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# Problems and Solutions in DWI Enforcement Systems

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16. Abstract <p><b>This report documents the results of a study aimed at identifying where and how alcohol-impaired drivers slip through the cracks in the criminal justice system. It also suggests potential fixes to close those loopholes. The report is based on information obtained through telephone discussions with law enforcement officials in 11 jurisdictions; detailed case studies of BAC-law enforcement methods and problems in three jurisdictions; and input from a panel of experts experienced in BAC-law enforcement procedures and methods. The study identified 28 significant problems in enforcing BAC-limit laws and traced them to their most common causes. These problems degrade the ability of the police to find DWI suspects, confirm suspects as DWI, and process suspects more quickly. The problems also degrade the ability of prosecutors to charge and obtain convictions of DWI defendants and the ability of judges to impose appropriate sanctions on persons convicted of DWI. Types of recommended fixes for these problems included expanded training programs for police officers, prosecutors, judges, and administrative hearing officers; new or modified procedures for catching and processing suspected DWIs, adjudicating DWI cases, and sanctioning DWI offenders; additional equipment, facilities, and personnel for agencies involved in enforcing BAC laws; additional funding to support the operation of these agencies; new or modified laws on the conduct of criminal and administrative adjudicative proceedings; and focused public information programs to gain public support for the operation of BAC-law enforcement agencies.</b></p>					
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## **EXECUTIVE SUMMARY**

### **STUDY OBJECTIVES AND APPROACH**

Many alcohol-impaired drivers go either undetected or unpunished. This report attempts to identify where and how these individuals slip through the cracks in the criminal justice system. It also suggests potential fixes to close those loopholes.

Specific objectives of the project were:

- to describe various ways being used in the United States to enforce laws limiting a driver's blood alcohol concentration (BAC);
- to identify significant problems that occur in DWI (driving while intoxicated) enforcement and the impact of these problems on catching law violators and subjecting them to appropriate sanctions; and
- to suggest changes in DWI enforcement that would prevent or ameliorate these problems.

To do this, we:

- conducted telephone discussions with law enforcement officials in ten jurisdictions to obtain an overview of current DWI enforcement methods and problems;
- visited three jurisdictions and prepared detailed case studies of their DWI enforcement methods and problems; and
- convened an expert panel of individuals with extensive experience in DWI enforcement. The panel provided additional information and helped in analyzing the information.

### **RESULTS**

A total of 28 significant problems in enforcing BAC-limit laws was identified and traced to their most common causes. These problems degrade the ability of the police to find DWI suspects, confirm suspects as DWI, and process suspects more quickly. The problems also degrade the ability of prosecutors to charge and obtain convictions of DWI defendants and the ability of judges to impose appropriate sanctions on persons convicted of DWI.

Some 50 fixes were recommended for consideration by jurisdictions experiencing these problems. Types of fixes recommended were:

- expanded training programs for police officers, prosecutors, judges, and administrative hearing officers;
- new or modified procedures for catching and processing suspected DWIs, adjudicating DWI cases, and sanctioning DWI offenders;
- additional equipment, facilities, and personnel for agencies involved in enforcing BAC laws;
- additional funding to support the operation of these agencies;
- new or modified laws on the conduct of criminal and administrative adjudicative proceedings; and
- focused public information programs to gain public support for the operation of DWI enforcement agencies.

## CONCLUSIONS AND RECOMMENDATIONS

We conclude that DWI enforcement in most jurisdictions is functioning at an acceptable, if not optimal, level, and is functioning extremely well in some jurisdictions. Specific conclusions and recommendations flowing from this project are:

**Conclusion:** The greatest improvement in DWI enforcement in most jurisdictions will be realized by increasing the percentage of patrol officers' time available for looking for and interdicting DWI suspects. However, all involved agencies must be prepared to adapt to the greater demands on their resources (for example, larger case loads) resulting from such increases.

**Recommendation:** Police command staff should reconsider their policies for allocating personnel and other resources to ensure that sufficient emphasis is being given to DWI enforcement.

Police managers should examine each support function performed by patrol officers to see how arrest and processing time can be reduced.

The possibility of reducing the time spent fulfilling reporting requirements should also be considered. The use of shortened forms and computer technology is one of the most productive ways of increasing officer availability for patrol tasks. Another way of increasing patrol time is to assign support duties during suspect processing to clerical staff or other non-sworn personnel.

**Conclusion:** The time required to adjudicate driving while intoxicated (DWI) cases is excessive in many jurisdictions, often stretching out for months and, sometimes, for years. This violates a basic tenet of deterrence theory that calls for the timely imposition of punishment for proscribed behavior.



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**Recommendation:** Judicial agencies should examine their procedures to learn where inordinate amounts of time are being spent. Particular attention should be given to the parts of the process that involve pre-trial hearings and continuances. There should be an eye toward restricting the conditions under which the process can be extended in time.

**Conclusion:** The failure to appear (FTA) by defendants at adjudicative hearings can have a large negative impact on system performance by reducing their availability for determination of guilt and sanctioning if found guilty. The extent of this problem nationwide is not known, but our research suggests that it could be widespread.

**Recommendation:** Jurisdictions should undertake research to learn the nature and extent of their FTA problem. If the problem is serious, then ways of dealing with it should be devised, including the revocation of the driver license for FTA.

**Conclusion:** A series of unexpected problems is occurring in the operation of the administrative adjudication components of DWI enforcement. These problems include excessive demands on police officers' time to appear at administrative hearings; procedures that require police officers to file a written request for continuance if unable to appear at a hearing; laws that prohibit a prosecutor from appearing at a hearing, placing the police officer in the role of prosecutor; hearing officers allowing non pertinent issues to be addressed at the hearing; and hearing officers' lack of knowledge of the law, alcohol impairment of driving performance, techniques for determining impairment, or some combination of these. These problems are causing the process to be avoided by police officers in some jurisdictions. Thus, the intended administrative sanctions are avoided by violators.

**Recommendation:** The requirement for police officers to appear at administrative hearings, scheduling of officers at hearings, qualifications of hearing officers, and pertinent issues that may be addressed at hearings should be examined.

**Conclusion:** Judges need more information on offender characteristics and sanctioning alternatives to develop effective sentencing packages.

**Recommendation:** Judges should be provided information on offender characteristics and sanctioning alternatives for use in sentencing. Sentencing guidelines for violations of laws regarding alcohol-related driving should also be provided. Research findings on the effectiveness of sanctions for DWI need to be disseminated to judges in an easy-to-use format.

**Conclusion:** Public support for DWI enforcement is critical to maintaining an acceptable level of performance.

**Recommendation:** Communities should develop and carry out public information programs on the nature and extent of the alcohol-crash problem locally, and on resources and legislation needed for enforcing BAC laws.

**Conclusion:** The introduction of laws limiting the BAC of various categories of drivers may not be having any serious impact on DWI enforcement. Specifically, laws setting the BAC limit at 0.08 has had little affect on the functioning of agencies involved in DWI enforcement. In states having so-called "zero-tolerance" laws for underage drivers, insufficient information existed during this project to determine whether these laws are creating difficulties or are not achieving their intended results. However, limited data suggest that there are problems in processing juveniles suspected of violating zero-tolerance laws, particularly in transporting and holding such suspects.

**Recommendation:** More research on the nature, provisions, and impact of zero tolerance laws should be conducted. NHTSA is now examining zero-tolerance laws and their application for youth. This should help fill this gap.

# 1 - INTRODUCTION

The general objective of this project was to determine where and how different types of DWI<sup>1</sup> enforcement systems fail in their mission to reduce alcohol-impaired driving and to suggest fixes for those failures. This project was concerned with improving the performance of governmental agencies that enforce laws limiting the blood alcohol concentration (BAC) of drivers of vehicles that operate on our nation's roads and highways. In this report we call the collection of these agencies in a given jurisdiction, and their procedures and resources, a "DWI enforcement system."

Specific objectives of the project were:

- to describe various ways being used in the United States to enforce<sup>2</sup> laws limiting a driver's blood alcohol concentration (BAC);
- to identify significant problems that occur in DWI enforcement systems and the impact of these problems on catching law violators and subjecting them to appropriate sanctions; and
- to suggest changes in DWI enforcement that would prevent or ameliorate these problems.

## BACKGROUND

We envisage the Traffic Law System (TLS) as one of many societal systems that attempt to manage risk created by our Highway Transportation System (Jones and Joscelyn, 1976). *Traffic crash risk* is the particular domain of the TLS. In a positive sense, the TLS provides guidelines for the normal operations of the Highway Transportation System, and in a negative sense, it prohibits actions that create traffic crash risk and generates forces designed to control those actions. *In general, its objective is maintaining crash risk at a level that is tolerable to society.*

For many reasons, DWI enforcement systems often fail to maintain drinking-driving risk within tolerable limits. Such system failures are the result of a failure

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<sup>1</sup> In this report, the term "DWI" is used generically to describe driving with an illegally high blood alcohol concentration (BAC). Other terms that are used by some jurisdictions include DUI (driving under the influence) and DWAI (driving while ability impaired), among others.

<sup>2</sup> The term "enforcement" is used in this report to indicate the full range of functions that are performed by DWI enforcement systems in creating a deterrent threat for discouraging violations of BAC laws. This definition includes the traditional enforcement function dealing with the detection and apprehension of law violators, as well as the subsequent functions of adjudication and sanctioning. We will use the more narrow definition of the term that excludes adjudication and sanctioning in later discussions.

of the system to perform one or more of its constituent functions. Usually, the failures are not catastrophic, but merely result in reduced performance. For example, jurisdictions rarely cease to detect and apprehend DWI violators entirely, but only fail to detect and apprehend enough of them.

The reasons *why* these failures occur are of major concern in this project. The failure to detect and apprehend enough alcohol-impaired drivers may simply be due to too few police officers observing for cues to driving while intoxicated (DWI). However, failures are very seldom isolated but are interconnected with other failures. For example, the lack of officers observing for DWI may be due to a lack of command emphasis of DWI enforcement, which is due to a lack of public support for necessary resources, which is due to poor public information programs publicizing local alcohol-related traffic crashes and describing alcohol-crash risk compared with the risk of violent crimes. Thus, looking for *chains* of failures that define the *failure modes* of a DWI enforcement system is necessary. It is not enough just to look for individual failures.

The situation is made even more complex by the possibility of multiple failure modes behind a single system failure. Another failure mode resulting in a failure to detect and apprehend enough alcohol-impaired drivers may originate with poorly designed and time-consuming procedures for police-officer participation in adjudication proceedings. Such procedures could undermine police motivation to detect, apprehend, and process DWI suspects.

Finally, a system may be experiencing multiple system failures, with each system failure being the result of several simultaneously-occurring and mutually-reinforcing failure modes. For example, besides the failure modes contributing to the detect-and-apprehend failures described above, one might have several other failure modes resulting in a failure to impose effective sanctions to deter alcohol-impaired driving.

This project was concerned with identifying common failures and failure modes in DWI enforcement systems and in generating promising ways of dealing with them. Problems arising in the enforcement of laws dealing with driver impairment by drugs other than alcohol were not addressed explicitly in this project, although some of the same problems can occur in enforcing both alcohol-impairment and drug-impairment laws.

From the definition above, the DWI enforcement system is clearly concerned with a particular type of traffic-crash risk, that which is created by alcohol-impaired drivers. At the highest level, the formal functions of a DWI enforcement system are law generation, law enforcement, adjudication, and sanctioning, defined broadly as follows:

#### **Law Generation**

- Define the target risk precisely;
- Prohibit behavior that creates risk (i.e., driving with a BAC exceeding specified limits);

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- Provide for the operation of the DWI enforcement system through procedural guidelines, creating necessary entities, and funding them.

### Law Enforcement

- Detect and apprehend violators for further system action; and
- Manipulate human behavior to prevent violations.

### Adjudication

- Determine if risk-taking occurred for individuals apprehended by Enforcement;
- Determine the validity of risk prohibitions by Law Generation; and
- Provide fundamental fairness essential for system operation.

### Sanctioning

- Provide the ultimate system response to ensure that the sanctioned individual will not engage in risk-taking in the future (specific deterrence); and
- Provide a pattern of responses to individual risk-taking that influences all potential risk-takers to refrain from such actions (general deterrence).

Besides the traditional functions listed above, a fifth, less formal, function is concerned with the dissemination of information among the components of the system and to potential DWI violators, among others.<sup>3</sup>

Many governmental agencies and institutions are involved in performing these functions. However, the DWI enforcement system has no "system manager" (because of the American doctrine of separation of powers), and has no "system specification" for describing what the system or any of its components should do. Actually, the DWI enforcement system is a "system of systems," each operating almost independently in some jurisdiction, but loosely bound by a common set of principles.

## SCOPE AND APPROACH

This project dealt with all of the functions of the DWI enforcement system as defined above, but was most interested in the enforcement function as affected by other functions of the system. The processes involved in the Law Generation function were not examined in this project, but pertinent BAC laws that must be "enforced" by the other three functions were of concern. In our analyses of these processes, we also looked for system failures that might be associated with laws specifying different BAC limits for different groups of drivers.

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<sup>3</sup> Note that these functions are *top-level functions*. Each of them can be (and is in our analyses) broken down into lower-level functions.

The project involved several tasks. First, we developed measures of the performance of DWI enforcement systems. Then, criteria were developed for selecting case-study sites at which the operation of various classes of systems could be observed. Criteria for selecting the members of an expert panel were also developed at this time.

We then developed a set of specifications of a traditional DWI enforcement system. The specifications were used as a framework for analyzing the systems and as a basis for comparing other types of DWI enforcement. Remaining tasks involved the identification of system failures and suggested fixes. All of this work was supported by ideas from the panel and by information gained in the site visits.

The expert panel was absolutely crucial to the conduct of this study, providing operational experience in all of the functional areas of the DWI enforcement system. The panel was not asked to reach a consensus on any particular issue, but merely to provide the individual members' opinions on those issues. It consisted of six members selected based on subject-area expertise and knowledge, willingness and ability to work and participate in cooperative group discussions, and representation of both national organizations and local practitioners. The panel helped in developing more detailed descriptions of common types of systems. The panel also helped in determining how and why these systems sometimes fail to operate as they were designed to operate, and in developing the fixes for the failures. Two, two-day meetings of the panel were held during the study. Other information about the operation of DWI enforcement systems was obtained through a series of telephone discussions with enforcement and adjudication staff in several states.

## **ORGANIZATION OF THE REPORT**

This report contains five chapters and one appendix. In Chapter 2, a detailed description of a baseline or nominal DWI enforcement system is presented as a basis for comparing other systems examined during the project. Chapter 3 describes DWI enforcement systems in three case-study jurisdictions. Problems being experienced in those systems, and some solutions being considered by various system actors are also discussed in Chapter 3.

Failures in performing DWI enforcement system functions are described in Chapter 4, along with brief descriptions of suggested fixes to the failures. Some considerations important to carrying out the alternatives are also discussed in Chapter 4. The conclusions and recommendations flowing from the study are presented in Chapter 5. The appendix summarizes the results of the telephone discussions.

## 2 - THE BASELINE SYSTEM

### INTRODUCTION

In this chapter, we present a set of specifications describing the operation of a traditional, no-frills DWI enforcement system. This system was used in this project as a basis for analyzing DWI enforcement systems. Note that the baseline system was not chosen to represent the most common DWI enforcement systems nationwide. Rather, it reflects our perception of the least complex and most basic system as a standard for comparing the wide variety of systems that generate and enforce BAC laws.

The specifications define the functions of this baseline system at various levels of detail. A separate flow chart has been prepared for each level. Interfaces with other functions are depicted in the chart, and alternate paths to and from functions are shown. A narrative description of the process at a given level accompanies the flow chart, showing what is done in each function. Finally, a table is provided summarizing possible measures of the performance of the system in performing its various functions. Types of resources needed are also shown in the table.

As indicated in the prior chapter, this project is attempting to improve the functioning of the process through which BAC laws are enforced. The laws themselves state maximum BACs permitted for specified driver groups. General types of BAC laws of concern in this project are:

Group	BAC Limit
All Drivers	
DWI	0.08, 0.10
DUI	0.05, 0.08
Under Age 21	0.0 - 0.02
Commercial	0.04
Commercial (Out of Service)	0

Recognizing the complexity of the DWI enforcement process, we used a *systems approach* to help us organize our thinking. We did this to make sure that our analysis considered all of the important aspects of the entire process and did not end up recommending changes to one part of the process that might adversely affect other parts of the process. In other words, we want to improve the functioning of the *entire process* in its mission of reducing the traffic crash risk created by drinking drivers.

To apply the systems approach to this problem, we defined a *DWI enforcement*

*system* that employs the processes and resources of the larger criminal justice system. In attempting to reduce drinking-driving crashes, this DWI enforcement system performs four major functions:

- BAC Law Generation
- Law Enforcement
- Adjudication
- Sanctioning

In our analysis framework, we call these functions "top-level" functions. For the most part, these functions are performed sequentially. The *BAC Law Generation* function is an input function, and its processes were not examined here, but pertinent BAC laws that must be "enforced" by the other three functions were of concern.

*This process, along with a summary description of the activities performed in each function and the resources (personnel, equipment, and facilities) involved in each function, comprises a top-level description of a DWI enforcement system.*

Clearly, this description is much too broad to depict the complexity of such a system in some real jurisdiction. We needed to go to lower levels of detail to understand how such a system really works and to suggest changes that might improve its performance. To do this, we began breaking down each the top-level functions into smaller pieces that we call "lower-level functions." For example, the top-level function "Law Enforcement" in some given jurisdiction might have "Perform Surveillance" and "Detect Violator" as two of several lower-level functions. The relationships between these functions could also be depicted in a lower-level flow chart. We call a description at this level a "first-level description."

Even this level of detail is not sufficient for the purposes of this project. To decide what is really happening, we needed still more detail, and to get this detail, we broke down each of the first-level functions into its constituent second-level functions that were then flow-charted and described.

From this analysis, we obtained not only a description of what each part of the system does and the resources required for doing it, but also the *relationship* of each part to all other parts of the system. This information is essential for assessing the performance of the *whole system* and for generating ideas for improving system performance.

## INFORMATION SOURCES

Information for developing the baseline system was obtained from several sources. These sources and the methods used in obtaining information are described below.



**THE BASELINE SYSTEM**

*Telephone Contacts with System Staff*

During the early stages of this project, we examined BAC laws in all fifty states based on the NHTSA "Digest of State Alcohol-Highway Safety Related Legislation" current as of January 1, 1996. States were classified according to the restrictiveness

**Table 2-1: Restrictiveness of BAC Limits in Selected States at Start of Study**

Group	State	BAC Limit				
		Presumptive	Per Se	Admin Per Se	Under 21	Commercial
1 - Most Restrictive	NC	0.08	0.08	0.08	0.00	0.04
	NM	None	0.08	0.08	0.02	0.04
	CA	0.08	0.08	0.08	0.05	0.04
2 - Restrictive	AZ	0.10	0.10	0.10	0.00	0.04
	FL	0.08	0.08	0.08	None	0.04
	KS	0.08	0.08	0.08	None	0.04
3 - Least Restrictive	SC	0.10	None	None	None	0.04
	TN	0.10	None	None	0.02	0.04
	MS					
4 - Other	IL	0.10	0.10	0.10	0.00	0.04
	MA	0.08	None	0.08	0.02	0.04
	OR*	0.08	0.08	0.08	None	0.04

\* Checkpoints not permitted

of their laws as measured by various BAC limits specified in state laws. Categories used were "Most Restrictive," "Restrictive," "Least Restrictive," and "Other." Three states in each category were identified as possible candidates for contact by telephone to obtain information about the operation of DWI enforcement systems in their state (see Table 2-1)<sup>4</sup>.

<sup>4</sup> The *per se* limits for Tennessee and Illinois changed to 0.08 during the study.

## PROBLEMS AND SOLUTIONS IN DWI ENFORCEMENT SYSTEMS

Contacts were then made with Governor Highway Safety Representatives (GHSRs) and state-level agencies in these states to ask for their assistance in identifying potential sites that might be willing to discuss their systems with us. Our contacts at the state level suggested jurisdictions within their respective states and often provided the names of enforcement staff and other officials for Mid-America staff to contact.

Based on this information, officers from law enforcement agencies in four states (California, Florida, Kansas, and Illinois) were asked about BAC enforcement practices. A police officer from Hattiesburg, Mississippi was also contacted.

Law enforcement personnel who were contacted provided extensive detailed information on BAC enforcement practices and procedures within their jurisdictions. Anti-DWI enforcement topics covered included *surveillance and detection* techniques and cues, *apprehension* policies and practices, *field investigation*, *arrest procedures* and transporting of the violators, *post arrest investigation* and processing, and *prosecution support*.

Prosecuting attorneys from state attorney offices in three states (Kansas, Florida, and Illinois) were also asked about BAC adjudication practices. Topics of discussions included the *charging process*, *arraignment*, *trial*, *appeal*, *sanctions* and touched on the *administrative process*.

For the most part, the persons contacted were cooperative and candid in discussing the DWI enforcement system in their area. A summary of the information they provided is contained in the appendix.

### *Expert Panel Discussions*

We asked our expert panel members to comment on a draft of a typical baseline system that we presented to them. The panel met twice during the project, in the first meeting to discuss the baseline system, and in the second, to identify system failures and to recommend potential fixes to the failures. The results of the first meeting were used to modify the draft description, the final form of which is presented below.

### *Staff Expertise*

We also drew upon the experience of Mid-America staff with DWI enforcement systems. Mid-America has been involved in the analysis of such systems nationwide since the early 1970s. During that involvement we have visited and held discussions with staff from some 200 operational DWI enforcement systems in the United States.

## RESULTS

### *Top Level*

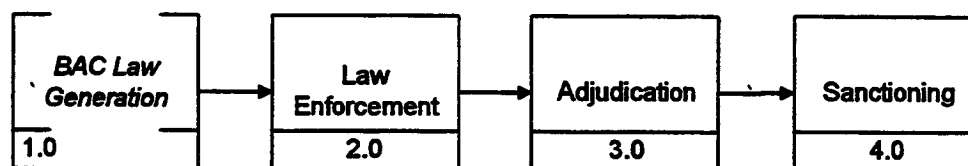
The four top-level functions of the *baseline* DWI enforcement system are:

## THE BASELINE SYSTEM

- BAC Law Generation
- Law Enforcement
- Adjudication
- Sanctioning

The overall flow of case processing at the top level is the same as that shown in the preceding section, which being:

**Figure 2-1: Top-Level Flowchart of the Baseline DWI Enforcement System**



Again, we note that the *BAC Law Generation* function is an input function, specifying the various BAC limits. The baseline system has a BAC of 0.10 as a presumptive limit<sup>5</sup>. The Federal limit of 0.04 for drivers of commercial vehicles also exists. No lower limit exists for minor-age drivers in the baseline system. Punitive sanctions specified by the laws are summarized in Table 2-2.

**Table 2-2: Sanctions for DWI - Baseline System**

Conviction	Criminal		Administrative
	Fine	Jail	License Suspension or Revocation
DWI, First	\$200-\$500	None	6-9 months
DWI, Second	\$500-\$1000	2 days-1 year	1-2 years
DWI, Third+	\$1000-\$2000	120 days-4 years	2-5 years
Refusal, First	-	-	1 year
Refusal, Second	-	-	2 years
Refusal, Third	-	-	5 years

*Law Enforcement* is performed by state and local agencies. It is concerned mainly with detecting and apprehending DWI violators, observing the suspect to decide

<sup>5</sup> This BAC limit applies only to the baseline system. As indicated in Table 2-1, states vary in their BAC limits, with several having *per se* limits of 0.08.

whether to arrest, and processing of the suspect during and after arrest. An important secondary element of enforcement is providing a deterrent threat to potential risk-takers simply through the presence of police or police symbols. Enforcement also supports operation of the entire DWI enforcement system by providing information - such as arrest records and accident reports - on the nature of risk.

*Adjudication* is most commonly associated with the courts where the rules of criminal procedure are followed to find out whether individuals accused of violating BAC laws are guilty. Before conducting the proceeding in which guilt or non guilt is determined (the "trial" when conducted by the judiciary), the accused offender is informed of the charge and his or her rights and may participate in one or more pre-trial hearings. Adjudication is also done by administrative agencies such as driver-licensing authorities. These proceedings are called "hearings" in which findings of fact are made by a hearing officer. On a less formal plane, adjudication can also be done by non adjudicative agencies of the DWI enforcement system. For example, a police officer may decide not to arrest a driver with a BAC very close to the legal limit, but to let another, sober, drive the vehicle. Similarly, a prosecutor may decide not to charge an arrested driver with drunk driving in return for the driver's promise to enter an alcohol treatment program. Finally, a driver may self-adjudicate by pleading guilty to the offense before a judicial trial or administrative hearing.

*Sanctioning* provides the ultimate deterrent threat of the DWI enforcement system. It can be done by the judiciary (for example, imposing a fine or a jail sentence), by an administrative agency (for example, by suspending a driver's license), or by a police officer (for example, by issuing a warning for some related offense such as speeding). Other, non punitive sanctions can also be imposed through such mechanisms as probation in which an offender agrees to participate in an alcohol treatment program in exchange for a reduction in a punitive sanction.

### *Law Enforcement*

*First Level.* Constituent functions are shown in Figure 2-2. The first function, *Perform Surveillance*, is concerned with looking for violators, including selecting times and places for surveillance and then deploying police units at those times and places. It also includes actions taken and methods used by officers in obtaining information for identifying DWI drivers in the traffic flow or after a crash has occurred. Such information is concerned with driving behaviors or other characteristics associated with a DWI violation.

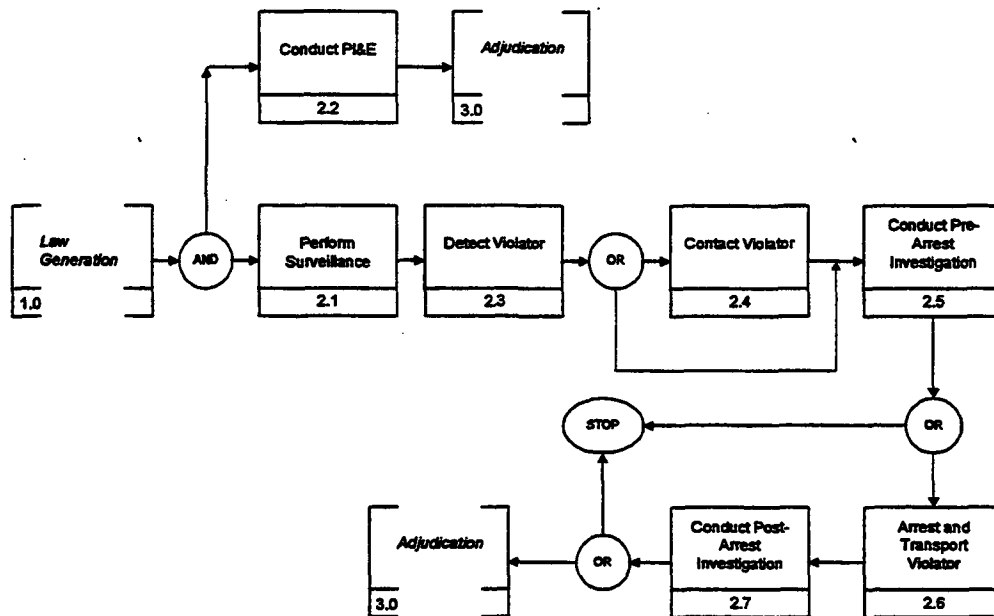
In the next function, *Detect Violators*, this information is used to identify an individual as a likely DWI in a specific instance, through either detecting drunk driving behavior, detecting other traffic law violations, or detecting other associated factors discovered during investigating a traffic crash.

The next function, *Contact Violator*, involves measures taken by police officers that will result in a face-to-face contact with a possible violator who was detected in the prior function. The objective of this function is to apprehend suspected DWIs.

*THE BASELINE SYSTEM*

It is concerned with actions taken and methods used by officers in making the initial contact with a suspected DWI identified during the surveillance and detection functions. In on-the-road detection, this function includes pursuit of the DWI and continues until the DWI has been pulled out of the traffic flow and both the patrol vehicle and the DWI suspect's vehicle have stopped.

**Figure 2-2: Flowchart for Function 2.0, Law Enforcement**



In *Conduct Pre-Arrest Investigation*, actions are then taken to decide (to the satisfaction of the field officer) whether the possible violator is a DWI-law violator or a non violator, and to decide what action (for example, an arrest) should be taken against an apprehended DWI suspect. For drivers apprehended by observing traffic, it includes all activity from the time the police officer approaches the suspected DWI's vehicle until the enforcement action is determined. For drivers involved in a crash, it includes all activity from the time the officer approaches a suspected driver until the enforcement action is taken. If the determination is "non-DWI violator," the sequence of functions is ended for that subject.

If the determination of the field investigation is "violator," and a decision is made to arrest the subject, the next function, *Arrest and Transport Violator*, is performed, resulting in the removal of the subject to facilities for further action. If the driver were injured and incapacitated in a crash, *Arrest and Transport Violator* is delayed as appropriate.

The "further action" will be taken in the next function, *Conduct Post-Arrest Investigation and Processing*, in which additional evidence of the violation is sought

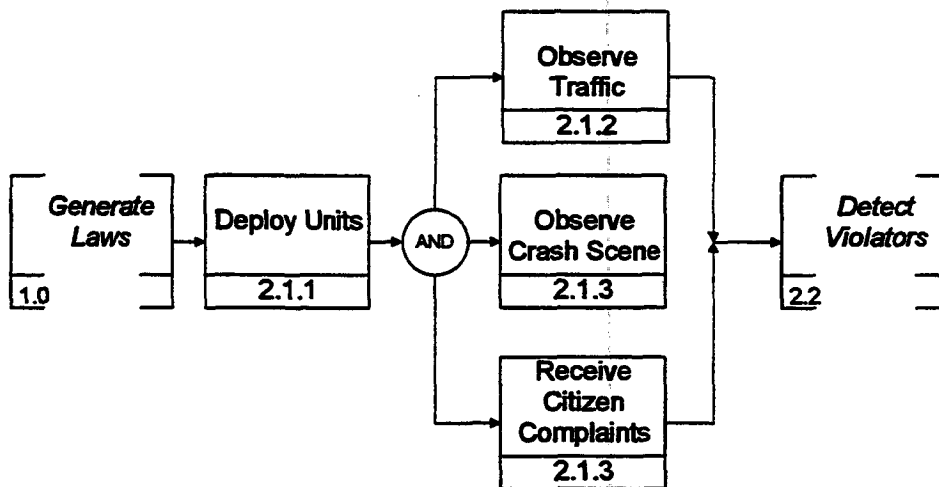
from the arrested suspect, and various procedures regarding record-keeping and disposition of the suspect are invoked.

All these functions are conducted against a background of public information and education (*Conduct PI&E*). Various mechanisms for publicizing the enforcement threat, ranging from hard news coverage to full-fledged public information campaigns are included.

*Second Level.* The first function, *Perform Surveillance*, is broken down into the lower-level functions (Figure 2-3):

- Deploy Units,
- Observe Traffic,
- Observe Crash Scene, and
- Receive Citizen Complaints.

Figure 2-3: Flowchart for Function 2.1, Perform Surveillance



*Deploy Units* is concerned with the assignment and placement of units to locations where they can look for DWIs. A strategy of "uniform" patrol is used in the baseline system. In this strategy, uniform coverage is maintained over a given geographical area. Marked vehicles are used during patrol (automobiles usually), with some support by motorcycles during warm weather. One-officer units are the rule, with two-officer patrols in high-crime areas. Units are used both in a stationary and moving mode.

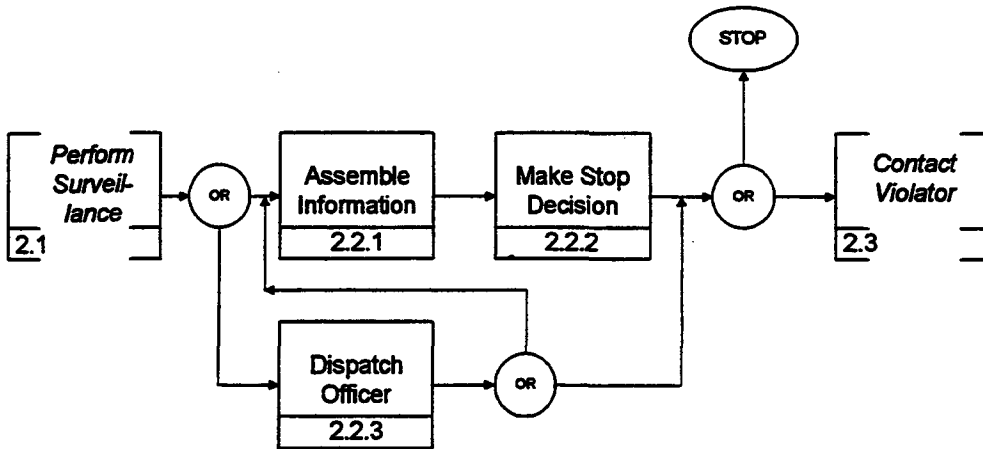
Two types of surveillance are performed: observation of moving vehicles on the road (the *Observe Traffic* function) and observation of conditions and behaviors at crash scenes to which a unit has been dispatched or has observed during patrol (the *Observe Crash Scene* function). In the former function, gross signs of driving

behavior indicative of DWI are looked for, for example, driving at a speed much higher or much lower than the posted limit; weaving and erratic driving; moving near or over the road center line; overshooting a stop; improper merging into traffic; and overcompensating to the left or right when passing another vehicle. In the latter function, a rapid assessment is made of the demeanor and commentary of persons at the scene (including the driver(s)); the environment; and the involved vehicles and their contents. In *Receive Citizen Complaints*, DWI incidents reported by citizens are received by police communications center staff.

The next function, *Detect Suspect*, involves the officer(s) from the patrol vehicle processing the information obtained in the *Surveillance* function to decide whether a violation has been detected. Three lower-level functions are involved (Figure 2-4):

- Assemble Information;
- Make Stop Decision; and
- Dispatch Officer.

Figure 2-4: Flowchart for Function 2.2, Detect Suspect

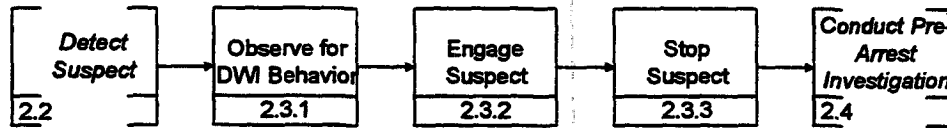


The first two functions follow observations made by the officer, and the third follows reception of a citizen complaint. In the *Assemble Information* function, information about an initial classification as a suspect is assembled. In *Make Stop Decision*, the surveillance officer decides whether the driver is a suspect and should be confronted for further classification. The emphasis is on identifying "marginal" drivers to get "good" DWI arrests that are likely to result in a conviction. In the *Dispatch Officer* function, an officer is sent to the location identified in the citizen complaint, and an affirmative decision to stop is implicit.

The next function, *Stop Vehicle*, contains the following three lower-level functions (Figure 2-5):

- Observe for DWI Behavior;
- Engage Suspect; and
- Stop Suspect.

Figure 2-5: Flowchart for Function 2.3, Stop Vehicle



First, the officer *Observes for DWI Behavior*, looking for such cues as overuse or exaggerated use of arm signals and attempts to dispose of beverage containers. If available, audiotape equipment is used by the officer to record his or her comments on the suspect's driving behavior.

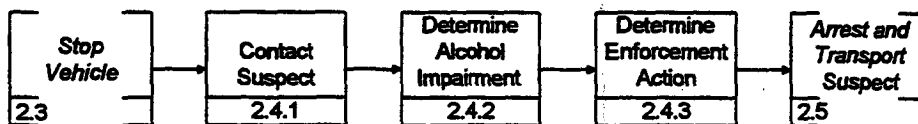
In *Engage Suspect*, the officer follows the suspect with the intent of stopping the vehicle. Techniques for getting the driver's attention include the use of flashers, horn, and siren (as a last resort). The officer looks for DWI cues as unusually fast compliance to signal to stop, slowness in stopping, and seeming ignorance of officer's signal to stop.

*Stop Suspect* involves: stopping the suspect driver as soon as possible after probable cause has been ascertained; choosing a safe stopping point; calling in the vehicle's registration number at the time of the stop; and not allowing the suspect to operate his or her vehicle in any manner after the stop unless it is determined that he or she is not impaired.

The lower-level functions of the *Conduct Pre-Arrest Investigation* function are (Figure 2-6):

- Contact Suspect;
- Determine Alcohol Impairment; and
- Determine Enforcement Action.

Figure 2-6: Flowchart for Function 2.4, Conduct Pre-Arrest Investigation





## THE BASELINE SYSTEM

In *Contact Suspect*, the officer approaches the stopped driver from the driver side and stands to the rear of the suspect's left front door. In two-person patrol units, the approach is made from both sides of the suspect's vehicle. The officer observes the occupants' actions to ensure, among other things, that the driver can be identified.

*Determine Alcohol Impairment* follows. This is accomplished by observing the suspect's demeanor, walk, speech, odors of alcoholic beverage, and manual dexterity ("totality of the circumstances").

The last sub-function is *Determine Enforcement Action* and involves deciding which immediate actions should be taken by the police from the pre arrest investigation. Alternatives are:

- Arrest the suspect for DWI;
- If it is unclear if the suspect is impaired and should be arrested, have the suspect lock his or her car and leave it at the scene, or have some other person who is not impaired (such as a taxi driver or passenger) drive the suspect's vehicle (with suspect) home;
- Arrest or cite the suspect for another violation; and
- Release the suspect.

The DWI enforcement process continues only for the first alternative.

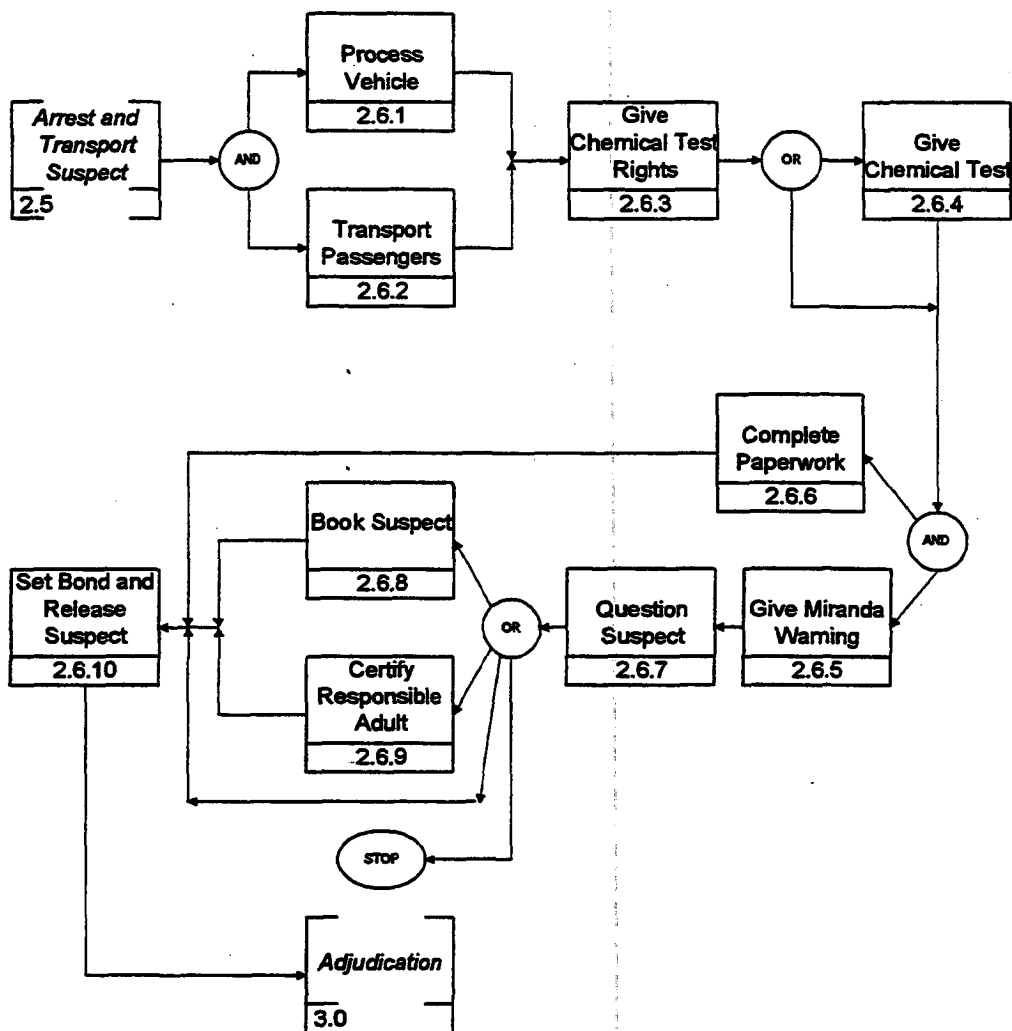
No lower-level functions exist for the *Arrest and Transport Suspect* sub-function. The suspect is arrested, placed in the patrol car, and taken by the arresting officer to the designated station or substation for further processing. The Miranda warning is read immediately after the arrest and breath test if there is custodial questioning.

*Conduct Post-Arrest Investigation and Processing*, involves traditional in-station breath testing, hand preparation of documents, and release pending prosecution. Sub-functions are (Figure 2-7):

- Process Vehicle
- Transport Drunk Passengers
- Give Rights Regarding Chemical Tests
- Give Chemical Test *or* Notify DMV of Test Refusal
- Question Suspect (Miranda applies)
- Complete Paperwork
- Book Suspect into Jail (Jail Personnel) *or* Release Suspect to Responsible Adult
- Set Bond and Release Suspect

The flow of the processing is depicted in the chart below.

**Figure 2-7: Flowchart for Function 2.6, Conduct Post-Arrest Investigation and Processing**



In *Process Vehicle*, the vehicle of the arrested DWI is released to a responsible person if available and if the suspect consents. Otherwise, the vehicle is secured and left at a safe place at the site of the arrest. Alternative ways to *Transport Impaired Passengers* include calling a taxi, having a sober passenger to take them home, and calling an additional officer to take them home or to a detoxification facility.

At the station, the first step in the post arrest processing of the suspect is to advise him or her of their rights with respect to a chemical test for BAC (*Give Chemical Test Rights*). If the suspect then refuses the test, the chemical test is bypassed.

In *Give Chemical Test*, an evidentiary breath test is administered according to specified standards by a certified breath test operator other than the arresting officer. Commercially available equipment is used.

## THE BASELINE SYSTEM

*Question Suspect* occurs immediately after the chemical testing. The *Miranda Warning* is given prior to this custodial questioning. Typical questions asked include how much the suspect had to drink, where he or she was coming from when arrested, and other circumstances of the drinking-driving event and arrest.

During and after the questioning, the arresting officer completes the paperwork associated with the arrest (*Complete Paperwork*). Much of the paperwork will have been started before this point, starting immediately after the arrest. The types of paperwork include:

- arrest report;
- citation or summons;
- alcohol influence report;
- booking forms;
- advice of chemical test rights form including refusal (if any);
- forms for notifying the DMV of administrative law violations, including the implied consent law (chemical test refusal); and
- chemical test forms.

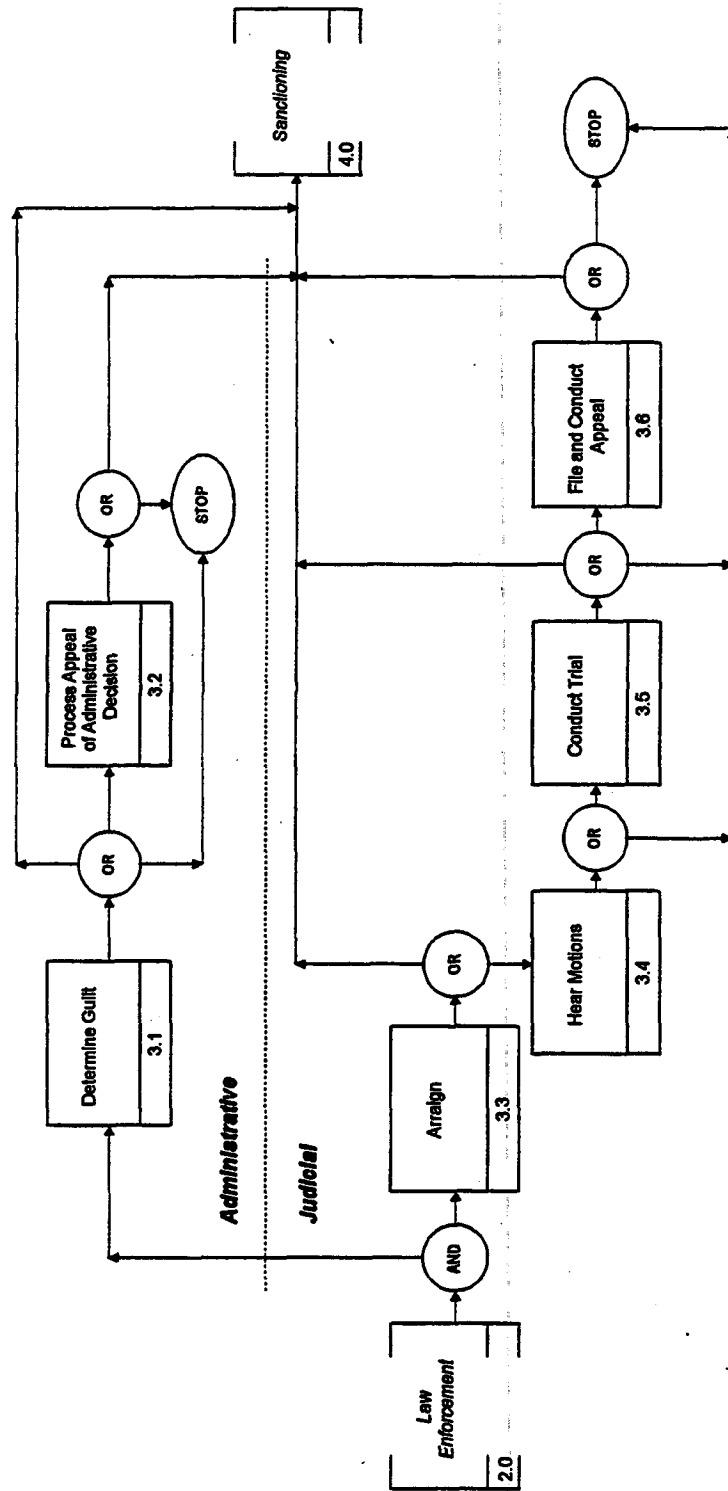
After completion of the questioning, a decision is made whether to book the suspect into jail or to release the suspect immediately. A major factor in this decision is whether the suspect is now sober. If sober, the suspect will be released following the next function (*Set Bond and Release Suspect*). If not sober, the suspect will be released to a responsible adult who will certify that he or she will be responsible for the suspect (*Certify Responsible Adult*). If such a responsible adult cannot be found, the suspect will be booked into jail to "sober up." The suspect will remain in jail until arraignment only if he or she has outstanding warrants or is unable to post a bond.

The booking process (*Book Suspect*) consists of the administrative procedures necessary to process the DWI into jail. It includes fingerprinting, photographing, filling out paperwork, and taking care of the prisoner's personal effects. The booking is performed by an officer at the police station.

### *Adjudication*

*First Level.* Adjudication involves two separate processes, an administrative process and a judicial process, that go on in parallel (See Figure 2-8 above). In the administrative process, the State driver licensing agency adjudicates any violation of the implied consent law. In *Determine Guilt or Innocence*, the driver will be found guilty of a violation if he or she refused the chemical test.

Figure 2-8: Flowchart for Function 3.0, Adjudication



## THE BASELINE SYSTEM

Sufficient evidence for a finding of guilty is the paperwork prepared by the appropriate law enforcement person during the post arrest processing (function 2.6.6 above). The driver may appeal a finding of guilty by requesting an administrative hearing after which the agency will *Rule on Appeal of Administrative Decision*. Further levels of appeal are also available through the judicial process.

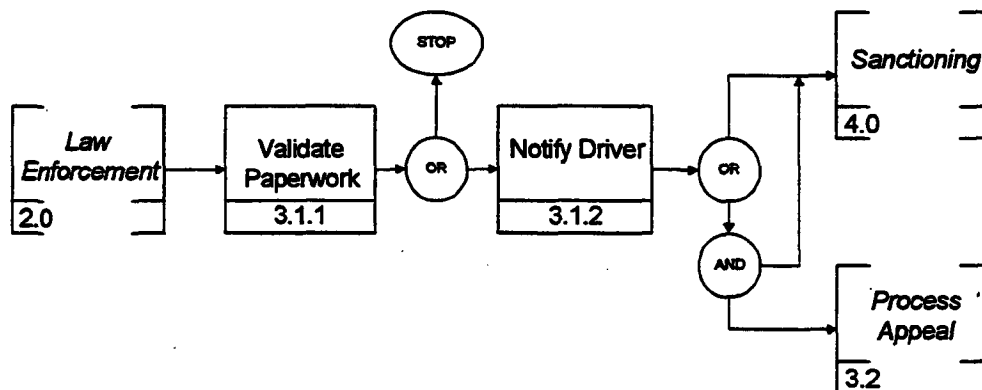
The judicial branch of the adjudication process follows standard procedures for handling criminal cases. (In the baseline system, one or two DWI convictions within five years are treated as a misdemeanor with a maximum jail sentence of one year, and three or more DWI convictions within five years are treated as a felony with a prison sentence of up to five years.) The process starts with the *Arraign* function in which the accused DWI appears before a judge or magistrate, has the charge explained, and is asked to plead guilty or not guilty. A plea of not guilty will lead to *Hear Motions* where pre-trial hearings are conducted, motions are filed with the court on various aspects of the case, and plea bargains may be negotiated. A plea of guilty will lead directly to the sanctioning function. A failure to negotiate a plea will lead to *Conduct Trial*. It is also possible that the charge may be dismissed at this point before or during the trial due to some irregularity or other circumstance, in which case the process will end.

The trial will have three possible outcomes, a verdict of guilt, a verdict of not guilty, a hung jury, or a mistrial. A guilty verdict leads to sanctioning or, if an appeal occurs, *Rule on Appeal of Judicial Decision*. A not-guilty verdict ends the process, and a hung jury or a mistrial could result in either a retrial or a dismissal (not shown).

*Second Level - Administrative.* The first function, *Determine Guilt*, involves two lower-level functions as follows (Figure 2-9):

- Validate Paperwork
- Notify Driver

Figure 2-9: Flowchart for Function 3.1, Determine Guilt - Administrative



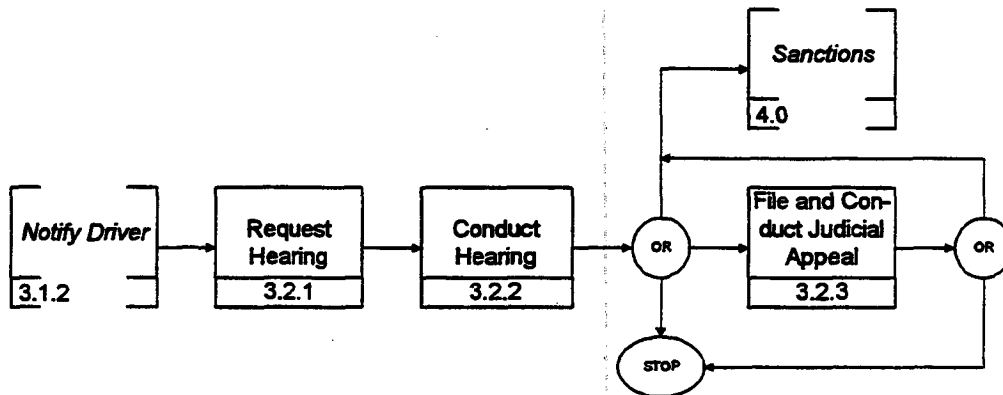
Determination of guilt is routine for the breath-test refusal violation, depending only on the validity and completeness of the paperwork prepared during the enforcement function. The paperwork is minimal, consisting of a form containing a written certification from the arresting officer that a test was refused. Driver identification data and the date and locations of the refusal or test are provided.

The driver is notified by letter of the results of the administrative finding. If a determination of guilty is made, the driver may either accept the determination and the sanction that follow or ask for a hearing. If a hearing is requested, the license is revoked pending the outcome of the appeal process.

Applicable lower-level functions for *Process Appeal of Administrative Decision* are (Figure 2-10):

- Request Hearing
- Conduct Hearing
- File and Conduct Judicial Appeal

**Figure 2-10: Flowchart for Function 3.2, Process Appeal of Administrative Decision**



A hearing may be requested within some specified period of time after the driver has been notified of the administrative determination of guilt (*Request Hearing*). It is to the driver's advantage to request a hearing soon, since the administrative sanction will follow immediately after the determination of guilt. However, the driver may request a temporary license for the entire period of the administrative review process. The administrative agency must conduct a requested hearing within 15 days after receiving the request for one (*Conduct Hearing*). An administrative hearing officer will conduct the hearing, and the arresting officer must be present.

The driver may ask a district court to review the administrative decision (*File and Conduct Judicial Review*), and the court may stay the administrative decision only if a substantial question is presented to the court.

## THE BASELINE SYSTEM

**Second Level - Judicial.** The first function, *Arraign*, has no lower-level functions. Arraignments are conducted in the court of jurisdiction. The court is required to inform the defendant of:

- the name of the offense charged;
- the maximum sentence permitted by law;
- the minimum mandatory sentence;
- his or her right to the assistance of a lawyer and a trial by jury; and
- if indigent, his or her right to an appointed lawyer.

The defendant is then asked how he or she pleads. Before accepting a plea of guilty or no contest, the court must advise the defendant that if the plea is accepted, there will be no trial. Also, the court must determine that the plea is voluntary and that there is support for the charged drunk-driving offense.

The next function, *Hear Motions*, has three lower level functions (Figure 2-11). First, the court *Schedules Pre-Trial Hearings* of motions dealing with various aspects of the case and during which pleas may be negotiated. Most issues involved will be concerned with the evidentiary aspects of the case as related to:

- Risk identification - Is the accused violator the actual violator?
- Fundamental fairness - Does the adjudicative process protect the rights of the accused violator?

Specific issues could be: probable cause for the traffic stop and arrest; Miranda warnings; and refusal to take a chemical test, among others. For example, a motion may ask, because there was no probable cause to stop the car, that all evidence obtained from the stop be suppressed because the stop and arrest were illegal and violated the defendant's basic rights. The judge rules on the motion, usually after hearing arguments from both sides. In the next function, *Conduct Trial*, standard procedures for conducting criminal trials are followed. The seven sub-functions are sequential as indicated in the flow chart below (Figure 2-12).

A docket showing the date and time of the trial is prepared by the court clerk after the arraignment. A jury is selected in the usual way and instructed by the court in various legal terminologies and in its conduct during the trial. (Other instructions may follow during the trial, for example, instructions on the admissibility of the defendant's refusal to submit to a BAC test as evidence.) Both sides may make opening statements, after which the prosecution presents its case, calling its witnesses that will include the arresting officer, and possibly, the BAC-test operator. The defense counsel then presents its response to the charge, calling its witnesses that may include the defendant if the defendant so wants. Cross examinations may occur after each witness's testimony.

Figure 2-11: Flowchart for Function 3.4, Hear Motions - Judicial

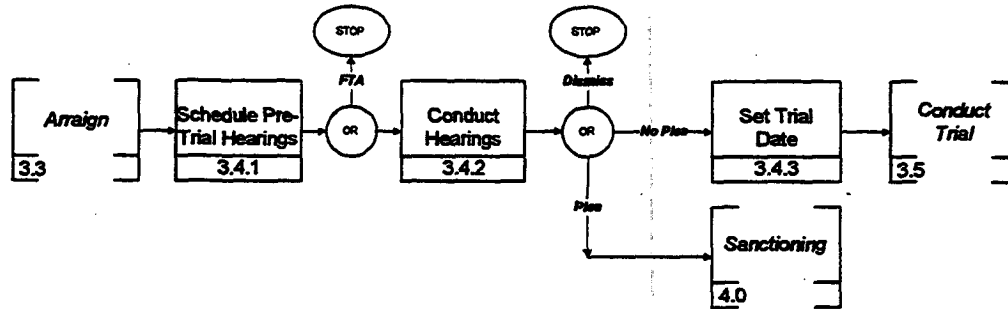
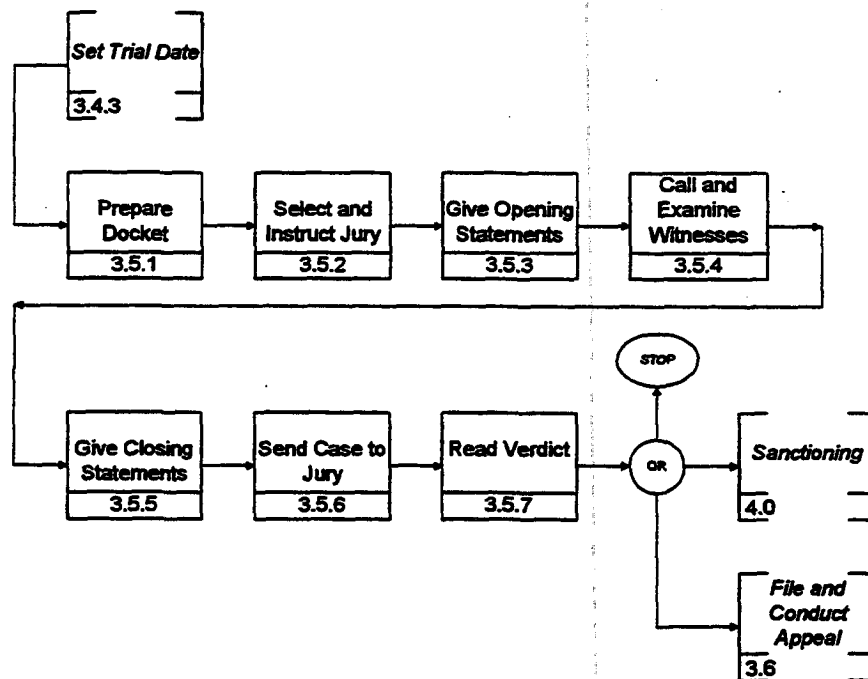


Figure 2-12: Flowchart for Function 3.4, Conduct Trial - Judicial



After closing arguments by both sides, the judge instructs the jury again on the critical aspects of the case, and releases the jury for its deliberations and its verdict. The jury's verdict is then read, after which the defendant is released (a not-guilty verdict), or, if guilty, proceeds to the sanctioning function or files an appeal. If the jury cannot reach a verdict, the prosecutor may choose to retry the case.



## THE BASELINE SYSTEM

No lower-level functions exist for *File and Conduct Appeal*. Standard procedures are followed in filing and conducting the appeal.

### *Sanctioning*

*First Level.* As with the adjudication function, sanctioning involves separate administrative and judicial processes (Figure 2-13). In the administrative process, the State driver licensing agency imposes the required driver license sanctions (see law generation function above). All other sanctions are imposed in the judicial process.

In the judicial process, the first function is to prepare a sentencing package that may include an offer of probation that will require the violator to enroll in an alcohol treatment or education program. In exchange for accepting probation and agreeing to complete the program successfully and follow other conditions specified by the court, the violator is offered a reduction in the traditional sanctions permitted by law (for example, jail time or amount of fine). If probation is not accepted (or offered), the more severe traditional punitive sanctions are imposed. If probation is accepted, probation staff diagnoses the extent of any drinking problem underlying the offense, and refers the violator to an appropriate alcohol treatment or education program (*Diagnose and Refer*).

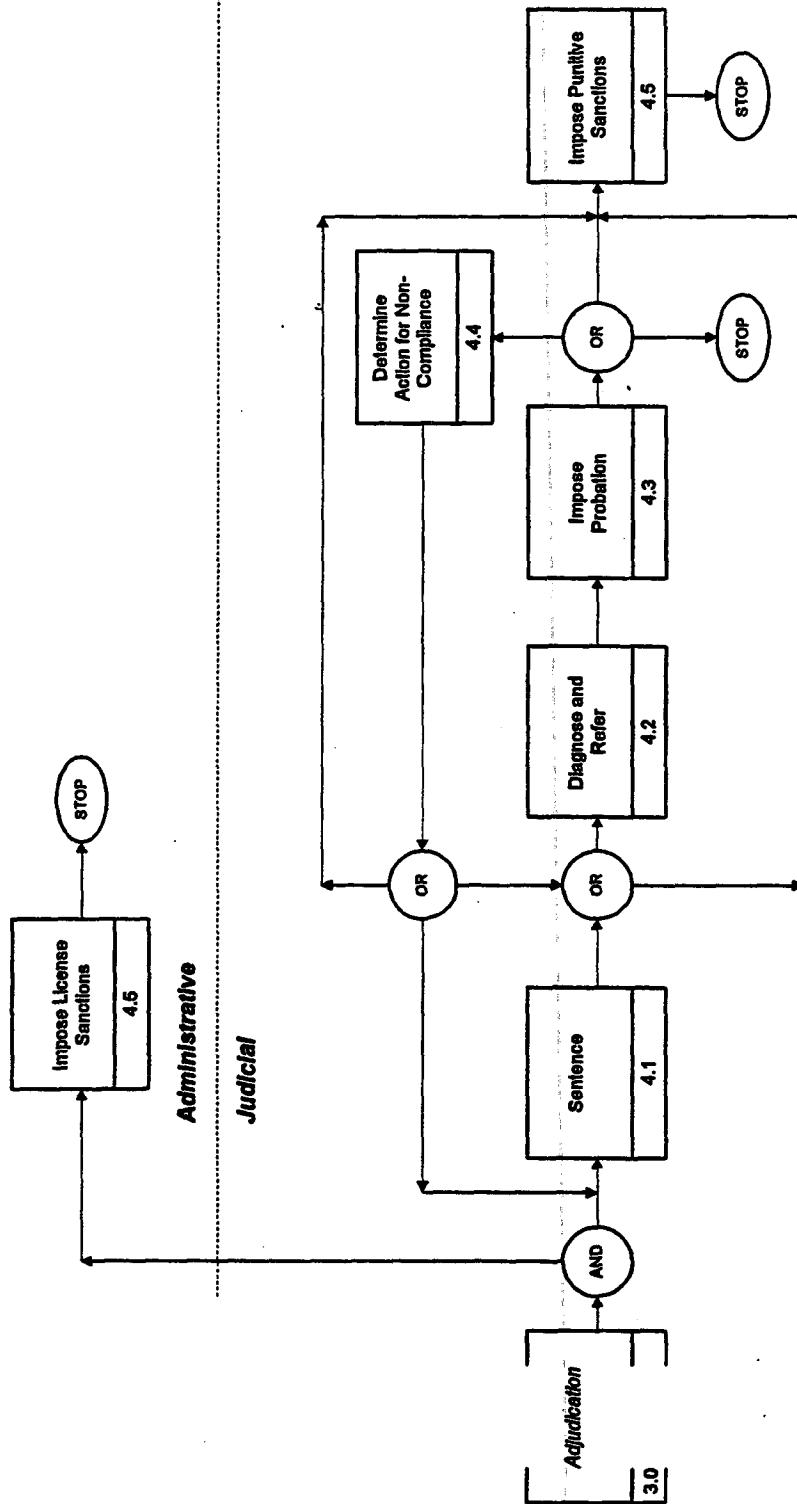
During probation, the offender is supervised by a probation officer who attempts to ensure that the conditions of probation are followed (*Impose Probation*). Failure to comply with the conditions of probation will result in a hearing to *Determine Action for Non-Compliance*. Possible outcomes of the hearing are: return to the sentencing function for re-sentencing; return to probation to complete the treatment program as ordered; or immediate revocation of probation.

In the final function the judge will *Impose Punitive Sanctions*. The severity of the sanctions (including suspension of all punitive sanctions) depends primarily on the number of prior DWI offenses, and on the final outcome of pre-trial negotiations.

*Second Level - Administrative.* No lower-level functions exist for this function. A description of the sanctions imposed are placed in the violator's driver record maintained by the administrative agency. If an appeal of an implied consent determination favors the defendant, then the license (which has been revoked pending the outcome of the hearing) is automatically reinstated.

*Second Level - Judicial.* No lower-level functions exist for the *Sentence* function. The judge selects a sentencing "package" that will be offered to the offender. The sentencing package says which punitive sanctions are to be imposed and sets forth the conditions of probation. The consequences of the offender not accepting and/or complying with the probationary conditions (i.e., more severe punitive sanctions) are explained to the offender. The offender decides whether to accept the conditions of probation, and the judge then specifies the sentence.

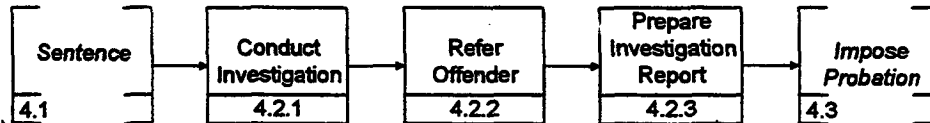
Figure 2-13: Flowchart for Function 4.0, Sanctioning



The *Diagnose and Refer* function contains three lower-level functions. They are (Figure 2-14):

- Conduct Investigation;
- Refer Offender; and
- Prepare Investigation Report.

Figure 2-14: Flowchart for Function 4.2, Diagnose and Refer



This function is performed by a probation officer from the court's probation department. First, an investigation is conducted (*Conduct Investigation*) during which the probation officer checks the state's criminal justice information system and the state's driver records system to obtain information on prior convictions. One or more interviews are conducted during which an alcohol assessment instrument (the Mortimer-Filkins protocol) is administered.

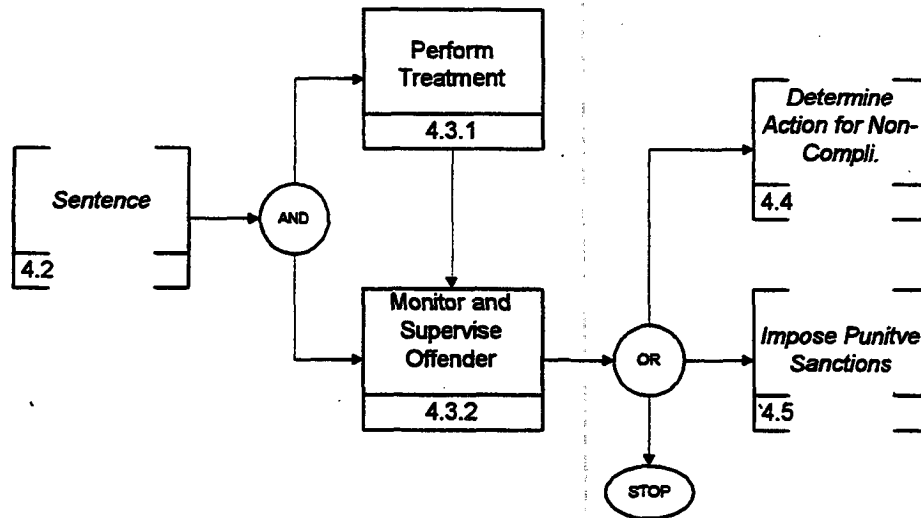
After the interviews are completed, a referral is made to an alcohol treatment or educational program (*Refer Offender*). Referral is made based on information gathered during the investigation, for example, whether the violator was classified as a problem drinker, and whether the violator has participated in other treatment programs. The probation officer then prepares a brief report describing the results of the investigation, and outlining the recommended treatment (*Prepare Investigation Report*).

The *Impose Probation* function includes two lower-level functions (Figure 2-15):

- Perform Treatment and
- Monitor and Supervise Offender.

As indicated in the diagram, both sub-functions are performed essentially in parallel. Note that, at this stage of the process, the offender has already enrolled in a treatment program following an assessment to determine treatment needs. In *Perform Treatment* one of the two programs offered will be administered to the offender, a program for offenders who are classified as not having a drinking problem and a program for offenders who are classified as having a drinking problem. Both levels are conducted on an outpatient basis.

Figure 2-15: Flowchart for Function 4.3, Impose Probation



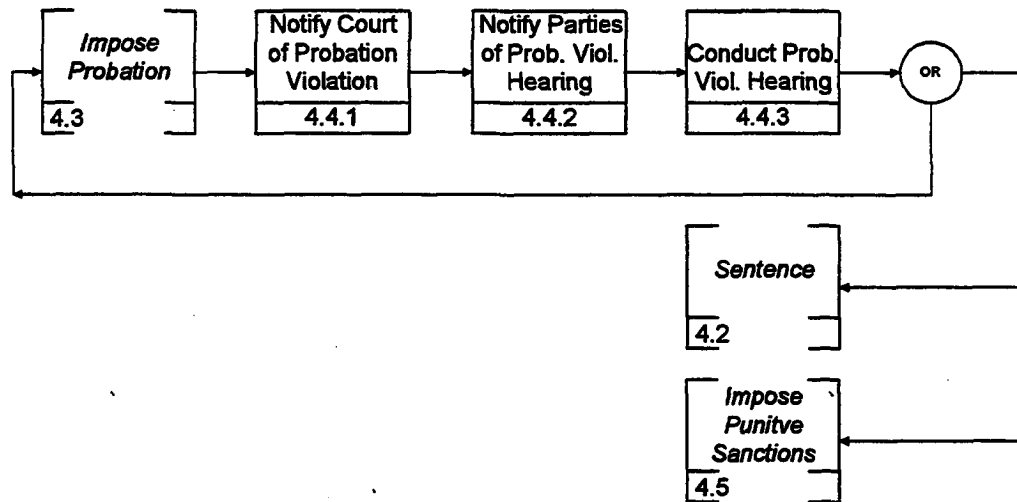
*Monitoring and Supervision* requires the offender to report periodically to his or her probation officer who will have information on the offender's attendance in the treatment program and on the offender's general progress in the program. Information from criminal justice data systems and from driver records data systems will also be available to the probation officer. Once the probation period is completed and the conditions have been satisfactorily met, probation is ended, and the court completes the file on the offender. At this point, the defendant is no longer subject to the traditional sanctions for which the probation was substituted, but still must receive any reduced sanctions (including time in jail or in prison if a felony) specified in the sentencing package.

The next function, *Determine Action for Non-Compliance*, is performed when the offender does not follow the conditions of probation agreed to at sentencing. Lower-level functions are (Figure 2-16):

- Notify Court of Probation Violation;
- Notify Parties of Probation Violation Hearing; and
- Conduct Probation Violation Hearing.

The first action is to *Notify Court of Probation Violation*. Then, the judge begins violation-of-probation proceedings against the offender, and *Notify Parties of Probation Violation Hearing*. In *Conduct Probation Violation Hearing* the offender may be represented by counsel.

Figure 2-16: Flowchart for Function 4.4, Determine Action for Non-Compliance



If the violation is upheld, the judge may stop the probation and impose the traditional sanctions or may reinstate and/or extend the probation up to the maximum limit allowed by statute. (Most often, the judge will show a good deal of leniency in allowing probation periods to be reinstated.) If the judge does not uphold the violation (a rarity), probation is reinstated. The offender may appeal a finding confirming the violation.

The last sanctioning function is *Impose Punitive Sanctions*. No lower-level functions exist for this function. Sanctions are a mixture of a fine, driver license suspension, and incarceration in jail or prison. The severity of the sanctions depends primarily upon the number of prior DWI offenses, and on whether the offender accepted and successfully completed probation. If the offender has less than three priors in a period of five years preceding the arrest for this offense, this offense will be considered a misdemeanor, with a maximum jail term of one year. Otherwise, the offense will be considered a felony. The offender is also required to pay the cost of the treatment program.

## MEASURES OF REQUIREMENTS AND PERFORMANCE

This section presents lists of measures of (1) how well the various functions of the BAC law enforcement system are performed (performance measures) and (2) the resources required for performing those functions (requirements measures). The measures are organized as above by function, and are contained in three tables, starting with enforcement functions (Table 2-3, Table 2-4, and Table 2-5) and proceeding successively through the adjudicative and sanctioning functions (Table 2-6, Table 2-7, and Table 2-8).

Some functions have more than one performance measure, for example, time to do the function for a given case, and percent of cases processed with given results. Requirements measures are stated as to:

- personnel requirements (for example, four hours per case for a patrol officer);
- equipment requirements (for example, a BAC measurement device); and
- facility requirements (for example, floor space for conducting BAC tests).

Quantifying such detailed measures using objective data will be all but impossible in most real-world jurisdictions. This is because such detailed data are not routinely kept, and constructing new data systems to provide the data would be prohibitively expensive and time-consuming. The main value of such measures is to provide a list of items that can be assessed subjectively by system managers (for example, police chiefs, prosecuting attorneys, presiding judges, and court administrators). This will allow them to learn whether improvements are needed in various parts of their system and to estimate the resources needed to improve performance. Both nominal (e.g., high, average, and low) and ordinal (e.g., 1, 2, and 3) scales could be used in such an assessment.

More aggregated measures *could* be quantified in most systems. For example, the performance of the top-level adjudication function could be broken down into the following components:

- Charging
  - ✓ Charge
  - ✓ No Charge
- Arraignment
  - ✓ Plea
  - ✓ No Plea
  - ✓ Fail to Appear
  - ✓ Dismissed
- Pre-Trial
  - ✓ Plea
  - ✓ No Plea
  - ✓ Fail to Appear
  - ✓ Dismissed
- Trial
  - ✓ Guilty
  - ✓ Not Guilty
  - ✓ Fail to Appear
  - ✓ Dismissed

## *THE BASELINE SYSTEM*

Then, the percentage of defendants moving from a given state (say, "no plea" during pre-trial) to various other permissible states (say, "guilty" after trial) could be determined and combined to provide an estimate of the probability of conviction given an arrest. This conditional probability would serve as a performance measure for the adjudication subsystem as a whole. Similarly, measures of overall law enforcement performance and overall sanctioning performance could be estimated and combined with adjudication system performance to give a quantitative measure of the performance of the total system.

Examination of such a model reveals that system performance will not be a linear function of the subsystem performance parameters. The effect of a given percentage change in one of the subsystem performance parameters on overall system performance will depend on the baseline value of that parameter. For example, a system in which 50% of the defendants set for trial do not appear will realize a greater percentage increase in system performance by reducing failure to appear (FTA) by 50% (to a rate of 25%) than will a system in which 20% of the defendants fail to appear. Consequently, one cannot give general rules on which subsystem changes will be the most productive. The productivity of such changes will depend on the starting point, which demands that each jurisdiction should carefully examine the performance of its current system and its subsystems before undertaking large-scale changes.

**PROBLEMS AND SOLUTIONS IN DWI ENFORCEMENT SYSTEMS**

**Table 2-3: Performance and Requirements Measures for Perform Surveillance, Detect Suspect, and Apprehend Suspect**

Function	Performance Measures	Requirements Measures		
		Personnel	Equipment	Facilities
<i>Perform Surveillance</i>				
Deploy Units	Patrol units deployed per licensed driver per unit time, appropriateness of deployment	Headquarters staff hours per unit deployed (planning and briefing)	Computer and record system	Headquarters building
Observe Traffic	Time spent observing for DWI per patrol unit, percent needed information recorded per unit	Patrol officer hours per unit	Patrol car	None
Observe Crash Scene	Time from crash to arrival at scene per event, time spent observing per patrol unit, percent needed information recorded per unit	Dispatcher hours per crash, patrol officer hours per crash	Patrol car	Headquarters building
<i>Detect Suspect</i>				
Assemble information	Percent of needed info recorded per officer per event / crash	Patrol officer hours per unit time / crash	Patrol car	None
Make Decision to Stop	Use of proper rules, stop decisions per officer per unit time	Patrol officer hours per unit time / crash	Patrol car	None
<i>Contact Suspect</i>				
Pursue Suspect	Time in pursuit per event, percent hot pursuits	Patrol officer hours per event	Patrol car	None
Observe for DWI Behavior	Cues sought	Patrol officer hours per event	Patrol car	None
Stop Suspect	Percent caught per event	Patrol officer hours per event	Patrol car	None



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**Table 2-4: Performance and Requirements Measures for Conduct Pre-Arrest Investigation, and Arrest and Transport Suspect**

Function	Performance Measures	Requirements Measures		
		Personnel	Equipment	Facilities
<i>Conduct Pre-Arrest Investigation</i>				
Approach Vehicle / Suspect	Suspects escaped, officers injured, elapsed time per event	Patrol officer hours per event	Patrol car	None
Screen for Alcohol Impairment	Elapsed time per event; percent correct decisions; percent positives	Patrol officer hours per event	Patrol car	None
Determine Alcohol Impairment	Elapsed time per event; percent correct decisions; percent positives	Patrol officer hours per event	Patrol car	None
Determine Enforcement Action	Percent correct decisions per unit, elapsed time to make decision per event	Patrol officer hours per event	Patrol car	None
<i>Arrest and Transport Suspect</i>	Elapsed time to transport per event	Patrol officer hours per arrest	Patrol car	None

*PROBLEMS AND SOLUTIONS IN DWI ENFORCEMENT SYSTEMS*

**Table 2-5: Performance and Requirements Measures for Conduct Post-Arrest Investigation and Processing**

Function	Performance Measures	Requirements Measures		
		Personnel	Equipment	Facilities
<i>Conduct Post-Arr. Invest. and Process.</i>				
Process Vehicle	Elapsed time per event	Patrol officer hours per event	Patrol car	None
Transport Drunk Passengers	Elapsed time per event	Patrol officer, or additional officer	Patrol car(s)	None
Give Rights on Chem. Tests	Elapsed time per event, percent given correctly	Patrol officer hours per event	Patrol car	Headquarters building
Give Chemical Test	Elapsed time per event, percent given correctly, percent refusals	Chem test operator hours per event; Patrol officer hours per event	Breath test equipment	Headquarters building
Question Suspect	Elapsed time per event, percent info items covered	Patrol officer hours per event	Patrol car	Headquarters building
Prepare Paperwork	Elapsed time per event, percent needed info provided per event	Patrol officer hours per event	Patrol car	Headquarters building
Book Suspect into Jail	Elapsed time per event, percent booked correctly	Patrol officer hours per event	Patrol car	Headquarters building
Set Bond and Release	Elapsed time per event, percent booked correctly	Patrol officer hours per event	Patrol car	Headquarters building

*THE BASELINE SYSTEM*

**Table 2-6: Performance and Requirements Measures for Determine Guilt (Administrative), Process Appeal of Administrative Decision, and Arraign**

Function	Performance Measures	Requirements Measures		
		Personnel	Equipment	Facilities
<i>Determine Guilt (Administrative)</i>				
Validate Paperwork	Elapsed time per case, percent cases with valid paperwork.	Clerical hours per case	Computer system, office equipment	DMV office space
Notify Driver	Elapsed time per case, percent cases driver notified.	Clerical hours per case	Computer system, office equipment	DMV office space
<i>Process Appeal of Administrative Decision</i>				
Request Hearing	Elapsed time to process request, percent drivers requesting hearings.	Clerical hours per case	Computer system, office equipment	DMV office space
Conduct Hearing	Elapsed time before hearing, elapsed time for hearing, percent decisions upheld.	Hearing Officer hours per case	Computer system, office equipment	DMV office space
File and Conduct Judicial Appeal	Elapsed time before appeal hearing, percent admin. decisions upheld.	Clerical hours per case	Computer system, office equipment	Courtroom, court staff office space

*PROBLEMS AND SOLUTIONS IN DWI ENFORCEMENT SYSTEMS*

**Table 2-7: Performance and Requirements Measures for Arraign, Hear Motions, Conduct Trial, and File and Conduct Appeal**

Function	Performance Measures	Requirements Measures		
		Personnel	Equipment	Facilities
<i>Arraign</i>	Elapsed time from arrest to arraignment, percent guilty pleas.	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space
<i>Hear Motions</i>	Elapsed time for motions, percent cases dismissed	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space, jury room
<i>Conduct Trial</i>				
Prepare Docket	Elapsed time for docket preparation.	Clerical hours per case	Computer system, office equipment	Courtroom, court staff office space
Select and Instruct Jury	Elapsed time for jury selection.	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space, jury room
Give Opening Statements	Elapsed time for statements.	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space, jury room
Call and Examine Witnesses	Elapsed time for examinations.	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space, jury room
Give Closing Statements	Elapsed time for statements.	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space, jury room
Send Case to Jury	Elapsed time for jury instructions.	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space, jury room
<i>File and Conduct Appeal</i>	Elapsed time before appeal hearing, percent decisions upheld.	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space

*THE BASELINE SYSTEM*

**Table 2-8: Performance and Requirements Measures for Sentence, Diagnose and Refer, Impose Probation, Determine Action for Non-Compliance, and Impose Punitive Sanctions**

Function	Performance Measures	Requirements Measures		
		Personnel	Equipment	Facilities
<i>Sentence</i>	Elapsed time to sentence, percent pre-sentence investigation recommendations accepted, degree of compliance with sentencing guidelines.	Judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space
<i>Diagnose and Refer</i>				
Conduct Investigation	Elapsed time for PSI, percent essential items covered.	Probation officer, clerical hours per case	Computer system, office equipment	Probation office space
Refer Offender	Elapsed time to enroll in recommended program, percent offenders enrolling.	Probation officer, clerical hours per case	Computer system, office equipment	Probation office space
Prepare Investigation Report	Elapsed time to complete report.	Probation officer, clerical hours per case	Computer system, office equipment	Probation office space
<i>Impose Probation</i>				
Perform Treatment	Elapsed time for treatment, percent treatment completed, treatment effectiveness.	Treatment staff, clerical hours per case	Computer system, office equipment	Treatment facilities
<i>Determine Action for Non-Compliance</i>				
Notify Court of Probation Violation	Elapsed time to notify, percent offenders violating.	Probation officer, clerical hours per case	Computer system, office equipment	Probation office space
Notify Parties of Probation Violation Hearing	Elapsed time to notify.	Clerical hours per case	Computer system, office equipment	Court staff office space
Conduct Probation Violation Hearing	Elapsed time for hearing, percent violations upheld, percent probations terminated.	Probation officer, judge, bailiff, attorney, clerical hours per case	Computer system, office equipment	Courtroom, court staff office space
<i>Impose Punitive Sanctions</i>	Percent fine, jail, etc. fulfilled; time incapacitated	Corrections, probation, DMV hours per case	Computer system, office equipment	Jail space, DMV office space, probation staff space

### 3 - CASE STUDIES OF OPERATING SYSTEMS

Case studies of DWI enforcement systems in three jurisdictions were conducted to get more information about how such systems operate. This chapter describes how the case study sites were selected, our procedures for conducting the case studies, and the findings of the studies.

#### SELECTION OF CASE STUDY SITES

The most basic site selection criteria were (1) the existence of statutes requiring enforcement of several BAC limits for various target groups, and (2) having a range of differing enforcement techniques for these BAC limits. As indicated in Chapter 2, BAC limits of concern in this project are:

<b>Group</b>	<b>BAC Limit</b>
All Drivers	
DWI	0.08, 0.10
DUI	0.05, 0.08
Under Age 21	0.0 - 0.02
Commercial	0.04
Commercial (Out of Service)	0

The sites selected for recruitment for participation in the study had to meet an initial screen that provided the appropriate mix of techniques and BAC limits before additional selection criteria were applied. Sites were to be counties or cities rather than states.

Additional site criteria included having appropriate data available at least to make rudimentary assessments of system functionality. This included such information as number of DWI arrests, BAC levels of arrestees, DWI conviction data, information on sanctions applied and compliance therewith, and crash data including time of day so that nighttime crashes could be used as a proxy of alcohol-related crashes. Though this project was not an evaluation project, these types of data were needed for preparing a thorough system description, identifying failure modes, and estimating levels of performance.

Systems that appeared to be performing satisfactorily and also those that appeared not to be performing satisfactorily were considered for inclusion in the study. Although the data indicated above permitted a more objective assessment of that issue as the project progressed, at the time of site selection and recruitment, we had to rely on more subjective measures. These included opinions of NHTSA

regional office, state specialists, staff from Governor's Highway Safety Program (GHSP) offices, and professionals in candidate sites.

Another important site criterion was cooperativeness of the various actors in the system at prospective sites. A study of this nature requires that those operating the system be willing and able to openly participate in the study. Potential participants included local, county and state police, prosecutors, judges, probation officers, problem drinking assessors, treatment professionals, licensing officials, hearing officers, chemists, communications specialists, members of the media and offenders. We assessed cooperativeness by asking personnel in GHSP offices about specific jurisdictions. For sites that met the initial site selection criteria, telephonic contacts were made with key players in the jurisdictions to assess interest further, and these were followed up by site-recruitment visits before commitment was made.

We also sought sites distributed geographically across the country, and representative of a range of socioeconomic and urbanicity characteristics. Sites were considered in states with and without administrative license revocation.

Finally, we looked for sites that had recently established new BAC limits and also sites that had their limits in place for a longer time. The former type of site would have personnel who would be more likely to recall the system design considerations associated with carrying out the new limits, while the latter type would have more information on how the system was actually functioning. A careful balancing of those two issues was made, with particular attention to the quality of potential cooperators within the sites.

Three sites were ultimately selected based on these criteria, *viz.*:

- Scottsdale, Arizona;
- Rockdale County, Georgia; and
- Palm Beach County, Florida.

## **CASE STUDY PROCEDURES**

The case studies were based on data collected during site visits lasting from three to five days. Both principal investigators of the study participated in the site visits. The site visits employed a variety of information-gathering techniques, including:

1. A half-day mini seminar with key actors in the local DWI enforcement system in which the basic system design of the jurisdiction was discussed, major problem areas identified, and some possible fixes to problems elicited. Police personnel participating included one or two shift commanders, general patrol officers, and special DWI patrol officers (if applicable). A prosecuting attorney with strong experience in DWI cases, and a traffic court judge who handled many DWI cases was present at the seminars. These adjudication and sanctioning personnel were needed because of the strong influences these

## CASE STUDIES OF OPERATING SYSTEMS

functions have on enforcement (and *vice versa*), and to help clarify, where needed, some legal issues involved.

2. One-on-one discussions with operational staff performing various functions at the task level. The purpose here was to verify and describe in further detail the operational functions being performed in enforcing the BAC laws. Each function was discussed sequentially to find out how and by whom they were performed and to identify the equipment and facilities used in performing the functions.
3. Observations of the performance of critical system functions and tasks (e.g., surveillance, and detection). The observations included ride-alongs in patrol cars, viewing of offender processing, and watching court processing, including arraignments, trials, and sentencing.

### CASE STUDY RESULTS - SCOTTSDALE, ARIZONA

#### *Site Description*

Scottsdale is on the east side of Phoenix in Maricopa County, Arizona and encompasses 185 square miles. According to 1990 U.S. Census Data, the population of 130,000 individuals was 96% white, 1% black and 3% other races. Sixty-six percent (66%) of that population were between the ages of 18 and 64, 18% were under age 18, and 16% were 65 or older. The 1994 City of Scottsdale Facts sheet reports a population of 165,430 with a median age of 39.1 years.

Per capita personal income in 1989 according to the U.S. Census Data was \$23,482, higher than Maricopa County per capita income reported as \$14,970. The county unemployment rate in 1994 was 4.9%. The median household income was reported to be \$54,251 in the 1994 City of Scottsdale Facts.

#### *System Description*

**Law Generation.** Arizona State Statutes require chemical tests of breath, blood, urine, or "other bodily substances" for individuals arrested for operating a motor vehicle under the influence of alcohol or other drugs. In the past, Scottsdale police officers administered breath tests to such individuals. However, defense attorneys questioned the reliability of breath tests based upon many issues ranging from the proper maintenance and calibration of the equipment to the qualifications of officers administering the tests. Consequently, authorities in Scottsdale decided to eliminate such questions by administering only blood tests to persons arrested for DUI. State Statute already allowed for police officers to request medical facility personnel who collect blood (and also other bodily substances) to supply samples from DUI suspects to law enforcement authorities for testing. Such samples can be obtained via search warrants if the suspect refuses to cooperate. The illegal *per se* limit for adults in Arizona is 0.10. Scottsdale's anti-DUI enforcement system is currently operating



under these statutes. Refusals are discussed under the Enforcement section that follows.

*Enforcement.* Multi jurisdictional DUI task forces have proved very successful in the Scottsdale area by providing cooperation and support among the different agencies and jurisdictions. Up to ten different Maricopa County and State law enforcement agencies have participated in the task forces. These operations were highly praised by the police officers we interviewed and by judges but are typically conducted only during holiday periods.

The Scottsdale Police Department routinely operates special DUI police units. General patrol officers, after making a stop, can call for a DUI unit to handle further processing of the suspect. This procedure is frequently followed. When a citizen complaint is received, the nearest patrol car is dispatched. When conditions permit, the officer responding to the complaint tries to observe driving patterns before stopping the suspected impaired driver. After a vehicle stop, the officer will question the driver. If the officer suspects the driver of being under the influence or intoxicated, standardized field sobriety testing (SFST) will be administered. If the driver demonstrates impairment, the officer arrests and places the suspect into the patrol car. The suspect's vehicle is legally parked or towed at the owner's choice. The officer then completes a uniform traffic ticket (UTT), and a record check of the suspect is run on the computer in the patrol car. The suspect's driving history is checked to find out whether the offense is a misdemeanor or a felony. Felony charges are made when there are two prior DUI offenses, the DUI offense occurs on a suspended or revoked driver license, if a child under the age of 15 is in the vehicle, or if a death or serious injury has resulted from a crash.

A ticket is issued for a misdemeanor, but not for a felony or "aggravated" DUI charge. A "long form" provided by the District Attorney's office must be completed for a felony charge. The felony suspect must be booked, as opposed to a "field release" for misdemeanor charges.

Motorcycle officers must call in via a telephone to decide charges, because no computers are on the motorcycles. The driver license suspension is handled routinely by the officer. The order-of-suspension portion of the administrative *per se* and implied consent affidavit is completed showing a 90 consecutive day suspension (12 months for a test refusal).

After the subject is placed under arrest, the officer reads aloud to the suspect the text of the implied consent form asking if the suspect will consent to a blood test at a hospital. The officer initials each block of text as it is read and then asks if the suspect understands what has just been read, because this has been an issue in the past. If the suspect replies that he or she understands and will consent to a blood test, the officer telephones a hospital to prepare for the test and transports the suspect to the hospital. The Scottsdale Police Department has agreements with two hospitals to provide this service to minimize the time required to transport arrestees to the testing facility.

## CASE STUDIES OF OPERATING SYSTEMS

At the hospital two vials of blood are drawn from the suspect. Both vials are labeled, placed in a shipping container and transferred to the toxicological lab for processing following careful chain of evidence procedures. The Scottsdale Police Department operates its own toxicological laboratory and thus does its own blood alcohol analyses using one of the vials. The suspect is informed about how to obtain the second vial if the suspect desires an independent test. Officers support the use of blood tests versus breath because they result in fewer validity arguments. Finger prints are also taken at the hospital to insure that questions of identity of the offender may be addressed if necessary.

For a refusal, a twelve month license suspension is served on the offender. This completes the administrative *per se* civil process. At that time the officer turns his or her attention to collecting BAC evidence for the criminal charge. The officer informs the suspect that a judge will be contacted and a search warrant will be requested. The subject is told: "If the judge grants the search warrant, you will no longer have the right to refuse." For day time search warrant requests, the officer requests the search warrant in person. For night time search warrants, the requests are handled by a faxed telephonic search warrant request procedure. Three judges rotate turns so that one is always "on-call" and available to officers. If the suspect continues to refuse, the officer contacts the judge by telephone who then swears in the officer over the telephone. The officer faxes an affidavit and search warrant to the judge. If the judge finds probable cause the judge signs the search warrant and affidavit and faxes them back to the officer. The warrant authorizes blood to be taken from a test refuser. Reportedly, this system has worked well.

If an individual refuses to submit to a blood test and a warrant is issued, the blood sample is drawn at the police station by an on-call licensed phlebotomist. This is done because the subject can be more readily restrained in the police setting. Occasionally, for example when the officer is convinced the subject is deathly afraid of needles, a breath test is administered instead of the blood test.

The officer will complete a booking slip and a department report (DR). Other forms, many containing repetitive information such as name, date, driver license number, etc., are completed. The officers follow a checklist to make certain everything has been completed according to procedures. The officer notes whether any phone calls have been made and if a taxi or friend has been called. Officers usually will not transport a suspect to jail unless the person has outstanding warrants or other issues need to be addressed. Sometimes, officers will even drive suspects home if it is faster than waiting for a friend to pick them up. Suspects are held overnight if the individual cannot be released to an adult, if the person does not have a local address, or if the person is considered a flight risk. The typical arrest requires about one hour of the officer's time on the night of the arrest.

The next actions requiring the police officers involvement could be defense interviews, DMV (Department of Motor Vehicle) hearings, or officers may be called to testify in court. Officers are also required to appear for felony arraignments. The officers interviewed during our visit reported 95-98% of DUI cases are plead out.

One officer said that in 1996, he made 136 DUI arrests and only three went to trial. Another officer reported appearing at two jury trials and eight evidentiary hearings in five years. Monthly, officers receive a list of potential court dates. They are notified by a voice mail system a day before a court appearance if their appearance will actually be needed. They also are interviewed by defense attorneys and spend time in administrative hearings.

Prosecutors reported that the 0.04 law for commercial truckers is not heavily enforced and that passive sensors are not used.

*Adjudication.* If held for arraignment, the suspect can "bond out" before appearing before a municipal court judge for arraignment. A bond schedule is used for misdemeanor offenses (\$500 per offense, \$1,000 for higher levels of offenses).

Very few juvenile cases occur, these cases are handled by city court, as are all other traffic violations for juveniles. Juvenile defendants may be charged with liquor law violations and zero tolerance violations, but receive no jail time for any resulting convictions of these charges.

DUI suspects are arraigned individually in municipal court, typically within one week of arrest (by law within 10 days of arrest). The judge advises the defendant of rights and sentencing bounds. Almost all DUI defendants plead not guilty at arraignment. Judges will rarely accept a guilty plea at arraignment because they believe that defendants do not have enough information about rights, procedures, consequences, etc. to decide. Also, judges need to be certain that the defendant's background check is complete, especially concerning possible prior offenses, and that type of information may not be available at the time of arraignment. Also, sometimes the blood alcohol test results are not available at arraignment.

Prosecutors are not present at arraignments. The court does not appoint public defenders at the arraignment. On the rare occasion when a judge does accept a guilty plea, the defendant has the option of changing the plea later. Felony DUI cases are transferred to County Court. The case will be dismissed in Municipal Court if County Court agrees to take the case.

Currently, six assistant city prosecutors are employed, and all handle DUI cases among their caseloads. A seventh assistant city prosecutor position will soon be created and will be dedicated to handling photo radar cases. A prosecutor will receive a "notice of appearance" from a defense attorney in response to the defense's request for a "discovery" meeting. The meeting usually occurs before the arraignment. If a suspect is not represented by a defense attorney, then the prosecutor has no contact with the suspect until the pre-trial conference that is usually scheduled five to six weeks after arraignment. The court notifies the prosecutor of an arraignment with an indication of the plea. The triggering action for a prosecutor is often a copy of the UTT that is typically sent to a prosecutor after an arraignment. In the past, prosecutors tried to attend arraignments, but too much time was required "waiting around" for the proceedings, so their attendance was stopped.

## CASE STUDIES OF OPERATING SYSTEMS

Usually the prosecutor, the defendant's defense attorney and the defendant (if a plea is to be made) are present at a pre-trial conference. Often, defendants will appear at their first pre-trial conference without counsel, and the prosecutor will advise them of their right to a public defender at a nominal cost of \$175. No pre-trial diversion is available for DUI charges. Twenty to 25 percent of DUI defendants are said to plead guilty after the pre-trial conference. Pleas to lesser offenses are sometimes accepted when blood alcohol concentrations (BACs) are less than 0.10 or if it were uncertain that the person was the driver of the vehicle. Defendants with a BAC of 0.10-0.11 with solid objective evidence of probable cause will not be pleaded down.

Cases that go to trial are generally disposed of within one year. The prosecutor prepares for the case the day before the trial and sometimes on the day of the trial. Usually, the prosecutor has no chance to talk to the arresting officer until the trial day when the prosecutor appears in court with a "box full of cases." The prosecution is more likely to accept a plea on the day of the trial because of the large number of cases. However, prosecutors usually do not object to some continuances because it means they can deal with the case later. Most misdemeanor trials are DUI cases and the average length of time required is 1.5 to two days. Most are also jury trials; bench trials are rare.

Arizona is an administrative *per se* state and officers may be subpoenaed to appear at administrative hearings. Administrative decisions are appealed to County Court. A trial *de novo* on appeal cannot occur unless the record is incomplete. Motions are appealed on the record. Disincentives to file appeals do not exist, although decisions are rarely overturned. Zero BAC *per se* cases for youth are almost never appealed.

**Sanctioning.** Minimum sanctions are often imposed for misdemeanor cases. For the first DUI offense, the jail sentence is 10 days with all but one day suspended upon completion of alcohol classes. If an offender is sentenced to jail, he or she can schedule when that jail time is to be served. Jail sentences are often not fulfilled to their full extent due to "two for one" (two days off for each served) and work release programs. Time can be suspended if the offender accepts alcohol screening. Offenders from outside Scottsdale may serve jail time in their own jurisdiction; they must post bail and then are released. Treatment is mandated and so is usually not an issue. Priors are dropped if the offenses happened more than five years before the current offense. Probation is rare because the city court has no probation department.

### *Problem Areas and Possible Fixes*

**Enforcement Issues.** Police officers are not receiving subpoenas to appear for DMV hearings under the administrative *per se* statute until a few days before the hearing. E-mail might provide one solution to this problem. Reasons for officers

failing to appear at these hearings include conflicting court appearances, training, sickness, or vacation. Court cases take precedence over the *per se* hearings, and time does not permit rescheduling the hearing. As a result, the administrative sanction is lost. A longer advance notice of the hearing is needed to alleviate this problem.

*Evidentiary Hearing Issues.* These issues include instances when Miranda rights were not read to the suspect and, more often, the suspect asked for an attorney and was not allowed a phone call before the blood test. These can result in the case being dismissed. Also, probable cause for the stop can be questioned. A potential problem area would be if the phlebotomist were called to testify. However, the phlebotomist is not identified on any reports (by statute, this is not required) and thus cannot be called into court to testify; this issue has been addressed in court and to date the policy has remained. Also, the officer may be "rusty" and his or her field performance could be an issue. Regular training can provide solutions for these types of problems. The accuracy of breath tests was often questioned in past cases that, as stated previously, have resulted in the successful use of blood tests.

*Adjudication Issues.* A study by a court staff member found that 40% of all DUI cases took more than 150 days after arrest for disposition. Twelve percent were more than one year old. These figures do not include suspects who have failed to appear. Many failures to appear (FTAs) are occurring, up to 50% some days, but appearance is not required in municipal court.

Continuance of cases causes major problems. One DUI case had 29 continuances. Many continuances are granted because of schedule conflicts: lawyers get continuances to appear in a higher court, defense lawyers have too many cases, etc. and as stated previously, prosecutors do not object because they have such heavy case loads. At least one judge would like to set a limit of two continuances per case. In the past, "calendar calls" were initiated in which the bailiff would call the defense lawyer a week before trial to find out if a continuance was needed. The prosecutor would check with the bailiff to see which trials were still set. This procedure was changed to require both attorneys physically to appear in court to say if they were prepared to proceed on the scheduled date.

Usually the defendant will sit for trial after several pre-trial conferences show no plea. The court staff study found 16-17% of DUI cases go to trial. Backlogs occur because as many as 5-15 jury trials may be set for one day, when only one can go on at a time. Oldest cases receive priority. Trial participants will usually not show if a request for a continuance has been filed before the trial date. Bench trials are rare, but a bill will be proposed soon to eliminate jury trial eligibility for a first offense DUI case.

*Sanctioning issues.* Complete jail sentences are not fulfilled due to work releases and the "two for one" policy. Also, time may be suspended if the defendant accepts

an alcohol screening to learn the extent of alcohol use and/or abuse by the individual. Minimum sentences are often imposed.

## CASE STUDY RESULTS - ROCKDALE COUNTY, GEORGIA

### *Site Description*

Rockdale, the county with the smallest area in Georgia, is southeast of Atlanta. The county encompasses small urban, suburban and rural areas. The county seat is in Conyers, Georgia. According to the Bureau of the Census, the population of Rockdale County has been increasing steadily from 36,600 in 1980 to a 1995 population of 64,500. In 1990, roughly 64% of the 54,100 individuals residing in Rockdale County were between the ages of 18 and 64, 28% were under age 18, and 8% were 65 or older. Ninety percent (90%) of the population in 1990 were white, 8% were black, 1% Asian or Pacific Islander, and 1% were other races. Per capita personal income for the County in 1993 was \$19,267. The 1994 unemployment rate was 3.7%, lower than the Georgia state unemployment rate of 5.2% for that year.

### *System Description*

Rockdale County is reportedly not typical of other jurisdictions in Georgia in handling DUI cases. System actors know each other and cooperate and educate each other about the system and cases. Considerable continuity exists among staff who remain available always to help each other. They appear proud of their accomplishments as part of the anti-DUI system and appear to enjoy a high level of camaraderie. The judge keeps statistics on every case, getting information on "pleaders" just before the pronouncement of a guilty verdict and then using that information to structure sentences. Police officers and prosecutors discuss each case together before court appearances.

*Law Generation.* Georgia is currently a 0.10 state, although the persons we talked with support 0.08 *per se* laws and hope Georgia will join other states in passing those laws. One Rockdale prosecutor believes a nationwide BAC standard should be established. Reportedly DUI laws are changed in Georgia almost every year and, consequently, staying abreast of the law is difficult. Georgia has an administrative *per se* statute.

*Enforcement.* DUI "road checks" are conducted every holiday period. Problems have occurred when drivers who appear impaired when questioned record BACs less than 0.10. Sometimes, officers cannot prove from driving actions that such a driver was impaired. "Concentrated patrols" are carried out once a month. Conyers city police have no DUI task force, but a "special operations" group is planned which will include anti-DUI enforcement. Currently, DUI suspects are found while responding

to calls for service, but police concentrate sometimes on areas involving citizen complaints. Much media coverage of DUI due to crashes has occurred. Citizens can call \*GSP on cell phones that, reportedly results in many DUI stops. Judges urge police officers to obtain as much information as possible from citizens reporting DUI suspects; encourage the reporter to follow the DUI suspect (if possible to do so safely) and encourage the police to obtain the reporter's name and address.

Officers videotape DUI suspects beginning immediately upon suspicion that the driver is DUI. Videotape helps establish the officer's credibility. Jurors want to see a complete videotape record covering all actions, not just those that "make the case." One officer identified a problem of perspective "distortion" due to the location of the video camera. He also discussed the benefits of not waiting to stop a vehicle after capturing erratic driving patterns on videotape; this avoids long episodes of no erratic driving that could be used by the defense to question probable cause.

After stopping a DUI suspect, the officer asks the suspect to take a SFST. The police officer's safety is always a consideration, and sometimes the SFST will not be completed because of the need to get a dangerous suspect into the patrol car. The officer documents the reason a SFST was not completed. In these cases, the individual is given a Preliminary Breath Test (PBT). Arrests are made at the scene before transporting the suspect. The SFST form is completed at the arrest scene. Usually the implied consent law is read to the suspect while in the patrol car.

In Rockdale County, some officers do not complete the administrative *per se* forms. If the suspect wins the criminal case, under Georgia statute, the refusal violation is null and void, and the license is not suspended. Most important, the license hearings are said to have become "fishing expeditions" for the defense. By not completing the forms to take the license, the hearings are eliminated. Police officers believe that most hearing officers do not know DUI law nor what the scope should be of these hearings. One officer lost an implied consent case because he did not have the actual card containing the implied consent rights that he read to the defendant.

The officer stays with the vehicle until it is impounded or released to another person; the procedure depends on the location of the stop. A vehicle release form is filled out. Drunk passengers are driven home or released to a sober person.

The suspect is transported to the jail for a breath test or to the hospital for a blood test. If certified, the arresting officer will administer the breath test, otherwise a certified officer will conduct the test. A mandatory 20 minute waiting period from time of initial personal contact is required before an evidentiary breath test is taken. After the test, individuals are released to the jailer. If the suspect's BAC is much lower than the legal limit and the officer sees impairment inconsistent with the BAC reading, the officer will request a blood or urine test. Individuals are held until their BAC is 0.05 or less. Those of age 21 or higher who have a BAC of 0.08 or more are held for 24 hours.

The officer completes the incident report (IR) within five days. One hour of processing time is typical, not including completing the IR. Total time to process a

## CASE STUDIES OF OPERATING SYSTEMS

DUI arrest including forms averages 1.5 - 2 hours. If the suspect requests an additional test, another 40 minutes or so are required.

*Adjudication.* DUI tickets are brought to the prosecuting clerk's office. DUI defendants do not get a chance to come to court on just the ticket; prosecutors have to file the case first. This allows prosecutors time to prepare the case before the speedy trial clock starts. The laws regarding speedy trials require a case to be tried within the remainder of the current court session or by the end of the next court session. Each court session is three months long, so a case going to trial will be completed within a maximum of 180 days. A Criminal Case Management System has been in place since 1987. This system tracks each case through the entire criminal justice system including jail.

Rockdale County court is classified as a "state court." There are one judge, one criminal justice system administrator, three investigators and seven prosecutors in Rockdale County. The prosecution receives the ticket, breath alcohol testing (BAT) tape, runs a criminal history, driver history, and then starts filling out the forms. Driver history data appear to go back to 1976. Priors are recorded and classified, for example, first in five years and second in life. Investigators compile a witness list, make sure all the necessary information is in the case folder, and handle any investigative work needed. They also prepare a summary of the facts of the case and the charge. The file includes the police officer's IR, refusal information, car impound form and bond sheet. The formal document filed is called an "accusation," analogous to a "criminal complaint." The Uniform Traffic Citation (UTC) can also be ratified and filed as an accusation. The package is then sent to the responsible prosecutor. Prosecutors meet once a month to discuss the accusations that are then batched and sent to the judge's clerk or else released.

All prosecutors have access to Criminal Justice System (CJS) data; public defenders also have read-only access to the data on their own screens. A "Prosecutor's Module" will soon allow CJS data to be merged into a WordPerfect document, thus eliminating repetitive entry of information (e.g., name, address, date of birth, etc.).

Refusals can be used as evidence in a DUI trial. When building a case, the prosecutors believe it best to rely on the officer's observation of the suspect's behavior and not entirely on a BAT. They believe that officers should observe every SFST as if there were not going to be a BAT, and they should document observations. This is because if the information is not available in the paperwork submitted for discovery, it may not be admitted into evidence. Also, the videotaped session should include a recorded narrative of the suspect's behavior; the camera does not record subtle actions by the suspect.

Police officers in Rockdale County believe the court there has a proper DUI adjudication system and report it is "much more picky" than other courts and imposes tougher sentences. These tougher sentences are thought to result in fewer guilty pleas because offenders fear the imposition of sentence and hope to be found not guilty at



trial. The officers do not appear at arraignments. Defendants who want to plead out come back later to enter a plea.

Few DUI cases go to trial; one officer reported that out of 800 DUI arrests, he only testified at four jury trials. A prosecutor reported that only four out of 62 DUI cases on the docket on a particular day would be tried. Officers, nevertheless, must be prepared to take all cases to trial. Preparation will result in "winning" cases through guilty pleas though there is no trial. A prosecutor reported that written, documented information is extremely important. In earlier years, it was reported that police management would not permit officers to make detailed reports because they were too time consuming. An important observation was to be careful when attempting to reduce paperwork, not to eliminate useful information.

The judge who was interviewed for the project believes DUI cases are the most difficult trials of all, including murder cases. Juries introduce great uncertainty into the process because they are influenced by experiences, inaccurate or wrong information, misconceptions, etc. Much information provided during the trials involves legal complexities and is technical in nature, which confuses some jurors.

*Sanctioning.* Pre sentence investigations are not routinely performed, although the judge does question suspects at arraignment and at trial just before sentencing. Offenders are usually sentenced to assessment and treatment as determined by assessors plus some jail time followed by house arrest. Submission to periodic breath alcohol tests is also often required.

Pictures of convicted DUI offenders are published in the newspaper along with sentences; all DUI offenders must attend a victim's impact panel.

#### *Problem Areas and Possible Fixes*

*Law Generation Issues.* Reportedly, DUI laws are changed in Georgia almost every year and, consequently, staying abreast of the law is difficult. All Court Justice System (CJS) staff should get a copy of law changes each year in language that is understandable and should attend a briefing on those changes.

The provision of the Georgia Statutes which vacates an administrative *per se* license suspension if the criminal case results in a not guilty verdict has undermined use of the administrative *per se* law by law enforcement officers. This can most likely be resolved through law generation where the criminal and administrative tracks would be more thoroughly separated, as they are in many other administrative *per se* states.

*Adjudication Issues.* The District Attorney has to approve UTC as an "accusation." This results in large groups of offenses moving to trial simultaneously. This crowds the dockets with DUI cases during some periods and leaves them relatively free of DUI cases at other times. More routine filing of DUI accusations could relieve this problem.

## CASE STUDY RESULTS - PALM BEACH COUNTY, FLORIDA

### *Site Description*

Palm Beach County is located in southeastern Florida bordering on the Atlantic Ocean. U.S. Census data for 1995 lists an estimated population of 972,093, an increase of 68.5% over that in 1990. In 1990, 85% of the population was white, 12% was black and 3% were other races. Twenty-five percent of the estimated population in 1995 was age 65 or older.

Per capita personal income in 1993 was \$32,230, and the unemployment rate in 1996 was 8.3 percent. The state unemployment rate has been declining from 8.3 in 1992 to 5.1 in 1996.

### *System Description*

**Law Generation.** The illegal BAC level in Florida is 0.08; a new 0.02 law for persons under the age of 21 went into effect January 1, 1997. If someone less than 21 is stopped for any reason, and the officer smells alcohol on the person's breath, the officer does not need probable cause for DUI at that point to request a breath test. If a person less than 21 does not give a breath test, he or she will be given a citation and will lose his/her license for one year. If the under-21 person takes the test and registers a BAC of 0.02-0.08, the result is the loss of the driver license for six months.

**Enforcement.** DWI laws are enforced by the Florida State Patrol, the Palm Beach County Sheriff's Department, and the various local enforcement agencies in the county. Reportedly, cities in Florida are more active in anti-DUI enforcement than they were in the past. Sometimes checkpoints are conducted in cooperation with other agencies. The Florida State Patrol has a three-person DUI task force in Palm Beach County working 10 hour days from Thursday through Sunday. One trooper believes DUI offenders are not as "prevalent" as they used to be on the roadways. Traffic is lighter during the week. One trooper says 2.5 - 3.0 hours are "lost" in processing a DUI arrestee; more troopers are needed. This number is down from an estimated 4.0, mainly due to recent reductions in paperwork requirements.

The Sheriff's Department formerly had a DWI Task Force, but that has been discontinued. Now, most of DWI enforcement is done by regular patrol units and by the traffic homicide unit. Sources indicate a de-emphasizing of DWI enforcement in recent years.

Overall, the DWI arrest rate in the county is low compared to the national average. Available data indicate some to 2,000 to 3,000 DWI arrests per year which amounts to roughly 0.3 % of licensed drivers.

The Florida Department of Transportation uses PBTs for enforcement of the commercial vehicle operator 0.04 law. PBTs can be used in other counties to prove

probable cause. Palm Beach County has no rules governing admissibility of PBT results. PBTs are used by the Sheriff's Department regular patrol officers only for the enforcement of 0.02 law for minors. Parents' concern over "criminal records" for children led to the requirement for a PBT. They did not want to have young persons arrested and taken to the "BAT cave" (the breath alcohol testing facility in the county jail) for testing. Prosecutors did not want PBTs administered in regular DUI cases because they were concerned that police officers would not conduct further investigations and would only have PBT results that are not admissible in court. If the PBT is used, then the evidentiary BAT cannot be given. Evidentiary BATs cannot be used for non-criminal testing and the 0.02 laws for minors are treated that way. Thus, PBTs are only used for greater than 0.02 law violations when an actual DUI case is considered unlikely and in commercial vehicle operator 0.04 enforcement. PBTs are used for *per se* violations only when there are overlapping criminal DUI violations.

Florida law requires a DUI arrestee be held in jail for eight hours, or until the BAC is less than 0.05; individuals are usually held rather than tested.

SFSTs are videotaped at the roadside if the patrol vehicle is equipped to do so. A judge commented that the videotapes were often of poor quality due to poor technique and inadequate equipment, but that good quality videotapes are effective tools in court. She said another problem was the long amount of time it takes the officer and suspect to reach the "BAT cave" (sometimes 1.0-1.5 hours) because of the large area covered and few testing stations. After that amount of time, the suspect may not show as much impairment when videotaped as when arrested. Thus, only the administration of the BAT and related questioning are videotaped in the "BAT cave."

A judge stated that police officers too frequently ask questions by rote that often do not apply and seem silly in context. Some officers do not understand that questions provided on forms and in manuals are intended only as guidelines.

*Adjudication.* Two trial-level courts hear most DUI-related cases, County Court for misdemeanors and Circuit Court for felonies. Pre sentence investigations are not done for misdemeanor cases. Pleas are accepted at arraignment, and sentencing may occur immediately or later. Thirty to 50 percent of individuals charged with DUI plead at arraignment where the judge, prosecutor and public defender or a defense attorney are present. Repeat offenders may also enter pleas at arraignment. The prosecutor will contact other states directly where the individual has had driver licenses, but sometimes it is difficult getting information from other states. The judge gives everyone a chance to speak and looks at the driving record before sentencing. The judge usually accepts negotiated dispositions.

Defendants who do not enter pleas appear three weeks later for "case disposition." There, the prosecutor is asked if evidence was provided for discovery and if the defendant was offered a plea at arraignment. After case disposition, attorneys and the judge will meet again for status checks. Officers and breath test technicians

## CASE STUDIES OF OPERATING SYSTEMS

usually have only a couple of court appearances. The judge usually does not grant a continuance after the second status check. Motions to dismiss may be presented between status checks. "Judge shopping" is not possible; cases are assigned randomly to judges.

Defendants cannot be offered a plea bargain at trial. The prosecutor's office has a policy of not accepting a negotiated plea after "calendar call" (the Friday before a trial). When defense attorneys win DUI cases, it is mostly through pre-trial motions. Motions to suppress include: no probable cause for the stop, a failure to wait 20 minutes before administering the breath test, SFST (tasks or exercises), or machine-related issues such as calibration and accuracy. BAC technicians have "a lot of cases" and have to "run around between court rooms." BAT results may be introduced with an affidavit only, and may lose on a technicality.

Horizontal gaze nystagmus (HGN) is not admissible in this jurisdiction because courts believe it has to be administered under "controlled conditions," requiring a "true expert." Only two officers in Palm Beach County qualify as HGN experts. An officer explains they can administer HGN, but officers do not always understand the relationship to impairment. This means they do not know how to testify in court about the use of HGN (and perhaps SFSTs). SFSTs are not convincing to jurors who do not understand the relationship of tests (called "exercises") to impairment. Most appeals are DUI cases with trial error as the main grounds for appeal (an estimated one appeal for every six trials for all offenses including DUI). Most convictions are upheld.

Probation officers are in every courtroom. Defendants report to the probation officers immediately after sentencing. The probation officers explain conditions to the offenders, have the offenders sign those conditions, dispense basic information and schedule the first appointment. Random breath tests are sometimes required of offenders. Offenders must report monthly to one officer. A hearing is held for probation violations, and police officers have to appear to testify (if needed) on the original violation. Officers are usually not needed. Unnecessary police witnesses are often required to appear, e.g., an "expert" on BAT.

Eighty percent of administrative license revocations are said to result in hearings. The defendant does not have to attend, but the arresting officer does, and the defense attorneys are given "a free shot at the officers." Hearings are shorter now, because issues are limited. In other counties, defense attorneys are said to sometimes intimidate hearing officers. Overall, officer scheduling is poor - police officers get short notice (five days) and have to prepare a written request for a continuance. Some officers and prosecutors believe that many judges are not sympathetic to the special needs of officers. Defense attorneys play this card routinely.

The judge who was interviewed for this study had never had a DUI case involving drugs other than alcohol. The prosecutor does not file them because neither officers nor prosecutors have received DUI-drug training. In this jurisdiction it must be determined that the suspect is under the influence of a controlled substance interpreted to mean a BAC-type *per se* measurement model for drugs. (Presence is

enough in many states.) Palm Beach County has no trained drug recognition experts that are available for impaired driving cases.

*Sanctioning.* Sanctions are uniform for first offenders but vary for multiple offenders. For a first offense, the offender will typically receive one year of probation, DUI school, and have a driver license suspension for six months with a work permit. The driver license cannot be reinstated until DUI school has been completed. Offenders often do not seek to have their driver licenses reinstated due to barriers (e.g., fines are too expensive), and the system loses contact with them. (Note: This does not mean these individuals do not drive; they are not licensed, but many will still drive.) Ways exist to help offenders get licenses back by arranging for them to complete requirements, e.g., converting fines into community service, granting more time to pay. The defendant has the responsibility of proving that probation conditions were completed.

Repeat offenders receive mandatory jail time if a second offense has occurred within five years, or a third offense within ten years. The judge will grant work release, but time is served with five days per month off for good behavior. House arrest with electronic monitoring is sometimes used as a sanction and is handled by the Palm Beach County Sheriff's Department. One judge did not like the "sheriff's program for house arrest," believing only a judge should impose house arrest. More intensive supervision ("maximum") may be imposed by the court ordering probation officers to visit offenders at their homes. A judge and a prosecutor interviewed for this study believed that one day of jail should equal three days of house arrest.

Collecting fines and supervision costs is sometimes hard. Probationers have to pay \$45 per month. One judge was more concerned with getting money for restitution. A private, for-profit company under contract to the County collects fines and fees and mails out restitution payments. This probation company ("PRIDE") collects monies from offenders and conducts the DUI school but does not monitor the treatment providers. Alcohol evaluation occurs in the DUI school, and clients are referred to separate treatment from that school. The Florida Department of Corrections monitors the treatment providers. PRIDE is monitored by a probation review committee that includes judges and meets once a month; the contract is reviewed annually. At one time three probation organizations were used, one government and two private sector companies. This created many problems and much confusion with probationers reporting to wrong agencies, information from providers being sent to wrong agencies, etc. The only other issue was a conflict of interest because PRIDE initially provided the treatment that they had recommended to offenders; this was rectified by ordering separate treatment providers.

Multiple offenders with high BACs are sometimes sentenced to the "drug farm" as a condition of probation; this is often in addition to jail time that must be served in a regular jail. (The drug farm is technically a jail.) The drug farm combines intensive substance abuse treatment with a boot-camp type physical regimen. Offenders with multiple DUIs within a short period might also be sentenced to the

drug farm. The length of time of treatment depends on the offender's progress and sometimes an offender is given jail credit for inpatient treatment.

The process to revoke probation is started by filing a "violation of probation," scheduling a hearing, and issuing a warrant to the judge to sign. Then, a preliminary hearing (analogous to an arraignment) is conducted with attorneys present. Probation will usually be reinstated if the violation was technical. A probationer may have a second preliminary hearing. If necessary, a final hearing (similar to a trial) is the last step, which could result in termination of probation and imposition of sanctions, usually jail.

### *Problem Areas and Possible Fixes*

A major problem in this county is the relatively low DWI arrest rate. This is apparently due to a lack of command emphasis of DWI enforcement.

Processing into jail is a problem because of the requirement that the officer be present. BAT vans or substations are needed, but currently no funds are available to pay for them. Most city police officers use the county facility for BAT and jail. There are no municipal jails in the county.

Many problems exist with the current 0.02 law. If a juvenile is stopped for some reason other than DUI-related driving, administered SFSTs and a PBT, and registers above the legal limit, the officer has a problem because probable cause for DUI does not exist. The driver cannot be released because he or she is "under the influence," and juvenile detention centers will not accept individuals not under arrest, nor intoxicated minors. Another problem is transporting minors to a test facility; if the individual is not under arrest, the person cannot technically be taken into custody and transported in a police vehicle. After an arrest occurs, the procedure for disposing of a juvenile and the vehicle is not clear. Currently, the parents are called to come and get a juvenile. If parents or guardians cannot be reached, the vehicle is towed, but the procedure for placing the individual is not clear if he or she is less than 18 years of age. Again, juvenile detention centers usually will not accept DUI offenders because they are intoxicated and jails cannot admit minors. If the person is more than 18 years of age, he or she is processed as an adult.

Another problem is that a driver who has consented to provide a PBT sample can later refuse the second evidentiary test because he or she already consented to the PBT. A judge then will not admit a refusal in court because the legal issues of multiple testing have been deemed too complex to be understood by average drivers. (A PBT reading is not admissible in court.) The state level task force recommends a complete DUI investigation before administering a PBT.

The County does not have enough funds to purchase the PBTs needed to enforce the 0.02 law. It was proposed that \$5-\$10 be added to DUI fines to cover the cost of purchasing additional PBTs.

When a temporary permit is issued pending imposition of an administrative *per se* suspension it is possible that the offender will immediately reoffend. A suggested

*PROBLEMS AND SOLUTIONS IN DWI ENFORCEMENT SYSTEMS*

solution to driving while impaired shortly afterwards would be to make the permit effective 12-24 hours later.

Interviewing and administration of the breath test is done at the "BAT cave," a centralized location that is often a long distance from the scene of arrest (1.0-1.5 hours).

As indicated above, a judge complained that police officers too frequently ask questions by rote during the taping session. This matter should be clarified in training.

Finally, the county has a problem in scheduling officers for administrative hearings. This is due primarily to the short notice of the hearing (five days) given to police officers. Then, if they will be unable to appear, the officers have to file a written request for a continuance. The obvious immediate fixes for this problem are to extend the notice and to eliminate the need for filing a written request for a continuance. It is also clear that there is a need for a deeper examination of scheduling officer appearances at judicial proceedings of all types. This would help eliminate or reduce many conflicts that lead to the problem in scheduling officers for administrative hearings.

## 4 - SYSTEM FAILURES AND SUGGESTED FIXES

### INTRODUCTION

The prior chapters presented a framework for analyzing DWI enforcement systems and described the results of three case studies of operating systems. This chapter applies this framework and information to the identification of failures in DWI enforcement systems. Then, ways are suggested for correcting these failures and improving the performance of DWI enforcement systems. Some factors to be considered in carrying out these fixes are also discussed. Throughout, the *performance* of a DWI enforcement system is measured by the system's ability to perform functions and tasks believed to be related to alcohol-crash risk reduction.

### SYSTEM FAILURES

This section is organized by the three top-level functions of a DWI enforcement system of concern in this study, i.e.,

- Enforcement;
- Adjudication; and
- Sanctioning.

Within each functional area, major categories of functional failures are defined and discussed. The failures addressed do not include all possible failures, but only those judged by our panel and other operational staff to have a significant impact on performance.

#### *Enforcement*

Three functional areas are of concern here:

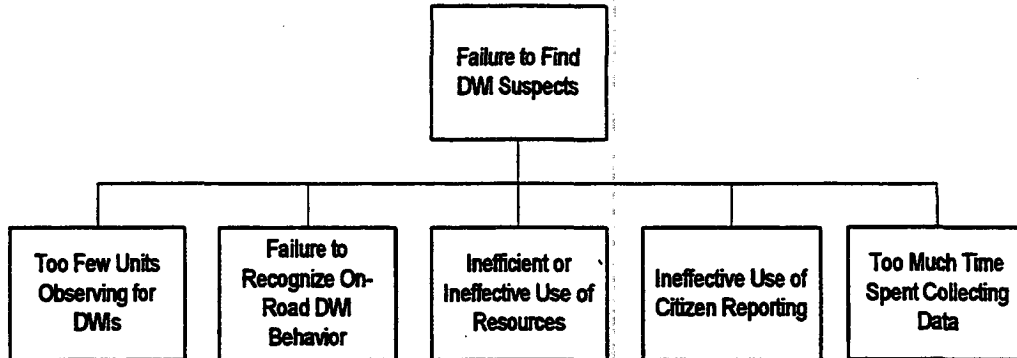
- Find DWI Suspects,
- Confirm Suspects as DWIs, and
- Process DWIs in a Timely Manner.

*Failure to Find DWI Suspects.* This class of failure may be traced to one or more factors (See Figure 4-1). First, there may be simply *too few police units observing for DWI*. General patrol units may be deployed in large numbers, but do not actively look for DWIs. These units act on only the most flagrant DWI violations observed while enforcing other types of law violations. Special DWI enforcement units may



not exist or are employed in insufficient numbers adequately to cover the enforcement agency's geographical jurisdiction.

Figure 4-1: Factors Contributing to "Failure to Find DWI Suspects"



Another factor leading to a failure to find DWI suspects is a police officer's *inability to recognize DWI driving behavior* even when it is observed. An officer may not be aware of the more subtle behaviors associated with DWI, and not classify a driver properly as a suspect.

DWIs also may not be found when *existing resources are not used efficiently or effectively*. This is because units do not operate at times and places where DWI violations occur or because existing strategies are not augmented by other strategies such as saturation patrol, citizen reporting of DWI, and sobriety checkpoints, among others.

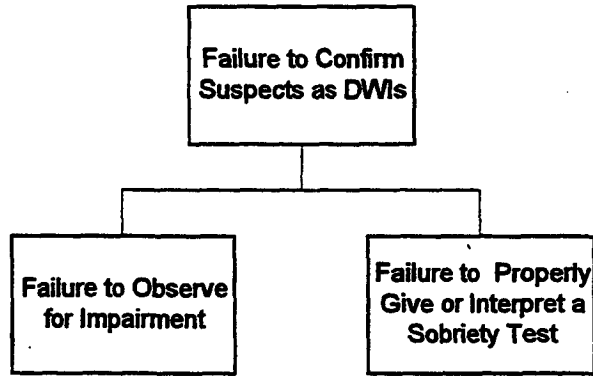
Citizen reports of suspected DWI incidents are used by some police agencies to augment police efforts to find DWI suspects. *Inefficient use of citizen reporting* that hampers follow-up by police units (for example, failure to arrange for pursuit of suspects across jurisdictional boundaries) can diminish the value of this approach.

Finally, *too much time spent collecting data for DWI cases* reduces the time available for observing for DWI by effectively taking a unit out of action during the data collection. Collecting data for use in adjudication and sanctioning functions are of especial concern in this respect. Obviously, the processing of DWI suspects occurs after DWI suspects have been found and stopped by enforcement personnel. Particularly time-consuming practices in processing DWIs after they have been confronted by a police officer are discussed below under *Failure to Arrest and Process Confirmed DWIs*.

*Failure to Confirm Suspects as DWIs*. Two classes of failure-related factors are of concern here (Figure 4-2). The first is a police officer's *failure to observe for signs of alcohol impairment*. Sometimes, an officer will rely almost entirely on BAC measurements to decide whether a suspect is impaired by alcohol. Problems in obtaining an accurate BAC reading can result in an officer's releasing an alcohol-im-

paired suspect. It also can lead to a dismissal of a case or to a not-guilty verdict if the BAC reading is successfully attacked by the defense during adjudication.

**Figure 4-2: Factors Contributing to "Failure to Confirm Suspects as DWIs"**



The second class of factors can cause the same failure and lead to similar consequences. In this instance, an officer observes for signs of impairment but *fails to properly give or interpret a sobriety test* (such as the Standardized Field Sobriety Test or SFST) which will reveal signs of impairment.

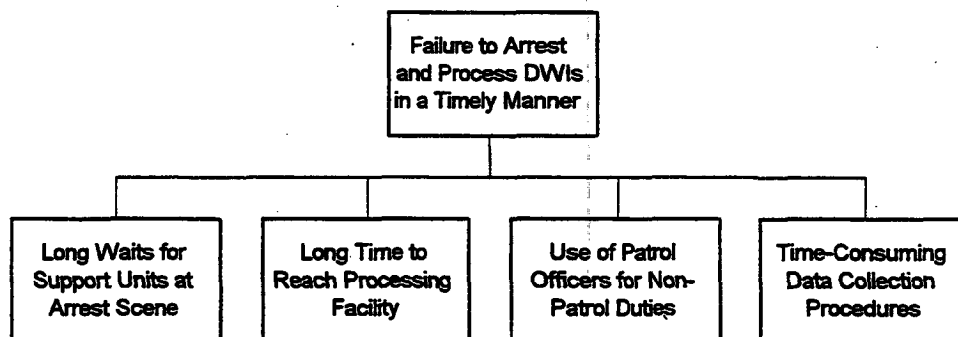
*Failure to Process DWIs in a Timely Manner.* This failure can occur when delays occur in performing certain law enforcement functions (Figure 4-3). As indicated above, a major consequence is the removal of operational police officers (those who are involved directly in interdicting suspected DWIs) too long from their on-the-road enforcement activities.

The most serious delays occur when an officer is:

- waiting for support units (for example, a tow truck or a breath-testing van) to arrive at the scene of a stop or traffic crash believed to involve alcohol;
- traveling from the scene to a processing center,
- performing non-patrol officer duties at a processing center (for example, booking a suspect into jail);
- filling out long and repetitious data collection forms at various stages of the process; and
- "baby-sitting" a juvenile suspect.

Combinations of these delays can extend processing by as much as two to four hours.

**Figure 4-3: Factors Contributing to "Failure to Arrest and Process DWIs In a Timely Manner"**



### *Adjudication*

Pertinent functional areas are

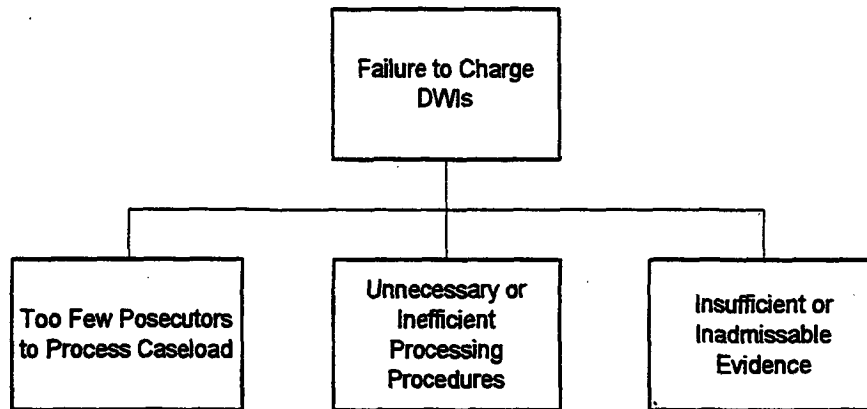
- Charging DWIs;
- Obtaining a Guilty Plea From DWIs; and
- Convicting DWIs.

*Failure to Charge DWIs.* The most obvious factor leading to this failure is *too few prosecutors to process the DWI caseload* (Figure 4-4). The need for more prosecutors can be exacerbated by *unnecessary or inefficient processing procedures* which increase the time for prosecutors to complete the charging process. For example, not permitting the uniform traffic ticket (UTT) provided by the arresting officer to function as a complaint can cause prosecutors to spend time in preparing a separate complaint.

The third major factor having a negative influence on DWI charging is *insufficient or inadmissible evidence*. Insufficient evidence might include a lack of proof that the suspect was actually driving the subject vehicle or that a suspect's driving performance was impaired by alcohol. Inadmissible evidence might include evidence obtained without probable cause and BAC test results obtained with an improperly maintained instrument.

*Failure to Obtain a Guilty Plea from DWIs.* This failure occurs in the pre-trial phase of adjudication and can result in a lengthening of the overall adjudication process and even in a dismissal when the prosecutor's case is *marginal* (Figure 4-5). The first factor leading to this failure is simply *defendants fail to appear* at some point during pre-trial. Arrest warrants are usually issued when this occurs, but the defendant may never be found. This is often exacerbated in jurisdictions near state

Figure 4-4: Factors Contributing to "Failure to Charge DWIs"



boundaries where many offenders are out-of-state residents and the warrants only appear in the computerized system of the state of arrest.

Defendants who appear at arraignment are usually offered the opportunity to plead guilty, but a plea will not be offered or accepted by the court if the court believes that due process may be denied by the defendant's pleading guilty. The result is *too few guilty pleas at arraignment*.

Other opportunities are available during the pre-trial phase for a defendant to enter a guilty plea. Typically, such opportunities arise during negotiations occurring in conjunction with pre-trial hearings. When there is a *failure to negotiate a plea*, adjudication will continue into the trial phase.

Two procedural elements of the pre-trial phase, (1) pre-trial hearings and (2) requests for a continuance can result in long delays in adjudication. Such delays occur when there are, for several reasons to be discussed later, *too many pre-trial hearings and too many continuances*.

Finally, sentencing practices that result in sanctions that are less harsh than conditions contained in any plea that can be offered by the prosecution discourage defendants from accepting a plea. Factors that can lead to the imposition of too-lenient sanctions are discussed below under *Failure to Impose Appropriate Sanctions*.

**Failure to Convict DWIs.** This failure occurs in the adjudication or trial phase of the DWI enforcement process (Figure 4-6). It can cause a lengthening of the overall adjudication process and, ultimately, the release without any sanctions of DWIs who should have been convicted but were not.

As with the prior failure, some *defendants fail to appear* during the adjudicative proceedings. Again, arrest warrants are issued but may not be acted upon because of, for example, too few officers to serve the warrant. Also, other deterrents for not appearing (such as driver license suspension) may be lacking. The trial must be rescheduled if and when the defendant is found. The result may be no conviction or a delayed conviction.

Figure 4-5: Factors Contributing to "Failure to Obtain Guilty Plea From DWIs"

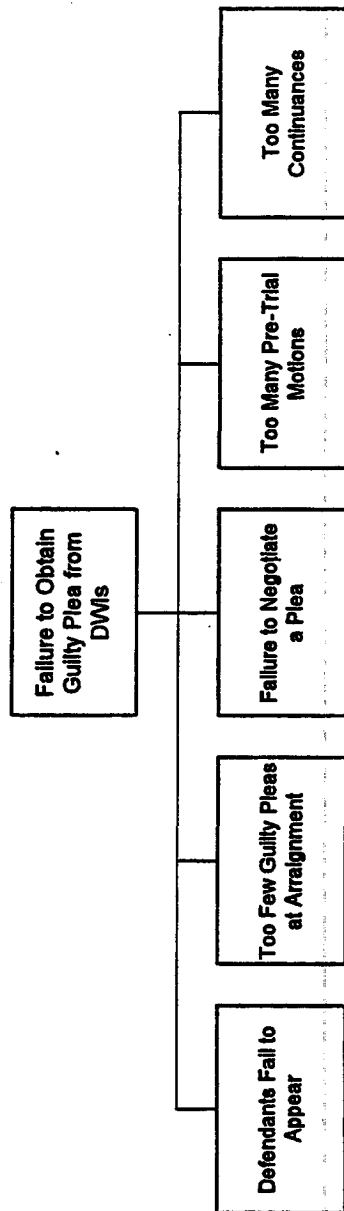
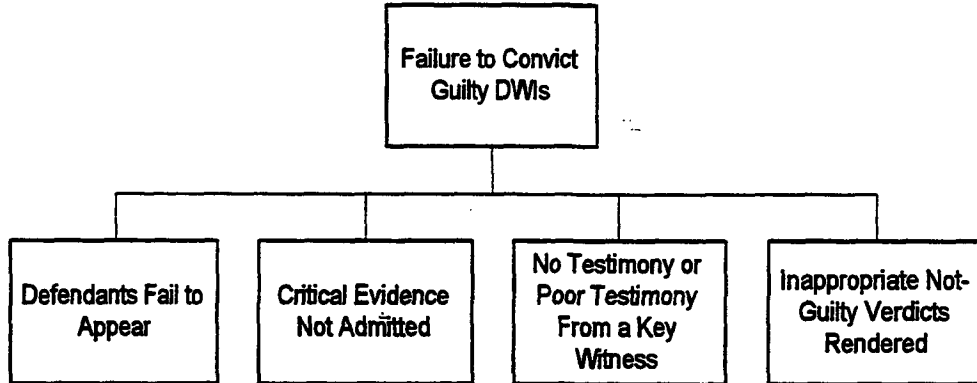


Figure 4-6: Factors Contributing to "Failure to Convict DWIs"



Another factor contributing to this failure is *critical evidence not admitted*. Such evidence might include all evidence (if the stop were illegal), breath-alcohol test results, and statements made by the suspect during questioning. Non admission of evidence may be the result of motions made by the defense during pre-trial, but can also occur when the prosecution attempts to introduce testimony or evidence during the trial.

*No testimony or poor testimony from a key witness* can result in not guilty verdicts and a lengthening of adjudication. Inaccurate or incomplete accounts of events preceding or during the arrest process can be seized upon by the defense to create a reasonable doubt of guilt. Examples are an officer's failure to describe the DWI driving cues that led to the stop and a failure to describe in detail the appearance or demeanor of the suspect after the stop. In DWI trials, the arresting officer is usually the most critical witness. Non testimony from an officer results when the officer cannot appear because of other commitments or does not know that an appearance is scheduled. Sometimes, a different officer or employee administered the test, and that person may be the one who is not present.

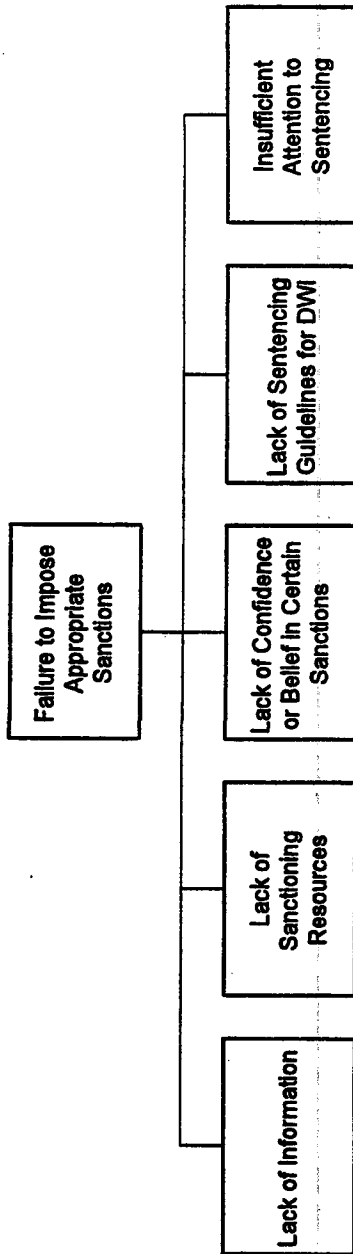
Even when the prosecution has apparently proven guilt beyond a reasonable doubt, an *inappropriate not-guilty verdict may be rendered*. A failure of jury members (or the judge in bench trials) to understand or correctly interpret the evidence or court rules underlies such verdicts.

### *Sanctioning*

Functional areas examined were:

- Imposing Appropriate Sanctions;
- Executing Imposed Sanctions; and
- Upholding Administrative Sanctions.

Figure 4-7: Factors Contributing to "Failure to Impose Appropriate Sanctions"



## SYSTEM FAILURES AND SUGGESTED FIXES

***Failure to Impose Appropriate Sanctions.*** Sanctions that do not take into account the characteristics and background of the offender, the circumstance of the offense, and available sanctioning alternatives are not likely to have the desired effect in reducing subsequent drinking-driving.

***Lack of information*** is a major factor contributing to this failure (Figure 4-7). Such information includes information about the offender, including prior DWIs, prior sanctions, biographical characteristics, and drinking habits; information about the offense, including how much alcohol impairment and drinking locations; information about available sanctioning resources; and information about the causes of DWI. It also includes information about the effectiveness of available sanctioning alternatives, which may cause a lack of confidence or belief among judges in the effectiveness of certain sanctions.

Of course, information alone will not result in the imposition of appropriate sanctions if a *lack of sanctioning resources* limits available choices. The resources may be insufficient both in number of offenders that can be served, and in type of alternatives available. They can range from jail space to house offenders for the full length of a sentence, to treatment programs for alcoholism and problem drinking, and to more innovative alternative sanctioning programs.

The *lack of uniformity* in sentencing across jurisdictions or among individual judges in a given jurisdiction can result in sanctions that are inappropriate not only for reducing drinking-driving, but for ensuring fundamental fairness as well. Sentencing guidelines are often provided to judges to ensure uniformity in sentencing, but the guidelines themselves may be out of date or disregarded by judges and not enforced by court administrators.

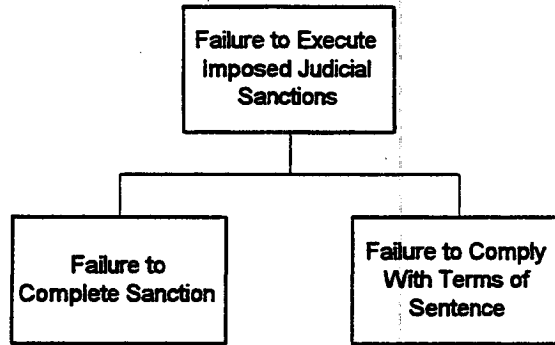
Finally, judges may simply give *insufficient attention to sentencing*, imposing "canned" or ill-considered sentences on DWI offenders. Overcrowded dockets or just a lack of understanding of the importance of the role of sanctioning in reducing alcohol-related traffic crashes may underlie this problem.

***Failure to Execute Imposed Sanctions.*** This failure occurs when appropriate sanctions are imposed, but one or more components of the sentencing package are not fulfilled (Figure 4-8). The failure may surface in two forms, the first being non completion of the sanction (such as when only part of a jail term is completed). The second form is completion of the term of a sanction without fulfilling the conditions of the sentence (such as when offenders fail to appear for a treatment session or for a BAC test).

The first factor leading to this failure is a *lack of sanctioning resources*, when such a lack was not taken into account in imposing the sentence in the first place. Here, enough space or staff to hold offenders for the full term of their sentence does not exist. A second factor is a *mis allocation of sanctioning resources*, as might occur when a disproportionate amount of resources is devoted to the treatment component of a program for problem drinking as compared with the supervision component of the program.

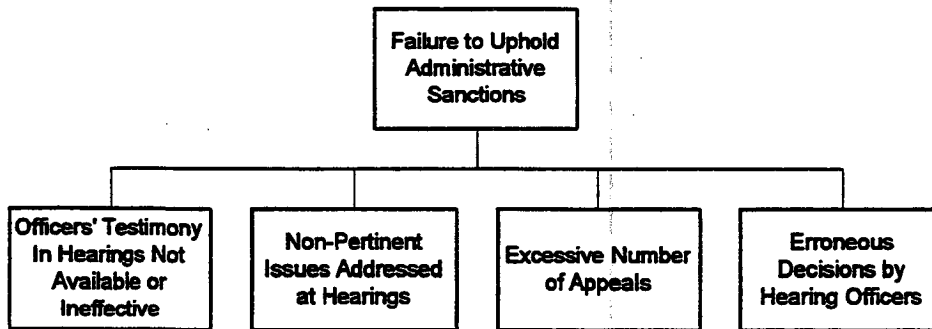


**Figure 4-8: Factors Contributing to "Failure to Execute Imposed Judicial Sanctions"**



*Failure to Uphold Administrative Sanctions.* Administrative sanctions limiting or removing driving privileges are "automatic" in the sense that they are placed into effect without adjudication unless appealed in a formal hearing (Figure 4-9). In many states, the police officer initiating the administrative action is required to appear at such hearings, often acting as a prosecutor opposing a legally-trained defense counsel. If the *officer fails to appear* for some reason, the administrative sanction will not be upheld. A similar result will occur if the officer does appear but the *officer's testimony is not effective*. This may be due to a lack of legal training or to other reason.

**Figure 4-9: Factors Contributing to "Failure to Uphold Administrative Sanctions"**



Procedural errors in conducting the hearing may also lead to this failure. For example, the hearing officer may allow *non pertinent issues to be addressed at the hearing*, when the only really pertinent issues are whether the driver was driving with an illegally high BAC (for a *per se* law infraction) or refused a valid request to take a BAC test. Based on testimony addressing some non pertinent issue (for example,

## SYSTEM FAILURES AND SUGGESTED FIXES

whether a Miranda warning was given), the hearing officer may arrive at an incorrect judgement, and in addition, the hearing may be extended in time.

Sometimes, non pertinent issues raised by the defense may be carried to the extreme, amounting in effect to a discovery session for developing information to be used later in judicial hearings. This may result in *many requests for a hearing*, placing a strain on resources and, because of problems in scheduling appearances, increasing the chances that the police officer will not appear at the hearing. Finally, as noted above, the *decision of the hearing officer may be incorrect* due to a lack of understanding of the evidence or the law.

### SUGGESTED FIXES

The prior section has identified several failures in DWI enforcement systems. This section isolates some causes of these failures and suggests changes in system functions that will improve the performance of the system. Again, this section is organized by the three top-level functions of a DWI enforcement system whose processes are of concern in this study, i.e.,

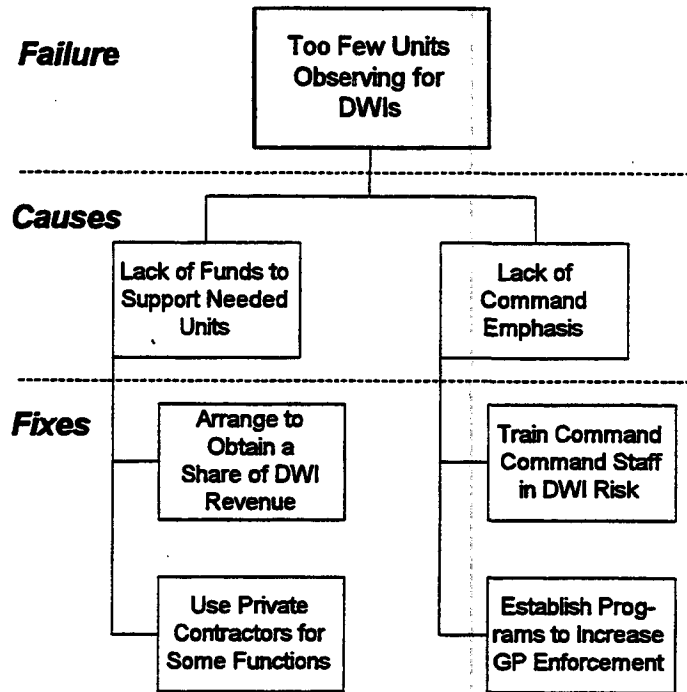
- Enforcement;
- Adjudication; and
- Sanctioning.

#### *Enforcement*

*Failure to Find DWI Suspects.* The first failure in this class was identified in the preceding section as *too few police units observing for DWI*. The first major cause of this failure is a lack of funds to support needed units (Figure 4-10). Such funds are most commonly used to support special DWI enforcement units. Often, "seed-money" grants are sought for this purpose, usually providing start-up funds for a short time, say three years, and then ceasing the funding. Unfortunately, funding after this period may not be picked up by local jurisdictions that do not have the money for all "priority" programs, and the units are disbanded, reduced in size, or used less frequently. Continuing grants are rarely available to provide ongoing support.

Two fixes are suggested for this problem. First, DWI enforcement should be "sold" to state and local funding agencies as an important source of funds that can support not only DWI enforcement but other needs as well. The latter could include (1) catching violators of other, non-DWI laws, (2) reducing the societal cost of traffic crashes (including the cost of fatalities and injuries, and the cost of days lost from work), and (3) making the community safer and more livable. NHTSA has been recommending so-called "self-sufficiency" of DWI programs for many years, but many needy jurisdictions have not adopted it, possibly because of a lack of knowledge about how to go about establishing such an arrangement. NHTSA

**Figure 4-10: Causes and Fixes of "Too Few Units Observing for DWI"**



regional and state offices can help in this respect by providing assistance to jurisdictions in setting up self-sufficiency programs in conjunction with their seed-money grants. It is important that such advice be provided at the state or local level because of state laws that sometimes restrict the direct use of money from traffic fines. When fines cannot be used in any way to support DWI enforcement, assessing special fees on DWI offenders may be possible, such as making them pay for their treatment program.

A second suggested fix is to involve private contractors in the DWI enforcement process. For example, Los Angeles County, California, is using a contractor to collect probation costs and restitution awards from probationers. The contractor keeps part of the probation cost (but not restitution), and returns the remainder to the County. Variations on this theme could be used to fund DWI enforcement efforts (not necessarily limited to police functions) in other jurisdictions consistent with local conditions.

A second cause of too few units observing for DWIs is a lack of emphasis of DWI by police command staff. This problem is also related to a lack of funds for needed units, where a necessary portion of available funds is not allocated to special DWI units. An obvious fix is to establish a training program for command staff on the nature of the alcohol-crash problem and the size of the risk it creates compared with that of other problems being dealt with by law enforcement. Such training

*SYSTEM FAILURES AND SUGGESTED FIXES*

would encourage command staff to reconsider their current allocation policies and would also prepare them to respond better to public and political pressures for policies that would de-emphasize DWI enforcement.

Lack of command emphasis is manifested in a lack of enforcement of BAC laws by general patrol (GP) units. These units follow command policy in looking for other law violations that may be perceived by command staff (or the public) to create higher risk. Thus, another fix is to *establish programs that would result in increased enforcement of BAC laws by GP units*. Such a program should include training for GP officers on the nature and size of the alcohol-crash problem, and on other pertinent aspects of DWI enforcement, with emphasis on driving behaviors associated with DWI. In addition, and most important, the program should incorporate a system of rewards for outstanding performance by GP personnel for DWI enforcement. Such rewards might include a monetary bonus and time off from duty, and a plaque or a framed certificate. Community organizations and businesses could participate by offering dinners for officers and their families, free passes to movies, etc.

The second failure in this class was a police officer's *inability to recognize DWI driving behavior*. This problem is not limited to GP officers but may also exist within special DWI enforcement units. The primary cause is simply a lack of knowledge of DWI driving behaviors, and this can easily be remedied by a training program that would include NHTSA's DWI detection cues and ride-alongs with officers skilled in DWI detection (Figure 4-11).

The next failure was *inefficient or ineffective use of resources*. In a failure to find

**Figure 4-11: Cause and Fix of "Inability to Recognize DWI Driving Behavior"**

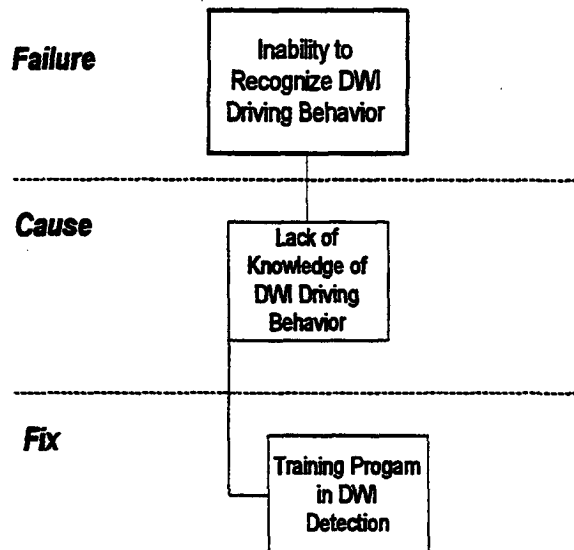
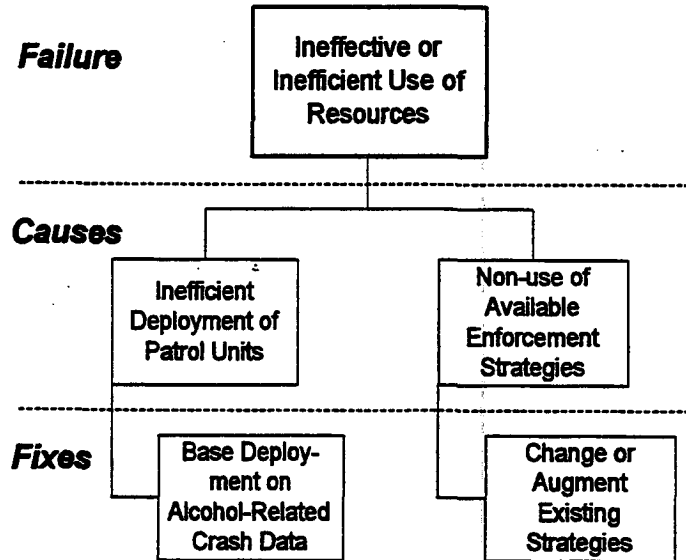


Figure 4-12: Causes and Fixes of "Ineffective or Inefficient Use of Resources"

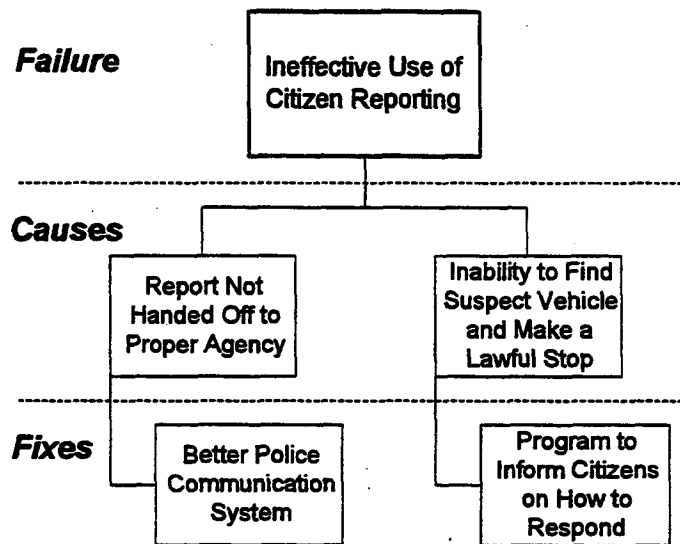


DWIs, two causes are of concern, *inefficient deployment of patrol units* and *non use of available enforcement strategies* (Figure 4-12). The suggested fix for the first cause is to use data on times and locations of alcohol-related crashes (and other alcohol-related incidents, if available) to develop deployment policies that will provide coverage to areas of greatest risk. In doing this, other areas of relatively low risk should not be neglected, but should be provided some coverage to maintain a jurisdiction-wide deterrent effect. The deployment policy should be updated periodically, since priorities may shift in response to changing drinking locations and driving habits.

With respect to the second cause, we suggest that police agencies critically reexamine their existing BAC- law enforcement strategies to ascertain which of them should be changed and whether new strategies should be adopted. For example, a police agency may rely exclusively on a "fishing hole" strategy that involves surveillance or periodic checking of areas with late-night drinking establishments. Other areas in the agency's jurisdiction may be left unattended.

A roving saturation-patrol strategy in which several units cover successively (and randomly) various sectors should be considered to fill this gap. If the agency does not have the resources for this strategy, then the use sobriety checkpoints in cooperation with other police agencies (such as a nearby State Patrol post) should be considered, and citizen reporting of DWI incidents (especially in jurisdictions with large areas to cover) should be promoted. All these additional strategies, combined

Figure 4-13: Causes and Fixes of "Ineffective Use of Citizen Reporting"



with heavy media coverage, help create the perception of strong, jurisdiction-wide enforcement of BAC laws and by that enhance general deterrence of DWI.

A fourth failure contributing to failure to find DWI suspects is the *ineffective use of citizen reports*. This failure can usually be traced to two different causes (Figure 4-13). The first cause is that the report is not handed off to the proper agency because the citizen observing possible DWI driving behavior calls a police number in an area in which the agency does not have jurisdiction. This problem can be eliminated by having a better regional communication system in which a citizen can call a single number other than 911 to report a complaint. The communication system should be able to notify the proper agency for action, and the nearest unit having geographical jurisdiction can be assigned.

A second cause of ineffective use of citizen reporting is that the officer either cannot find the suspect vehicle or, having found it, does not have sufficient information to make a lawful stop. A suggested fix is to set up a program of public information advising citizens on how best to respond to such an incident. The citizen should be encouraged to stay with the suspect (if possible and safe to do so) until an officer arrives, reporting to the dispatcher that, for example, that the officer is behind the suspect vehicle. The citizen should also report a clear description of the vehicle, its occupants, and its maneuvers. Such information will be useful to the officer in finding the vehicle and later during adjudication even if the citizen does not appear in court to testify.

The fifth and last failure in this group is *too much time spent collecting data* throughout the law-enforcement function. The obvious cause is time-consuming and

inefficient data collection procedures (Figure 4-14). Often, multiple forms are used (sometimes ten or more forms), each form containing unnecessary data items and data items contained in other forms. Officers spend considerable time just copying information (such as name, address, driver license number) from one form to other forms. Sometimes, patrol officers are required to fill out the forms required for the booking process or for other post arrest functions such as the conduct of chemical testing at police headquarters. All of this takes the officer off the road for too much time, time that could be spent observing for DWI violators. Since many officers are frustrated by this task, it may provide a disincentive to make the arrest in the first place.

The first fix is to reduce the number of forms and data items to those that are really necessary, taking care to eliminate redundant and repetitious data items. For most jurisdictions, no more than four forms should be filled out by the arresting officer:

- Uniform Traffic Ticket;
- Incident Report (including probable cause elements or affidavit, if required by law);
- Towed Vehicle Report; and
- Administrative License Suspension / Implied Consent Form.

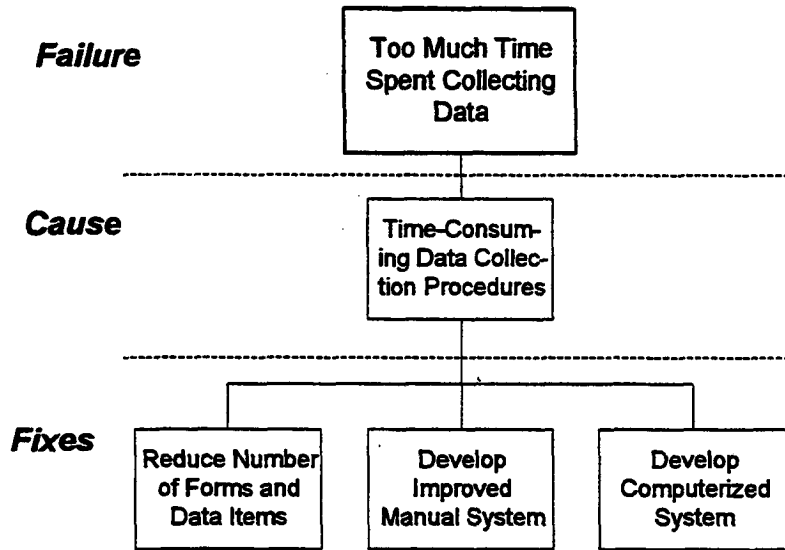
The incident report has perhaps the most potential for improvement. It should be restricted to one or two pages covering:

- arrestee identification;
- time, location, road condition, and ambient conditions of the incident;
- officer observations of the arrestee and the results of field sobriety tests;
- implied consent and BAC test results; and
- a short narrative containing case notes on the details of all aspects of the incident.

Further time savings could be possible by improving an agency's existing manual system of data collection. Particularly important in this respect are improvements that reduce the officer's involvement in performing clerical functions. For example, an officer can tape-record the information required in the forms, and the forms can be filled in later by clerical staff.

Still larger reductions in time spent in data collection can be realized by developing a computerized DWI data system, possibly as a module of some existing criminal justice information system. Software can be provided that allows the forms to be displayed on the computer screen along with drop-down menus with possible values of categorical data items. The officer could then select values without any key

Figure 4-14: Cause and Fixes of "Too Much Time Spent Collecting Data"



stroking. This can also reduce transcription errors caused by unclear handwriting, and can provide a common means for communicating the same information. Basic information (e.g., driver license number) could be entered just once and used in other "reports" as needed. For example, prosecutorial and judicial agencies could download the information needed in adjudicating DWI cases. Such software can be quite sophisticated, allowing the location of an incident to be pointed to on a computerized map and automatically transferred to the form.

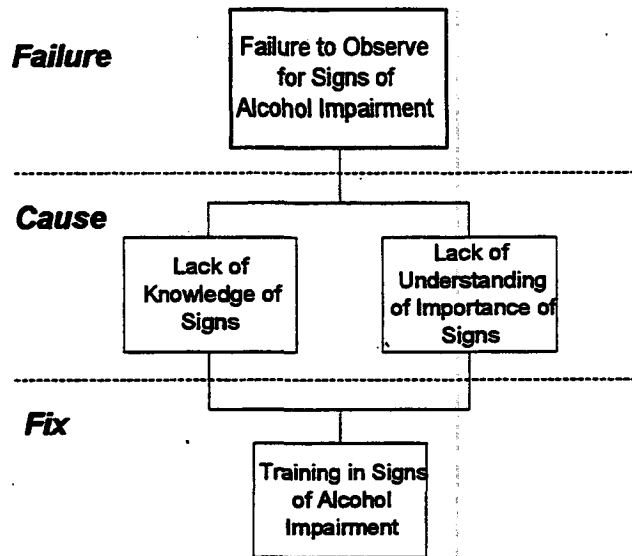
The best hardware solution for such a system would be personal notebook computers assigned to each patrol officer, possibly tied into a network providing access to other information. An intermediate solution might employ terminals at a headquarters or post location that could be used for completing forms using an officer's field notes.

*Failure to Confirm Suspects as DWI.* The first failure in this class is *failure to observe for signs of alcohol impairment*. It is caused by either (1) a lack of knowledge of the signs or (2) a lack of understanding of the importance of such signs in prosecuting the case if an arrest is made (Figure 4-15).

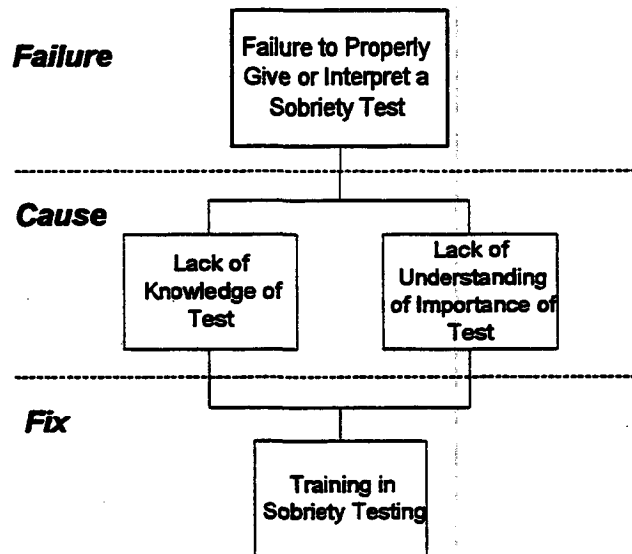
The next failure of concern here is *failure to properly give or interpret a sobriety test*. As in the prior failure to observe signs of alcohol impairment, the causes are a lack of knowledge of how to conduct a sobriety test and a lack of understanding of the importance of the test (Figure 4-16). Again, the fix is officer training. The training should focus on the Standardized Field Sobriety Test (SFST) developed by NHTSA.



**Figure 4-15: Causes and Fix of "Failure to Observe for Signs of Alcohol Impairment"**



**Figure 4-16: Causes and Fix of "Failure to Properly Give or Interpret a Sobriety Test"**

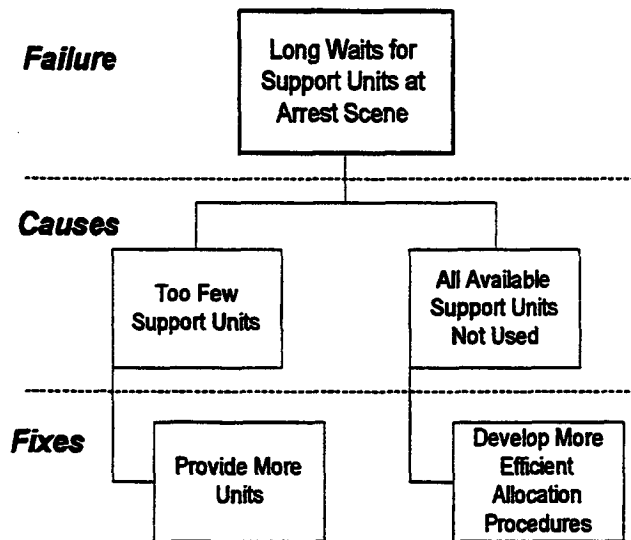


## SYSTEM FAILURES AND SUGGESTED FIXES

It should be required for all police officers and should use a common training package. All officers should be required to be certified in the SFST. If necessary, officers should be paid overtime to attend the class. Again, the course should stress the critical importance of sobriety testing in making a DWI case. It should emphasize that the use of a portable breath testing device (PBT) is merely confirmatory of impairment and not the primary indicator of impairment.

*Failure to Process DWIs in a Timely Manner.* The first failure underlying this class of failures is *long waits for support units at the scene of an incident*. It may be traced to two causes, (1) not having enough support units to service a DWI incident, and (2) not using all available support units to provide services (Figure 4-17). In

**Figure 4-17: Causes and Fixes of "Long Waits for Support Units at Arrest Scene"**



principle, the first cause can be addressed simply by adding more support units. However, this fix would only apply to services controlled by some governmental entity with the funds or resources to provide the additional units. For example, if tow trucks were the problem and city trucks were used, then more trucks would have to be purchased by the city. If trucks were provided by private contractors, then arrangements would have to be made with the contractors (or with more contractors) to have more trucks standing by for possible calls during peak hours.

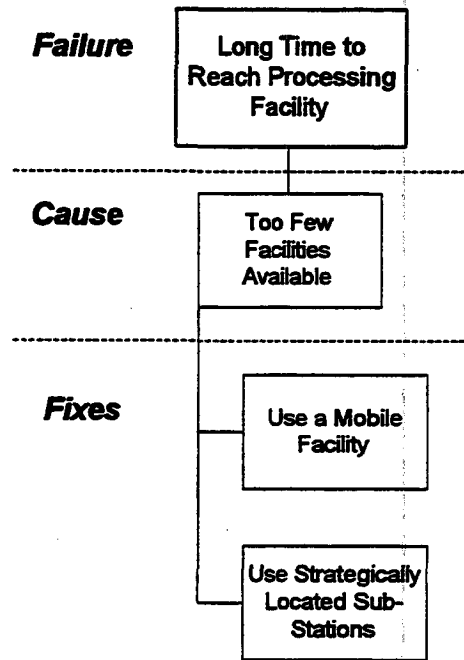
A better solution might be to address the second cause and develop more efficient procedures for allocating resources. For example, many police agencies have a policy of rotating tow truck providers, using company "A" for, say, a week and then switching to company "B" for the next week, etc. This will leave gaps in coverage in areas not near to the locations where the current company's trucks are operating.

Adopting a policy of dispatching the nearest truck regardless of company would alleviate this problem. The policy could also incorporate a provision allowing a suspect the option of securing the vehicle and leaving it at the scene when a safe and convenient location exists for parking the vehicle.

A second failure leading to excessive DWI processing time occurs when it takes a long time to transport a suspect to a location for additional processing (usually post arrest processing). This failure is caused by having too few breath alcohol testing facilities (BATs) or jails available (Figure 4-18). Two fixes are suggested for this problem.

First, an agency could use a mobile BAT facility that would be called to the scene and used for all post arrest processing, including breath testing, booking, and

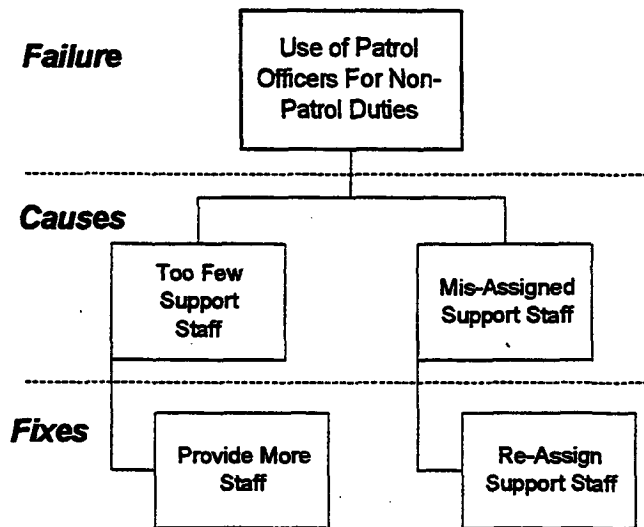
**Figure 4-18: Causes and Fixes of "Long Time to Reach Processing Facility"**



transport to a holding facility. A second fix would be to have additional BATs in police substations scattered about the service area. In both fixes, the suspect would be handed off to a responsible officer in the mobile facility or at the substation to complete the processing.

A third failure is *use of patrol officers for non patrol duties*. Any time spent by patrol officers on non patrol duties can be deducted directly from the time they can spend looking for and confirming DWI suspects. Patrol officers are assigned non patrol duties because of a lack of non patrol support staff or because existing staff is

**Figure 4-19: Causes and Fixes of "Use of Patrol Officers for Non-Patrol Duties"**



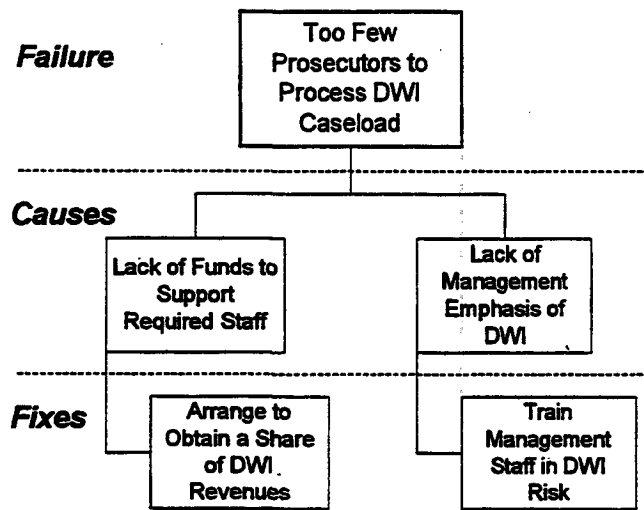
mis assigned and do not do more critical support duties (Figure 4-19). Additional support staff would fix the first cause if the staff were used properly. For example, the staff could be used to operate BAT vans or less-equipped vehicles. Such vans or vehicles could be dispatched to the scene to transport and process a suspect after a stop and initial processing by a patrol officer. With respect to the mis assignment of support staff, we found that patrol officers often perform several support duties simply because other available staff have not been assigned those duties. For example, it is common for patrol officers to remain at a BAT station, filling in forms, helping in booking, and even accompanying a suspect to the jail or holding facility. Clearly, these duties could be assigned to other staff already at the station, releasing the patrol officer to his or her primary operational duties.

The fourth and last failure in this group is *time-consuming data collection procedures*. This failure and its causes and suggested fixes have already been discussed in connection with *Failure to Find DWI Suspects* (see page 69).

**Adjudication**

*Failure to Charge DWIs.* The first failure in this group is *too few prosecutors to process the DWI caseload*. It parallels the enforcement failure *too few units observing for DWI* discussed beginning on page 65, preventing suspects' entry into the adjudication subsystem of the DWI enforcement system. As with the enforcement failure, this adjudication failure is attributed primarily to two causes, a lack of funds to support the required staff, and a lack of management emphasis of DWI (Figure 4-20). Some of the fixes suggested for the lack of funds for enforcement also apply here. These include selling the need to deal aggressively with the DWI

**Figure 4-20: Causes and Fixes of "Too Few Prosecutors to Process DWI Caseload"**

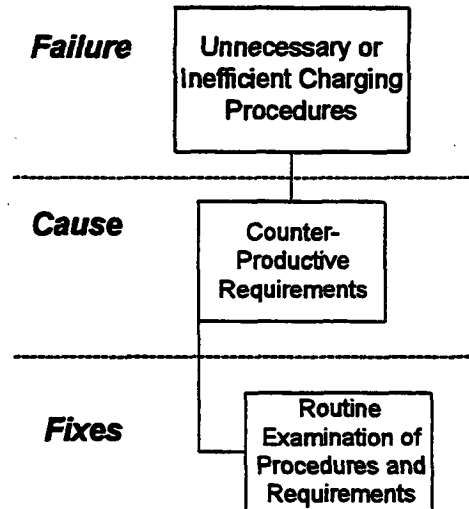


problem to state and local funding agencies and to the public, and establishing "self-sufficiency" programs for DWI offenders. The media and advocacy groups should be called upon to help get support for operating and improving this aspect of case processing.

To remedy the lack of management emphasis of DWI, a jurisdiction could establish a training program for management staff on the nature of the alcohol-crash problem and the size of the risk it creates compared with that of other problems being dealt with by prosecutors. As with the suggested program for enforcement command staff, the training would encourage managers to reconsider their current allocation policies and would prepare them to respond to pressures to de-emphasize DWI.

Another failure leading to DWI suspects not being charged for DWI is *unnecessary or inefficient charging procedures*. Such procedures delay adjudication and increase staff time and resources needed for charging. The procedures are often the result of statutory and regulatory requirements, but may also arise within a prosecutorial agency in response to some particular systemic problem (Figure 4-21).

Figure 4-21: Causes and Fixes of "Unnecessary or Inefficient Charging Procedures"



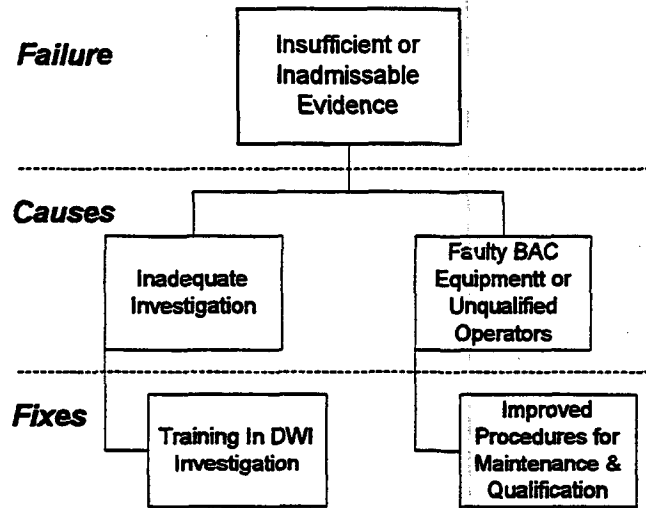
For example, legislation required one agency to "validate" its uniform traffic tickets (which had been used as the formal complaint or accusation) before filing with the court. The agency's response was to schedule a retreat for all deputy prosecutors once a month to clear up all of its complaints. The complaints were then "batched" into the court which was then faced with a sudden "bump" in case flow and attendant docketing problems.

Specific fixes for problems of this type are hard to identify because of the diversity of the problems. We can only offer the general recommendation that prosecutorial agencies establish a policy of routine, periodic review of their procedures to ensure that counterproductive changes have not occurred or are being contemplated. The effect on charging of any proposed changes in procedures (due to legislation or other factors) should be critically examined by agency management before being adopted.

*Insufficient or inadmissible evidence* is the third failure resulting in non charging of suspects. Here, we are alluding to a lack of essential evidence or to grossly flawed evidence that would almost certainly result in dismissal or other unfavorable outcome in court. Examples are: uncertainty as to the driver of the suspect vehicle, marginally low BAC readings combined with a lack of other evidence of impaired driving, use of an uncertified breath test operator, and unavailability of key witnesses to testify.

There are two basic causes of this problem, (1) inadequate investigation at the scene (especially when a crash is involved), or later in support of case-preparation

**Figure 4-22: Causes and Fixes of "Insufficient or Inadmissible Evidence"**



by the prosecutor; and (2) faulty breath testing equipment or unqualified operators (Figure 4-22).

The suggested fix for the first cause is to provide training in DWI investigative methods to police officers and to investigators used by prosecutors. The proper use of investigative tools (such as videotaping, discussed on page 84) should be covered in the training. For the second cause, we suggest developing and implementing improved procedures for maintaining breath-alcohol testing equipment and for ensuring that equipment operators are certified. With respect to certification, we recommend that all patrol officers be certified as operators, and their certifications be kept current.

*Failure to Obtain Guilty Pleas from DWIs.* The first failure in this group occurs when *defendants fail to appear*. The major cause of concern here is the defendants' belief that they will not be apprehended for not appearing (Figure 4-23) and will thus avoid any sanction that might be imposed either for DWI or for failure to appear (FTA). The suggested fix is to put a system in place by which the state DMV will take action against the driver's license. In such a system, the DMV would be notified of the defendant's FTA, and the FTA would appear on the defendant's driving record. Also, defendants should be advised in advance on all notifications to appear in court that failure to do so will result in a license suspension and also a warrant for arrest on the separate charge of FTA.

Figure 4-23: Causes and Fixes of "Defendants Fail to Appear"

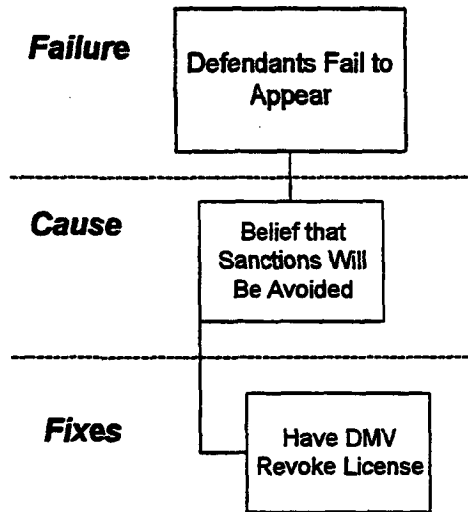
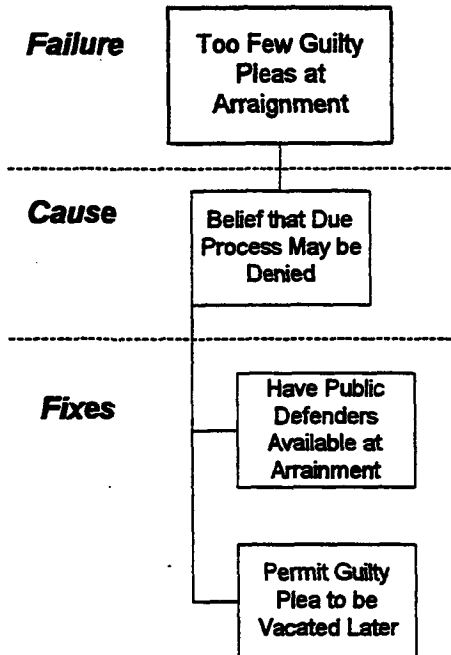


Figure 4-24: Causes and Fixes of "Too Few Guilty Pleas at Arraignment"



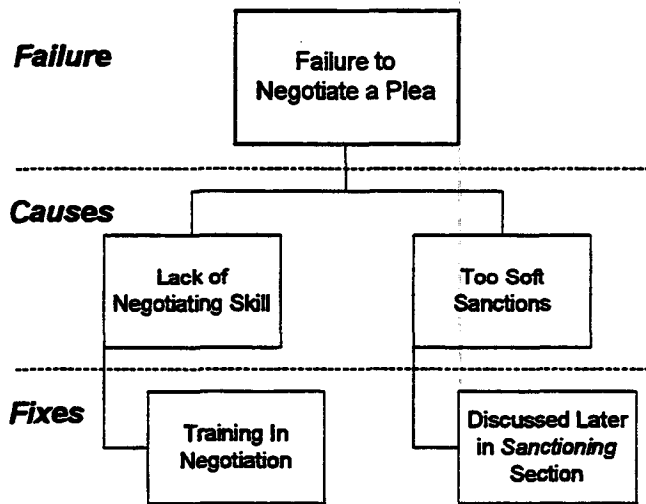


The next failure is *too few guilty pleas at arraignment* (Figure 4-24). This is likely to occur in jurisdictions in which judges believe that a suspect will, because of not understanding the consequences of a guilty plea, be denied due process by entering a guilty plea.

In such instances, a guilty plea will not be accepted. One fix is to make sure that defendants who are financially unable to be represented by counsel at arraignment are offered the opportunity to confer with a public defender before pleading. A second fix is to give a suspect a chance to vacate his or her guilty plea later after conferring with counsel.

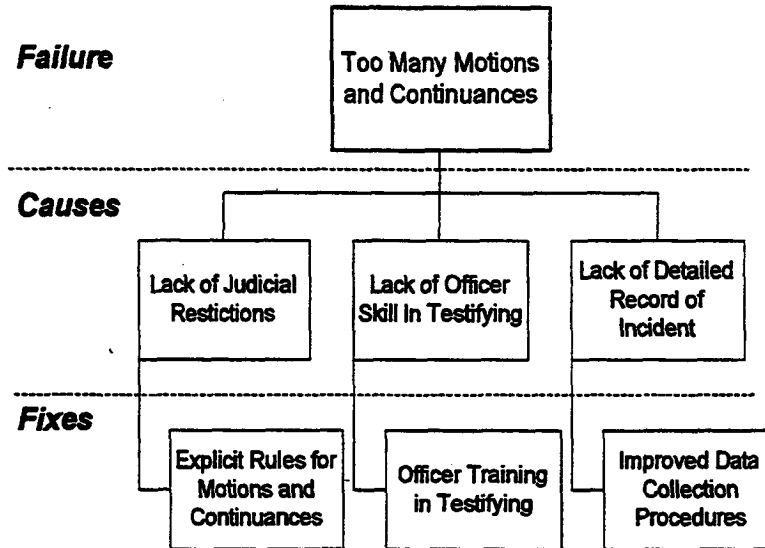
A third failure is a *failure to negotiate a plea*. This can be caused by the prosecutor's lack of skill in negotiating techniques. It can also be caused by a prosecutor's inability to offer an acceptable plea bargain because of sentencing practices that result in sanctions that are less tough than those that could be offered in a plea bargain (Figure 4-25). Training in negotiating skills will help remedy the first cause. The second cause is a sanctioning issue that is addressed later.

Figure 4-25: Causes and Fixes of "Failure to Negotiate a Plea"



The last failure is *too many motions and continuances*. Some defense attorneys will continue to file motions serially until they get a "hit," and continuances provide the defense the opportunity to delay closure and by that increase the chances of such occurrences as the failure of a key witness to appear. The main cause of this problem is a lack of judicial restrictions on motions and continuances (Figure 4-26). The fix for this cause is the establishment of judicial rules (possibly at the state level) setting time limits for filing motions and explicitly limiting the conditions under which continuances will be granted. "Weasel words" such as "if practical" and "to the extent possible" should be avoided in such rules. It has also been suggested that

Figure 4-26: Causes and Fixes of "Too Many Motions and Continuances"



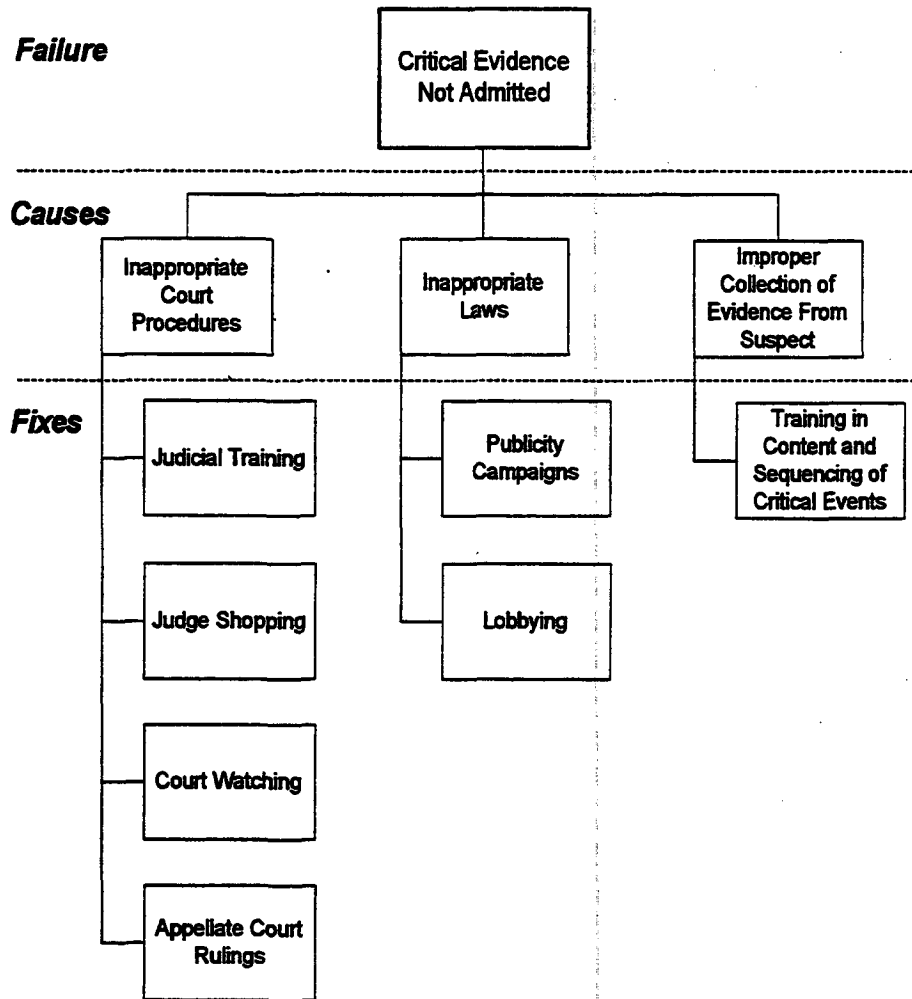
chronic abusers of continuance privileges be dealt with by scheduling hearings after normal working hours. In any case, judicial toughness is required to move the proceedings along.

Pre-trial motions are also sometimes generated by a lack of officer skill in testifying and by the officers not having detailed facts at hand describing the incident. The fixes for these causes are (1) training in testifying and (2) having a well-prepared incident report with a clear narrative of the incident and the circumstances surrounding it.

*Failure to Convict DWIs.* The first failure in this group, *defendants fail to appear*, has already been discussed on page 78 in connection with a failure to obtain guilty pleas from DWIs. The second failure in this group, *critical evidence not admitted*, may be caused by *inappropriate court procedures* and by *inappropriate laws* which might allow such evidence as the results of the horizontal gaze nystagmus (HGN) portion of the standardized field sobriety test (SFST) to be excluded (Figure 4-27).

Inappropriate court procedures could be corrected through judicial training of the type sponsored by NHTSA and conducted by the National Judicial College at Reno, Nevada. This may not always work, since some judges may regress to their old habits after attending courses. Then, other remedies may have to be tried, such as "judge shopping" by prosecutors (in large jurisdictions) and the use of reporters from the news media and members of advocacy groups such as Mothers Against Drunk Driving to "court watch" heavily-biased judges. Having state appellate courts establish the validity of evidence (such as HGN test results) through appeal is another

Figure 4-27: Causes and Fixes of "Critical Evidence Not Admitted"



possible fix for this problem. When the statutes themselves are the cause, efforts to influence legislators may be required, including publicity campaigns and direct lobbying by advocacy groups.

The third cause of critical evidence not being admitted at trial is *improper collection of evidence from suspect*. This occurs most frequently when the judge rules that the officer did not have probable cause for the stop. It also may happen when the rules regarding custodial questioning are violated and suspects are questioned after an arrest but before being given the Miranda warning. Finally, it may occur in conjunction with the implied consent warning, when the warning is given at such a time and in such a manner that the suspect becomes confused about rights to counsel and about the consequences of refusing a BAC test. The fix is

## SYSTEM FAILURES AND SUGGESTED FIXES

officer training in observing for DWI cues and in the proper sequencing of critical interactions between the officer and the suspect. The sequence should be:

- pre-arrest questioning
- arrest
- implied consent warning
- chemical testing
- Miranda warning
- post-arrest custodial questioning (if any)

The arresting officer should keep a record of the times of these events should the sequencing be questioned in court. The incident report should provide a space for such data. It is also recommended that a tape recorder be used during transport of the suspect to capture any spontaneous remarks made by the suspect.

A third failure leading to a failure to convict DWIs is *no testimony or poor testimony from a key witness* (Figure 4-28). Usually the key witness will be the arresting officer, and the cause of not obtaining any testimony at all from the officer will usually be *inefficient scheduling of police officer appearances in court*<sup>6</sup>. This failure results in wasted time and money when officers are required to appear in court only to find that the trial has been postponed. Or officers may be required to appear at proceedings earlier than they could occur, for example, appear in the morning when jury selection is scheduled and wait until the afternoon for the trial. Another possible result of poor scheduling is case dismissal when an officer is not notified of an appearance in time to attend.

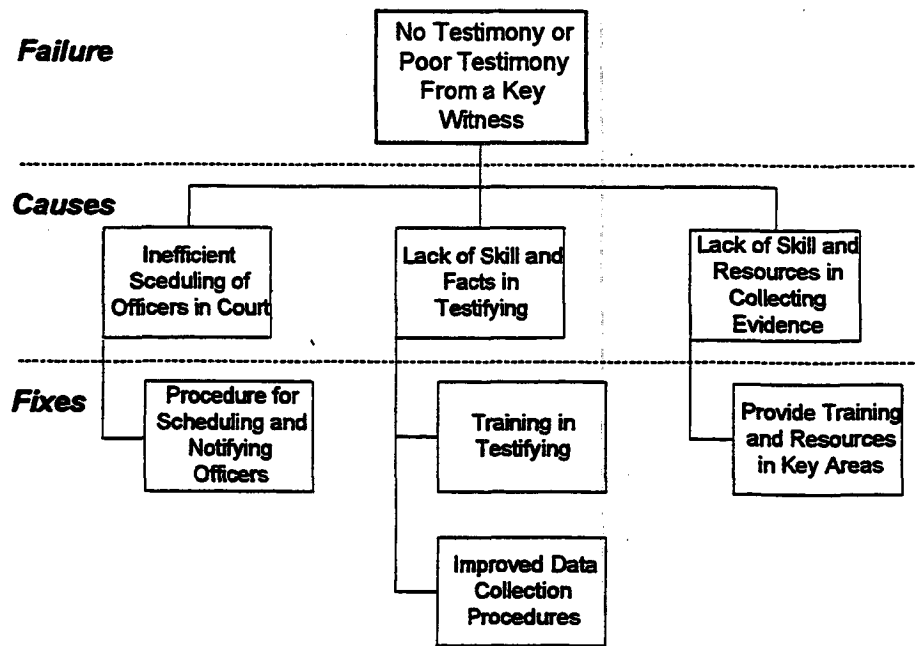
The fix is to (1) maintain a status of officers' scheduled court appearances and to (2) notify officers of that status. One way of doing this is to establish a procedure by which officers are scheduled by shift, and subpoenas for court appearances are issued immediately after the arrest and delivered directly to the police agency. The procedure could require the establishment of a court liaison officer who would check daily with the court and notify officers of the status of their appearances.

Poor testimony from a key witness (again, usually the arresting officer) can be due to a variety of factors. One such factor, *a lack of officer skill in testifying and officers not having detailed facts at hand describing the incident*, was discussed previously on page 81 concerning the problem of excessive numbers of pre-trial motions. Another cause is *a lack of skill or resources for collecting evidence*. The obvious fix is to provide the needed skills through training and to get the needed resources.

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<sup>6</sup> This problem is also encountered at pre-trial hearings where they are most troublesome due the number and lack of management of such hearings.

**Figure 4-28: Causes and Fixes of "No Testimony or Poor Testimony From a Key Witness"**



An example illustrating principles that apply to other deficiencies of this type is the use of videotaping to capture driving behavior leading to a stop, and a suspect's behavior afterwards. We found staff involved in enforcing and adjudicating BAC laws to be nearly unanimous in agreeing that such evidence can be highly effective in a trial if the taping is done properly. The problem is that very often the tapes do not show the subtle signs of impairment that can be convincing to a jury or a judge (in a bench trial). To make them more effective requires proper placement of the camera in the police vehicle (as close to the driver as possible) to obtain a perspective that will show the maneuvers of the suspect's vehicle with respect to road lane markers.

If possible, the camera should be aimed such that the suspect's demeanor and performance of field tests can be clearly observed and taped. Taping of the suspect should be conducted as soon after the stop as possible before the suspect has time to gain control and "pull himself / herself together." The tape should be accompanied by a narrative description of what is being taped.

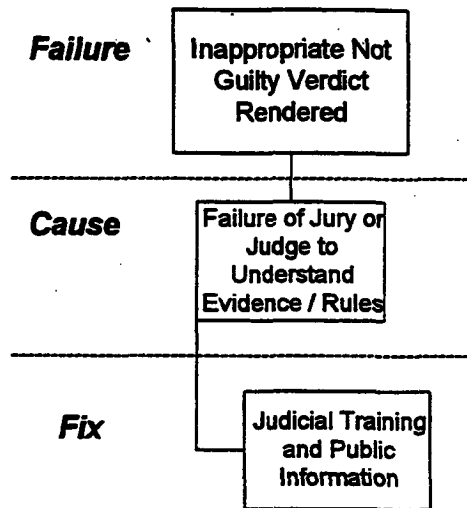
Equipment is an extremely important to producing quality videotapes that will be convincing to a judge or jury. Police agencies should have standards for equipment used in videotaping. The standards should be set by officers who use or have recently used such equipment in DWI enforcement, rather than by administrators. As a rule, departments should purchase the best equipment available, taking

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care to include such features as a dual microphone and a counter for quickly finding specific portions of a tape.

The fourth and last failure in this group is *inappropriate not-guilty verdict rendered*. As indicated previously, this failure is caused by *jury members (or the judge in bench trials) failing to understand or interpret the evidence or court rules correctly* (Figure 4-29). Judicial training programs of the type discussed above and public information and education programs are possible fixes for this problem.

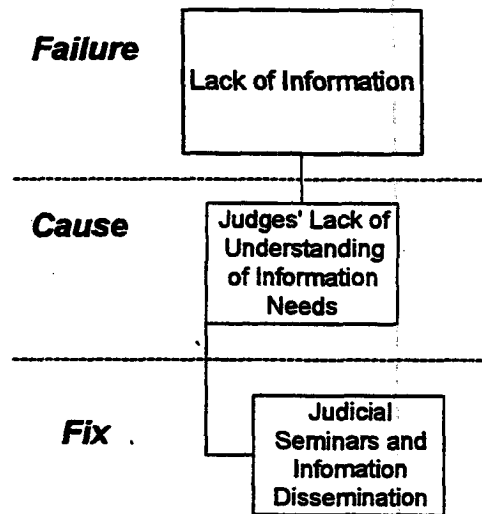
**Figure 4-29: Cause and Fix of "Inappropriate Not Guilty Verdict Rendered"**



**Sanctioning**

*Failure to Impose Appropriate Sanctions. Lack of information* is the first failure in this group. It is caused, first, by the lack or inaccessibility of systems to provide information about the offender and information about sanctioning resources. It can also be caused by a lack of resources to help a judge in interpreting available information and recommending a sanctioning package for a given offender. Underlying these two factors is a lack of understanding by DWI enforcement system managers and actors of (1) the role of sanctioning in reducing alcohol-crash risk and (2) the necessity for having information to fulfill that role. Along with this, there will most likely be a lack of funds for designing and operating systems that can provide the needed information (Figure 4-30).

**Figure 4-30: Cause and Fix of "Lack of Information"**

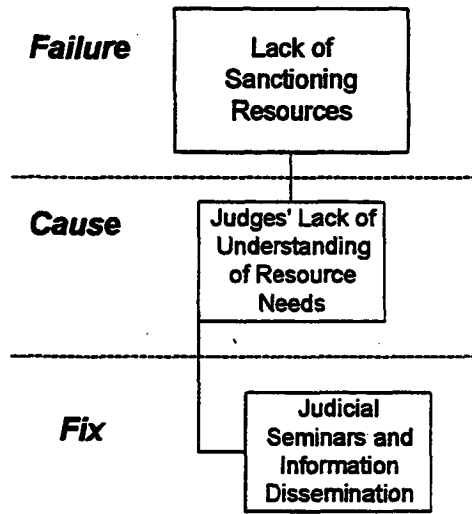


One fix for increasing knowledge about information needs is to provide seminars for judges (especially newly-appointed or newly-elected judges) on the role of judges as the official sanctioning authority of the DWI enforcement system, and the information requirements for that role. The seminars should be conducted at the state level and include modules devoted to identifying existing information resources and gaps between existing resources and needed resources. Strategies and programs for filling these gaps should be identified at the seminars, and the status of prior attempts at gap-filling should be reviewed. Research findings on the effectiveness of various sanctions in reducing alcohol-crash risk should also be presented at the seminars.

Methods of financing information system development and improvement cannot be specified here because of their dependence upon local conditions. In general, they might follow the same general approaches as discussed earlier in this report on page 65 concerning enforcement subsystem needs.

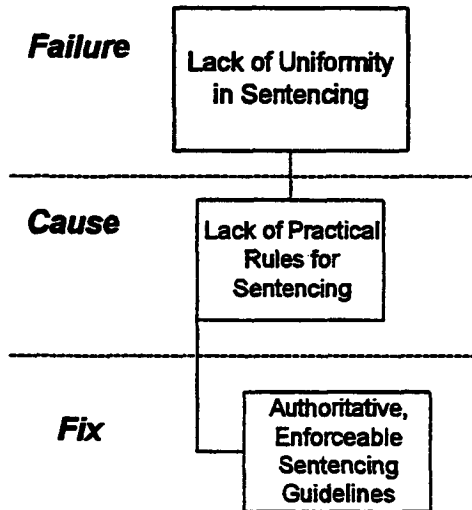
The second failure in this group is a *lack of sanctioning resources* such as jail space, treatment programs for alcoholism and problem drinking, and alternative sanctioning programs such as intensive supervision probation, electronic monitoring, ignition interlock devices, and vehicle sanctions (Figure 4-31). The cause will again be a *lack understanding of the need for such resources and a lack of funds to provide them*. Initiatives such as those just discussed above are needed to fix these deficiencies.

Figure 4-31: Cause and Fix of "Lack of Sanctioning Resources"



The third failure is a *lack of uniformity in sentencing* across jurisdictions or among individual judges in a jurisdiction (Figure 4-32). This is caused by a *lack of any enforceable, general rules indicating which sentences are appropriate for which classes of offenders*. Ranges of sanctions specified in statutes or regulations are often too wide for everyday use.

Figure 4-32: Cause and Fix of "Lack of Uniformity in Sentencing"

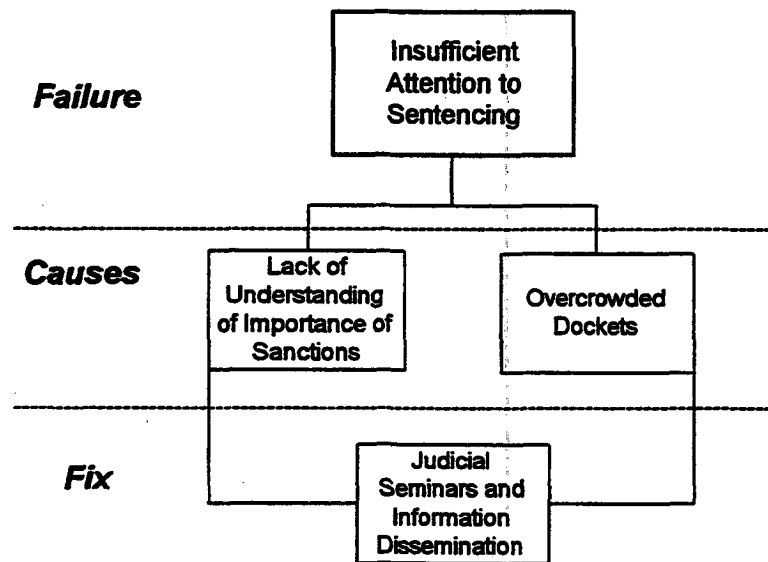




To fix this problem, sentencing guidelines should be promulgated (at the state level for states with statewide court systems) and presented to judges periodically at judicial conferences and in newsletters published by court administrative offices. Means for monitoring adherence to the guidelines should be included along with provisions for enforcing the guidelines and for keeping them up to date.

The last failure in this group occurs when judges give *insufficient attention to sentencing* (Figure 4-33). The two causes of interest here are (1) *a lack of understanding of the importance of the role of sanctioning in reducing alcohol-related traffic crashes* and (2) *overcrowded dockets*. The first cause was discussed above.

Figure 4-33: Cause and Fix of "Insufficient Attention to Sentencing"

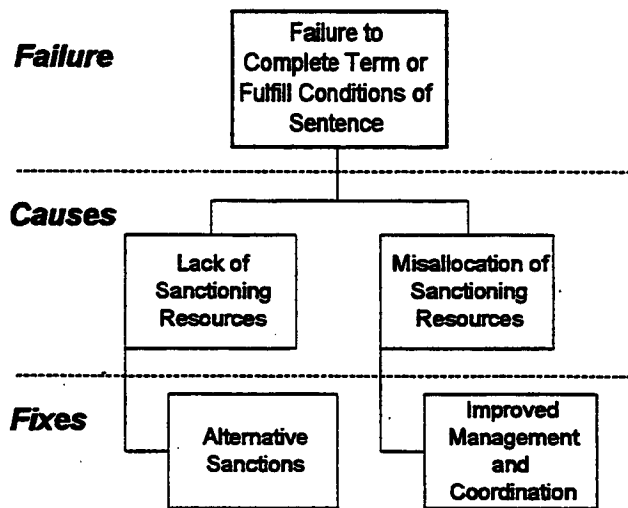


There is no simple fix for the second cause which may be the result of too many cases and too few judges. We noted above that too many cases may be the result of overly-lenient sentencing practices that cause defendants to opt for a trial rather than accept a plea bargain that may require a harsher sanction. Judges must be made aware of this possibility through seminars, judicial conferences, newsletters, and other media. Laws prohibiting plea bargaining also contribute to more cases going to trial, making it necessary to advise legislators contemplating passing such a law that the law may have to provide for additional judges.

*Failure to Execute Imposed Sanctions.* This class of failures occurs when appropriate sanctions are imposed, but one or more components of the sentencing package are not fulfilled. The first failure in this class is *failure to complete the term of the sanction* (such as when only part of a jail term is completed). The second failure is *failure to fulfill the conditions of the sentence* (such as when offenders fail to appear for a treatment session or a BAC test required as a condition of probation).

As suggested on page 63, one cause of both of these failures is a *lack of sanctioning resources*, when such a lack was not taken into account in imposing the sentence in the first place (Figure 4-34). This failure and a possible fix were discussed above. In looking for ways to augment existing resources, system managers should consider alternatives to current high-cost sanctions such as jail. Recent research suggests that sanctions such as intensive supervision probation and electronic monitoring can be more effective in reducing recidivism for some classes of DWIs than is jail. Often, the cost of operating these sanctions can be borne by the offenders and the facilities operated by private contractors.

**Figure 4-34: Causes and Fix of "Failure to Complete Term or Fulfill Conditions of Sentence"**

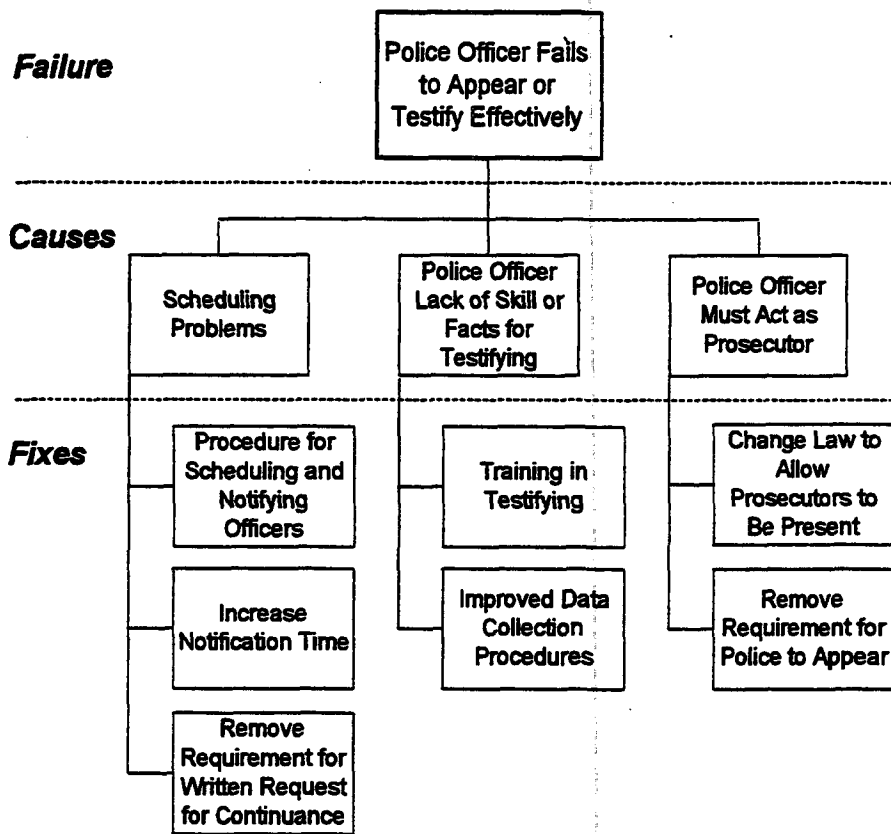


A second cause is a *misallocation of sanctioning resources*, for example, devoting too few resources to probation supervision and too many resources to treatment. This problem can be fixed quite easily through standard management techniques when the resources involved are under the control of a single agency, for example, a probation department that supervises clients and contracts for treatment services with private agencies. Often, though, the resources are operated by multiple agencies, for example, a state correctional department for prisons and a probation department serving a particular court for supervising probationers. In these

instances, coordinating committees have to be established to arrive at some compromise in resource allocation. Such committees should meet regularly and include in their agenda the consideration of new sanctioning alternatives of the types mentioned above.

*Failure to Uphold Administrative Sanctions.* The first failure in this group is *officer fails to appear* or after appearing, the *officer's testimony is not effective* (Figure 4-35). The failure to appear will almost always be due to scheduling

**Figure 4-35: Causes and Fix of "Police Officer Fails to Appear or Testify Effectively"**



problems of the types noted on page 83 and can be addressed through fixes noted there. It can also be dealt with by increasing time between the notification to appear and the appearance and by removing any requirement that an officer file a written motion for a continuance when he or she cannot appear.

Ineffective testimony is caused by a lack of officer skill in testifying and by officers not having detailed facts at hand describing the incident. As indicated on page 81, the fixes for these causes are (1) training in testifying and (2) having a well-

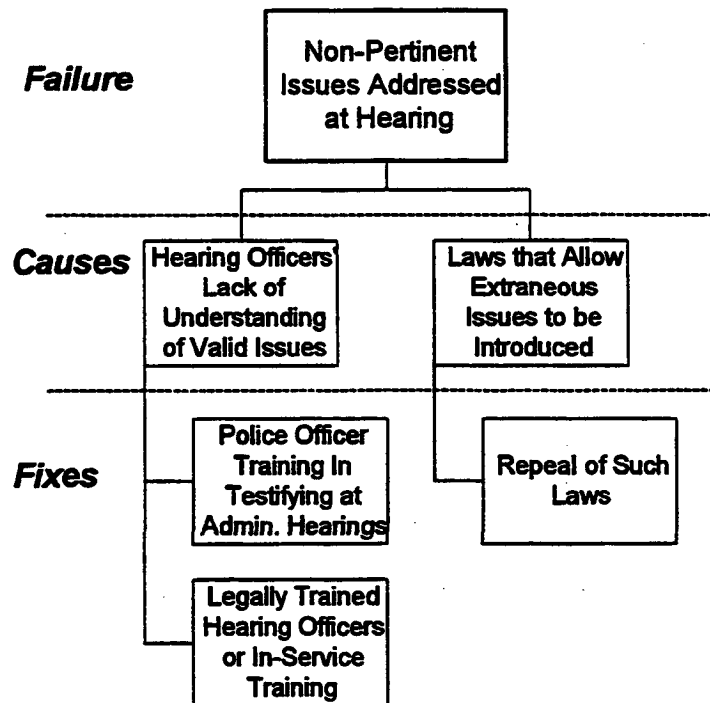
## SYSTEM FAILURES AND SUGGESTED FIXES

prepared incident report with a clear narrative of the incident and the circumstances surrounding it.

Another, perhaps even more basic cause of ineffective testimony, is the provision in the laws of some states that prosecutors *may not* appear at a hearing, placing the police officer in the role of prosecutor. This results in police officers who are not legally trained being pitted against a defendant who is represented by an attorney. This lack of a "level playing field" is believed to cause more defendants to request administrative hearings. In addition to changes in the law removing such restrictions on the prosecution, a fix is to remove the requirement (which may be statutory in some jurisdictions) for the police officer to appear at all, with the hearing officer merely reviewing the paperwork and having the hearing tape-recorded. This could be supported by having the officer's report sworn and notarized.

Another failure in this group is the hearing officer allowing *non-pertinent issues to be addressed at the hearing*. One cause is hearing officers' lack of understanding of what makes up a valid issue (Figure 4-36). One fix is to train police officers to be firm and not to answer "discovery-type" questions that are beyond the scope of an administrative hearing. These officers should be trained not to be reluctant to file an appeal when such questions are asked. Police officers should always request a copy of the transcript of the hearing (and other adjudicative hearings) for use in court in an appeal. Another fix is to require hearing officers to be legally trained and/or to receive on-the-job-training in the details of their duties.

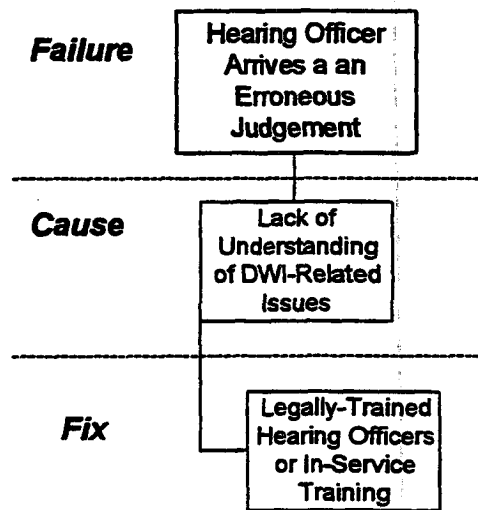
Figure 4-36: Causes and Fixes of "Non-Pertinent Issues Addressed at Hearings"



Some states have laws that allow the issue of probable cause to be brought up at an administrative hearing. Action should be undertaken to repeal such laws and thus keep hearings administrative rather than criminal in which probable cause is a recognized issue. Issues should be limited to whether the driver was driving with an illegally high BAC (for a *per se* law infraction) or refused a valid request to take a BAC test.

A failure to uphold an administrative decision may also occur when the *hearing officer arrives at an erroneous judgement*. This failure may also cause the hearing to be extended in time and result in more requests for a hearing (Figure 4-37). This failure is typically caused by a lack of knowledge of the law, alcohol impairment of driving performance, techniques for determining impairment, or some combination of these. Again, the fix is to require hearing officers to be legally trained and/or to receive on-the-job-training in these areas.

Figure 4-37: Cause and Fix of "Hearing Officer Arrives at an Erroneous Judgement"



We close this discussion by observing that the enforcement of administrative license suspension laws is not running as smoothly in some jurisdictions as thought. Because of numerous problems of the types noted above, officers in such jurisdictions believe that the laws are counterproductive and just add to their burden by causing them to appear in adjudicative proceedings more often, including two types of administrative hearings (implied consent and administrative *per se*) and three types of judicial proceedings (arraignment, pre-trial hearing, and trial). This in turn, leaves them less time to perform their operational functions of finding and interdicting DWI violators. For these reasons, police officers in one jurisdiction we studied have stopped processing administrative infractions altogether and now

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concentrate their efforts on criminal-law violations related to alcohol-impaired driving.

### **IMPLEMENTATION OF SYSTEM FIXES**

Implementing some of the above fixes can be more difficult than may be implied. In particular, their implications for the overall DWI enforcement system need to be taken into account before virtually any of them is undertaken. A change in the operation in one area of the DWI enforcement system may have unanticipated negative consequences elsewhere in the system unless a system-wide perspective is taken when considering such a change. When such a view is taken, appropriate decision makers in other components of the system may need to be brought into the discussion and potential problems identified and prevented.

An example is streamlining the paperwork requirements for the arresting officers. The root impetus for this fix is to speed the processing time at the time of the arrest and thus allow the officer to return to patrol more quickly and resume searching for other DWI offenders. Thus, the most basic mechanical benefit of this fix is more patrol time. Officers often find the paperwork requirements of processing a DWI arrest arduous, and this acts as a disincentive to making DWI arrests in the first place. The intended consequences of making the arrest processing time briefer and paperwork requirements less arduous are more patrol time and a lessened disincentive to making DWI arrests -- resulting in more DWI arrests.

However, at the front end, if the streamlining involves eliminating some forms, one must examine the reasons the forms existed in the first place. Some may be required by statute, and eliminating them at the local level may be difficult. Some that serve more local needs may have been initiated by other components of the system such as the prosecutor or judiciary. Obviously, any potential changes must be coordinated with these other actors in the system. Ironically, a form that creates an additional burden for the arresting officer may have been created to make processing easier for the prosecutor or clerk of court. Coordination with them could result in a consolidated form that meets each component's needs without creating new burdens on others.

Additionally, if the fundamental purpose of the fix is achieved, i.e., more patrol time and thus more DWI arrests, there are further implications for the overall system. Can the prosecutors, courts and sanctioning components of the system handle the additional caseload generated by additional DWI arrests? For that matter will the police be able to accommodate the additional court time required to prosecute these offenders? And, if additional resources are required, will funding sources and the public be willing to support the allocation of additional resources to the DWI enforcement system? These questions must be answered before embarking on any program of change.

In summary, when considering implementing a solution to a specific problem within the DWI enforcement system, one must take into account:

- the requirements imposed by the laws that are being enforced and by legal constraints such as probable cause;
- the implications of the fix for other components of the system;
- higher order effects of the fix on the component being fixed;
- the resources required to implement the fix; and
- the potential need for public support.

## SUMMARY AND CONCLUSIONS

A number of failures in DWI enforcement systems were identified and traced to their causes. The failures can occur in all three of the top-level functions of the system, and can result in reduced system performance. When they occur, they degrade the ability of the enforcement subsystem to find DWI suspects, confirm suspects as DWI, and process DWIs in a timely manner. The failures also degrade the performance of the adjudication and sanctioning subsystems in charging, obtaining guilty pleas, convicting, and sanctioning DWIs.

Suggested fixes for these failures fall into the following categories:

- expanded training;
- new or modified procedures;
- additional equipment, facilities, and personnel;
- additional funding;
- new or modified laws; and
- focused public information programs.

*Expanded training* consists of tailored training programs for police officers, prosecutors, judges, and administrative hearing officers. Depending on the needs of a jurisdiction, the training programs should address the following areas:

- nature and size of the alcohol-crash problem nationally and locally,
- DWI driving cues,
- proper sequencing of critical interactions between the officer and the suspect,
- observable signs of alcohol impairment,
- field sobriety testing using the standardized field sobriety test (SFST),
- evidentiary breath alcohol testing, and
- DWI investigative methods.

In addition, we suggest that specialized training be provided to police officers in testifying in judicial and administrative hearings, and to prosecutors in negotiating techniques for developing pleas in arraignments and pre-trial hearings. Judges should participate in specialized judicial training courses of the type sponsored by NHTSA and conducted by the National Judicial College at Reno, Nevada. The

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judicial training should include units on the characteristics of DWI offenders and the selection of appropriate sanctions for such offenders.

*New or modified procedures* may be needed in all phases of DWI enforcement. In particular, procedures are needed to:

- deploy patrol units more effectively,
- adopt more productive enforcement strategies,
- reduce the number of forms and data items used by police in documenting interactions with suspects,
- use clerical staff instead of patrol officers for support functions such as completing forms,
- establish and operate a system of rewards for outstanding DWI performance by general patrol officers,
- make better use of existing enforcement support resources (e.g., tow trucks),
- have routine, periodic review of operating procedures of all subsystems,
- better maintain BAT equipment,
- certify all patrol officers as BAT operators,
- require the state DMV take action against the driver license of defendants who fail to appear at adjudicative proceedings,
- ensure that all defendants are offered the opportunity to confer with a public defender before pleading,
- give a suspect a chance to vacate a guilty plea after conferring with counsel,
- provide judicial rules setting time limits for filing motions and limiting the conditions for continuances,
- schedule hearings after normal working hours to discourage filing of continuances,
- have state appellate courts establish the validity of SFST evidence through appeal,
- have a court liaison officer check daily with the court and notify officers of their appearance status,
- establish sentencing guidelines and present them periodically to judges at judicial conferences and in newsletters, and
- increase the notice given to police officers of their appearance in administrative hearings.

*Additional equipment, facilities, and personnel* may be needed in some jurisdictions to improve performance and efficiency. Resources that are especially critical and may require augmenting are:

- mobile BAT facilities,
- BATs in police substations,
- computerized DWI information system for all system activity,
- high-quality videotaping equipment, and



- personnel as needed for selected, understaffed functions.

In addition, there is a continuing need for improvements to the equipment itself. For example, current BAT devices require a 20 minute waiting period to clear mouth alcohol from a suspect. New technologies are needed to eliminate this need and thus further reduce suspect processing time.

*Additional funding* is needed to support operations in nearly all jurisdictions. Suggested strategies for obtaining such funding are:

- use of self-sufficiency initiatives (such as having the offender pay the cost of a program) to finance additional resources,
- use of private contractors to reduce cost of current operations,
- selling the need to deal aggressively with the DWI problem to state and local funding agencies,
- use of media and advocacy groups to help get support for additional funding, and
- coordinating committees to arrive at any necessary compromises among governmental agencies in allocating resources.

Some provisions of statutes and regulations are inadequate or may create problems for the DWI enforcement system in some jurisdictions. These laws prohibit behavior that creates risk, and provide for the operation of the system. Desirable provisions that may require *new laws or modifications to existing laws* are:

- permit SFST results as evidence,
- allow prosecutors to appear at an administrative hearing,
- do not require police officers to appear at an administrative hearing, and
- do not permit criminal procedures to be followed in administrative hearings.

Finally, a widespread need exists for *focused public information programs* to gain public support for the operation of the DWI enforcement system. Topics that need addressing in such programs are:

- the nature and size of the alcohol-crash problem,
- resource needs of the BAC-law enforcement system,
- need for new or revised laws dealing with DWI, and
- advice to citizens on how best to respond to observation of DWI driving.

Clearly, not all jurisdictions require all these remedies, and some fortunate jurisdictions may require none. Agencies of local DWI enforcement systems need periodically to examine their total operations to identify failures and to find out which, if any, of the fixes suggested in this chapter could be applied. Inter-agency

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coordinating committees of the type alluded to in this chapter are one mechanism for examining failures and fixes on a system-wide basis.

## 5 - CONCLUSIONS AND RECOMMENDATIONS

We conclude that DWI enforcement in most jurisdictions is functioning at an acceptable, if not optimal, level, and is functioning extremely well in some jurisdictions. Specific conclusions and recommendations flowing from this project are:

**Conclusion:** The greatest improvement in DWI enforcement in most jurisdictions will be realized by increasing the percentage of patrol officers' time available for looking for and interdicting DWI suspects. However, all involved agencies must be prepared to adapt to the greater demands on their resources (for example, larger case loads) resulting from such increases.

**Recommendation:** Police command staff should reconsider their policies for allocating personnel and other resources to ensure that sufficient emphasis is being given to DWI enforcement.

Police managers should examine each support function performed by patrol officers to see how arrest and processing time can be reduced.

The possibility of reducing the time spent fulfilling reporting requirements should also be considered. The use of shortened forms and computer technology is one of the most productive ways of increasing officer availability for patrol tasks. Another way of increasing patrol time is to assign support duties during suspect processing to clerical staff or other non-sworn personnel.

**Conclusion:** The time required to adjudicate driving while intoxicated (DWI) cases is excessive in many jurisdictions, often stretching out for months and, sometimes, for years. This violates a basic tenet of deterrence theory that calls for the timely imposition of punishment for proscribed behavior.

**Recommendation:** Judicial agencies should examine their procedures to learn where inordinate amounts of time are being spent. Particular attention should be given to the parts of the process that involve pre-trial hearings and continuances. There should be an eye toward restricting the conditions under which the process can be extended in time.

**Conclusion:** The failure to appear (FTA) by defendants at adjudicative hearings can have a large negative impact on system performance by reducing their availability for determination of guilt and sanctioning if found guilty. The extent

of this problem nationwide is not known, but our research suggests that it could be widespread.

**Recommendation:** Jurisdictions should undertake research to learn the nature and extent of their FTA problem. If the problem is serious, then ways of dealing with it should be devised, including the revocation of the driver license for FTA.

**Conclusion:** A series of unexpected problems is occurring in the operation of the administrative adjudication components of DWI enforcement. These problems include excessive demands on police officers' time to appear at administrative hearings; procedures that require police officers to file a written request for continuance if unable to appear at a hearing; laws that prohibit a prosecutor from appearing at a hearing, placing the police officer in the role of prosecutor; hearing officers allowing non pertinent issues to be addressed at the hearing; and hearing officers' lack of knowledge of the law, alcohol impairment of driving performance, techniques for determining impairment, or some combination of these. These problems are causing the process to be avoided by police officers in some jurisdictions. Thus, the intended administrative sanctions are avoided by violators.

**Recommendation:** The requirement for police officers to appear at administrative hearings, scheduling of officers at hearings, qualifications of hearing officers, and pertinent issues that may be addressed at hearings should be examined.

**Conclusion:** Judges need more information on offender characteristics and sanctioning alternatives to develop effective sentencing packages.

**Recommendation:** Judges should be provided information on offender characteristics and sanctioning alternatives for use in sentencing. Sentencing guidelines for violations of laws regarding alcohol-related driving should also be provided. Research findings on the effectiveness of sanctions for DWI need to be disseminated to judges in an easy-to-use format.

**Conclusion:** Public support for DWI enforcement is critical to maintaining an acceptable level of performance.

**Recommendation:** Communities should develop and carry out public information programs on the nature and extent of the alcohol-crash problem locally, and on resources and legislation needed for enforcing BAC laws.

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**Conclusion:** The introduction of laws limiting the BAC of various categories of drivers may not be having any serious impact on DWI enforcement. Specifically, laws setting the BAC limit at 0.08 has had little affect on the functioning of agencies involved in DWI enforcement. In states having so-called "zero-tolerance" laws for underage drivers, insufficient information existed during this project to determine whether these laws are creating difficulties or are not achieving their intended results. However, limited data suggest that there are problems in processing juveniles suspected of violating zero-tolerance laws, particularly in transporting and holding such suspects.

**Recommendation:** More research on the nature, provisions, and impact of zero tolerance laws should be conducted. NHTSA is now examining zero-tolerance laws and their application for youth. This should help fill this gap.

## 6 - REFERENCES

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## **APPENDIX - SUMMARY OF TELEPHONE DISCUSSIONS**

This appendix contains descriptions of DWI enforcement procedures for eleven jurisdictions based on telephone discussions with police officers and prosecutors. The information captured was used in conjunction with other information to formulate the baseline system described in the report.

We ask readers to note that laws in some states have changed since the discussions. Also, the acronyms "DWI" and "DUI" are used throughout this appendix, depending on which term was in use at each site. Readers should also note that the information presented here reflects the opinions and attitudes of those who were contacted, often expressed in their own words. We have made no attempt to obtain any confirmation from other sources or from separate studies.

The large amount of paperwork and processing time required for DWI arrests remain the biggest problem for police officers contacted. Officers almost everywhere complained of the complicated process and the need for documentation of minute details of each case. This level of detail is apparently necessary in many locations to "cover all of the bases" should the officer be required to testify at an administrative or court hearing.

Some areas have planned DWI enforcement with both police and states attorneys present so that procedures hold up in court. We also heard about streamlining the arrest process by releasing suspects directly from a checkpoint site, rather than transporting suspects to jail or police headquarters for processing; this is done under stringent guidelines approved by the courts. Also, at one site, when a case is dropped, officers are notified and memos are written to administration to point out what has happened and the reasons.

Specially trained anti-DWI enforcement officers have resulted in increased arrest rates in some areas. Because general patrol officers can call for specially trained officers to handle arrests and processing of DWI suspects, they are willing to apprehend more DWI suspects. Also, the specialized officers will testify if necessary which, reportedly, can be an intimidating process for officers unfamiliar with the often complicated DWI adjudication process. A less experienced officer who has spent hours on the witness stand "on a simple DWI case who is being questioned by a good defense attorney is afraid; they don't want to go through that experience again." If the suspect is a multiple offender, or has a good attorney, the attorney will badger the officer to the point where "you are looking at your whole credibility going out the window, and you're trying to fight just to tell them what you saw."

Most times policies and procedures are in place for officers to follow when handling DWI suspects, but officers have told us they do not always follow procedures. Specialized anti-DWI enforcement officers often recommend additional training for all officers to aid in the detection and processing of DWI suspects and to stress proper procedures. In several instances we heard about police officers who

do not want to handle suspects; "they'd just as soon if they see one they think is drunk, turn ...to get away from it...if we had every officer who was on the ball looking and would follow his instincts on DUIs, we'd probably have twice as many DUI arrests." Another officer would like to see nationwide certified training in DWI detection and arrest procedures. He discussed how training at Northwestern University Traffic Institute is highly recognized in courts and thinks if anti-DWI training can be raised to the same level, it would cut down on court time and save money spent on cases. "Block training" programs were discussed in several locations as a solution to scarce funds for training. Officers are sent to formal training programs and then return and train other officers in the department who did not attend.

Administrative hearings are problematic in several areas because defense attorneys use these hearings as a source for finding out details about the case which help them decide the most beneficial way to handle the case in judicial proceedings. These hearings often do not focus on their intended purpose, which is whether the driver license suspension will stand or fall, but instead have become "free depositions" requiring substantial amounts of the officers' time. And there are no prosecutors present to advise the officers.

Several prosecutors we talked with were overwhelmed with DWI cases (1,200-1,300 per year) on top of other types of cases. The most recent trend has been to add more police officers, but not more judges, court rooms, prosecutors or public defenders. "You just can't tinker with one aspect of the system. You just can't add cops and think problems will get better, they will get worse. Then, there are more cases which get lost...." Prosecutors believe that there needs to be more and better communication between the law enforcement administrators and the district attorney's and prosecutor's offices as to what is enforced and how. Otherwise, "a bunch of cases come in which are questionable in that they might not follow state statute, which means it might not be possible to prosecute successfully, resulting in lost or dismissed cases" which angers the cops and possibly the public. Or it sends a message that someone can get away with that particular offense. At these sites, it is also difficult if not impossible to find the time to properly prepare for a case.

And, finally, there are sites where a significant number of individuals arrested for DWI disappear and their cases are not resolved. This is a problem which needs to be addressed.

Following are the highlights of the discussions, separated by site.



## SUMMARY OF TELEPHONE DISCUSSIONS

### SALINAS, CALIFORNIA

*Department Size.* 142 officers at time of contact, authorized for 151 officers.

*State Laws.* BAC limits are 0.08 for adults, 0.05 for juveniles under 21. There is a zero tolerance law for juveniles under 21 which reads if any alcohol is detected in a juvenile's system (even 0.01), administrative action will be taken; the juvenile stands to lose his or her license for one year. But the BAC level must be 0.05 or greater for a charge of DUI.

*Training.* All Salinas police officers are trained in DUI detection cues. In California, police academy training currently includes operation of the BAT, and most Salinas police officers are certified by the State of California, Department of Justice as BAT operators.

*Enforcement and Apprehension.* Special Operations handles specific DUI enforcement using moving surveillance; only stationary when conducting checkpoints. They do not target establishments (e.g., sit outside of bars in parking lots).

A state Office of Safety grant funds saturation patrols and periodic checkpoints. Once a month a DUI checkpoint is conducted at a location within the city chosen at random, generally from about 8:00 p.m. to midnight. Afterwards, officers staffing the checkpoints are on saturation patrols until 3:00 a.m. The dates of the checkpoints are publicized, but not the locations. The other weekends, saturation patrols (three marked police cars, 2 officers per car) drive randomly throughout the city with no specified boundaries. General patrol officers also watch for DUI suspects. At crash scenes, officers always check for possible alcohol involvement.

A typical DUI investigation begins when officers first detect either driving that is erratic or involves an infraction of the vehicle code. Officers often use basic vehicle code infractions as the cause for the stop.

Formal policy allows for pursuit only with serious crimes (includes DUI). The pursuing officer must have reason to begin a pursuit, must be aware of existing street conditions (e.g., persons, vehicles, weather, time of day), and the nature of the crime. All of this information is recorded when a pursuit begins and is monitored by a Field Supervisor, a Sergeant, and the Watch Commander. The pursuit can be terminated by any of these individuals (or by the officer who began the pursuit) if anyone determines risks are too great.

There are no computers in the patrol cars. Having just received a video camera, there are plans to record driving history, the stop, field sobriety tests, and any subsequent

arrests. While following a DUI suspect, officers radio in pertinent information before making a stop.

*Field Investigation.* After the stop, the officer approaches the vehicle and requests information on the driver's license and vehicle registration which puts the officer in close enough contact to make a determination about the presence of alcohol. When a stop is suspected of being DUI related, the officer radios for a second unit. After the second unit arrives, the driver is asked to step out of the car and proceed to a safe area. The second officer is there as a safety factor to assist the first officer in case the person becomes belligerent, or passengers or others try to get involved. A series of questions are asked which may enforce the officer's suspicions that the driver has been drinking. If so, the driver is informed that the officer believes alcohol has been consumed and that the driver is responsible for taking a series of field sobriety tests (FSTs). The second officer witnesses the FSTs.

The FSTs are standardized and appear on a preprinted form which is followed from the time the officer begins to administer the tests through either an arrest or the person is released. The same tests are administered in the same order to every person suspected of DUI. The person's capabilities in performing the tests determine if the DUI investigation needs to continue. If the individual performs poorly on the FSTs, then the PAS (passive alcohol sensors) testers or the flashlight sniffers may be used to confirm the presence of alcohol in the breath (but the testers may not be used before the FSTs have been completed).

*Arrest and Transport Violator.* The suspect is arrested at the scene, handcuffed, and driven by the arresting officer back to the station. Use of a "paddy wagon" can be arranged for checkpoints. The backup officer will begin "tow procedures." In California, if you are driving a vehicle and are arrested from that vehicle, the vehicle may be towed and stored. This is a safeguard to the arrestee that the car not remain out on the street. The arrestee may be allowed to leave the vehicle legally parked if the arrestee signs a form releasing the police from any responsibility for the vehicle; this reportedly does not happen often.

*Post Arrest Investigation and Processing.* At the station, the arrestee is photographed, finger printed and allowed to choose which test to take (blood, breath or urine). There is a cite-and-release policy; if the person is cooperative and has no other basis for arrest (no outstanding warrants or other charges to be filed), and there is a responsible adult (family member or friend who is sober and can take charge of the person), then they will cite the individual out with an appearance date, meaning the individual does not initially spend any time in jail. In this case, the time before the initial arraignment date in court is typically 10-14 days from the arrest and is printed on the back of the form. If a responsible adult cannot be located, the DUI suspect is taken to county jail. In this case, the person has a right to arraignment

### *SUMMARY OF TELEPHONE DISCUSSIONS*

within so many hours of arrest, generally within 2 days of the arrest date. If the person bails out, that date will be further in the future. At the initial arraignment the charges are read and the person either accepts the charges and pleads guilty or pleads not guilty and appropriate court appearances and dates are assigned accordingly.

*Arrest and Processing Time.* For a typical DUI case, an officer usually spends two hours arresting and processing the DUI suspect. In addition to the primary DUI form, which lists field sobriety tests, etc., the other forms which might need to be completed include evidence forms, tow paperwork, arrest charges in addition to the DUI charge, and an arrest report.

*Prosecution Support.* Not a lot of people request administrative hearings, so officers do not spend a great deal of time at hearings. Each hearing requires under an hour of an officer's time. For the few DUI cases which proceed to trial, officers spend approximately one hour per trial preparing the case with prosecutors. At trial, the officers testify why the initial stop was made (easy because any infraction is cause for a stop), that the person on trial was driving that vehicle on that date, the reason to suspect alcohol was involved (e.g., the officer detected an odor of alcohol) which led to the FSTs which the person failed, leading to the BAC test.

*Handling Juvenile Cases.* If a juvenile is arrested at a checkpoint, officers will spend a "great amount of time" attempting to locate a responsible adult. If one cannot be found, the juvenile will be housed at juvenile hall. If a juvenile has been found driving with a BAC of 0.01 or 0.02 then administratively, under the zero tolerance law, they begin the process of the license suspension. The paperwork goes into the Department of Motor Vehicles who notifies the juvenile of the pending action and asks if the juvenile is going to contest the action. If the juvenile does nothing within a certain period of time, the license is suspended. If the juvenile requests a hearing, the officer must go and testify.

*Comments.* None.

## **SAN GABRIEL, CALIFORNIA**

*Department Size.* 59 officers at time of contact.

*State Laws.* BAC limits are 0.08 for adults, 0.05 for juveniles under 21. There is a zero tolerance law for juveniles under 21 which reads if any alcohol is detected in a juvenile's system (even 0.01), administrative action will be taken; the juvenile stands to lose his or her license for one year. But the BAC level must be 0.05 or greater for a charge of DUI.

*Training.* There is no formal departmental policy which outlines DUI training for the officers. There are very general policies. All officers have attended classes on DUI detection and had in service training. The officers have between 8-30 years of police experience.

The four officers in the traffic division have attended classes on recognizing signs of substance abuse; one officer is a certified drug recognition expert (DRE). The traffic division officers would look to see if the pupils are pinpointed revealing possible opium use, or completely dilated revealing possible marijuana or other drug use. The DRE expert does a little more thorough examination. Reportedly when the drug tests come back, the DRE expert is usually right on the diagnosis or very close, especially in the usage of combinations of drugs and/or alcohol.

*Enforcement and Apprehension.* The California Office of Traffic Safety (OTS) provided funding in 1994-1995 and in fact those funds were used to start the traffic program. The funding required the traffic division to conduct monthly checkpoints. Prior to the funding there had been no motorcycle officers in over 22 years and no traffic unit, only one traffic investigator. That OTS funding has ended but they continue to hold the checkpoints or have DUI roving teams.

The traffic division specializes in DUI enforcement, although general patrol officers are on the lookout for drunk drivers also. Traffic officers handle 90% of crash investigations within the city, any special events, and anti-DUI education in the schools. They typically use moving teams of two motorcycle officers who patrol looking for drunk drivers. There are PAS devices on the bikes. If a patrol unit is available, it will follow the bikes to transport individuals. The officers work from experience and often patrol the back (side) streets as they find drunk drivers try to avoid detection on the main streets. Officers look for weaving, stopping at green lights, failure to proceed when the light turns green, slow and deliberate movements of lane changes, or abrupt lane changes, basically inconsistent driving patterns; they watch for more than one cue, a more constant pattern to show the driver may be under the influence. At a crash scene, officers look for signs such as alcohol on the breath, blood shot and watery eyes in persons interviewed at the scene. They also

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look for containers and statements from other parties or witnesses. The roving patrols work best for actually catching DUI suspects, but checkpoints work best for informing the public.

The traffic division holds DUI checkpoints (about one a month) but the checkpoints sometimes changed to DUI teams (discussed above) because of lack of personnel. Four to seven officers set up the checkpoints, depending on available officers. Motorists are warned of the checkpoint with signs in advance, but are not given an outlet to bypass the checkpoint. When enough officers are available, chase vehicles are used to stop motorists who turn around to avoid the checkpoint. Every vehicle is stopped unless there is a long backup or busses trying to get through, in which case, the officers would open up the road and allow the backup to pass, and then would begin stopping all vehicles again. The vehicles are stopped five at a time and each driver is approached, greeted and given information on drunk driving. Individuals are advised of other minor violations such as non-use of seatbelts, but citations are not issued for these other minor violations. Drivers are cited for major violations. Each driver is asked if he or she has a driver's license, but are not asked to show it unless there are signs the driver has been drinking.

On occasion, the police receive calls from the public reporting suspected drunk drivers and have sometimes been able to send units directly to intercept the individuals.

There is a pursuit policy that is not specific to DUI cases. Officers do everything necessary to terminate the pursuit by stopping the suspect, but will call off the pursuit for any unsafe conditions (traffic, weather). Officers or on-duty Watch Commanders may terminate a pursuit. Reportedly, drunk drivers sometimes will not stop but will continue at the same rate of speed (not at an increased speed) and in those cases, typically, another unit will get in front of the suspected drunk driver and slow to a stop in an attempt to stop the suspect. Officers often must improvise because the impaired or drunk drivers are not acting or reacting normally.

*Field Investigation.* Once the vehicle is stopped, the officer will approach the vehicle and ask the driver for a license, usually getting close enough to see what the individual is doing and to smell any odor of alcohol. The officer will be looking for how the individual retrieves the license (fumbling, passes over it several times while looking for it, cannot find it when the officer sees it) and listening for slurred or incoherent speech. If signs of impairment are evident, the individual will be asked to get out of the vehicle and the officer will note if the individual trips or has trouble exiting the vehicle. The officer will typically be making mental notes at that point as to the individual's gait and if the vehicle was used as a crutch to steady the individual while walking. Normally, a backup unit will have arrived at this point because the first officer would have reported following a possible drunk driver and

making the stop, and a backup unit would have been dispatched. The person will be asked a series of questions before being asked to perform field sobriety tests. These questions include topics such as if the individual is under medical care, taking any medications, have any leg, back or hip problems (or feet, ankles, knees) to determine if the field sobriety tests need to be altered to accommodate the person. Occasionally the officers will encounter a disabled person and suitable tests must be given which are fair and impartial to the individual.

Based on the situation, the officers will determine which field sobriety tests to administer. There is no policy, but it is routine for one officer to be in front of the suspect giving instructions and one officer will be behind the suspect in case the individual would fall. Generally the suspect will be asked to perform at least three physical field sobriety tests as well as gaze nystagmus. Reportedly narcotics are often involved as well as, or instead of alcohol (the officer contacted estimated as many as one-third of DUI arrests involve alcohol plus another substance, often marijuana). The officers have PAS devices available and can call the DRE, if that expert is available. The arresting officer uses every tool available, but if the DRE is not available, and the person is clearly impaired although BAC levels may be low, the person is still arrested.

*Arrest and Transport Violator.* Persons suspected of DUI are placed under arrest at the scene and given a choice of blood, breath or urine tests and then are transported to take the chosen test. If drugs are suspected, the options are blood or urine. The tests are mandated by state law. Test results or refusal forms are added to the reports. The officer contacted estimates 3 out of 10 individuals refuse the breath test. Sometimes, they choose the test, but when they get to the station, they will try to cheat the test or refuse at that point.

*Post Arrest Investigation and Processing.* Individuals are booked at the central station which has a jail facility. Processing individuals arrested for DUI does not vary by enforcement method except for when checkpoints are used, where the officers generally do not have a driving pattern for the case. If there are no warrants outstanding for an individual, and the person has sobered up (minimum of five hours), he or she is cited out. Generally if the person was stopped on a major street, the vehicle is impounded. Individuals are not Miranda-ized unless a crime has been committed (would be for drugs, not for alcohol).

Sometimes, if field conditions are not safe, field sobriety tests can be done at the station. Also, if lighting conditions in the field are poor, the other eye tests may be conducted at the station as well, especially for drug involvement where the eyes are studied for indications. Following a crash, everyone at the scene is interviewed. In the case of a regular DUI stop, passengers are sometimes asked questions if the driver is too drunk to remember or is uncooperative.

## *SUMMARY OF TELEPHONE DISCUSSIONS*

*Arrest and Processing Time.* There is a lot of paperwork for officers to process DUI arrestees. It typically takes an officer two hours from the time of the stop until the officer is back out on the street, and then the report may not necessarily be written. Paperwork consists of an Intoximeter form (if the person took the breath test), booking information (if a booking officer is not available), possibly an administrative per se form and a temporary license must be filled out for the individual, and the officer's report. If an individual stays in custody, he or she must be arraigned within 48 hours; otherwise, if released on a citation, court dates are set for 30 days after the arrest.

*Prosecution Support.* Most DUI offenders will plead guilty or plead out to reckless driving if it is a first offense; a small number of cases actually go to trial. The cases which do go to court are usually individuals with prior DUI offenses who are facing more serious jail time. For cases which proceed to court, officers will review their reports to refresh their memory of the case and will usually meet with the district attorney beforehand to prepare a game plan for what might happen in court.

Major issues involving police officers at trial include probable cause, and the defense sometimes tries to suppress evidence saying their clients did not understand their rights. Because both the defense attorneys and prosecutors must disclose what evidence they have, the prosecutor knows ahead of time what areas are going to be covered more thoroughly and can go over those areas with the officers. The arresting officer usually must testify, but it is not just limited to that officer if, for example, other officers were on the scene or got involved somehow. For preliminary hearings, sometimes the officer is just placed on call, but does not have to appear if the offender is going to plead guilty or plead out. The majority of time for trials, the officer does not take the stand, but the defense waits to see if all the pieces are in place (the officer shows up, the paperwork is in order, etc.) before pleading guilty.

After the arraignment where the charges against the individual and the status (bailed out, cited out, etc.) are given, the preliminary hearing is set. The preliminary hearing was described as a "mini trial" to see if there is enough evidence to go to trial or enough that the person pleads guilty without going to trial.

Officers must testify if they are called to an administrative hearing which is done through the driver licensing agency. Reportedly, officers are rarely called to administrative hearings (the officer contacted had only appeared at two hearings). If an adult has a BAC of 0.08 or greater, the license is immediately seized and the person is given a temporary license which is good for 30 days. Within that 30 days the person must appear before the DMV to contest the seizure and plead the case to retrieve his or her license. The officers are not always subpoenaed into the DMV hearing, but sometimes they are and then must appear. The hearings are informal, requiring approximately 30 minutes of an officer's time. The officers will typically

testify why the stop occurred, what the alcohol content in the person's blood was, what the person did, or anything that might come up in a trial. When the officer is finished answering questions, he or she leaves and typically does not know if the suspension is upheld or if the license is given back. The individual charged may not find out immediately either.

*Handling Juvenile Cases.* Reportedly there are few juvenile DUI offenders in San Gabriel. Juveniles are given a PAS test, a form is filled out, the citation issued and the license is suspended for one year. The juvenile is then released to a parent or responsible party. If the juvenile is arrested for DUI, he or she is booked, the parents are notified and then the juvenile is released.

*Comments.* The San Gabriel Police Department conducted a study of the ethnic breakdown of DUI offenders. There is mix of Asian, Hispanic, and Caucasian populations in the area, and DUI offenders are reportedly represented equally among these three groups.



*SUMMARY OF TELEPHONE DISCUSSIONS*

**SARASOTA, FLORIDA**

*Department Size.* 188 officers at time of contact.

*State Laws.* BAC limits are 0.08 in Florida. There is an 0.02 law for persons under the age of 21. If someone under 21 is stopped for any reason, and the officer smells alcohol on the person's breath, the officer does not need probable cause for DUI at that point to request a breath test. If the person does not give a breath test, he/she will be given a citation and will lose his/her license for a period of one year. If the person takes the test and blows a 0.02-0.08, the result is loss of license for six months.

*Training.* All Sarasota officers are trained initially at the police academy on detection cues and on how to perform field sobriety tests. The officers in the traffic unit have also been through a 40 hour course (IPTM in Jacksonville) which teaches detection of DUIs and new, improved field sobriety detection techniques. Also, all new Sarasota police officers must spend 3 days training with the traffic unit officers, who are certified trainers. The training officers go over the traffic laws and procedures.

*Enforcement and Apprehension.* Sarasota uses routine patrols, checkpoints, and DUI task force patrols which are actually traffic patrols looking for violations and DUIs; these patrols do not have to answer routine calls for service. Three to four checkpoints a year, which are conducted around holidays, are heavily publicized to inform the public the police are watching for DUIs. The publicity is the intent, rather than actually arresting large numbers of DUI offenders.

The patrol division using marked police cars make the majority of DUI arrests. Officers in the traffic division normally handle the "DUI directed patrols." There is one officer per vehicle. They drive unmarked cars because of their normal traffic functions during the day to catch speeders, but this reportedly is not an advantage in apprehending DUI suspects, because the average DUI offender does not realize if "you have blue lights on the top or not." Many times officers are forced to use a siren to get the attention of a DUI suspect.

Moving surveillance is usually conducted because following a DUI suspect gives an officer time to build a case by observing detection cues ("straddling the center lane, weaving within a lane is a good indicator, hugging the left or right side of the lane as if using the lane marker to judge where they are going," invariably crossing the lane marker at some points). Reportedly, younger, more inexperienced drivers will go faster and drive more recklessly (e.g., squealing tires going around a corner or rolling through a stop sign) and older persons will be slower and more deliberate in their actions ("they know they have to go home and are going to take it easy to make

sure they get there and don't end up in the ditches," possibly driving 5-10 miles under the speed limit).

The traffic officers respond to all serious injury and fatal crashes. When responding to a crash scene, the officers will ask the EMTs or others already at the scene if there were any signs of alcohol involvement. The officers will also interview witnesses or passengers and observe the scene for open containers, etc. Unfortunately, there is usually no driving case, only the results of the driving. There might be an issue of whether the person can even be placed behind the wheel. Once it has been determined alcohol was involved, the driver or witness would be asked if the person was the driver, the only occupant in the vehicle or if there were others, etc., to try and establish that the person was driving the car at the time of the crash. The officer must also determine that the person has not had anything after the crash that added to the blood alcohol level.

The Sarasota Police Department has a policy which generally allows pursuits. The officers must call in the reason for the pursuit, location, and description of the vehicle on the radio. At that time, the supervisor will ask the pursuing officers any additional necessary questions (e.g., speeds being traveled, how the suspect is driving and if suspect is dangerously weaving, traffic conditions or road conditions), and the supervisor can terminate the pursuit at any time. Communications makes sure everything is being recorded. The supervisor must complete a use-of-force form which is the same form used if physical force was used to arrest someone. The form and tape and any other evidence go before a use-of-force board, and a determination is made whether use of force was justified.

At the time of the contact, Sarasota was in the middle of a DUI enforcement grant and had five video cameras which had been in use for about six months. Every traffic stop, including DUI stops, are now taped, because when the blue lights are turned on, the camera is automatically activated. The officer we contacted had made 5-6 DUI arrests since getting the video camera and only had the opportunity to turn the camera on one time (before the blue lights were activated) to tape the person's driving before the stop. He also does not want to turn the camera on often when following someone who might be a DUI because it wastes tape if the person does not display further cues. More important, it might give the defense in a DUI case a reason to argue probable cause, for example, by showing that the officer followed 18 cars before finally getting the defense attorney's client.

*Field Investigation.* The officer asks to see the individual's driver license, registration and insurance and might ask the person his or her destination. If an odor of alcohol is detected, especially coupled with other cues (e.g., bloodshot watery eyes, slurred speech, dilated pupils, flushed face), the officer will not ask if the person has been drinking, but rather, "how much have you had to drink tonight?"

## SUMMARY OF TELEPHONE DISCUSSIONS

Reportedly, the typical answer will be "a couple." During this time the officer is making observations such as: did the individual retrieve the vehicle registration easily, or fumble while searching for the license, how many times did he or she pass over the driver license before pulling it out? The police do not use passive sensors; passive sensors are not allowed in the state of Florida. (This may change under a pending DUI law, but details were not available at the time of the contact.) At one time, a pre-arrest breath test was allowed, but habitual or repeat offenders knew about it and would request it to stall for time, because the results were not admissible. The jury could not even be told that the individual had been given a pre-arrest breath test. It was more of a hindrance to law enforcement than a help.

The video cameras are used to tape the field sobriety tests. A backup patrol unit will be called if one has not already arrived and the backup officer will operate the camera to insure the tests are conducted within the field of vision of the camera and the audio is clear. However, another officer is not required to be on the scene.

Officers request that suspects perform five field sobriety tests. The field sobriety tests used are the balance test, alphabet test or counting test, heel to toe walking test sometimes while counting, finger to nose test, the one-legged stand, and gaze nystagmus. The horizontal gaze nystagmus is used because, although it is not admissible in court, many officers believe it is the true indicator of DUI and the person we contacted has been using it since 1984. The finger to nose test version used involves pointing straight forward and with the tip of the index finger, touching the tip of the nose, and then out to the side and touch index finger to nose. It is noted not only how well the person performed the tests but how well he or she was able to follow the instructions. Points are taken off for making mistakes performing the field sobriety tests and for failure to successfully complete each test. Often the tests will be demonstrated by the police officer so there is no question as to the instructions.

*Arrest and Transport Violator.* The suspect is arrested at the scene (but not Mirandized at this point), handcuffed and transported in a marked patrol car with a cage to central booking at the jail. The officer asks the person if an officer should legally park the car, have it towed, or call a friend or relative to come in a short period of time (5-10 minutes) and get the vehicle. The person must sign a waiver agreeing to one of those options. The arresting officer typically stays with the suspect's vehicle until it is secure, while the back-up unit transports the suspect. After the vehicle is secure, the arresting officer proceeds to the jail.

*Post Arrest Investigation and Processing.* The breath testing machines are at the jail. There are breath testing technicians at the police department and, if available, one will meet them at the jail; otherwise, many of the jail personnel, such as detention officers, are trained as breath test operators. The suspect will be turned over to a detention officer, but the arresting officer will stay through the booking process. The

officer will stay and observe the person for a 20 minute waiting period to see if the person put something in their mouth, drank water, belched or vomited. If any of those things occur, the 20 minute waiting period is started again. If, however, the person is a repeat offender and knows this, as a recent arrestee did and used the waiting period by belching every time at 19 minutes to start the waiting period again, the officer will inform the individual that a refusal to take the test will be recorded. During the waiting period, the jail personnel collect the personal property, the officer gets employment information, physical information and everything that is needed to prove probable cause and possibly completes the paperwork. The breath test is not video taped or audio taped. Individuals are finger printed and photographed.

The arresting officer reads an implied consent warning, which is included on a standard form included with the DUI paperwork. The test is explained to the individual who refused who is then told the driver's license is suspended for one year for refusing the test on the first offense and 18 months on the second offense. The suspect is told that a refusal can be used against him/her in court; the person is asked if he or she understands what has just been explained. The person is then asked to sign either yes (will take the test) or no (refusal), and the form is included in the case paperwork. If the person takes the test, the breath test results and paperwork are included with the arrest paperwork. An alcohol influence report is then completed which includes detection cues, field sobriety test information, suspect's manner of speech, and what the person was wearing. Defense attorneys will sometimes ask questions in court on the last two items to test the officer's memory and observation skills.

There is an 8 hour hold policy on DUI arrestees. In most cases, the person will not be released unless there is someone to come and pick them up.

*Arrest and Processing Time.* It will take the average officer a minimum of two hours (and up to three hours) to process a DUI and be back out on the streets. Traffic officers can typically process in 1 ½ to 2 hours, but it takes other officers longer. The regular officers might not have all of the necessary paperwork. The traffic officers carry manila envelopes with one of each kind of form that could be needed to process a DUI.

*Prosecution Support.* Cases go to court within 3 months. DUI cases do not go to trial often, usually only when the person might face jail time (e.g., a repeat offender, or an injury or fatal crash), or when there is a "low blow" (BAC = 0.08-0.10).

There are administrative hearings for driver licenses or depositions or trials. An attorney can no longer get a deposition unless jail time is being requested or special circumstances exist. Arresting officers used to give depositions on almost all DUI cases; the person contacted made 63 DUI arrests in one year, and he thinks at least

### *SUMMARY OF TELEPHONE DISCUSSIONS*

50 went to deposition. That was because an attorney could look at the evidence and then decide whether to defend it further, or tell their client to forget it. Now, there is a DUI suspension hearing which is administered by the Florida driver's license people in Bradenton. The hearing officer will listen to the probable cause, will listen to all of the witnesses, and will ask questions. If the hearing officer deems that there is probable cause for the DUI, the suspension will stand. At these hearings, the attorneys now get a "free deposition," because they can ask the officer any related questions. One attorney tells the officers that every DUI case he defends, he will take to administrative hearing even though he knows he will not get the driver's license reinstated, because by going to the hearing, he will find out everything the state has on the defendant.

There is a *live file policy* which means every DUI case goes to the state attorney's office and charges are filed, whereas on other misdemeanor charges, the officer goes to a pre-filing interview and presents the evidence and the state's attorney then decides whether to proceed. Many times the officer will not see the state attorney until trial time. If the officer gets a trial subpoena, sometimes a good state attorney or a new state attorney will call the officer before and ask to set up a pre-trial interview to prepare for the trial. They will go over all of the paperwork and what the officer's testimony will be. Before, when formal depositions were usually given, everything was transcribed and the officer had to adhere exactly to the deposition. Our contact person believes it is beneficial to no longer have formal depositions as often for attorneys to argue.

*Handling Juvenile Cases.* Juveniles are processed the same, except there is a juvenile referral form instead of a probable cause form. For DUI, juveniles are handled through the adult court system (county court), whereas for any other offense, they would go to juvenile court. Juveniles are supposed to face the same penalties for DUI as adults, but in reality they do not usually receive the same penalties as adults. Juveniles cannot be detained more than six hours, and they are typically released as soon as possible to a parent or responsible adult.

*Comments.* The person contacted is attempting to set up a DUI tracking system in Sarasota, Florida. The purpose is to provide meaningful data on DUI arrests, test refusal rates, and outcome of the cases. Most police officers do not have closure on their arrests. Sarasota is small enough, that if officers know an individual has a license suspension for a DUI arrest, they could pull the individual over if they see that person driving. Also, the hope is to track officers' DUI arrest and conviction rates to help point out training needs. The individual contacted believes more training is necessary for officers to detect and process DUI offenders.

## MIRAMAR, FLORIDA

*Department Size.* 111 police officers, with a budget for 119.

*State Laws.* BAC limits are 0.08 in Florida. There is an 0.02 law for persons under the age of 21. If someone under 21 is stopped for any reason, and the officer smells alcohol on the person's breath, the officer does not need probable cause for DUI at that point to request a breath test. If the person does not give a breath test, he/she will be given a citation and will lose his/her license for a period of one year. If the person takes the test and blows a 0.02-0.08, the result is loss of license for six months.

*Training.* General patrol officers are trained in DUI detection (driving patterns to look for) and there is heavy emphasis on DUI apprehension, although a lot of the officers, if they believe they have a DUI suspect, will call for a specially trained DUI officer (any of the traffic officers) to conduct field sobriety tests after the stop and make an arrest if necessary. This has improved the department's prosecution rate. The traffic officers are highly trained and can close loopholes in suppression hearings better than other officers. The overall police department DUI arrest rate has increased; although DUI arrest rates for most officers have decreased, those made by traffic officers have increased. General patrol officers, not just in the traffic division, who have shown a strong interest in apprehending DUI suspects and who had the best rates for stopping and/or arresting DUI suspects, are sent to an advanced training course.

*Enforcement and Apprehension.* Every other month DUI checkpoints are conducted in Miramar as a joint effort with other police agencies in the area. Multi-agency checkpoints are conducted because of the personnel needed. The officers from Miramar, in turn, travel to other areas to assist with checkpoints. They usually participate in two checkpoints a month. They have received a startup grant for DUI enforcement from the state of Florida to help focus DUI enforcement and consequently have become more aggressive with DUI enforcement.

The Miramar police and members of the state attorney's office sat down and planned the checkpoints before any were held so that the procedures would hold up in court. The sheriff's office and other police agencies in south Florida conduct roadway interviews where traffic is funneled down into one lane and an officer greets and talks with drivers, directing those suspected of being under the influence into a separate area to other waiting officers. The problem with this procedure is that if hundreds of cars passed through the checkpoint, and an officer stopped every third vehicle, that officer spoke with a lot of drivers and it is hard in court to say exactly why impairment was suspected. The agencies often do wire the officers to record the reasons, but it is still difficult and they often lose suppression hearings. In Miramar,

### *SUMMARY OF TELEPHONE DISCUSSIONS*

the procedure requires more officers to allow for three areas of traffic flow. An officer flags every third or random number vehicle into the area of traffic flow where officers are waiting. These drivers will be interviewed, whether impaired or not. The same officer that suspects a driver of DUI stays with the individual through the entire procedure. This way one officer has first-hand, first-sight knowledge of impairment. They have not lost a suppression hearing in the year since this procedure has been followed.

DUI enforcement officers are given alcohol related crash rates by area so they know what areas to patrol more heavily. There are two full-time DUI enforcement officers who only do DUI enforcement. Their schedules are adjusted to cover peak crash times so they can patrol to stop DUI suspects and cover any crashes which may occur. In addition, the Traffic Unit (budgeted for seven officers and one sergeant, currently operating with six officers and one sergeant) has either a monthly "blitz" or a checkpoint. As an example, on Memorial Day Weekend, the traffic division ran a two day blitz, "wolfpacking" for two nights where roving patrols were used. Officers also address enforcement problems they may be having during part of the night. Marked patrol cars, motorcycles and special units (Chrysler Intrepids with no roof lights mounted, only police markings on the sides of the vehicles and equipped with video cameras) are used in DUI enforcement. There is typically one officer per vehicle, and both moving and stationary surveillance are used for DUI detection.

Officers responding to crash scenes are trained to look for signs of alcohol involvement (staggering, odor of alcohol, disheveled clothing, driving patterns). A DUI arrest where a crash has occurred is reportedly very complicated in Florida for police officers to investigate (a lot of paperwork, etc.) which is made easier by calling a special DUI officer to the scene. There is no intimidation factor for general patrol officers because they know they can just call a DUI officer to handle the case. At either a crash scene or a typical DUI stop, the first officer there would remain even after a traffic officer has arrived to take over any testing and subsequent arrests. The first officer would secure the scene and would witness the field sobriety tests, etc.

The Miramar Police Department has a pursuit policy which states they can only chase violent felons and does not make an exception for DUI; officers basically cannot pursue DUIs. The officers videotape as much as possible of the DUI suspect's driving pattern and the stop. Or if an officer has stopped an individual for a standard traffic violation (such as running a red light) and then, after approaching the vehicle, the officer suspects alcohol involvement, the audio and video would be started at that point. Field sobriety tests are usually taped.

*Field Investigation.* When the officer suspects DUI, he or she begins building the case immediately. The officer asks the individual for a driver's license and will ask

the individual to step out of the car for voluntary roadside testing. Miramar officers conduct standardized field sobriety testing (one-leg stand, heel to toe walk and HGN). They do not have passive sensors or PBTs; Florida does not accept these devices as evidentiary proof of impairment. The officer contacted is afraid that if someone is suspected of consuming alcohol and is given a preliminary breath test and blows 0.08 or higher, that person will refuse the evidentiary breath test. While some police agencies in Florida use preliminary breath tests, Miramar at this point does not. If they suspect someone is over the legal limit, the person is asked to submit to the evidentiary breath test and if they blow a 0.08 or higher, the officers have definite proof which will hold up in court.

*Arrest and Transport Violator.* The suspect is arrested at the scene, handcuffed, and taken to an alcohol testing facility which may be at the central station, at a satellite facility (these are located throughout the county), or a mobile van. The vans park in areas of the county where the workload is and others are at various police stations. Suspects' vehicles are towed to a central pound. At checkpoints, there is a "paddy wagon" at the scene for individuals charged with DUI.

*Post Arrest Investigation and Processing.* If the officer does not have video capabilities in the patrol unit, the suspect would be brought to a facility, breath tested, and then videotaped while completing the field sobriety tests (the officer would probably have had the individual do field sobriety at the scene also).

For checkpoints, a mobile BAT van is there to provide breath testing capabilities. The field sobriety tests are videotaped.

Individuals arrested for DUI are taken to the central facility where there is an 8 hour hold policy or until the person's BAC is down to 0.02. But generally everyone is just held 8 hours so retesting would not be required. If someone has a high BAC (the officer thought 0.26 or 0.28), that person must be taken to a hospital for medical clearance.

*Arrest and Processing Time.* Dedicated DUI officers can do the necessary paperwork and process a typical DUI suspect in 90 minutes, but can be back out in as little as 45 minutes if necessary. This would mean conducting field sobriety tests, making the arrest and getting the suspect to a BAT van. The officers do not hand write reports; they audio tape the reports and turn in the tapes for transcriptions which they later proof and sign. The officers can audio tape their reports while back out on patrol or while *en route* to another scene.

*Prosecution Support.* Cases go to court as specified by a preset schedule for "regular misdemeanors" (which includes DUIs) as set by the county.



### *SUMMARY OF TELEPHONE DISCUSSIONS*

Because license suspensions are automatic, most cases reportedly go to a driver license hearing before a magistrate or a hearing officer (not necessarily an attorney). There are no rules for evidence, so any question can be asked, and the officers must mandatorily go to these hearings (each one taking close to an hour of the officer's time). It was described as almost giving a deposition. Dedicated DUI officers can spend 2-3 days a month at these hearings because of the large number of arrests they make. The officer contacted believes defense attorneys use these hearings to find out if they can fight the charges for their clients or if they should advise the clients to plead guilty.

Also, for every checkpoint, officers usually end up reporting to at least one suppression hearing. (Once one suppression hearing has been lost on one defendant, the others will typically plead guilty.) The few he has seen go to trial "get hammered."

For the few cases that proceed to trial, it could take a day of the officers' time who were involved in the case. Officers are asked about their training, if they actually saw the person (probable cause), how many DUI arrests they have made. The initial officer is called (what patterns were observed, why the stop was made), the arresting officer and breath testing officer (if a different person). Initially, the officers who made the stops and then called in dedicated DUI officers were asked why they had not made the arrests, meaning because they were not certain the suspect was impaired. That line of questioning ceased when it was made clear that the officers called in the dedicated officers to give the person arrested the benefit of the doubt ("yes, I thought he might be impaired, but I called in a special, experienced officer to make the call"). The dedicated officers wear different uniforms in court which sets them aside from regular officers; this is to impress upon the jury that these are highly trained, specialized officers in the DUI field. All of the traffic officers have been brought up through accident reconstruction and homicide investigation school (each of which are several months of training), as well as DUI detection, so these officers are highly trained and this helps their testimony hold up in court.

*Handling Juvenile Cases.* Juveniles are handled the same except they are taken to a juvenile facility. There is a difference in some of the forms completed by the officers. Florida's 0.02 bill for juveniles goes into effect in January (1997); there will be administrative hearings for impairment for levels 0.02-0.08. As stated before, while some police agencies in Florida use preliminary breath tests, Miramar at this point does not. The officer contacted is afraid that if someone is suspected of consuming alcohol and is given a preliminary breath test and blows 0.08 or higher, that person will refuse the evidentiary breath test.

*Comments.* For every checkpoint held, an invitation is extended to the state attorney's office to observe and reportedly someone from that office always attends.

**PROBLEMS AND SOLUTIONS IN DWI ENFORCEMENT SYSTEMS**

This helps the attorneys understand what the police officers are doing. (Also see checkpoint procedures under the *Enforcement and Apprehension* section above.)

Our contact believes if there is one problem with the system, it is that DUI offenders do not receive enough jail time. If they got 30 days for the first offense without appeals, plea bargaining, etc., he believes there would be fewer drunk drivers.

Miramar officers have worked very closely with MADD (one traffic officer was the President of the local MADD chapter for the last year), and the MADD organization has aggressively assisted the Miramar police. At the checkpoints, neighborhood citizen groups attend and observe from lawn chairs, cheering when officers make an arrest. They provide moral support for the officers and often provide snacks and sodas, too. The Miramar officers have a good reputation in the community for their DUI enforcement.

## SUMMARY OF TELEPHONE DISCUSSIONS

### DECATUR, ILLINOIS

*Department Size.* There are 155 officers in the Decatur Police Department.

*State Laws.* Illinois has a zero tolerance law for persons under 21 years of age. Any alcohol at all is cause for license suspension (no arrest unless over 0.10). The law is the same for DUI for juveniles and adults ( $\geq 0.10$ ). It is presumed individuals are intoxicated at or above 0.10, at 0.05 to 0.10 there is no presumption, but a case can be built on other factors such as field sobriety tests and probable cause. Under 0.05, it is presumed that the person is not intoxicated. (NOTE: These state laws were in effect at the time of the contact; at the time this report was written, the BAC level for DUI in Illinois was  $\geq 0.08$ .)

*Training.* Detection cues include driving with lights off, weaving, speeding, driving too slowly. Cues do not vary based on vehicle or occupant. There is not a department policy to look for signs of alcohol involvement when responding to a crash scene, unless the situation suggests alcohol might be involved, and this decision is generally left to the individual officers. (If person is glassy eyed, has slurred speech, etc. which does not appear to be injury related...smell of alcohol.) Nearly all Decatur police officers are trained in horizontal gaze nystagmus.

There is no set policy, but typically in a driver fatality crash, BAC is obtained for the victim if the situation suggests alcohol might have played a role (e.g., not in a family crash with victims going to church Sunday morning, but in a single vehicle, high speed crash late Saturday night).

*Enforcement and Apprehension.* Regular marked police vehicles are used in anti-DUI enforcement. Any Decatur police officer would be watching for intoxicated drivers. Officers must have probable cause to stop a vehicle: speeding, improper lane usage, equipment violation (even no license plate light). They use checkpoints (called roadside safety checks) three times a year, saturation patrols and general patrols. One dedicated DUI officer is on roving patrol for six hours every Friday and Saturday night, supported by a grant from the Illinois Department of Transportation. The person we contacted believes the public is *not* aware of the roving patrol and one of his goals is to create public awareness.

One patrol car has a video camera mounted with a set view out of the front windshield of the patrol car. Decatur's "best DUI officer uses it faithfully," but *all* DUI stops are not taped. They originally started taping the conversation, but a constitutional question came up and the issue has not been resolved. He thinks the audio may have to be thrown out in some of their cases.

The Decatur police have a written pursuit policy which, summarized, says if the risk of the pursuit outweighs the necessity of making the stop, the officers do not pursue. They do gather information from the time the officer decides to make a stop, right now by radio and soon they will have computers in the cars. If a pursuit is necessary, the officer is usually already in contact with central headquarters. Departmental policy requires the officer to relay the charge against the person being pursued, and the speed of the vehicle. A command officer would be listening.

Typically, officers do not think about DUI as a possibility unless alcohol containers are being tossed out of the car, or a driver does not appear to be in control of the car, possibly evidenced by weaving or very slow driving.

*Field Investigation.* Officers always ask for a driver's license and proof of insurance first. The officer starts building on probable cause for an arrest (e.g., glassy eyes; slurred speech; fumbling for license, can't find the license; smell of alcoholic beverage on the breath, etc.). Next, the person would probably be asked to step out of the vehicle to a safe area. A backup unit would have been called by this time as protection for the first officer and to provide a witness to the field sobriety tests. Choice of those tests are at the discretion of the officer. Typically, the officer might ask the person to walk heel to toe, stand on one foot, count to some number, finger to nose test. The officer would normally select three tests unless conducting the tests would endanger the person. The field sobriety tests are not videotaped unless they happen to be performed within the field of vision of the permanently mounted unit on the patrol car. They have PBTs. The suspect is advised of the implied consent law and told they have to take a test. (PBT results are not admissible in court.)

The decision to interview witnesses, passengers, etc. is usually left up to the arresting officer; there is no formal policy.

*Arrest and Transport Violator.* The individual is arrested at the scene and is Miranda-ized. Department policy is to handcuff every violator who has been arrested and transport the individual in a patrol car. Typically the violator is transported in the backup unit which would have a cage. Usually the traffic car makes the DUI stops and the traffic car does not have a cage. There is a paddy wagon which is usually used only on weekends. Officers have used the paddy wagon at the roadside safety check, but usually transport each person arrested individually back to the central station with another squad car following.

*Post Arrest Investigation and Processing.* The units return to the central station and drive into a salleyport, which is an enclosed area the squad cars pull into and overhead doors come down to secure the area. This is to provide officer safety and so the suspect does not escape. The officers then place their weapons in a lock box and then remove the individual from the car and proceed to the pre-book area with

## SUMMARY OF TELEPHONE DISCUSSIONS

sliding heavy metal doors operated automatically from inside the central station. They proceed to the DUI testing room. Most of the officers are trained as BAC operators. The arresting officer becomes the camera operator. All individuals being tested in the DUI room are videotaped (sight and sound). The backup officer normally does the testing. Another set of sobriety tests are given (not always the same ones as at the scene). Then the suspect is asked for a breath sample. The offenders are advised of the implied consent law and told they have to take a test (they already have been admonished at the scene) or forfeit their license by suspension. The officer contacted thinks "more often than not the person will test, but there is also a high percentage who will not test." The post arrest investigation and processing policies and procedures do not vary by surveillance strategy.

In Decatur, the Decatur police and the county sheriff use the same jail facility and it is the sheriff who decides jail policy. However, they do not release the person's car for six hours after the arrest. Unless the individual is arrested in his/her driveway, or there is someone sober in the car that can drive it, the car is towed by a private vendor for the police department.

*Arrest and Processing Time.* There is much paper work to complete for a DUI arrest. It takes a lot of time and takes the officer off the street. The officer contacted thinks the DUI laws need to be simplified so that such an outrageous amount of time is not taken in processing suspects. Defense attorneys often don't try to prove the person was not intoxicated, but that the police did not follow all of the rules and "there are many rules" so it is easy to make a mistake. It was estimated that there are "about four hours of red tape." This consists mostly of paperwork and reports because they do not like to lose DUI arrests.

*Prosecution Support.* Court dates are typically 30 days from date of arrest. Officers do talk with prosecutors prior to trial. Officers must attend trials to determine probable cause for the stop and evidence that the person was intoxicated (arresting and testing officers). The testing officer must certify he or she is a qualified breath testing operator. Because proceedings in the DUI room are videotaped, many times the cases are plea bargained by "an aggressive" state's attorney. The officer thinks "there are probably not 5% of people arrested for drunk driving who have a trial." Officers rarely testify at administrative hearings.

*Handling Juvenile Cases.* Juveniles in Illinois cannot be held with adult offenders.

*Charging Process.* Decatur does not have pretrial diversion. The arresting officer forwards the reports to the Traffic Prosecutor's office. The person appears in court about 30 days later. The only time a DUI charge is reduced (usually to reckless driving) is when a BAC is below the legal limit, usually 0.07 - 0.09. The charge won't be reduced if the person has a prior DUI or if there was a crash. When

individuals are arrested and take the breath test, the prosecutor we contacted estimated 90-95% blow 0.10 or higher. She thought it was "pretty rare" when someone is arrested and blows below the legal limit.

She thinks that the videotape made in the DUI room at the central law enforcement facility (which includes field sobriety tests and the breath test) and the fact that usually two officers have witnessed and can testify that the person arrested for DUI was intoxicated builds strong cases. She cannot recall any time that the police officers have not provided the necessary reports or videotape to support a case and believes they are very well trained.

To check records for prior offenses, the prosecutor's office orders the driving abstract immediately upon receiving the report for an individual charged with DUI. They also run a records check in the county to see if there are prior records and request a driving abstract through the Secretary of State's office. If there is a reference to another state in the police reports, such as the person had a driver's license in another state or had resided in another state, then the prosecutor's office will run a criminal history on the person to make certain the person did not have any prior "supervisions or arrests for DUI."

*Arraignment.* There are nine judges and one of the judges is assigned to traffic court. Every morning at 8:30 there is arraignment court for traffic violations. The DUI offenders are arraigned along with other traffic tickets. The traffic court judge will handle all aspects of a DUI case including petition to rescind, etc., except if it goes to trial. Then any judge might handle the case.

*Trial.* The only time the arresting officer is present is when subpoenaed by the prosecutor's office and that would only be for a bench trial, a jury trial, or if there has been a petition to rescind filed and the prosecutor needs the officer present. The prosecutor we contacted said a very small percentage of people charged with DUI go to trial. She thinks a lot of it has to do with the DUI room videotapes. The person knows if the case goes to trial, the videotape will be shown. She thinks less than 10% go to trial. The cases which go to trial are typically repeat offenders who are afraid if they lose the case, they will lose their license (which is usually the situation).

*Appeal.* For an appeal, defendants must file a motion with the court that heard the trial, up to the appellate court, then up to the supreme court. The prosecutor could not think of any typical issue which would be used as grounds for appeal. She has heard about double jeopardy in other states (when person refuses to take breath test and the license is suspended for that statutory summary suspension, then prosecuting the person in the court system for the DUI is double jeopardy). That has gone on appeal a couple of times in Decatur, but the appellate court has held that it is not double jeopardy.

### *SUMMARY OF TELEPHONE DISCUSSIONS*

*Admin Per Se.* If person blows 0.10 or higher, the license is suspended for three months; a refusal is 6 months. If a repeat offender takes the breath test and blows over the legal limit, the license is suspended for one year; if a repeat offender refuses the test, the license is suspended for two years. No hearing is required. The only court procedure is the person can try to get a judicial driving permit from the judge to drive during that time. The only other hearing is a petition to rescind, and there are only a few allegations the person can bring up to try to get rid of a suspension (e.g., the officer did not have reasonable grounds to believe the person was under the influence, the person was not placed under arrest for the charge of DUI, was not properly warned, or for some reason the person said he or she did not refuse to submit - the last one she has never seen brought up). She said the petition to rescind happens rarely anyway. Reportedly, in her county the officers do a "real good job" and there really aren't too many issues to try and fight. Once a petition to rescind has been filed, it needs to be heard within 30 days.

The prosecutor questions police officers in court about their qualifications, ascertaining that they have been trained at the academy when they became police officers. There is follow-up training down the road, depending upon how long they have been police officers. She thinks the police in her county do an "exceptional" job handling DUI cases.

*Comments.* "The first DUI laws were so complex that cops, even those with training, stopped making drunk driving arrests." There was so much red tape that it was easy for a lawyer to get the case thrown out. They have relaxed some, but "it seems like the pendulum is swinging back toward" making it impossible to charge the person with DUI; police don't even get far enough to have to prove the person was drunk. If the lawyer can find one little place "where the officer did not go by all the rules, and there are a lot of them," then the case is thrown out.

## NORMAL, ILLINOIS

*Department Size.* 57 sworn officers with a couple in the training academy (authorized for 60). The Normal Police Department does not have a traffic unit.

*State Laws.* Illinois has a zero tolerance law for persons under 21 years of age. Any alcohol at all is cause for license suspension (no arrest unless over 0.10). The law is the same for DUI for juveniles and adults ( $\geq 0.10$ ). It is presumed individuals are intoxicated at or above 0.10, at 0.05 to 0.10 there is no presumption, but a case can be built on other factors such as field sobriety tests and probable cause. Under 0.05, it is presumed that the person is not intoxicated. (NOTE: These state laws were in effect at the time of the contact, at the time this report was written, the BAC level for DUI in Illinois was  $\geq 0.08$ .)

*Training.* Officers are trained to look for detection clues including the following: improper lane usage, speeding, driving with bright lights on, or stopping too far into an intersection instead of behind a stop sign. They have not found that certain detection cues are more prevalent in certain drivers. After stopping a DUI suspect, officers are trained to observe DUI detection cues such as slurred speech ("mush mouth"), glassy eyes, inability to understand questions or follow directions, odor of alcohol, or open containers. Officers do look for signs of alcohol involvement at crash scenes.

Police in Normal have video cameras in the patrol vehicles but they are not always used; "there are probably only a couple of officers who do it." Fortunately, in their county, officers do not have a difficult time getting DUI convictions. If officers write good reports and do their jobs right, they don't have a lot of problems. If they were losing a lot of DUI cases, the officer contacted believes the video cameras would be used more frequently. He used the video cameras a lot on night shift, but none of his tapes were ever played in court.

*Enforcement and Apprehension.* The officer coordinating the local alcohol program reports operating funds are received from NHTSA and the Illinois Department of Transportation (IDOT). There is one officer on general DUI patrol on Wednesday, Thursday, Friday and Saturday nights. Both stationary and moving surveillance are used. They use more officers on holidays. The general patrol officers are busy enough that when they get a DUI suspect, they will call for a "DUI car" to come over, if one is available, and have that officer do the field sobriety tests and make any arrests. There is normally one police officer in a marked patrol car; the department does not have motorcycles. The Normal Police Department conducts a minimum of two roadside safety checks each year. They occasionally conduct saturation patrols, but this form of surveillance is used "least of all."



## SUMMARY OF TELEPHONE DISCUSSIONS

There is a pursuit policy which covers emergency driving in general and that includes DUI pursuits. The Normal Police Department and all of their policies have been nationally accredited. In addition to the pursuit policy, there is also a DUI Countermeasures directive. If an officer was pursuing a DUI suspect and speeding ensued and they were in a downtown location with traffic (where there would be a greater chance of a crash resulting in injury or death), the officer would probably stop the pursuit.

*Field Investigation.* From the time an officer observes a DUI suspect (before the stop and after) everything that the officer observes helps him or her form an opinion as to if the driver is under the influence. Every stop is different, but all of the little components add up to either arresting the driver or letting the driver go. Sometimes the driver does not understand the officer's questions or responds inappropriately. (An example given was when asked for a driver's license, the driver produces a credit card.) As soon as an officer decides to have the person exit the vehicle, the officer calls for a backup unit. It is not dictated by policy that the first officer has to wait for backup to arrive before proceeding; sometimes they wait, sometimes they do not, often depending upon how close the backup unit is to the scene.

Officers are provided with training to conduct field sobriety tests. The standard tests used are the alphabet test, the horizontal gaze nystagmus, the one-leg stand, the walk and turn, and the finger to nose test. The officer contacted always conducts them in the same order, but this may not be true of other officers because there is nothing that dictates a testing order. Field sobriety tests are sometimes videotaped "but no more than anything else." PBTs are available to the officers, but again, these are not widely used.

*Arrest and Transport Violator.* Arrest procedures vary from case to case, but generally the person is handcuffed, arrested at the scene, and transported to the county jail where the paperwork is done. If there are traffic charges or criminal charges, typically the person is arrested at the scene, transported back to the jail and asked to perform field sobriety tests there instead of at the scene. The room at the jail is safer, well lit, with level floors to conduct the tests. Arrested individuals are transported in the patrol car of the arresting officer to the county jail. These procedures typically do not vary for different surveillance and detection strategies. For example, at a checkpoint, the officer who suspects an individual of DUI will direct the car off to the side, administer field sobriety tests, and if the officer arrests the driver, the officer will take a patrol car from a pool of patrol cars at the checkpoint and transport the individual to the jail. Witnesses and passengers are sometimes interviewed (usually a cursory interview).

*Post Arrest Investigation and Processing.* At the jail, officers complete the necessary paperwork (warning the motorist form, summary license suspension, traffic tickets,

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alcohol influence report, breath test paperwork) and then turn the individual over to jail personnel who take care of booking procedures and processing. Usually the arresting officer conducts the breath test, if the officer is certified; if not, usually another certified officer from the Normal Police Department. Sometimes if a state trooper is there and is certified, the trooper will handle the breath test, just as Normal certified officers assist non-certified troopers at times.

Once DUI suspects have been processed, if they can make bond, they are released on bond. Vehicles, however, are impounded for six hours.

*Arrest and Processing Time.* An average of two and one-half to three hours of an officer's time are necessary to process a DUI suspect.

*Prosecution Support.* Most individuals plead guilty and the cases do not go to trial. A very small percentage of DUI cases go to trial; the officer we spoke with has only had three cases in five years go to trial. Court dates are set 14-45 days from date of arrest. DUI cases must appear on Tuesdays at 1:30 p.m. If a case does go to trial, officers will meet with prosecutors before the trial "on a good day" but prosecutors are very busy and sometimes this does not happen. Sometimes officers have a minute or two before the trial with the prosecutor and sometimes they will have 30 minutes.

At trial, officers are usually questioned on technical issues. Typically a case will not go to trial unless they have found a "fatal flaw." (Example given was the officer did not read the warning to the motorist before the breath test. Occasionally, passengers in the car will testify that the driver passed all of the field sobriety tests in their opinion. But usually there are technical reasons why a case goes to trial in Normal.)

The arresting officer would be called to testify at a trial, sometimes the breath test operator if this was a different officer, and backup officers. All officers whose names appear in the report are typically subpoenaed, but they are not always asked to come in and testify. Usually trials require about 2 hours of an officer's time.

Officers are required to testify at administrative hearings (called a petition to rescind) and this happens more often than trials. The officer contacted estimates 5% of DUI arrests result in the arresting officer being called to an administrative hearing.

*Handling Juvenile Cases.* Juveniles in Illinois cannot be held with adult offenders. Juveniles are either processed at the police station or at the sheriff's desk as opposed to the county jail. Normal has centralized booking at the County Jail and there is a DUI processing room there. Parents or guardians of juvenile DUI suspects are contacted; when they appear at the station the juvenile is released to their custody. The vehicle is still towed and impounded for six hours (this is state law).

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*Comments.* Officers believe there is too much paperwork involved in the process. For example, after completing an alcohol influence report, officers are asked to summarize the report so others do not have to read it. This report contains the results of the field sobriety tests which are also included in the arrest report. "Everyone is battling for their own time" but no one is concerned that it takes officers three hours to do the paperwork and get back out on the street. The process should be shortened and streamlined.

## WAUKEGAN, ILLINOIS

*Department Size.* 140 officers at the time of the contact.

*State Laws.* Illinois has a zero tolerance law for persons under 21 years of age. Any alcohol at all is cause for license suspension (no arrest unless over 0.10). The law is the same for DUI for juveniles and adults ( $\geq 0.10$ ). It is presumed individuals are intoxicated at or above 0.10, at 0.05 to 0.10 there is no presumption, but a case can be built on other factors such as field sobriety tests and probable cause. Under 0.05, it is presumed that the person is not intoxicated. (NOTE: These state laws were in effect at the time of the contact; at the time this report was written, the BAC level for DUI in Illinois was  $\geq 0.08$ .)

*Training.* The two officers who work on DUI detection have received special training. Other officers are trained to operate the Breathalyzer and the shift (general patrol) officers also make DUI arrests.

*Enforcement and Apprehension.* Checkpoints are run several times a year, usually around holidays (the latest was on Labor Day when 400 vehicles were processed resulting in 6 DUI arrests, 4 arrests for open container violations, 14 drivers with no insurance, and 12 with no valid driver license). There are 2 officers who work on DUI detection and who are funded by a state grant. "They drive around (separately) and look for DUIs." Marked police units are used for DUI patrolling and typically moving surveillance is utilized with occasional stationary surveillance. Officers watch for detection cues such as sudden braking, swerving, and driving across the center line. Additional detection cues used after the stop are gaze nystagmus and a portable breath tester kit. Reportedly, officers always check for alcohol involvement at a crash scene.

A pursuit is at the discretion of the shift commander who can call off a pursuit anytime deemed necessary. The pursuit of a DUI suspect is handled the same as any other case. A pursuit usually consists of no more than three police units (original unit, one following that unit and a third running along on a side street).

*Field Investigation.* The officers have suspects perform field sobriety at the scene; they follow a sheet of procedures. Suspects are asked to perform the walking test, touch their nose, etc. They have no video or audio tape equipment in the units or at the station.

*Arrest and Transport Violator.* Usually the person is arrested at the scene and there is usually another traffic offense that goes before the DUI charge. The suspect is Miranda-ized but the officer contacted did not know if this happens at the scene or the station. Procedures do not vary much for different surveillance strategies;

## *SUMMARY OF TELEPHONE DISCUSSIONS*

roadblocks require more officers (9-10). But after the routine roadside sobriety tests when there is probable cause, the suspect is brought into the station to blow into the Breathalyzer.

*Post Arrest Investigation and Processing.* Post arrest investigation and processing is done at the station. The suspect is allowed to request a blood or urine test. For a blood test, the individual is taken to a hospital. Individuals with high BAC levels are not released while still intoxicated; for dangerously high BACs, persons are transported to a hospital. On the booking process, officers must fill out an incident report, an arrest report, a motor vehicle report, a supplementary case narrative stating what happened, a property report if any evidence is seized, the warning to motorist, an alcohol influence report (marked if the test is refused), if the Breathalyzer is taken then the breath test operator's form with the printout, plus officers must issue all of the appropriate DUI citations. Sometimes offenders are released to other responsible adults. The suspect's vehicle is sometimes left on the street and is sometimes towed. At times witnesses and other passengers are interviewed.

*Arrest and Processing Time.* An officer spends 2-3 hours from the time a DUI suspect is stopped until the officer is back out on the street.

*Prosecution Support.* Each officer has specific court dates set by the traffic division. Court dates are approximately 30 days from date of arrest. If a DUI case proceeds to trial, the officer(s) typically meets with the prosecutor. On standard DUI cases, the officer(s) usually meets with the prosecutor immediately prior to the trial. At trial, officers are often asked about probable cause, exactly what happened, and then are questioned about the paperwork. Anyone who is on the police report could be subpoenaed to testify (arresting, breath testing, and/or back up officers). Officers sometimes testify at an administrative license hearing which does not take place for most DUI arrests.

*Handling Juvenile Cases.* Juveniles are released to parents, if no parents are available, the officer contacted does not know what happens but does not think for DUI offenses they are taken to the detention center. Juveniles in Illinois cannot be held with adult offenders.

*Comments.* It would be helpful to cut down the processing time on DUI arrests. They have been successful in enforcing anti-DUI laws due to the state grant.

## OLATHE, KANSAS

*Department Size.* 119 officers with a total of 130-140 employees. Olathe does not currently have a traffic division in the police department; everything is run through the patrol division.

*State Laws.* BAC limits are 0.08 in Kansas.

*Training.* All of the Olathe police officers were trained in DUI detection cues through the police academy. Olathe does not currently have a formalized DUI education program; however, there will be one under the grant program. The traffic officers will receive education at a DUI detection program. Hopefully, over the next several years, all of the other officers will also receive the training, even if it has to be through their block training program where officers who attended the formal program train the other officers who did not attend. In Kansas, police officers need 40 hours of training every year to maintain certification. In Olathe, a number of officers are pulled each week over an approximately 6 month period of time, and these officers receive their 40 hours of training in different areas. Typically, the officers will attend two block training programs.

Officers watch for detection cues such as lane straddling or weaving back and forth which would cause officers to suspect DUI, but more importantly, officers look for anything unusual, i.e., there is a clear highway with little traffic, but a vehicle is traveling 10 miles under the speed limit or it stops at stop lights for an excessively long period of time. The officer contacted does not believe the cues vary by age of driver or type of vehicle; however, when their new computer system is in place they will be able to track those types of things. In the 20 years he has been a police officer, he has arrested persons of all ages for DUI, from underage teens to 70 and 80 year old people.

*Enforcement and Apprehension.* Olathe police conduct two checkpoints each year. They do not normally run saturation patrols. They use moving surveillance while on routine patrol as opposed to stationary surveillance. They have identified "3 or 4" hot spots such as popular bars and night spots in Olathe that general patrol officers "keep an eye on," but they do not sit out in the parking lots waiting for people to leave. They currently use only marked patrol cars for DUI enforcement. There is a grant which should soon provide four motorcycles, although it is not clear if these would be used for DUI enforcement, and two officers in one DUI car working a 4-10 shift (four days a week, ten hours a day-from 6 p.m. until 4 a.m. Wednesday through Saturday nights). Currently there are the general patrol officers working individually who enforce DUI laws while on routine patrol.

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When responding to crashes, officers look for signs of alcohol or drug involvement in the driver and passengers: odor of an intoxicant, blood-shot or watery eyes, slurred speech, etc. They do vehicle checks at crash scenes and look for signs of drug or alcohol use (liquor or beer bottles).

Olathe's pursuit policy states that officers should not pursue, unless a felony has been committed (e.g., homicide, kidnaping, robbery). Johnson County has a county pursuit policy, but most agencies have chosen to develop separate pursuit policies. In Olathe, for the safety of the public, if a violent felony has not occurred, then officers will usually not pursue. However, it is the sergeant's discretion, who is acting as the street supervisor at the time, who will advise a unit whether to continue or discontinue a pursuit. If someone suspected of driving under the influence was pursued by police, and the suspect increased vehicle speed to an unsafe level, the officers would typically be told to break off the pursuit.

*Field Investigation.* The Olathe police department does not currently have computers in the patrol cars, but are scheduled to be computerized by 1997; they are currently testing laptops. The first video camera was installed about six months ago, but it will not be used until a formal policy has been approved. As a result of grants, three more cameras are coming on three new traffic cars. In addition, the department does plan on acquiring more cameras. Officers will be encouraged to use the cameras for all traffic stops including DUI.

When about to make any traffic stop, the officer will radio to dispatch that he or she is about to stop a vehicle and relay pertinent information. When approaching the vehicle, the officer will first ask the driver for a driver's license, vehicle registration and insurance card. During that time, the officer will observe if the driver has trouble finding the license and registration (passing over the driver's license repeatedly while looking for it), look for blood-shot, watery eyes, check for odor of intoxicant, etc. Most officers carry a pupil dilation chart. They do not have passive sensors.

If the officer believes the driver may be intoxicated, the driver will be asked to step out of the car to perform field sobriety tests. Officers do not currently follow a standardized set of field sobriety tests. They are working to correct this problem during the training sessions mentioned earlier. Generally, a heel to toe test is done, an alphabet test or counting test (sometimes backwards) is used, and "some type of a standing balance test." Reportedly, many officers have different concepts of the balance test, but generally they use some type of one foot stance with head back and eyes closed; some officers have suspects keep their arms and hands at their sides, others stretched out. Specific instructions are given, the officer will often demonstrate the test, and it is noted if individuals cannot follow the instructions. There are plans to videotape the field sobriety tests; the DUI traffic car will have a video camera.

Olathe currently has alcosensor portable breath testers, as do most communities in Kansas, which may be administered. The readings can be used in court as circumstantial evidence, but the case is based on the BAT readings. There is a traffic citation issued if an individual refuses a PBT. Refusing a PBT is not an "arrestable offense" and is treated as an infraction which results in a fine. This is separate from implied consent (consent to take the evidentiary test at the station) where refusal is a criminal offense, resulting in license suspension for up to one year.

On DUIs or other "suspicious" traffic stops, classified as anything which might be more than a simple traffic ticket such as speeding, dispatch will send a backup unit. If an officer discovers after the stop that the person might be under the influence, the officer will immediately radio for a second unit. The DUI unit which will have two officers will not call for backup. It will also expedite the reporting process which is currently quite lengthy. All intoxicated drivers must also be fingerprinted and photographed. The entire process is reported to be very time consuming.

*Arrest and Transport Violator.* Individuals are arrested for DUI at the scene, frisked, handcuffed and are placed in the back of the patrol car and transported to the police station. Individuals are not Miranda-ized at the scene, but at the station preceding the alcohol influence report when they are questioned as to their activities before the arrest. This follows state statute. If after processing, the person cannot post bond, he or she is transported to the county jail. The police station has a 12 cell holding facility, but prisoners are not housed there.

On general patrol, normally vehicles will be towed unless someone can arrive in a short period of time to remove the vehicle (i.e., 15-20 minutes). The police department will generally not let the individual make the decision to leave the vehicle legally parked at the scene. This is because officers are charging that the person is impaired, but by allowing the person to make a decision, it could be argued as proof the person was not impaired. Plus, the police department would be responsible for the vehicle. Generally the backup officer handles vehicle removal.

*Post Arrest Investigation and Processing.* All of the processing is done at the police station. An arrest report is filled out, a medical screening report (to find out if the person is diabetic, had head injuries, etc.), the person is Miranda-ized, then an alcohol influence report is completed (contains questions pertaining to where the person was prior to the arrest), the person is photographed and finger printed (department policy for any alcohol or drug related crime and state statute for any A or B misdemeanor or felony) and an implied consent checklist is followed (checked off by officers as they proceed through the checklist). All Olathe police officers are trained in the process and all are also certified BAT operators. Previously only Sergeants were certified, until it was discovered how much of their time was spent



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in court. A second officer does not need to be present to witness or assist with the BAT.

Processing varies for a checkpoint, and the difference has been approved by a judge. People charged with DUI at a checkpoint will be released at the scene if they sign a notice to appear (a uniform traffic complaint) and can have someone who is not intoxicated pick them up at the checkpoint. Many times the person who picks the individual up is given a PBT. The bonding procedure is waived during checkpoints per agreements with the courts.

*Arrest and Processing Time.* It takes an officer an average of two hours to process a DUI.

*Prosecution Support.* First appearance in court is generally 20-30 days after arrest. All arrest violations begin at 8:30 a.m. on Thursdays and Fridays. The individual can plead guilty or not guilty; reportedly, most have an attorney for a DUI charge. Only a small percentage go to trial. There is a diversion coordinator and some individuals plea bargain. Officers will meet with the prosecutor prior to trial to go over the facts of the case. The officer, at trial, will most certainly be asked about probable cause for the traffic stop. Very few cases are lost in court, because, for the most part, the officers do a good job in presenting the case. If a case is lost, it is typically because the officer cannot articulate why the person was stopped. Generally, the arresting officer is subpoenaed, and if another officer administered the BAT, that officer would also be subpoenaed, and other witnesses might be brought into court, especially if there was a crash. For a jury trial, an officer may spend 3-4 hours, most of the time spent waiting to testify. The time will vary depending upon how much the defense presents; the prosecutor has a fairly straight-forward case covering the reason for the stop, actions the officer took, and the BAT readings. Officers must also testify at implied consent hearings (license revocation).

*Handling Juvenile Cases.* Processing juveniles is basically the same, except for they might receive an additional citation for minor consumption or possession. There is a slightly different jail procedure, but that is handled through the county. Prosecutors handle juveniles charged with DUI the same as adults. Sanctions for juveniles are the same as for adults.

*Charging Process.* The city prosecutor handles many of the DUI cases and is the person we contacted. Court is held twice a week; arraignments on Thursday mornings and trials and other activities on Thursday and Friday afternoons. DUI offenders would go through the city court or traffic division at the district court. If there is a DUI involving a crash with a fatality, that case would go to the county for the state to prosecute and also if the person is considered a DUI felony (received a third DUI within a five year period), or if they have already been declared a habitual offender for other offenses (driving while license suspended or number of offenses),

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the case would go to the county. They do not reduce DUI charges; they dismiss the DUI charges and recharge with a more appropriate offense if they don't feel the case is strong enough. The city prosecutor's office handles about 350-400 DUI cases a year.

The prosecutor's office determines who is eligible for a diversion program. It checks to see if there are prior DUI offenses or prior alcohol related offenses which would make the individual ineligible for the diversion program. There are private evaluation agencies within the county, and also Olathe has a court services officer who does assessments of the individuals to determine what type of treatment clients need. An alcohol and drug safety action education program "ADSAP" evaluation is required by law. The prosecutor's office does a records check and requests a certified record from the state of Kansas. It runs a check through ALERT, which is based on Kansas City metropolitan information obtained by police agencies; if the person is from out of state or there is some concern, the office will run a National Crime Information Center (NCIC) check. They also obtain a Kansas Department of Motor Vehicles certified record, which is a history of the person's driving record. There is also an application the individual completes as to why the individual believes he or she is eligible for the diversion program. If they know the person is from out of state and is not a part of the violator compact act which would show up in Topeka, they would then contact the respective state and try to get a records check from that state.

The city prosecutor did not know what percentage of people charged with DUI plead guilty but he thinks it is a high percentage that either plead guilty or enter diversion. He guessed about 75% of DUI offenders are represented by counsel.

There are pre-trial motions to suppress evidence of either field sobriety or breath test results "all the time," and sometimes motions to suppress for an invalid stop. An officer does not have to be present for charging or arraignment. If a DUI case goes to trial, the arresting officer would be called to testify. Others called to testify might include any civilian witnesses, any officers who may have had to follow the vehicle and observe driving patterns, the officer who conducted the field sobriety test (and if necessary officers who witnessed the field sobriety tests), the records custodian who maintains all of the records for the BATs, and the officer responsible for administering the BAT test (if different from the arresting officer or the officer who conducted the field sobriety tests).

The city prosecutor thinks about quarter of those charged with DUI are set for trial but will plead guilty on the trial date or right before. When they or their defense attorneys find out everything is in order with the case, they might plead guilty. Either the attorneys come in and look over all of the evidence, or they may find out

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information at an administrative hearing and they convince their clients to plead guilty.

Elements of an offense include a positive BAC, failure of the field sobriety tests, and the elements of the driving that were involved before the stop. The Olathe prosecutor's office does take a hard stance on prosecuting DUIs; they prosecute with BACs below a 0.08 (not always successfully) if the police officers have indicated in their reports that they believe the person was not able to safely operate the vehicle. They prosecute cases where no field sobriety tests have been done.

Elements which might be contested include a low BAC, no observation of the person being unable to drive, and, most recently, individuals who may be passed out in a vehicle when the motor is running and there is the question of operating the vehicle and what "operating" means.

If a person loses in municipal court and wants to appeal, he or she must file an appearance bond with the municipal court and prepare a notice of appeal. Generally, such persons file with the court clerk's office who then files the appeal at district court level. It gets docketed on an appeal docket from municipal court up to district court. So they file an appearance bond to cover their appearance in district court and a notice of appeal for the case which gets docketed by the court clerk's office.

Grounds for appeal sometimes depend on who the attorney is, and most of the time it is the "borderline" cases that are appealed (e.g., perhaps no BAC, or someone who failed two aspects of field sobriety and passed two, but the judge found them guilty on other evidence). It is the harder DUI cases that the defendant and defense attorneys think municipal court may have just "brushed by" and found the person guilty, but that a jury may think otherwise.

*Sanctions.* There are not different sanctions for different BAC levels. Once there is a conviction, that information is sent off to the Department of Motor Vehicles, and the prosecutor's office is currently filling out Kansas Bureau of Investigation (KBI) forms on individuals convicted of DUI.

Assessments of individuals convicted of DUI are handled either by outside private agencies approved by the court or the court services officer who conduct the ADSAP evaluations. There is a district court judge in charge of this for the county, and he makes the rules and regulations regarding how these activities are handled. The municipal court and the prosecutor's office have adopted these rules and regulations. They refer individuals to the approved private agencies for assessments and treatment recommendations. If the individuals are eligible for diversion, the prosecutor's office would base the terms of the diversion on the ADSAP evaluations. If someone is convicted, then the terms of the assessment would help determine the level of treatment (a more structured program, inpatient, AA, etc.) the person would be

ordered to receive. The treatment requirements are put either into the person's diversion agreement or probation agreement. It is a function of the probation department to see that the requirements have been met. If there are problems or violations relating to non-compliance, then the probation officer will prepare a revocation agreement which the prosecutor's office will review to make sure everything is in order and then they will sign the revocation. The person is then brought in and, depending on the circumstances, may go to jail. During the sentencing, the prosecutor's office tries to work with the individual to come up with a plan with which the person can comply. If the person does not comply, the prosecutor's office would like to see the person sent to jail for at least a short period of time, but this does not always happen. They do have house arrest available as an option.

*Sentencing.* There are sentencing guidelines the judges follow which have been determined by the state as to what sanctions a DUI offender receives depending on first, second or third offense. These have been incorporated into the Olathe municipal code and the judge does follow the code.

*Administrative Sanctions.* Administrative forms are filled out by the police officers before the individual takes the breath test include the implied consent form. Those forms and what the police officers have to say is what the hearing officer typically looks at and listens to during an administrative hearing. If an officer made a mistake and did not follow procedure, that might be revealed at the hearing. The administrative hearing officer may determine that the license won't be taken. There is a "very set procedure" as to what the hearing officer may look at and what the police officers have to fill out for the administrative hearings.

Generally the offenses "fall off" of the certified (driving) record after a period of time; this is the record the prosecutors receive from the state. But if they check the ALERT system, or run an NCIC check, they can find a DUI conviction as far back as records are kept. And the prosecutor reports they do check ALERT on all DUI cases.

If there are prior old convictions (older than five years), the person could not participate in the diversion program, and it might make a difference to the judge in sentencing as to whether the person would receive the minimum or the maximum sanctions within the range set by the Olathe municipal code. For example, if a person was convicted of a DUI offense, and had two other offenses ten years before, the person would not be eligible for the diversion program and, hopefully, would receive the maximum sanctions possible for a first time offender. He also hopes this would be addressed during the evaluation stage. And they would attempt to make different recommendations at the sentencing. A person who has gone through the diversion program, even years before, is not eligible for the diversion program again.

*SUMMARY OF TELEPHONE DISCUSSIONS*

There have been cases where individuals convicted of DUIs twenty years ago are denied diversion, even though the court can only sanction them as first-time offenders.

*Comments.* Defense attorneys who find out that a police officer is properly certified and that the paperwork has been completed properly, will try to plea bargain out. The only time they go to court is when they see a hole or a problem in the case. The individual we contacted would like to see nationwide DUI certified training. Kansas has a program, but the Olathe police department has not had enough money to send officers through it. He discussed how training at Northwestern University Traffic Institute is highly recognized in court. He thinks if DUI training can be raised to the same level, with statewide or nationwide certification which would be recognized and would hold up in court, it would cut down court time and save money spent on cases.

## TOPEKA, KANSAS

*Department Size.* There are between 230-250 officers in Topeka; several years ago the traffic unit was cut from 40 officers to approximately twelve, and seven of these officers deal with DUI enforcement. There is also an Alcohol Safety Action Project (ASAP) where officers work overtime or compensatory time and assist in looking for DUI suspects.

*State Laws.* BAC limits are 0.08 in Kansas.

*Training.* The person contacted has been a standardized field sobriety testing instructor for 18 months. With respect to surveillance, he uses the standard cues like weaving in a lane, estimating 75% of DUI offenders display at least one of the standard detection cues, and he also uses a lot of moving radar and makes stops for speeding. He reports not all the officers in Topeka are trained on detection cues. However, they are trying to catch new officers coming into recruit school and to train them with at least an 8 hour mini-training course during "DUI detection day," where the officers are given instruction, and watch videotapes to train them in detecting and handling DUI suspects.

When asked about observing specific detection cues which might relate to certain "groups" of DUIs (age, sex, vehicle type), the officer contacted had never thought about if certain detection cues were prevalent for particular groups of drinking drivers. He thought possibly the older drivers who might have drinking problems might drive slower and seem to be overly cautious. He thinks most officers look for signs of alcohol or drug involvement at crash scenes, or at least they are "getting more officers aware" with the BAT van.

When they first got the BAT van, there was cynicism because officers thought processing DUIs was too much work. Now there are officers making DUI arrests that he thought would not make those kinds of arrests, because they can call for the BAT van. This means the traffic officers can take over DUI arrests at the scene, at another officer's request, or at least can offer substantial assistance in processing DUI suspects. The reason the BAT van officers are permitted to become so involved is to allow more officers to make DUI stops and then get back out on the street without the long processing time required for DUI suspects. Those officers do not have to complete all of the paperwork that they are not familiar with, etc. and arrests have increased because the other patrol officers are utilizing the BAT van more. They had approximately 100 more DUI arrests last year than the previous year, even though the number of officers in the traffic unit had been cut.

### SUMMARY OF TELEPHONE DISCUSSIONS

There is no set DUI probable cause threshold when a DUI suspect would be pulled over (e.g., certain number of detection cues, length of time following a vehicle); it is up to the officer's discretion.

*Enforcement and Apprehension.* There is a three year grant, now half over, that supplies a mobile BAT unit. The unit is a full-size windowless, cargo-type Chevrolet van equipped with a video camera, and a BAT as well as standard red lights, siren and radio. The van is in operation 6 days a week; normally Monday through Saturday. The van is on patrol and also backs up the other police officers if a DUI suspect is stopped. There are two other BATs in two DUI rooms at police headquarters which can also be used for breath testing. There are six motorcycles available for traffic enforcement, but these are typically not used for DUI enforcement. Topeka does not have computers in patrol cars yet. They have two video cameras; one in the BAT van and one in an enforcement unit. If possible, officers will tape a DUI suspect's driving before the stop.

Two anti-DUI officers, one of them usually in the BAT van, work from 8:30 p.m. - 4:30 a.m. Another unit is also on DUI patrol, typically from 10:30 p.m. - 6:30 a.m. They believe these are the best hours to arrest DUIs. The taverns and bars close around 2:00 a.m. They mostly use roving enforcement, often around the tavern areas or areas of frequent crashes. Sometimes, stationary surveillance is used around the tavern areas. They also have an anti-crime team (ACT) and SCAT (street crime unit) which mainly deal with drug enforcement. Apparently, these units have more police officers while traffic resources have been cut "considerably" during the last couple of years. When ACT and SCAT set up driver license check lanes, the officers look for DUIs as well. There have been one to two check lanes a month, less during the winter months. Check lanes may be set up any night of the week, and sometimes they have found mid-week is productive. When check lanes are set up, it is required that notice be posted 8 or 16 hours in advance. The media are not notified directly; but the notice is posted in a public access area at police headquarters, so anyone could come in and find out potential check lane locations.

If an officer starts a pursuit, the officer must call in the violation or reason for the pursuit, where the pursuit has started, and must call for a helicopter. One other unit, the closest one available to the pursuing officer may assist with the chase until a helicopter takes over. If a helicopter is available and responds, the pursuing officers must break off pursuit once the helicopter has located the fleeing vehicle. The helicopter will continue the chase and call in the location of the vehicle. The pursuing officers will continue to follow, but at a distance.

This policy was developed in hopes that once the patrol cars have stopped the pursuit, the suspect will slow down and not be a hazard to public safety. If a helicopter is not available, only the two units described above are allowed to run with lights and siren; again, this is to reduce the chances of crashes. Other units may enter

the area on a non-emergency status to assist, but cannot pursue unless given authorization by a supervisor to run lights and siren.

*Field Investigation.* The policy for Topeka police officers is to call in all traffic stops with the vehicle description and location. When approaching the vehicle, the officer will ask the driver for a driver's license, noting how the person retrieves the license (if the person passes over it or fumbles). Then the person will be asked to recite his or her current address so the officer can listen for slurred speech or smell the odor of alcohol, if that hasn't already been detected. The officer will look at the person's eyes for signs and will generally watch how the person responds. The suspect will be informed as to why the stop was made (e.g., speeding, weaving) and might be asked if he or she had been drinking that evening. The officer we contacted reported the usual response is two beers, or the person had something earlier in the evening, or that the person had not been drinking.

Depending on how the person has reacted, the officer may ask the person to remove the keys and step out of the vehicle at that point, or may wait for the backup unit to arrive. There are portable breath testing units available for officers to check out. The officer might do a horizontal gaze nystagmus on the person while the person is sitting in the vehicle, or later during other field sobriety tests. The officers also use a one leg stand test, and a walk and turn test. If the BAT van is on the scene, the field sobriety tests will be videotaped; if not, the field sobriety tests might be conducted without taping. The suspect would then be taken to police headquarters where there are video cameras and the tests might be conducted again while taping.

*Arrest and Transport Violator / Post Arrest Investigation and Processing<sup>7</sup>.* The suspect is arrested, patted down, and handcuffed at the scene "99% of the time." Department policy is to handcuff before transporting. This is important in the BAT van due to close quarters, but is also done when transporting in a patrol car with a cage where the person is handcuffed, placed in the back, seat belted and transported to headquarters. If a suspect is combative, a unit with a cage will be used and the person would be transported directly to jail.

When a patrol officer calls for the BAT van, it would depend upon the officer's experience in making a DUI arrest whether that officer would conduct the field sobriety tests, place the person under arrest and begin the necessary paperwork, or wait for the BAT van and have the DUI traffic officers take over the entire procedure including the arrest. If the BAT van is on the scene, the suspect is breath tested at the scene using the BAT. Otherwise, the suspect is breath tested at police headquarters

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<sup>7</sup> In Topeka, the post arrest investigation and processing are sometimes done in the field with the BAT van and sometimes at police headquarters, so these sections have been combined.



### *SUMMARY OF TELEPHONE DISCUSSIONS*

using one of the other BATs located there. During a checkpoint, the only procedural processing difference is there would be no driving violations, but the same field sobriety tests are conducted, etc.

After the person is arrested and placed in the BAT van or taken to headquarters, an implied consent advisory form is read. The person's Miranda rights are always read before the intoxication report because of the questions asked on that report (e.g., were you operating the vehicle, where were you going, where were you coming from, have you been drinking, how much, are you a diabetic?). A DUI report is also completed at some point and an arrest report.

If the processing of the suspect has been done in the field (as opposed to at police headquarters), then the suspect is transported directly to the Department of Corrections (which is a county jail, separate from police headquarters). If the person fails the breath test and requests a blood test, the person will be taken to a hospital and then to jail.

Release procedures vary, but if the arrestee can get a signature bond, he or she can call someone who is at least 18, has a valid driver's license, and has not been drinking. That person must report to police headquarters and sign a form to take custody of the arrestee and must agree to watch the individual for six hours during which time that individual will not allow the arrestee to drive or be out in public. If the person who has taken custody of the arrestee cannot control him or her, it is that person's responsibility to call police and report that the arrestee is out; if the police find and arrest the person again, he or she is taken to jail and will not get out until an appearance is made before a judge. If there is no one available to take custody of the person, then there is at least a six hour hold, after which time the person is released on his or her own recognizance if a cash bond is not required.

Passengers are usually not interviewed unless, for example, the driver does not have a license with him or her; then the officer might ask the passenger what the driver's name is and other information to verify the driver's statements. The vehicle would be checked for open containers. In a crash, witnesses would be interviewed and asked what they saw along with their name, address, and telephone number. In a fatality, injury or major crash, officers will attempt to get written statements from witnesses either at the scene or the next day.

A DUI arrestee is asked for permission for a police officer to legally park and lock the vehicle. The keys are normally returned to the arrestee and are kept with his or her possessions. If the person will not give permission to park the vehicle, a "non-preference" wrecker will be called and the vehicle will be towed.

Reporting forms to be filled out on a "typical" DUI arrest for city charges are: a DUI intoxication report, breath test protocol, the card from the BAT, entry in a DUI log,

arrest report and supplement report, one or more tickets (e.g., speeding, DUI, driver license violation). If state charges are being filed, then an offense report and supplement report would have to be completed. If there are felony charges (third DUI) then state charges would have to be filed. An NCIC check would have been run to check for any wanted charges and a driver license search to check if the license is valid; the dispatcher would let the officer know if any previous DUI charges are on the record. If prior charges are discovered at a later date, the charges can be amended from city to state. In those cases, the District Attorney will drop the city charges and file state charges.

The implied consent forms have a checklist which provides the date of the stop, reason for the stop, and if the driver license was valid at that time. The arrestee gets a copy of the form which serves as a temporary driver's license for 30 days. If the person wants to request a hearing, there are instructions on the back of the form and a perforated bottom section, which can be torn off, completed and mailed to the Department of Motor Vehicles to request a hearing. The person has 10 days if they hand-carry the form to the DMV, and 13 days if the form is mailed, in which to request a hearing; otherwise 30 days after the stop, the driver's license is automatically suspended.

There are three copies to the notice of suspension, the violator gets one, the other two are turned in by the officers to the traffic division secretary who sends in all the paperwork to the DMV.

*Arrest and Processing Time.* As far as processing paperwork, before implied consent, a DUI offender would require approximately an hour of an officer's time; after implied consent, the time required jumped to 2 hours, but currently approximately 90 minutes is required to process an average DUI offender.

*Prosecution Support.* The Department of Corrections has a schedule of court dates and they set up the date with the arrestee for the preliminary hearing or the plea days. The officer contacted was not certain, but thought the time frame might be a month or so and could be several months (especially if going to trial). If a case goes to municipal court, the officers might meet with prosecutors beforehand to discuss the case, but usually only if there was a serious crash. If a case goes to trial, which is not often, then officers are most likely asked to testify as to probable cause for the stop, field testing, reliability of equipment, and the videotapes are shown. Whichever officers had been involved would testify, and reportedly most officers do a good job. It is mandatory for officers to show up at any court proceedings for any arrests. Most driver license hearings last 15 minutes, but one defense attorney in Topeka brings in a court reporter and he has kept officers as long as 1 ½ - 2 hours. Implied consent hearings and administrative hearings both take place at the Department of Motor Vehicles. A driver's license might be suspended with the case going to trial in

## SUMMARY OF TELEPHONE DISCUSSIONS

municipal or district court, but even if the person charged wins the case, the license could still be suspended by the administrative hearing.

*Handling Juvenile Cases.* The arrest procedures are the same for juveniles, but instead of taking them to jail or a juvenile facility, police will attempt to contact the parents, the juveniles will be released to the parents' custody and then they will have to set up their court date. If the juvenile is to be incarcerated, the person interviewed was uncertain, but thinks he or she is first transported to a hospital to make certain there is no danger of overdose on the amount of alcohol consumed, and that the juvenile is given a clean bill of health, after which the juvenile is transported to the youth center.

The city court handles very few juveniles, even though technically they can handle anyone over 14 years of age in the city. They have a problem of what to do with juveniles if convicted because the city has to pay to house any child in the youth center which costs over \$200 a day. Ninety percent of juveniles arrested for DUI end up going through the District Attorney's office. Most juveniles the city gets are diversion eligible and they enter the diversion program. Most juveniles arrested for DUI are 18-21 years of age and are only charged with the DUI and not other charges in addition to the DUI such as underage drinking. This is one of the city prosecutor's "pet peeves" because the officers think the DUI is the most serious charge they can make, so why file other charges; but if there are other charges filed, it gives him more ways to negotiate. (The prosecutor heard right before the interview that the "zero tolerance" law for juveniles - under 21 years of age - passed at 0.02.)

*Charging Process.* We had two contacts with prosecutors in Topeka, one with a city prosecutor and the other with a county prosecutor who handles DUI charges for the state.

The city prosecutor tries between 1,200-1,400 DUI cases a year; he (the city) gets the generic DUI (someone is speeding, gets pulled over, crashes). The county gets felony DUIs (2<sup>nd</sup> or 3<sup>rd</sup> conviction, or felony driving while license suspended, drugs in the car). DUIs are "the biggest single thing they do in the city." The prosecutor has been prosecuting in that office for five years and there has always been a policy not to reduce DUI charges; Kansas has a prohibition against plea bargaining DUIs. If they have a case bad enough that they are considering amending it, they will dismiss it. And they have one of the lowest DUI dismissal rates in the state (5%). Normally the offenders plead guilty to the DUI, it is taken to trial or the DUI charge is dismissed. They don't amend to reckless driving, and if they tried, the judge there would not allow it. Last year (1995) he thinks they had over 400 diversions, and about the same number of convictions. He reports a significant number of people never make it to court but go out on warrant and are not resolved, but of the cases handled, approximately 85% plead guilty or go to diversion, a small percent get dismissed and a small percent are found not guilty at trial.

Every once in a while there is a bad case; periodically, there is a technical fault where the officer or someone involved "screwed it up" (did not provide the implied consent advisory, the machine was not working properly). They've had a few cases where officers think the person is DUI following a crash because they smell alcohol, the officers write it as a DUI, and when the tests come back (which could take a month because blood tests are run by the Kansas Bureau of Investigations), there is no proof of impaired driving. Or there was a crash which was not the fault of the person suspected of being under the influence (example given was someone being rear ended while sitting at a stop sign), the person refuses a breath test and does not do field sobriety tests, so there is no case against them. A case like that they would likely take to trial, but that is the type of case they might lose.

State (actually county) versus city charges depend on if the offender is charged under state statute versus city ordinance; most city ordinances in Topeka mirror the state statute verbatim. A third DUI in 5 years could be enhanced to a felony charge which would be a state charge; city would only be doing misdemeanors. When it comes to a DUI, an officer in the field has to make a relatively quick decision as to if it will be a state or city charge, and this decision can be based on faulty information. They must rely on information from dispatch which relies on coded information from a computer for motor vehicle records which might not be up-to-date. Also, if the person at dispatch is not proficient in reading the coded information, errors could be made. And, an out of state DUI might not be detected until later.

If the city prosecutor discovers after receiving the case that it should be a felony charge, it could be sent to the state's prosecutor, but there are also times when the city prosecutor would prosecute a third time DUI offender; just because a felony charge is not brought, it does not mean the person will not be doing significant (jail) time. "You can argue the statute and how it should be interpreted, but if it's charged as a misdemeanor and at sentencing, it's found to be the third offense, the courts cannot call it a felony." The penalties for second and third DUI offenses are very similar in Kansas; an argument can be made that the mandatory minimum for a third offense be imposed even though it is a misdemeanor charge. It will not go on the person's record as a felony, but an argument could be made that the judge has to impose the minimum based on a third time offense.

And there are some economics involved, too. In Topeka there is no city jail; so, anytime someone is sent to jail, the city pays for it. There is now a house arrest program, which is "excellent" and also it generates money; the offender pays for the program. So sometimes the decision as to where to prosecute is made based on economics. Shawnee County does not have a house arrest program, so felony offenders go to jail. Sometimes, if the facts on a case look like he could lose, and in his mind, he thinks the client is deserving, the county attorney will dismiss and ship the case over to the city with the understanding that the offender will plead guilty

### SUMMARY OF TELEPHONE DISCUSSIONS

there and be put on house arrest. That way the case is not lost and the offender does not lose a job.

DUI charges are not reduced because Kansas statute does not allow it; prosecutors can only go forward with a DUI charge or dismiss it. Other charges filed with a DUI can be dismissed for a plea of DUI. "Given a defendant doesn't run" the time from arrest to charging would be from 1-3 months in county court. That's the time it takes to do the background check and get the person charged. If it's a misdemeanor charge, a summons will be issued; if a felony, a warrant for the person is issued. If the person has not run, he or she will typically be picked up fairly quickly. The summons will go to their address and they will have an appearance in 30-60 days (usually 30). The person will be given another 2 weeks if they need to get an attorney. A trial date will be set for about 2 months after the appearance date. Sometimes "for a dead bang loser" an attorney will continue it once just to drag it out a little bit. If they have a defense, the attorney will get a little more involved. If there is a test result, they will probably file a motion to suppress. There would be an evidentiary hearing on that separate from the trial. So pick-up date (arrest) to conviction date might be nine months in a county case. A small percentage flee, but those are usually individuals with problems other than DUIs. Arraignments are done in the court involved (either city or district).

Topeka has a DUI diversion program. For a person to qualify there could be no crash involving injury, the person must have been properly licensed and insured at the time of arrest, no prior DUI diversion, no prior drug conviction. The Alcohol Safety Action Project (a function of Kansas court services) identified as ASAP does the interviews for the offenders; the requirements are "black and white" and ASAP makes the call unless they have one that is close; then they will ask for the prosecutor's opinion. The diversion itself is for a 12 month period. There are standard conditions; special conditions can be added based upon the facts of a particular case. (Alcohol education is always required, sometimes inpatient and outpatient treatment and AA meetings are involved.) The person's licensed driving privileges are restricted by the state.

*Arraignment.* The city prosecutor reports pretrial motions on a generic DUI are rarely filed (he estimates only about 15 a year). If filed, they are mostly motions to suppress for lack of probable cause to pull the vehicle over, or no probable cause to place the individual under arrest for DUI after being pulled over (e.g., the officer had no reason to think the person was drinking, so should not have asked the person to perform the field sobriety tests). Periodically they receive motions to suppress based on defects in the breath testing machine which are "very rarely, if ever, successful." Also, periodically, they will receive motions claiming that the arresting officer did not supply the person with the proper paperwork (few and far between). The city prosecutor estimates 20% of persons arrested for DUI are represented by counsel. The average DUI individual will prefer to handle it on their own and save money;

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they are not required to have council. There are 10-15 attorneys in Topeka who handle 90% of the DUI cases.

*Trial.* Of the small percentage of DUI cases that go to trial, the city prosecutor estimates approximately 40% plead guilty right before the trial when they discover all the paperwork is in order and the police officers are present. Certain attorneys will use a municipal court trial as a sort of discovery trial. If they lose in municipal court they have the right within 10 days to appeal to district court for a new trial (a trial *de novo*). The attorneys use municipal court, where there are no juries, to find out all the facts and then hope they can win the case in district court in front of a jury. A couple of attorneys in Topeka do this, but it is rare in DUI cases.

The county prosecutor reports a high percentage plead guilty to DUI (approximately 80-85%), 5-10% try and 5% he does something with (decides it is a weak case and dismisses; decides he could lose at trial and the person does not really qualify for diversion, but he does not want to lose the person so he sends him or her to diversion; or he sends the case over to the city). A high percentage plead guilty because the police do a good job. He files cases where he knows there are problems with the case, but he believes the person was driving under the influence, and the case won't often be challenged.

After an individual is arrested for DUI in Topeka and taken to jail (and they all go to jail), that person is given a court date to appear (always on a Tuesday morning for city court) before being released. Those who come (and he reports a lot do not show up) must see the judge for a short arraignment. The judge talks with each person individually and asks if he or she understands the DUI charge and asks if the person agrees with the charge. If the person agrees, that person is told to report to the probation department for an evaluation to determine if that person is eligible for the diversion program. The person returns to court at a later date and will either enter the diversion program or will be sentenced. A certain number of people will walk in and say they want to retain an attorney; the judge will give them a new date to appear (about 30 days). They and/or the attorneys must appear at the new date; a certain number of people charged with DUI send their attorneys in their place. The judge sets all of the trials in an effort to efficiently use trial time. This is done so that the judge can question all parties to make sure the prosecutor's office has been contacted first to try and work out some arrangement. After these efforts have been exhausted, a trial date will be set.

*Elements of Offense.* The city prosecutor reports they have good police officers working drunk driving cases. His elements of offense (other than positive BAC and he reports not many fight a positive BAC) are field sobriety tests (e.g., were they asked to perform field sobriety, were they orderly, how did the person appear?). Officers are told the more field sobriety tests they give, the better; the more

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ammunition for the prosecutor. The prosecutor reviews the offense report on cases going to trial and on those cases where he is contacted by attorneys. Police officers complete a lengthy offense report and this is the one element the prosecutor refers to heavily; time does not permit reviewing all of the paperwork on every case) Videotapes have been used, in the past, mostly in the DUI room which might include field sobriety tests. Videotapes are usually only used if the case goes to trial; most defense attorneys don't care if they are used. Defense attorneys rarely argue probable cause for lower BACs. If someone blows an 0.08, the attorney will come before the judge and try to argue there could have been a deviation. The prosecutor reports the judge will not allow this, the legislature says 0.08 or above and the judge will not deviate. Also, he reports the police officer we contacted is very good at testifying, and this officer gives the person the benefit of the doubt when he sets up the machine.

The county prosecutor reports elements of a successful offense other than positive BAC are positive ID (person has to have been driving), the person has to have been under the influence of alcohol to a degree that he or she was driving unsafely or a positive BAC 0.08 or higher, and the person had to have been driving in Shawnee County, Kansas. If there is a breath test, the testing officer must testify in court. If he knows the officer and the officer has testified before, the prosecutor only asks the officer a couple of questions right before the trial date. If there was a fatality, he will have talked with the officers more often and will be more familiar with the case. Other than that, it is the same foundational questions over and over again. His case load is too heavy and does not allow much time to review and prepare. He handles vehicular homicides, driving while suspended felony cases, driving while habitual felony cases, car stops involving drugs and DUIs. He will handle 400-500 DUI cases alone in 1996 and there are more of the other types of cases. He uses a couple of legal interns to assist, but is responsible for all of the cases.

*Elements Contested.* Most of the cases which go to trial in city court involve DUIs where there is no breath test (refusals). The cases then revolve around whether field sobriety tests were given, claims of prior injuries so the person could not perform field sobriety tests, sometimes weather conditions, traffic, distractions, etc. Attorneys will argue all of these points. And then there are individuals who have refused to do anything, and the defense attorney will argue there is no evidence of impairment. The prosecutor reports he wins more often than he loses on these cases, but he does lose his "fair share." It kind of depends on the individual; even though they refused the breath test, a lot of these people were caught driving down the middle of the road, straddling both lanes, or a multitude of other things that can be used against them. He estimates he wins 60% of these types of cases and loses 40%. Luckily these cases are few and far between, most people take the breath test, or at least the field sobriety tests.

Elements of a trial likely to be contested in county court are, when a person refused any test, the defense attorney will argue the client was not under the influence. If there was a test, then the test is likely to be contested; whether it should be admitted and its accuracy. For the lower BACs, he reports the better defense attorneys will argue the accuracy of the machine because it has a 5/1000 margin of error. Hopefully, on those cases there is "some good driver action" (where officers can testify that the driver was not in control.) But generally there was a driver who was stopped for speeding and then was found to be under the influence. Generally only KHP (Kansas Highway Patrol) officers can provide video tape of field sobriety tests because they are the only ones with cameras in all of their cars. For a bench trial, a video is not that important, but a jury has a different view.

*Appeal.* Defendants have 10 days from the date of sentencing to appeal Municipal Court convictions. Within 10 days they have to file notice with the district court of whatever county they are in, and must pay the \$59 filing fee. Then the case starts from scratch in District Court which is part of a state-wide court system, where they are arraigned and they can have a jury trial (again, jury trials are not possible in Municipal Court). The city prosecutor reports this does not happen often; he estimates about 25 cases a year are appealed (this small number includes all types of cases, not just DUIs). There are no issues involved because it is a brand new trial and everything starts over again.

Appeals in county court must be filed within 10-20 days; most attorneys there are looking for an appeal bond so their clients will not go to jail. Double Jeopardy has also been used to appeal recently.

*Sanctions - Judicial.* There are not prescribed sanctions for different BAC levels in Kansas, but rather the person's history is factored in (e.g., number of prior DUI offenses). Municipal courts operate under the Kansas statutes which give the maximum penalties a first, second, third, etc. offender can receive. There are parameters they must stay within, but no charts.

In Kansas district courts, for felonies, there are sentencing guidelines. DUIs are "off grid" when it comes to felonies; meaning sentencing guidelines are not followed. That is a plus because DUI felonies are "low-level" felonies, and none of these people would go to jail if the sentencing guidelines were followed; that's why DUIs were moved off grid. Offenders have to go to jail for a minimum of 90 days. On the misdemeanor DUIs (first and second offenses), there are statutory minimums as well, but that has nothing to do with sentencing guidelines. On the first offense, 48 hours up to a maximum 6 months; second is, by statute, "minimum 90 days paroled to five after the person becomes enrolled in treatment," and maximum of one year. The county prosecutor reports second time offenders get five days; judges "are pretty good about not just rubber stamping the minimum and letting them go." On first



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time offenders, the minimums are imposed 98% of the time, unless the person had a prior DUI six years before and another six years before that (DUIs stay on the record 5 years). Again, most of the first time DUIs divert, and those that don't, do the minimum time.

On second offenses, the judges in Topeka look at the offender's history, and the recommendations of the pre-sentence investigation rider. State statute requires that a pre-sentence investigation report be done and provided to the court; DUI is the only misdemeanor for which this report is a requirement. The judge peruses this report and then makes a recommendation. For all other misdemeanors in Kansas except for DUI, sentencing is immediate. Reportedly, judges also do a good job of not rubber stamping a third offense, although that carries a "pretty good penalty" already, 90 days jail. Most judges will impose the maximum and then entertain motions to modify after 90 days.

There is no house arrest program planned for Shawnee County. The county prosecutor does not like house arrest, he favors a work release jail program but that would cost the taxpayers and the county money and he knows they won't spend money on it. He is in favor of work release because he believes DUI, more than any other crime, cuts across the socio-economic groups and there are a lot of employed people with good jobs who get DUIs.

House arrest was implemented by the main DUI judge in the municipal court. Second and third offenders who are facing significant amounts of jail time may be eligible for house arrest if they are employed, or are full-time students, or are primary care givers. These individuals must have a telephone, be able to pay for the program, etc. They are sentenced to serve 2-5 days in jail, they immediately must report to probation (located in city hall) and they must provide probation with a copy of their work schedule. They are hooked up to a monitoring machine on their telephone which has a video camera and a breath tester. The person is called between 2-5 times every night (or day depending upon their schedule). They must stand in front of the machine, blow into the machine which registers if they have any alcohol on their breath.

Probation personnel can confirm the person's identity by the video camera. If alcohol registers on the person's breath, the judge will have the person picked up and brought into municipal court. Sometimes the judge will send the person back to jail, sometimes not. The prosecutor reports it is a good program but at times it gets abused. Part of the reason it was set up was to cut the costs the city had to pay to house DUI offenders in jail (over \$70 per offender per day). The city prosecutor does not agree with the use of house arrest in some cases because he believes some of these people are so chronic they need to be in jail. But the judge makes the final decision on who gets house arrest and who goes to jail. Juveniles probably would

be treated the same, but he does not ever recall having a juvenile second or third offender.

Any conviction or diversion information is sent by municipal court staff to KBI and the KDOT (for driving record purposes), and the municipal court keeps its own records.

When asked if treatment is ever used as a sanction, the city prosecutor replied not as a sanction, but as a requirement. On a second offender, it is mandatory the individual receives either inpatient or outpatient treatment from a certified alcohol treatment agency. If they do not comply, their driving privileges are suspended until they do comply. Also, the person's probation can be revoked and they can go to jail. The probation department is responsible for tracking compliance; they send a letter to the state which immediately suspends the license and notifies the prosecutor who files a motion to revoke probation or diversion. On a third offense, the person is required to go into treatment and it is a violation of probation if he or she does not comply.

*Sanctions - Administrative.* Prosecutors do not get involved with license issues but apparently for a first time DUI offense, the person loses the license for 30 days and then it is restricted for 330 days following that (to and from work, to court, to alcohol school, etc.). Persons who refuse the breath test lose their license automatically for one year as do second and third offenders. The city prosecutor believes 90% of administrative hearings result in the suspension being upheld.

*Comments.* The city prosecutor believes their process works fairly well, although he is overwhelmed with work. He handles 35,000-40,000 tickets a year (mostly speeding) including the 1,200-1,300 DUIs. There are two full-time prosecutors, but he is the only one to go to court. The prosecutor is in court almost all day every day. They have two part-time law school interns.

The county prosecutor does not think people realize the volume of DUI cases. He said a decision must be made on what issues to enforce; there is not enough "people power" to enforce everything. He feels overwhelmed with the volume and he knows other prosecutors who are overwhelmed. He would keep the level of DUI enforcement up; however, people don't realize the judicial system is bursting at the seams. Some sort of planning or advisory counsel beforehand might reduce this problem. His view of prosecution is that they should slow down a little and make sure they do it right as opposed to weeding through a multitude of cases to find the few which can be successfully prosecuted.

Topeka police anti-DUI officers say they are working to broaden the training of the other officers, many of whom have been required to ride in the BAT van for 8-24 hours to gain experience and exposure to the van and the equipment. The officer we

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contacted feels confident that not many of their DUI cases are being plea bargained or dropped. When an officer does find out that a case has been dropped, memos are written to the administration to point out what has happened.

## WICHITA, KANSAS

*Department Size.* There are approximately 635 officers in Wichita; this includes eight dedicated DUI motorcycle officers.

*State Laws.* BAC limits are 0.08 in Kansas.

*Training.* The officers are trained in detection of the "20 validated clues" (nighttime DUI cues) sanctioned by NHTSA.

*Enforcement.* The eight dedicated DUI motorcycle officers generally saturate certain areas which are known hot spots on given nights. General patrol officers are also considered active in DUI enforcement but they stay within their beat areas, whereas the dedicated DUI enforcement officers can go anywhere. Usually the dedicated DUI enforcement officers are stationary and often run radar; each officer usually works alone and radios for backup when needed. Checkpoints are conducted occasionally and are usually done in conjunction with KHP (Kansas Highway Patrol). Wichita recently received grant money and purchased video cameras for patrol cars and for the BAT van, and possibly another BAT. There are currently four BAT vans.

Regular patrol officers wait for a very distinct violation of city ordinance before stopping a vehicle; a lot of the DUIs come from the motorcycle officers who are sitting still and running radar. Normally the first indication that a driver may be impaired is personal contact. But in route to their position, they will sometimes follow drivers who might display subtle clues, such as drifting within a lane, slight weaving, in which case the officer would follow the individual until they observe a violation and then stop the vehicle.

There are traffic investigation officers who investigate crash scenes and are very observant as to possible alcohol and drug involvement. If they have any questions as to driver involvement with alcohol, they call out one of the eight dedicated DUI officers.

*Apprehension.* Regarding pursuit, if a driver is suspected of DUI, the officer will call in to receive permission from a lieutenant or a supervisor to continue pursuit unless the pursuit becomes reckless or dangerous. Departmental policy is "a lot more liberal" when pursuing a DUI suspect than for a general traffic infraction. Basically, motorcycle officers have a no pursuit policy unless DUI is suspected, and then the motorcycle officer must break off pursuit once a four wheel police vehicle has picked up the suspect. After that, only two marked police units and a supervisor (maximum of three units) may pursue a DUI suspect. Additional information is gathered during the pursuit and now that the radar cars have video cameras, the cameras could be an additional help in recording the pursuit. The video cameras must be switched on

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manually. Department policy is that video cameras are used on all DUIs, all pursuits, and anything else that the officer deems necessary to document.

Department policy on stopping a vehicle is that dispatch is notified either before a vehicle is stopped or sometimes after a vehicle is pulled over. If an officer sees a car where the driver is obviously impaired, the officer will continually call in until the vehicle is stopped; that way a backup unit will already be in route before contact is made with the driver. Normally, however, the officer does not wait for backup to arrive before approaching the driver.

*Field Investigation.* Initially upon approaching the vehicle, the officer will address the driver and request a driver's license and observe how the individual moves to respond to that request. Often, officers pose a divided attention question at that point to see how the individual comprehends responding to two requests. Sometimes, the officer will ask an unusual question which would make the individual stop and think, giving the officer an opportunity to observe the individual's behavior. Other signs include chewing gum, smoking a lot of cigarettes, etc. The officer normally asks the person if he or she has been drinking and a typical response is "yea, I had two beers." The person would be asked when he or she finished the last drink. The length of time from the last drink is important if the officer decides to administer a PBT. If the person says the last drink was consumed within the past half hour, or if there is alcohol in the vehicle, the officer will start a fifteen minute deprivation period. If the person says he or she did not have anything to drink that day or within 2 hours, the PBT manual states that the test may be administered immediately.

The PBTs used in Wichita have green, yellow and red lights. The officer says if he gets a red light immediately possibly indicating mouth alcohol, he might decide to begin a 15 minute deprivation period and then administer a second PBT. If he suspects the individual is impaired, he would ask the person to exit from the vehicle. The officer we contacted said he would not typically wait for backup to arrive. The officer believes the eyes are a key indicator of alcohol consumption and would typically administer horizontal gaze nystagmus. However, if the person is wearing hard contact lenses, departmental policy is not to administer the horizontal gaze nystagmus evaluation, because the contacts could pop out. He would question the person about any physical impairments, check the person's foot ware and then administer the field sobriety tests.

If a video camera is available, the field sobriety tests are taped. Usually, however, the officer has completed the field sobriety tests before a backup officer arrives (a witness for the field sobriety tests is not required). Officers are trained to conduct three standardized NHTSA field sobriety tests "in the correct order: HGN, walk-turn and one-leg stand." Reportedly the only time officers deviate from this is for obvious reasons such as when there has been a crash or the person is handicapped. Officers

state in their report why they have deviated. Other tests they can give include the divided attention test.

*Arrest and Transport Violator.* A suspect is arrested at the scene and a call is placed for a BAT van. The vans try to respond first to motorcycle officers because those officers have no means to transport DUI suspects. If a BAT van is not available, an alternative is to have a beat officer transport the individual to the county jail where a BAT is set up. Most of the dedicated DUI officers are certified BAT operators. Or, a beat officer can be asked to transport suspects to a BAT van, when the van is at another DUI scene. The arresting officer stays with the individual for a 20 minute deprivation period prior to administering a breath test, or the officer will be nearby if the BAT van operator is handling the 20 minute deprivation period.

The arresting officer will provide the person with the implied consent advisory form and will read it to the person. The officer "Miranda-izes" the individual after the breath test. The reason for reading the Miranda warning after the breath test is that it states the person has the right to an attorney. The implied consent advisory form states the person does not have the constitutional right to talk with an attorney. The officers try to keep the confusion down by stating the person does not have the right to talk with an attorney during the test; then after the person has been given the opportunity to take a test, the person is then read the Miranda rights which states they have the right to talk to an attorney.

If the individual blows a 0.08 or higher, the officer completes the suspension notice for the driver license and serves the individual a copy. The suspect is then released to the BAT van operator along with all of the paperwork. The suspect is then taken down to the county jail where the booking procedure is completed. The arresting officer is not responsible for the preliminary offense report, the arrest report, turning in any alcohol evidence, or booking the suspect into the jail. The arresting officer is responsible for turning in any guns taken during the vehicle stop and completing the driver's suspension form and for a taped report and an alcohol influence report (a standardized checklist form which has the three standardized field sobriety tests, and a series of standard questions under Miranda).

Ninety-five percent of the time, the suspect's vehicle is towed and impounded. At the officer's discretion and with the vehicle owner's permission, the care and custody of the vehicle can be released to another individual on the scene who has not been drinking. The vehicle is never just left at the scene.

*Post Arrest Investigation and Processing.* Typically the post arrest investigation and processing take place at a BAT van or at the county jail (see section above, *Arrest and Transport Violator*). For a homicide or serious injury crash, field sobriety tests may be administered again at the county jail and videotaped. Also, if the individual

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seemed impaired, but did not have a high BAC reading, officers may call in a drug recognition expert (DRE). Sedgwick County has a policy where everyone is held for a minimum of two hours and are not released until they have a means to get home (someone comes to pick them up, a cab is called). Normally, witnesses or passengers are contacted only at a crash scene. In addition, if someone calls in to report a DUI, and wants to be contacted, that person will be called back.

*Arrest and Processing Time.* It typically takes an officer between 50-75 minutes to process a DUI arrest.

*Prosecution Support.* A small percentage of DUI cases actually go to trial. Officers have limited discussions with the prosecution prior to trials. Newer officers, although trained in DUI detection and arrest procedures, are told to make sure they contact prosecutors before a trial and let them know they have limited experience testifying at DUI trials. The eight dedicated DUI officers normally only talk with the prosecutor for a couple of minutes on the side beforehand to go over a few specific details, normally at the end of the pretrial conference. The city attorney prosecutes DUI cases.

Major issues which involve the police officers at trial include probable cause for the stop, a full 20 minute deprivation period before the BAC test (otherwise must try to go with impaired statute which is harder to prove), and how the field sobriety tests were conducted. However, it seems like defense attorneys are running out of issues and are trying to create new ones by subpoenaing everything so that if something does not show up, they have a motion to dismiss. For example, the officer's field notebook may be subpoenaed in which the officer may or may not have made notes regarding the DUI stop. They have even subpoenaed the records custodian in training so that if that person does not show, they can move to dismiss. The BAT log, video log and all of the paperwork related to the case are often subpoenaed. When an officer must appear at a trial, it usually requires 2-3 hours time, most of that time waiting to appear.

Officers do testify at Driver License hearings, and the officer contacted reports "this is the biggest sore spot in DUI enforcement." Defense attorneys and defendants use the hearings as a fact finding mission to learn of any weaker points of the case. They sometimes know they will not get the driver license returned and admit they are only on a fact finding mission for the trial. Other times, if defense attorneys subpoena enough items, something may be missing, or an officer will forget to bring a report, and then the suspect gets the license back. If everything is in order, the hearing turns into "a one-sided trial" because there is no one on the officer's side and the defense attorney can ask all of the questions and find out details of the case.

Many individuals ask for a hearing (on the Thursday following this contact, he had 11 hearings he had to attend). The officer we contacted says based on the DUI

arrests he makes, 25% request an administrative license hearing. Officers used to have to spend the day at hearings, but the hearings must now start on time and so often officers now spend 2-3 hours. The BAT van operator (or whoever ran the BAT) must also attend the administrative hearings.

The prosecutor we later contacted also spoke of defense attorneys using these hearings as "a big discovery tool." He believes most of the hearings are scheduled to find out the evidence or to hope that the police officers will not show up and that the hearing will not be continued but dismissed, because that is typically the only way a person gets back a driver's license (charges against the person are still pending). The city prosecutor's office would not get involved in driver's license administration hearings except to review the transcripts from the hearings, because the defense will often use the findings in court.

One city prosecutor handles first-time offender DUI cases. Most of these individuals, if they have no other alcohol-related offenses in Kansas or any other state, have not been involved in an injury-related or fatal crash, and have not shown an extremely high BAC (e.g., 0.25), are eligible for a diversion program. Offenders are assessed either by the probation department or other certified private alcohol counseling groups within the city where individuals are permitted to receive an assessment. Normally each first-time offender would have to attend the WIP (Wichita Intervention Program) which is a weekend intervention program. After that point, he or she might go into alcohol treatment if WIP personnel recommend treatment. The WIP weekend takes care of the 48 hours the person would typically have to serve for a DUI conviction.

Another city prosecutor handles multiple offender DUI cases. He reports the system has been changed in Wichita to a "case review system" meaning each case is checked for technicalities and then is sent on to a pretrial conference. The pretrial conference is a short meeting attended by the prosecutor, the defense attorney, and the defendant, unless the defendant has authorized the defense attorney to make a plea. Pretrial conferences have been ordered by the judges in Wichita (for all defendants, not just DUI cases). In theory the pretrial conference gives the prosecutor a second chance to review the case, especially the technical portions which may pose problems at trial. However, since the pretrial conference process has been put in place, the period of time until a case might go to trial has been lengthened and has even resulted in motions to dismiss for lack of time. At the time of this contact, the problem was being brought to the attention of judges.

The city prosecutor said some attorneys want to come to pretrial, talk about the case and "if it's a bad deal," the defense attorney will plead the defendant guilty at pretrial. He said if there is an illegal BAC, if the deprivation period was right, the temperatures for the BAT were correct and the machine was operating properly, the offender



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would plead guilty. If the BAC is below the legal limit, those are the cases that might not go to trial. However, he is comfortable with the arrests made by the dedicated DUI officers, the way they conduct field sobriety tests, and their testimony.

Reportedly, the more times the person has been through the system, the more likely he or she is to refuse a breath test. Most of the times when there is a refusal, the reason given is that an attorney told the person it would be better to refuse a test. For refusals, there is now case law in Kansas that will allow the refusal to be admitted as evidence that the defendant is guilty. The prosecutor we contacted said he uses this often and reports that most of the judges will accept it if there is something else along with the refusal such as bad driving patterns, alcohol in the vehicle, stumbling while exiting the vehicle, or incriminating statements made.

Appeals can be filed *de novo* from municipal court. But reasons for appeals are usually probable cause or claiming something went wrong with the breath test (e.g., because the person had dentures).

*Handling Juvenile Cases.* Juveniles are not handled differently, except that a juvenile may not be taken into an adult detention facility (by state statute). Therefore, a BAT van must be used to process the individual, because a juvenile cannot be taken to the county jail. The juvenile may be transported to the youth detention facility. Parents or guardians are notified and if that is not possible, the watch commander is notified.

*Comments.* Other than the Driver License hearings which cause problems for officers, the officer contacted would like to see changes for juvenile driver licenses, especially for repeat offenders. The officer contacted has arrested a juvenile who now has two DUIs, and a one-year suspension does not seem appropriate; he would like to see a longer suspension for juveniles. He is also seeing more habitual offenders (5 or 6 violations). His record is a person with 23 DUI offenses in 5 years and the person just got sentenced to 13 months in jail. The officer thinks DUI offenders are only doing the minimum jail time specified by state law because "the inn is full and they have to weigh the seriousness of the crimes."

The prosecutor contacted described a bottle neck created by pretrial conferences which increase the workload and extend the judicial process time line. In addition, administrative hearings are used as a discovery tool by offenders and defense attorneys. Also, high turnover among police officers was mentioned as a problem for prosecutors because cases are often dismissed if the officers have left the force, or are on lengthy medical leave. And, many newer police officers are not familiar with all of the technical aspects of a DUI case. This is not a problem with the dedicated officers who are so well trained, most of the defense attorneys "will not mess with them."

## HATTIESBURG, MISSISSIPPI

*Department Size.* The officer contacted made 511 DUI arrests in 1995 and 448 in 1996. He is part of a two-person DUI task force in Hattiesburg which is supplemented by a DUI caseworker who is a deputy court clerk. All three positions are supported by 402 funds.

*State Laws.* In Mississippi BAC limits are  $\geq 0.10$  for adults and  $\geq 0.08$  for persons under 21 years of age.

*Enforcement.* The task force officers are instructed to patrol anywhere in the City for the purpose of identifying and arresting DUI's. They also process DUI's stopped by regular patrol officers, on request. The DUI caseworker works the same shift as the DUI task force officers (8pm to 5am). She works Tuesday through Saturday nights while the officers rotate 6 days on, 4 days off.

*Apprehension.* The officer notifies the caseworker of the stop and the ID of the potential arrestee. They use standard detection cues for probable cause for the stop.

*Field Investigation.* They employ in-vehicle video cameras. A passive alcohol sensor is used to help confirm the presence of alcohol and SFST's are applied.

*Arrest and transport violator.* When officers think they may make an arrest, they notify the caseworker who begins filling out the paperwork while the suspect is being transported. The 20 minute pre-breath test observation period begins at the time of the stop. No Miranda warnings are given unless a felony charge is likely.

*Post Arrest Investigation and Processing.* Once at the station, the breath test or refusal is taped. If the breath test is 0.10 or above or there is a refusal, a DUI arrest is made. The officer must only fill out a brief narrative, swear to the charges before the caseworker, sign the paperwork which has been filled out by the caseworker and then transport the prisoner to the jail and drop him or her off with the booking form which was prepared by the caseworker.

*Arrest and Processing Time.* The officers state that they average about 30 minutes per DUI arrest from time of stop until they return to patrol when the DUI caseworker is on duty. The more recalcitrant suspects require about 45 minutes.

*Prosecution Support.* DUI cases are only tried on Thursday afternoons beginning at 2 p.m. The court has the officers' schedules and does not schedule cases when the officers will be off. The officers need not be present at the first appearance, at which time about 50% of violators plead guilty.

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*Comments.* An innovation in Hattiesburg is that DUI cases are only tried on Thursday afternoons beginning at 2 p.m. and that officers' DUI cases are only set for trial around their regular work schedule. Also, officers are not required to be present at a suspect's first appearance, which saves a lot of time because about half of the individuals charged with DUI plead guilty.