day average for disposition of misdemeanor cases here, Boyer said. That sort of delay could cause DWI cases to be dis-

missed under the speedy trial act, Boyer said.

But he also said he knew of no such dismissals under the act, which requires the state to be ready for trial within 90 days of the filing of misdemeanor charges like DWI, Boyer said.

Andy Tobias, chief of the district attorney's misdemeanor division, said the delays in tape viewing should not cause a speedy trials problem because defense attorneys are causing the delays by asking to see the tapes.

But if the problem is not resolved, the delays could work to the advantage of DWI suspects, Tobias said.

"Time is the best thing in the world for the defense attorney," he said.

Both Tobias and Zimmermann said they think the delays can be cut to a reasonable level.

Until then, though, one enterprising attorney in Houston may make himself a good living. Zimmermann said he knows of at least one attorney who has started a service where he will attend the DWI tape viewing in place of a defense attorney, make a copy of the videotape and deliver it to the defense — for a price.

# County plans taping cutback of suspected drunken drivers

County Attorney Luther Jones said today he is cutting back on a program to make videotapes of suspected drunken drivers.

Because of a new, tougher drunken driving law in Texas, all driving while intoxicated suspects are videotaped while being arrested. The suspects are given a breath test that determines the level of alcohol in their bloodstreams.

Those tapes are frequently used as evidence when the suspect comes to trial.

Jones was expected to announce his reasons for cutting back on the program at an afternoon press conference.

But policeman Harry Kirk said that instead of taping suspects first and then administering the breath test, the reverse will probably take place. Kirk is coordinator of the Selective Traffic Enforcement Program which seeks out drunken drivers Wednesday through Saturday nights.

Since not all people arrested on suspicion of drunken driving have more than .10 percent of alcohol in their blood — the legal limit for intoxication — videotapes are wasted, Kirk said.

If the breath analyzer measures .15 alcohol content, the videotape machine will be turned on, Kirk said. Otherwise, tapes will not be run.



Luther Jones

Austin has a similar procedure in which a reading of .15 alcohol content is used to turn on the video machine.

Jones' announcement is probably a cost-cutting move because the videotapes cost about \$9 each. It also requires officers' time to run the machine, Kirk said.



4-27-84

# All this, and he still lost

## Despite backflip, man convicted

The attorneys involved in the case of the acrobatic drunk driver had varying opinions Thursday on the jury verdict of guilty.

On Wednesday, a jury found 22-year-old Timothy Lloyd Torrez guilty of driving while intoxicated even though he did an impressive backflip while being videotaped during sobriety testing by police.

Assistant District Attorney Jaime Esparza said he believes Torrez tried to hide behind the new law requiring the videotapes.

But Esparza said the jury didn't allow it because they paid strict attention to the breath tests that proved the construction worker was intoxicated.

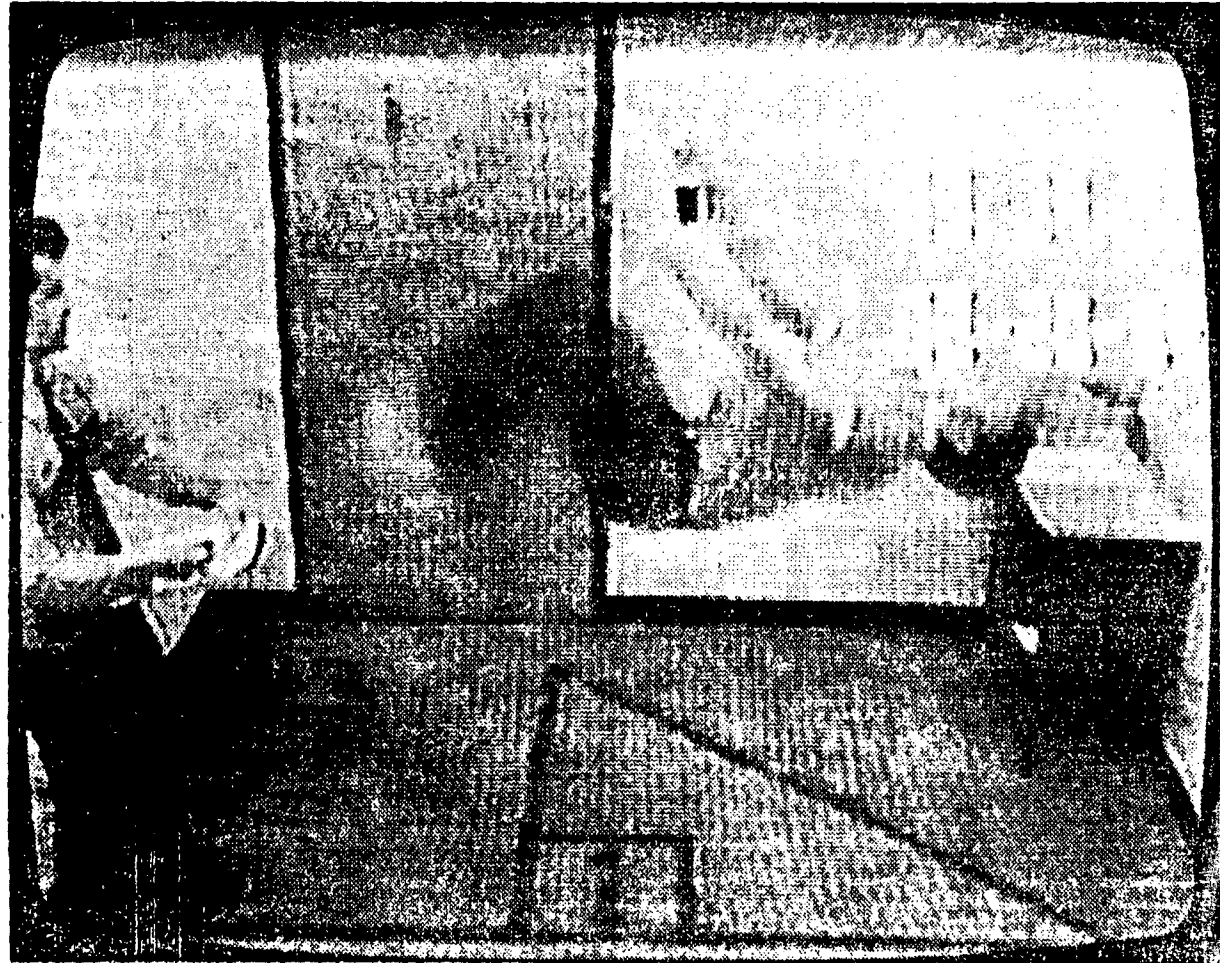
"It's great he could do a backflip but it didn't mean he wasn't intoxicated," Esparza said of the man pulled over by police at Westheimer and Montrose Feb. 20.

Charles Whitfield, Torrez' attorney, said jurors did not use their own brains or their own prerogative.

"I don't think the jurors believed their own eyes," he said. "I don't think we should have lost this one."

Assistant District Attorney Bob Stabe said nine drunk driving cases have been tried with the new videotapes required by law since Jan. 1.

He said prosecutors have won five of those cases. Stabe said the tapes have not yet proven to be of categorical value to either the defense or the state.



In photos taken from a television screen, Torrez is shown beginning his flip, above, as a

police officer watches.

FELONY DATA SUMMARY FOR: MILAM  
AND WASHINGTON COUNTIES

County	Period	Method	Total Cases On File In Sample Year	Total Cases Disposed In Sample Year	Cases Filed In Sample Year	Sample Cases Disposed	Sample Cases Carried Forward	Average No. Days From Arrest To Disposition
Milam	1983	No Video	11	6 54.55%	5	2 40.00%	3 60.00%	221.50
	1984	No Video	8	3 37.50%	3	0 0.00%	3 100.00%	NONE
Washington	1983	No Video	11	11 100.00%	11	10 90.91%	1 9.09%	48.2
	1984	No Video	10	10 100.00%	10	8 80.00%	2 20.00%	49.88
All	1983	No Video	22	17 77.27%	16	12 75.00%	4 25.00%	39.74
	1984	No Video	18	13 72.22%	13	8 61.54%	5 38.46%	47.77

FELONY DATA SUMMARY FOR: EL PASO,  
LUBBOCK, AND TRAVIS COUNTIES

County	Period	Method	Total Cases On File In Sample Year	Total Cases Disposed In Sample Year	Cases Filed In Sample Year	Sample Cases Disposed	Sample Cases Carried Forward	Average No. Days From Arrest To Disposition
El Paso	1983	No Video	1	0 0.00%	0	0	0	84.15
	1984	Everyone/ Refusals *	8	3 37.50%	7	0 0.00%	7 100.00%	96.88
Lubbock	1983	Refusals Only	41	17 41.46%	16	2 12.50%	14 87.50%	225.5
	1984	Videotape Everyone	38	12 31.58%	8	1 12.50%	7 87.50%	84
Travis	1983	Refusals only	715	376 52.59%	475	165 34.74%	310 65.26%	133
	1984	Refusals Only	505	293 58.02%	166	32 19.28%	134 80.72%	136.38
All	1983	Varied	757	393 51.92%	491	167 34.01%	324 65.99%	118.58
	1984	Varied	551	308 55.90%	181	33 18.23%	148 81.77%	125.74

C-2

FELONY DATA SUMMARY FOR: KERR,  
SMITH, TOM GREEN AND VICTORIA COUNTIES

County	Period	Method	Total Cases On File In Sample Year	Total Cases Disposed In Sample Year	Cases Filed In Sample Year	Sample Cases Disposed	Sample Cases Carried Forward	Average No. Days From Arrest To Disposition
Kerr	1983	No Video	52	33 63.46%	29	18 62.07%	11 37.93%	109.72
	1984	Videotape Everyone	26	18 69.23%	7	3 42.86%	4 57.14%	113.67
Smith	1983	No Video	115	50 43.48%	101	12 11.88%	89 88.12%	182.08
	1984	Videotape Everyone	146	61 41.78%	43	5 11.63%	38 88.37%	168.2
Tom Green	1983	No Video	92	71 77.17%	82	57 69.51%	25 30.49%	77.51
	1984	Videotape Everyone	51	42 82.35%	30	19 63.33%	11 36.67%	85.68
Victoria	1983	No Video	70	61 87.14%	61	48 78.69%	13 21.31%	50.19
	1984	Videotape Everyone	18	14 77.78%	9	6 66.67%	3 33.33%	57
All	1983	No Video	329	215 65.35%	273	135 49.45%	138 50.55%	56.1
	1984	Videotape Everyone	241	135 56.02%	89	33 37.08%	56 62.92%	62.1

FELONY COURTS

Counties Served and Court Locations

SAMPLE COUNTY	COURT #'S AND OTHER COUNTIES SERVED	COURT LOCATIONS
El Paso	34, Culbertson, Hudspeth 205, Culbertson, Hudspeth 210, Culbertson, Hudspeth 41, 65, 120, 168, 171, 200, 201, 243, 327, 346	El Paso El Paso El Paso
Kerr	198, Concho, Kimble, McCullough, Menard 216, Bandera, Gillespie	Brady  Kerrville
Lubbock	72, Crosby 99, 137, 140, 237	Lubbock Lubbock
Milam	20	Cameron
Smith	7, 321, 241 114, Wood	Tyler Tyler
Tom Green	51, Cøke, Irion, Schleicher, Sterling 119, Concho, Runnels 340	San Angelo  San Angelo San Angelo
Travis	53, 98, 747, 167, 250, 261, 299, 331, 345	Austin
Victoria	24, 135, 267, Calhoun, Dewitt, Goliad, Jackson, Refugio	Victoria
Washington	21, Bastrop, Burleson, Lee 335, Bastrop, Burleson, Lee	Giddings Caldwell