

## **DWI System Improvements for Dealing with Hard Core Drinking Drivers**

**ENFORCEMENT**



**A DRIVING FORCE FOR SAFETY**

## **The Traffic Injury Research Foundation**

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# DWI System Improvements for Dealing with Hard Core Drinking Drivers

Enforcement 

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We acknowledge with gratitude the police commanders who arranged for officers to participate in workshops held in six states -- the names and affiliations of the commanders appear in Appendix A. In particular, we acknowledge the 32 officers from 20 different districts who participated in these workshops. Their passion, expertise and experience provided valuable insights into enforcement problems and how to solve them. Their names and affiliations are provided in Appendix B.

We also acknowledge the assistance of Patricia Goven, a Grant/Technical Management Specialist with the International Association of Chiefs of Police (IACP), as well as members of the Highway Safety Committee of the IACP, who facilitated our survey of police officers. The survey was designed to determine the generality of the findings obtained from the workshops and to gain further insights into enforcement problems and their solutions. A total of 2,731 officers from 16 states provided us with their views, opinions, and experiences. A list of the Chiefs of Police and designated staff, who assisted in surveying their officers, is provided in Appendix C.

In addition to the authors of this report, other members of TIRF staff who facilitated various aspects of the project were: Doug Beirness, Dan Mayhew, Barbara Koppe, Steve Brown, Gisele Perron, Emerita D'Sylva, Rebecca Val and previous employee, Manon des Groseilliers.

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The opinions expressed in this report are those of the authors and do not necessarily represent the views or opinions of the sponsor, police organizations, or individual officers who participated in this project.





# List of Abbreviations Used in the Report

BAC	Blood Alcohol Concentration
DMV	Department of Motor Vehicles
DWI	Driving While Impaired. See footnote, page 2
FARS	Fatal Accident Reporting System
FBI	Federal Bureau of Investigation
FTA	Failure to Appear
HGN	Horizontal Gaze Nystagmus
HSC	Highway Safety Committee
IACP	International Association of Chiefs of Police
JDP	Judicial Driving Permit
MDC	Mobile Data Computer
NHTSA	National Highway Traffic Safety Administration
NTLC	National Traffic Law Center
NTSB	National Transportation Safety Board
PBT	Preliminary Breath Test
SFST	Standardized Field Sobriety Test





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# Executive Summary

## Synopsis

- ◆ This is the first report from a major study designed to identify ways to improve the efficiency and effectiveness of the DWI<sup>1</sup> system for dealing with hard core drinking drivers.
- ◆ The present report underscores the need for system improvements by identifying key problems in the enforcement of DWI laws, and recommends practical solutions derived from prior research and validated by the experiences of several thousand front-line officers who participated in the project.
- ◆ Forthcoming reports will examine system improvements related to prosecution, sanctioning, and monitoring of hard core offenders.

## Background

- ◆ Unprecedented declines occurred in the drinking-driving problem during the 1980s and early 1990s.
- ◆ These improvements have been largely attributed to changes in socially responsible individuals, who were drinking and driving less often and consuming less alcohol when they drove.
- ◆ Since the mid-1990s, however, declines in the problem have been marginal, suggesting that the characteristics of the problem have changed.

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<sup>1</sup> The abbreviation DWI (driving while impaired, or intoxicated) is used throughout this report as a convenient descriptive label, even though some states use other terms such as OUI (operating under the influence) and DUI (driving under the influence), and in some cases they refer to different levels of severity of the offense. We have used DWI not only to maintain consistency throughout the report but also because it is more descriptive of the offense usually associated with hard core drinking drivers.



- ◆ A very significant portion of the problem is accounted for by a high-risk group of drinking drivers referred to variously as hard core drunk drivers, chronic drunk drivers, persistent drinking drivers, or drivers with high blood alcohol concentrations (BACs).
- ◆ This dangerous group of offenders has since been declared a priority by virtually all major government and non-profit agencies in the U.S.
- ◆ In response to this concern, new programs and policies have been developed and implemented to deal with hard core drinking drivers -- e.g., many states have passed legislation imposing stiffer sanctions on offenders with BACs in excess of .15; forty-one states have passed some form of vehicle incapacitation law.
- ◆ Great strides have been made on the legislative front and continued efforts are needed.
- ◆ At the same time there is growing evidence that legislation is not enough, since hard core repeat offenders are “slipping through the cracks” -- in part, because their familiarity with the system allows them to circumvent it.
- ◆ Changes are needed that will improve the efficiency and effectiveness of the DWI system for dealing with hard core drinking drivers.

## Objectives

- ◆ This project has as its primary goal focusing attention on the need for improvements in the DWI system, by identifying priority problems and recommending practical solutions.
- ◆ The study is examining the entire spectrum of policies, programs and practices that target hard core drunk drivers -- from initial apprehension and charging by the police, through prosecution and adjudication, to the application of sanctions, and follow-up monitoring by probation and parole.
- ◆ The current report deals with the need for improvements in the enforcement phase of the DWI system.



## Approach

- ◆ The project involved a series of steps designed to illustrate the need to improve the efficiency and effectiveness of the DWI system's response to hard core drinking drivers.
- ◆ A comprehensive literature review was used to generate problems identified by previous research. These problems were synthesized and condensed into a short-list of priority issues.
- ◆ This list formed the basis for discussion in a series of workshops held in six states with 32 officers experienced in DWI investigations, from 20 different districts. Workshop participants verified, expanded and prioritized the problem list and developed a set of solutions.
- ◆ To increase the generality of these findings and obtain further information about such things as the frequency with which various problems are encountered, a major survey of police officers was conducted.
- ◆ With the assistance of members of the Highway Safety Committee of the International Association of Chiefs of Police (IACP), 2,731 officers from both state and local agencies, participated in the survey, ensuring the findings are representative of the problems facing officers across the country.

## Findings and Recommendations

- ◆ Police officers consistently acknowledge the need for improvements in the DWI system that will enhance the detection and apprehension of hard core drinking drivers.
- ◆ A primary concern of officers is the complexity of the DWI arrest process. It has become so detail-laden and time-consuming that it is frustrating, discouraging and even intimidating to some officers.
- ◆ A linchpin to successfully improving the efficiency and effectiveness of DWI enforcement is to simplify and streamline the arrest process.



- ◆ In addition to the need for simplifying and streamlining the arrest process, a variety of specific changes to the enforcement system have been identified by officers.
- ◆ They identified nine key problems that impede the effective detection and apprehension of hard core drinking drivers, and recommended ways to overcome these problems. The problems, in order of priority, include: paperwork, test refusal, detection, incomplete evidence, medical cooperation, failure to appear, access to records, testimony, and resources.

- ◆ **Paperwork**

- *The problem:* Paperwork associated with a DWI arrest is voluminous -- virtually no other criminal charge requires as much documentation. It can take hours to fill out as many as 13 different forms. The arrest process, which is dominated by paperwork, takes an average of 2-3 hours, meaning an officer could make only about two arrests per shift, assuming there are no other competing enforcement demands.
- *The consequences:* Time spent filling out forms is time away from direct enforcement and minimizes the deterrent effect created by the presence of police on the roadways. Paperwork is repetitive and frustrating and, due to competing demands, details are sometimes omitted and recording errors may occur. Accurate and detailed paperwork is, however, vital for a successful prosecution. This is particularly so in the case of hard core repeat offenders because paperwork is the primary source of evidence, given that this group is most likely to refuse chemical (BAC) testing.
- *The solution:* Officers want to see paperwork simplified, the forms standardized and technology used more widely to reduce processing time and recording errors.



## ◆ Test Refusal

- *The problem:* Many DWI suspects, but in particular hard core repeat offenders, refuse to cooperate with the investigation -- they will not answer the officer's questions, or take the field sobriety test, or take a breath test. The primary reason for this is that in most jurisdictions the sanctions for refusing to cooperate are much less severe than the sanctions for a DWI conviction, especially a repeat one. Officers say they encounter some form of refusal in 1/3 of the DWI cases they process. And, 95% of the officers say that refusals are much more common among repeat offenders. Refusal rates vary widely across jurisdictions, from as low as 5% to as high as 50%, largely as a result of differences in the sanctions imposed on those who refuse.
- *The consequences:* Essentially, test refusal prevents an officer from gathering critical evidence to support laying a DWI charge and the subsequent prosecution. Moreover, if the suspect is impaired when they refuse testing, they will avoid a criminal conviction and will not be identified as a repeat offender the next time around.
- *The solution:* Officers supported increased penalties (both criminal and administrative) for test refusal. Ideally these penalties should be equivalent to those associated with a DWI conviction, to remove the benefits for test refusal. Officers also want to see test refusal admitted as evidence in DWI trials in jurisdictions where this is not already done.

## ◆ Detection

- *The problem:* Detection of drinking drivers involves two stages during routine police patrols. The officer must first identify a potential suspect in the traffic stream and then determine if there are signs of impairment that justify further investigation. Only the latter stage is involved in sobriety checkpoints.

It is not possible to quantify precisely how likely it is that a drunk driver will be detected but some related statistics provide insights into the magnitude of the problem. To illustrate, Kenkel (1998) estimates there are some 150 million drunk-driving trips in the U.S. every year and 1.4 million arrests. Police



officers in our survey indicate that only half of the suspects they investigate are arrested, so we estimate there are some 2.8 million DWI investigations each year. The chances of a drunk driver being investigated are, therefore, about 1 in 50. Therefore, the chances of a drunk driver being arrested as a result of the investigation are about 1 in 100.

However, the least likely to be detected at both stages are hard core offenders because many are alcohol tolerant and simply do not exhibit even subtle signs of intoxication, even at high BACs. To illustrate, half the drivers who have BACs over the legal limit escape detection at sobriety checkpoints.

- *The consequences:* Hard core offenders who go undetected are not apprehended, sanctioned or deterred or discouraged from engaging in this crime. Moreover, because no charge is laid and there is no conviction, the driver will not be officially identified as a repeat offender the next time through the system.
- *The solution:* Officers supported increased and enhanced training in detection both at the academy and on-the-job. In particular, wider training in the application of the field sobriety tests, particularly horizontal gaze nystagmus (HGN), is recommended. Officers also support more extensive use of technology, including passive sensors that “sniff” the air in the vehicle, and preliminary breath testing equipment (PBTs).

#### ◆ **Incomplete Evidence**

- *The problem:* DWI arrests are detail-laden and potentially relevant evidence must be recorded clearly and documented concisely. This is especially important in dealing with hard core offenders who will often choose to go to trial. The complexity and dynamics of the arrest procedure, coupled with the special problems posed by hard core offenders, increase the likelihood that errors can occur in the documentation or that important evidence can be overlooked.
- *The consequences:* If the evidence is incomplete or inadequate, the chances of a conviction diminish significantly for those who are actually impaired.



Moreover, on subsequent occasions these drivers will not be identified as a repeat offender.

- *The solution:* Officers want to see the entire arrest process reviewed and simplified. In addition, they believe that better training in the collection of evidence is necessary.

#### ◆ **Medical Cooperation**

- *The problem:* Hard core drinking drivers are more likely to be involved in a crash and more likely to seek medical attention, even if they are not injured. They know that medical staff is, for a variety of reasons, often reluctant to provide the requested breath or blood sample or to provide observational data that might demonstrate intoxication. On average, police officers encounter some form of resistance from medical staff in about ¼ of the DWI cases involving medical attention. And, nearly 20% of the officers experience refusal in excess of 50% of such cases, suggesting that a quote from over 20 years ago still has validity, “the hospital is a safe haven for injured impaired drivers” (Maull et al. 1983).
- *The consequences:* When the needed evidence, either in the form of a BAC result or expert testimony cannot be obtained, valuable proof of intoxication, which is vital to sustaining charges and prosecuting the suspect, is lost.
- *The solution:* Officers believe that medical cooperation can be enhanced through improved communication. They strongly endorse the idea of meetings and open dialogue with hospital administration and staff to clarify concerns and expectations, discuss legal requirements, and move toward a policy regarding the level of cooperation to be extended to police officers investigating DWI cases.

#### ◆ **Failure to Appear**

- *The problem:* To avoid DWI prosecution offenders will sometimes simply not appear for arraignment, hearings or trial. Estimates of the magnitude of the problem are not readily available but some jurisdictions report as few as 1%



of their cases fail to appear; by contrast, other evidence suggests the rate may run as high as 30%. The extent of the problem appears to be influenced by the consequences of failing to appear. Many of the offenders who fail to appear are more transient and cannot be readily located, or know that warrants for failure to appear for DWI are served infrequently (most departments lack the resources to execute outstanding warrants), or know that the sanctions for failing to appear are nominal compared to those for a DWI conviction, so they simply ignore the requirement to attend hearings or trial.

- *The consequences:* By failing to appear, DWI offenders evade prosecution and sanctioning. Moreover, valuable resources are wasted on court proceedings that produce nothing more than a warrant. Offenders also avoid a conviction on their record if they are guilty of DWI, so they will not be officially logged as a repeat offender the next time they are apprehended.
- *The solution:* Police officers recommend that the penalties for failure to appear be increased to discourage this behavior. They also want to see greater use of innovative techniques to reduce the frequency of failure to appear in the first place (e.g., the unique telephone-reminder system in King County, Washington) as well as ways to capture those with outstanding warrants (e.g., sting operations that entice individuals with outstanding warrants to a particular location). Officers also see a need to improve liaison between states, since it is both costly and difficult to pursue cases across borders.

◆ **Access to Records**

- *The problem:* Nearly 1/3 of the officers in our survey indicated that their access to a driver's record was inadequate. In many cases they do not have computerized uplinks to records and in some cases what they can access by these means is not up-to-date.
- *The consequences:* Charges laid at the roadside often depend on information gathered at the scene, so individuals with several prior



convictions might be charged as a first-offender and prosecuted similarly, if the error is not corrected at a later date.

- *The solution:* Officers want to see improvements in record-keeping and linkages to enhance the accuracy and availability of criminal and/or driving records. They also want improved access to such records and believe the use of technology, including magnetic-stripe readers, would facilitate charging decisions and help identify counterfeit licenses.

#### ◆ Testimony

- *The problem:* Police officers are not often called to testify in DWI cases -- 78% of the officers in our survey said they rarely or only occasionally testify because relatively few cases go to trial. However, some officers do testify quite frequently, and those who do so only occasionally are usually called to testify in serious cases, often involving repeat offenders, so the presentation of accurate and credible testimony is important. Officers believe their ability to testify is compromised by many factors, such as the length of time between an arrest and trial, the limits imposed on the admissibility of evidence and the lack of opportunity to gain experience in providing testimony in court.
- *The consequences:* Testimony that is not detailed, accurate and communicated effectively can contribute to a dismissal or acquittal.
- *The solution:* Police enthusiastically support the idea of workshops with prosecutors that would focus on how to testify effectively and how to prepare for cross-examination. At the same time, officers could illuminate for prosecutors many of the realities involved in arresting and documenting a DWI offender. Officers support the idea of mentoring programs where experienced officers teach novices how to testify, either directly through instruction or indirectly through observation in the courtroom. They also support the use of mock trials, which simulate the presentation of evidence and cross-examination.



## ◆ Resources

- *The problem:* Funding for DWI units and initiatives is limited at best. The problem was highlighted in a recent report (Wiliszowski et al. 2001), which noted "...enforcement resources have remained stagnant in the face of increasing population and number of licensed drivers". Insufficient equipment, such as on-board computers, PBTs, passive sensors, and video equipment, also impacts the efficient and effective detection and apprehension of hard core offenders.
- *The consequences:* A lack of resources has obvious consequences for the entire enforcement process -- in short, the quality and effectiveness of enforcement is comprised.
- *The solution:* The obvious solution is more money -- either in the form of new money or a re-allocation of existing resources within enforcement. The former is increasingly difficult to obtain in times of economic uncertainty. The more likely solution will entail strategic re-allocations of existing resources that strike a delicate balance across enforcement needs both within traffic safety and outside of it.

## Summary

The DWI arrest process is complex, detail-laden, and time-consuming. Indeed, it has become so onerous that it is often frustrating, discouraging and even intimidating to some officers. Clearly, the process needs to be streamlined and simplified to improve its efficiency and effectiveness. This is a primary concern to police officers and a linchpin to successfully improving the DWI system.

In addition to this general recommendation for simplifying and streamlining the arrest process, a variety of specific changes to the DWI system can improve the efficiency and effectiveness with which police detect and apprehend hard core offenders. These improvements are organized below in terms of the general method by which this can be achieved.



## ◆ **Training and Education**

Police identified several areas in which training can improve the enforcement of DWI laws:

- enhanced training at the academy in conjunction with more on-the-job experience in the detection of hard core drinking drivers -- the most difficult to identify because of alcohol tolerance and familiarity with the system;
- enhanced training, at the academy and in-service, in the complexities of arrest procedures;
- wider training in the use of the SFST, in particular HGN, as well as in the use of PBTs and passive sensors; and
- enhanced training and experience in providing testimony in DWI trials, through such methods as mock trials and direct observation of experienced mentors.

## ◆ **Communication and Cooperation**

Police believe that improved communication and cooperation with other professionals involved in the DWI system will significantly improve the enforcement of DWI laws. They support:

- workshops with prosecutors, which would highlight evidentiary requirements for obtaining a conviction, keep officers informed about new case law, and allow police the opportunity to share with prosecutors the complexity, dynamics and realities of the arrest environment;
- dialogue with medical personnel, which would clarify concerns and expectations with respect to the drawing of blood samples for BAC tests, clarify legal requirements, and encourage a move toward a policy regarding the level of cooperation to be extended to police officers investigating drunk drivers; and



- dialogue with DMV and other stakeholders to simplify forms completed by officers making a DWI arrest.

#### ◆ **Record Linkages, Availability and Access**

A variety of records relevant to a DWI arrest are maintained by separate agencies. Police require timely access to these records to facilitate a DWI arrest and the laying of appropriate charges. The importance of the police having access to accurate, up-to-date records has been underscored by NHTSA as well as other agencies, and remains a critical need to improve the enforcement of DWI laws.

#### ◆ **Technology**

Police believe that new technological applications can improve the efficiency and effectiveness with which they enforce DWI laws:

- mobile data computers and laptop computers to improve access to information and reduce recording errors at the roadside;
- computerized forms to reduce processing time and recording errors;
- magnetic-stripe or bar-code readers to provide rapid access to driver record information and help identify suspended, revoked or bogus licenses;
- digital dictation systems to reduce paperwork and recording errors; and
- PBTs and passive sensors to enhance the officers' ability to detect drinking drivers.

#### ◆ **Legislation and Regulation**

Police also identified a number of legislative changes that would improve the enforcement of DWI laws:

- a consistent look-back period, specifying the timeframe during which prior alcohol-related convictions can be considered;



- criminalize test refusal and allow evidence of refusal to be admitted in court;
- increase penalties for test refusal, for leaving the scene of an accident, and for failure to appear;
- remove the opportunity for judicial driving permits; and
- revisit the interstate licensing compact to ensure that DWI charges, convictions and sanctions follow the offender from state-to-state.





# 1.0 Background

Unprecedented declines in the drinking driving problem occurred during the 1980s (NHTSA 1997; NTSB 2000; Simpson 1993; Sweedler 1994; U.S. Department of Health and Human Services 1988). Progress continued through the 1990s, although the gains were far less impressive (NHTSA 1997; NTSB 2000). More worrisome is the fact that alcohol-related crashes actually increased in 2000 (NHTSA 2001).

Various explanations have been offered as to why the substantial gains in the 1980s were not replicated in the 1990s (Simpson et al. 1994; Stewart and Voas 1994). One widely accepted explanation is that the characteristics of the drinking-driving problem changed (Beirness et al. 1998; Mayhew et al. 2000) and that continued progress on a similar scale will be challenging because of this.

The profound improvements observed in the 1980s have been attributed primarily to changes in the practices of so-called socially responsible individuals -- they were drinking and driving less often and had lower blood alcohol concentrations (BACs) when they did drink and drive. The same could not be said for a group of individuals who frequently drive after drinking, usually with very high BACs. This high-risk group of individuals did not show the same level of change and, as a consequence, now account for a significant part of the alcohol-crash problem. For example, in 1999, drivers with BACs of .15 and above accounted for nearly 80% of the drinking drivers killed in the U.S. (NHTSA 1999). As a spokesperson to the National Safety Council recently stated, "We've already deterred virtually all of the social drinkers. We're now down to the hard core of people who continue to drink and drive in spite of public scorn..." (Pickler 2001).

The importance of this high-risk group was extensively documented early in the 1990s in a report entitled, "The Hard Core Drinking Driver" (Simpson and Mayhew 1991), even though the legacy of concern about this group certainly pre-dates our report (e.g., Glad 1987; L'Hoste and Papoz 1985). By the end of the 1990s there was widespread recognition that addressing the problem of hard core drinking drivers should be a national priority. Groups such as the National Transportation Safety Board, the National



Highway Traffic Safety Administration, the Century Council, the American Legislative Exchange Council, Mothers Against Drunk Driving, and the National Commission Against Drunk Driving declared that the key to continued progress in the fight against drunk driving was dealing effectively with hard core offenders.

As more and more agencies accepted the importance of dealing with hard core drinking drivers, a variety of descriptive labels for this group was created -- e.g., "persistent drinking driver", "chronic drunk driver" and "high-BAC driver". Despite the variation in terms, all of them referred to individuals with a common set of characteristics -- they frequently drove after drinking; they usually had high BACs (often defined as a BAC in excess of .15); they had a history of arrests and/or convictions; and, many were alcohol dependent (Hedlund 1995; Simpson 1995; Simpson and Mayhew 1991).

Research shows that such individuals comprise a very small percentage of the population of nighttime drinking drivers -- less than 1% -- but they account for a very large percentage of the alcohol-related crashes occurring at that time -- in excess of 50% (Simpson and Mayhew 1991).

The magnitude of the problem created by the hard core and the apparent inability of the existing DWI<sup>2</sup> system to change their behavior led to a growing interest in identifying countermeasures that might be effective with this group. A number of proven and promising solutions were described in our second major report on this issue entitled, "Dealing with the Hard Core Drinking Driver" (Simpson et al. 1996).

Since that report was issued, many of the recommended measures have been implemented. Indeed, the 1990s proved to be a watershed for legislation targeting the hard core. Fifteen states passed legislation that imposes stiffer sanctions on offenders with BACs in excess of .15 (the BAC level at which the aggravated charges apply varies from .15 to .20 across the states; NTSB 2000), explicitly recognizing the dangers posed by drivers with high BACs. Other states increased the charge from a misdemeanor to a

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<sup>2</sup> The abbreviation DWI (driving while impaired, or intoxicated) is used throughout this report as a convenient descriptive label, even though some states use other terms such as OUI (operating under the influence) and DUI (driving under the influence), and in some cases they refer to different levels of severity of the offense. We have used DWI not only to maintain consistency throughout the report but also because it is more descriptive of the offense usually associated with hard core drinking drivers.



felony, based on such things as prior convictions and aggravating factors, explicitly recognizing the dangers posed by repeat offenders.

And, this trend does not appear to have lessened. According to the Century Council, “in the 2000 legislative session, 42 states introduced nearly 300 pieces of legislation focusing...on the hard core drunk driver” (The National Hardcore Drunk Driver Project 2000). Forty-three states now have passed either mandatory or discretionary legislation for alcohol ignition interlocks; and 41 have passed some form of vehicle incapacitation law (i.e., license plate removal, vehicle impoundment, immobilization, or forfeiture).

It is evident that great strides have been made on the legislative front. However, there is still room for improvement in the legislative arena and continued efforts are required to promote the needed changes.

At the same time, legislation and regulation, although necessary for success, are not sufficient. This is poignantly illustrated by the case of ignition interlocks. An impressive body of literature (Beirness 2001) has demonstrated that interlocks significantly reduce DWI recidivism. As noted above, this has led to 43 states passing the requisite legislation to enable their use with offenders. To date, however, only about 40,000 units are in use in the United States -- this represents just 3% of eligible offenders. Even in jurisdictions where the law removes judicial discretion by making interlocks mandatory for repeat offenders, very few have been installed (Beirness 2001). Part of the reason for this is that the law is ignored (Tashima and Helander 1998) for various reasons, such as a lack of adequate resources and the perceived cost. Whatever the reasons, the fact is that an effective sanction, although legislated, is not being applied.

**Legislation and regulation are necessary but not sufficient for success.**

The case of the interlock is, unfortunately, not unique. It is illustrative of a wider range of problems in the DWI system, which reduce its effectiveness and efficiency in dealing with hard core drinking drivers. Indeed, there are problems throughout the system -- in enforcement, prosecution, sanctioning, monitoring -- that impact efforts to keep hard core offenders off the road and/or to change their behavior.

**Problems throughout the DWI system diminish its effectiveness.**



Some of the problems are not new -- e.g., detecting hard core offenders who are alcohol tolerant and may not show obvious signs of impairment at the roadside. Some of the problems are not new but have been given a contemporary twist as a result of recent changes in the DWI system -- e.g., refusal to take a test for alcohol has increased in some jurisdictions because the penalties for refusing are now considerably less than the ever-escalating consequences of having a BAC over the statutory limit. And, some of the problems are new, arising from the increased complexity of drunk driving laws -- arguably the offense with the most extensive and complex criminal statutes.

Despite the failings within the system, it is important to keep in mind that it works relatively well -- there were 1.4 million arrests for alcohol-related driving offenses in 1998 (FBI 1998); fewer people are drinking and driving (Balmforth 1998); and, significant declines in the problem occurred, at least during the 1980s and early 1990s (NHTSA 1998).

At the same time, it is evident that much more needs to be done. Many drunk drivers go undetected; some who are detected avoid arrest; overloaded courts engender plea bargaining, which compromises the level of sanctions applied to offenders; poor quality of evidence impedes effective prosecution; and, savvy repeat offenders simply ignore the imposed sanctions. These problems illustrate the need for improvements in the DWI system, which is the primary goal of this project.



## 2.0 Objectives

The primary goal of this project is to underscore the need for improving the effectiveness and efficiency of the DWI system for dealing with hard core drinking drivers by determining where they “slip through the cracks”, and how these gaps can be filled. The project will:

**Project goal: underscore the need for improving the DWI system.**

- provide comprehensive documentation of precisely where the system is failing, and why; and,
- offer practical solutions to these problems.

The need for change arises in part because of the disconnect between policy and action -- many of the laws and regulations are in place but for various reasons they are not being applied or implemented in a meaningful fashion. As a consequence, the efficiency and effectiveness of the DWI system is being compromised at many levels. This ultimately reduces the general and specific deterrent effects of the DWI system -- i.e., it sends a message that the chances of getting caught are slight; that if caught, the chances of being convicted are marginal; and, even if convicted, there is a reasonable chance that the penalties will not be served.

There are a multitude of problems associated with the system’s response to hard core drinking drivers. However, some problems have more far-reaching consequences than others, so this project has as an objective the identification of *priority issues*. Moreover, not all problems are amenable to change in the short-term (e.g., the sympathetic attitude of jurors who do not consider drunk drivers to be “criminals”), or they are difficult to change because they are rooted in constitutional issues. As a consequence, this project has as an additional objective the identification of *practical, cost-effective solutions*.

**Objectives: Identify priority problems and recommend practical, cost effective solutions.**

The project is examining the entire spectrum of policies, programs, and practices that target hard core drinking drivers -- from initial apprehension and charging with a DWI offense, through prosecution and adjudication, to the final application of sanctions and



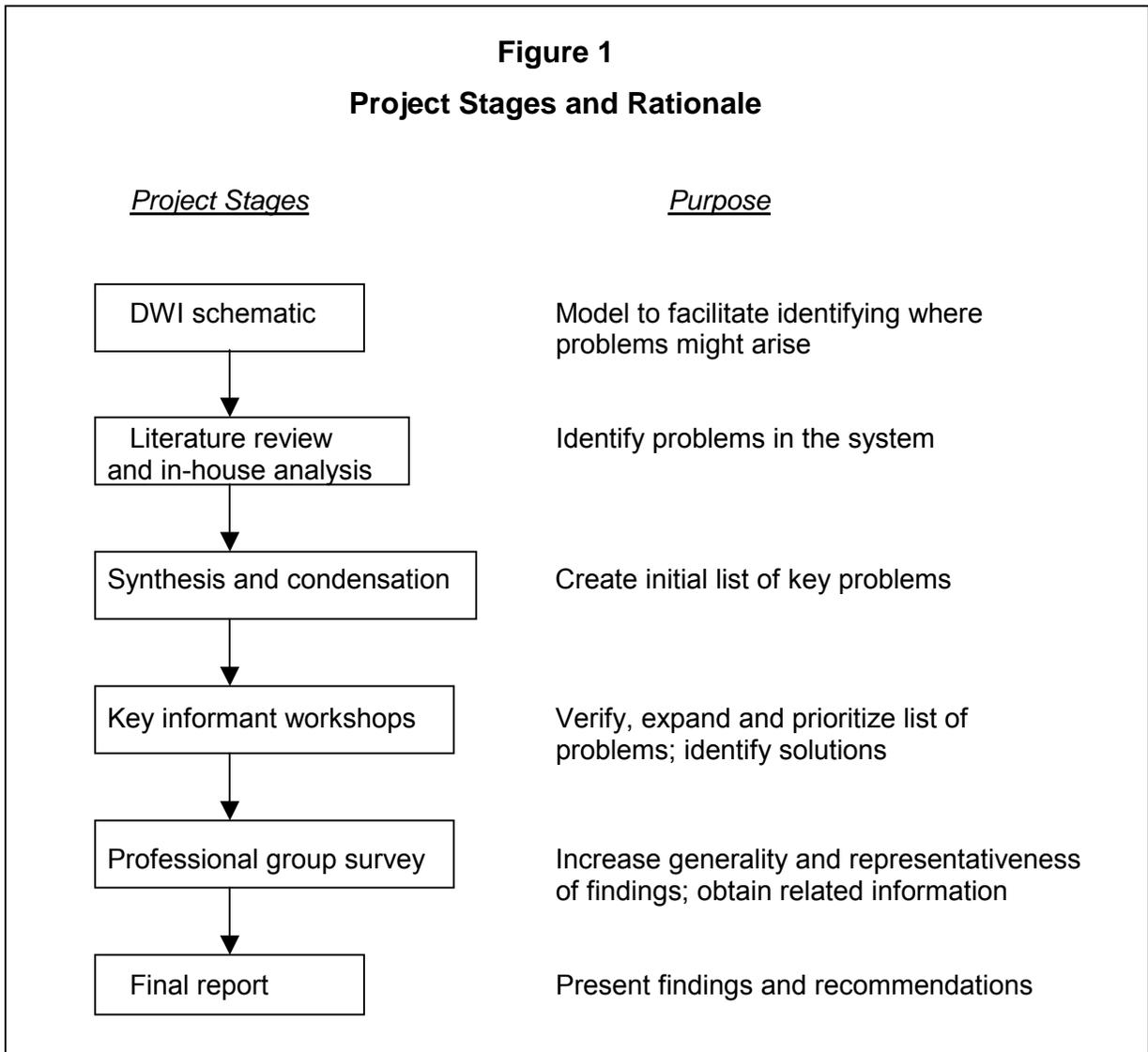
follow-up monitoring. This is critical because it has been clearly demonstrated that hard core offenders can “slip through the cracks” at many stages in the process. This comprehensive analysis of the system that deals with hard core offenders will provide timely and practical insights into how the system is failing and, more importantly, how it can be improved.

This report highlights the need for improvements at the enforcement phase of the DWI system. It documents problems and solutions associated with the detection and apprehension of hard core drinking drivers. Subsequent reports will focus on the prosecution, sanctioning, and monitoring phases.



# 3.0 Approach

The overall approach to the project involves a series of steps designed to produce an increasingly refined, valid and representative list of ways to improve the efficiency and effectiveness of the DWI system's response to hard core drinking drivers. The project stages are outlined in Figure 1. This approach is being used for studying all four phases of the DWI system -- enforcement, prosecution, adjudication and sanctioning, and monitoring.



The first task was the development of a flow-chart, that represents schematically and generically how a DWI case proceeds through the system. The purpose of the schematic was to provide a model that would facilitate identifying where problems might arise. This representation of the system was reviewed and revised based on comments from a number of experts familiar with the DWI system.

Next, a comprehensive literature review was undertaken to determine what problems had already been identified by previous research. This set of problems was expanded by our own experience and knowledge of the system.

The expanded list of problems was synthesized and condensed to produce a short-list of key problems in each phase of the DWI system (i.e., enforcement, prosecution, etc.).

This final list of problems was then presented to the appropriate professional group in a series of workshops in several states -- participants were asked to verify, expand, and prioritize the list of problems as well as to identify solutions. The judgments of these professionals were collated to produce a rank-ordered list of priority problems as well as a set of associated solutions.

To increase the generality and representativeness of these findings and to obtain further information and insights into these issues, a larger and more representative group of professionals was surveyed. They were asked to rank-order the list of problems, to provide other relevant information, such as how frequently they encounter these problems, and to elaborate on the best way to solve them.

The details of the process and its results are described in a series of reports -- this is the first in that series and it deals with enforcement.



## 4.0 The DWI System

To assist in identifying what type of problems might arise in the DWI system and where they are most likely to occur, a flow-chart was developed, which represented how a typical DWI case proceeds from detection through monitoring. Development of the schematic was greatly assisted by similar previous efforts (e.g., Jones et al. 1998). The schematic was intended to be generic and not meant to incorporate the variations and nuances of individual states' systems.

The schematic was presented to a number of professionals working within the DWI system to verify its accuracy and then modified as needed. It appears in Appendix D.

Even a cursory review of the schematic makes it evident that the DWI system is anything but simple. It is also evident that the processing of cases in the DWI system involves several phases which are relatively distinct and sequential but highly interrelated -- enforcement, prosecution, adjudication/sanctioning, and monitoring. Each of these phases is the primary responsibility of a different group of professionals -- enforcement is the responsibility of the police, prosecution the responsibility of district attorneys (or their equivalent), adjudication and criminal sanctioning the responsibility of the judiciary, and monitoring of criminal sanctions is the responsibility of probation and parole officers<sup>3</sup>.

This convenient division of the system was used to structure the approach to the project, which is being completed in four segments to make the task manageable. The first segment, which is covered in the current report, deals with enforcement; the second deals with prosecution; the third with adjudication/sanctioning; and the fourth with monitoring.

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<sup>3</sup> It is important to recognize that this report focuses on the criminal justice system, since this is the primary catchment for hard core offenders. However, in the past several decades there has been an increasing move away from the judicial to the administrative system, largely because it can impose sanctions more swiftly and often more certainly. This administrative segment is shown in the DWI flow-chart and will be the subject of a forthcoming investigation.



Although this segmentation of the system is convenient, it is both arbitrary and somewhat misleading because the responsibility of each professional group extends well beyond the segment in which they have been placed. For example, police are not just involved in the detection and apprehension of drinking drivers; as witnesses in court they are often an integral part of the prosecution.

Moreover, the problems identified in one segment are not necessarily limited to it but can have reverberations throughout the system. We acknowledge these complexities explicitly and are sensitive to the erroneous impressions that can be created by simplifying a truly complex and dynamic system. We have avoided misleading simplification wherever possible.

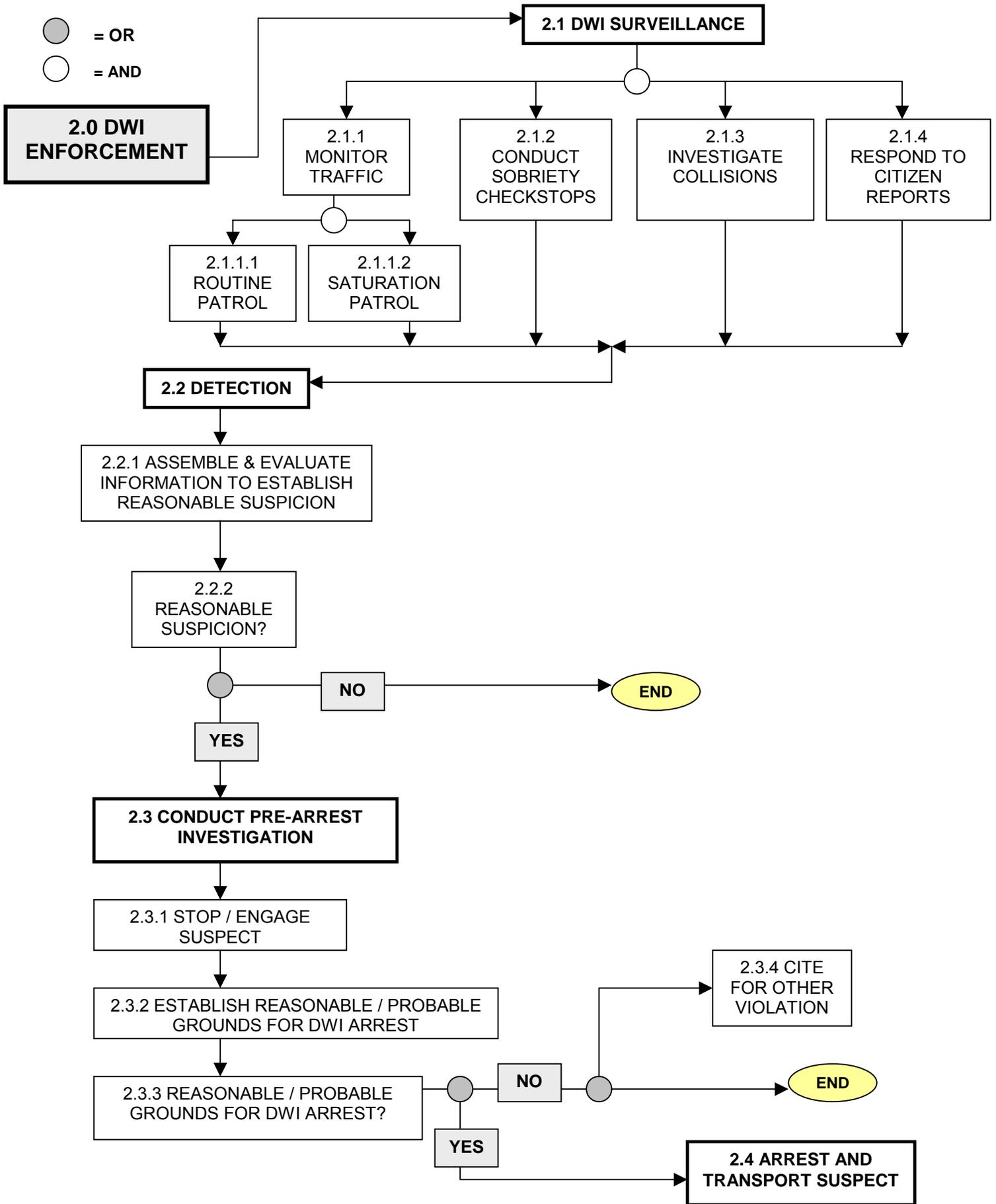
## 4.1 The Enforcement Process

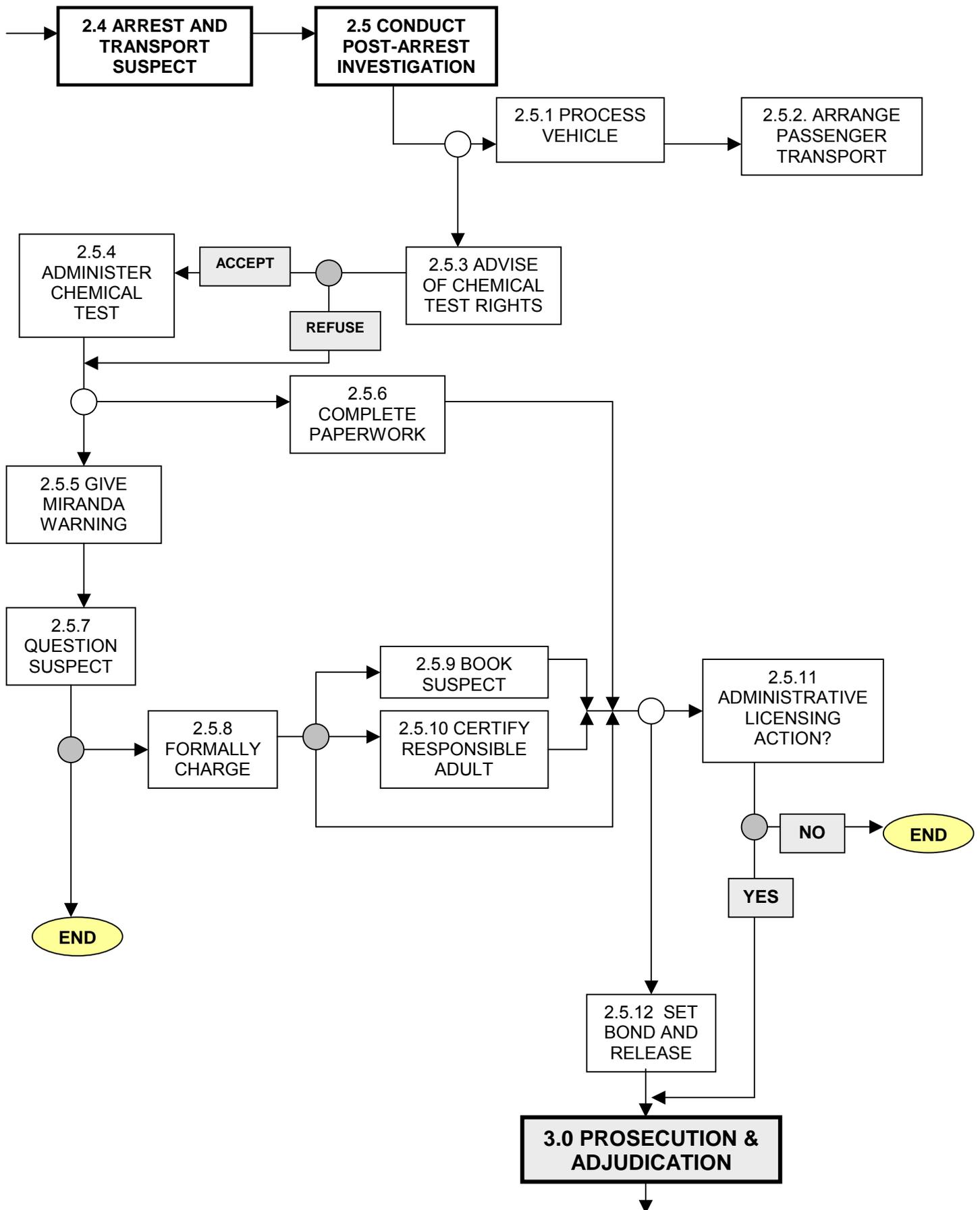
DWI enforcement typically elicits an image of an offender being arrested by the police. The DWI arrest, referred to by police as a “deuce”, a “dee-wee”, or “dewie”, depending on the state, is in fact only an element of the DWI enforcement process. This process is illustrated in the schematic on the next two pages.

The following explanation of the enforcement process is meant to provide the reader with a general idea of the procedures used by police officers to identify and arrest suspected impaired drivers, and is not intended to elaborate on the detailed and complex procedures associated with DWI arrests in each state. It will assist the reader in locating the problems identified in this report within the arrest process in a chronological manner.

There are five distinct but interrelated stages associated with DWI enforcement -- surveillance (2.1 in the schematic), detection (2.2), the pre-arrest investigation (2.3), the arrest (2.4), and the post-arrest investigation (2.5). At each of these stages certain requirements or conditions must be met before the officer can proceed to the next stage.







#### 4.1.1 Surveillance by Routine Patrol

DWI surveillance takes many forms as illustrated in the schematic but the majority of arrests typically result from monitoring the traffic stream using either routine or saturation patrols. Indeed, officers in our survey (see Section 5.0 of this report) indicate that about  $\frac{3}{4}$  of DWI arrests result from routine patrol. When monitoring traffic, the officer searches the traffic stream for drivers who are exhibiting cues indicative of possible impairment. The most reliable cues have been identified through research, and the National Highway Traffic Safety Administration (NHTSA) has developed a list of such cues to assist officers in identifying vehicles operated by people who may be impaired (e.g., wide right turns, straddling the lanes). Officers often rely on these particular indicators when making the decision to initiate a traffic stop.

#### 4.1.2 Detection

The detection stage begins when the officer observes one or more of these cues with regard to a particular vehicle. The officer may follow the vehicle for a short length of time in order to watch for additional indicators of impairment before making the stop because the officer must gather sufficient evidence in order for the stop to be deemed “reasonable”. That is, these cues constitute “articulable suspicion” that a crime is being or has been committed and justifies a stop for the purposes of further investigation.

An officer must be constantly aware of the constitutional rights of the motorist who is stopped. Under the 4<sup>th</sup> Amendment, citizens are protected from “unreasonable search and seizure”. While the interrogation of a motorist is not normally viewed as a search, the stopping of a vehicle is considered a seizure. Without the “articulable suspicion”, the stop is not deemed reasonable and is, therefore, a violation of the driver’s constitutional rights. This means that any subsequent charges resulting from the stop would be dismissed.



### 4.1.3 Pre-arrest Investigation

The pre-arrest investigation involves the request for personal identification and the driver interview, which may be followed by a request to complete the Standardized Field Sobriety Test (SFST) and submit to a Preliminary Breath Test (PBT), if there is sufficient evidence to justify such a request. During the interview the officer attempts to collect any verbal and observational data of impairment exhibited by the driver. The officer may note such things as the slurring of speech and the ease with which personal identification can be located. If the officer concludes, as a result of the interview, that further investigation is warranted, the driver may be requested to exit the vehicle and perform the SFST.

◆ **The SFST.** The SFST is a set of standardized tests that are designed to determine impairment and have been validated by research studies (Stuster and Burns 1998). The tests included in the SFST are the walk and turn, the one leg stand, and the horizontal gaze nystagmus (HGN) test. Each of the tests are described below.

The walk and turn test should be conducted on a flat, dry surface that is large enough to accommodate nine heel-to-toe steps, and where the suspect is not likely to hurt themselves. Poor weather conditions tend to reduce the validity of the test results. Further, this test is not appropriate for individuals who are very overweight, elderly, or suffering from various medical conditions. Those drivers wearing high heels are requested to remove them before performing the test.

Essentially, this test requires the driver to walk nine heel-to-toe steps on a line, turn on the line, and walk back in the same fashion. This test is designed to determine the driver's ability to perform divided attention tasks, meaning that the driver's attention is divided between the mental task of complying with the instructions (information processing, comprehension, memory recall) and the physical task of performing it (balance and coordination). This skill is tested because individuals under the influence of alcohol have difficulty performing divided attention tasks.

During the test, the officer is looking for eight specific clues which indicate impairment, such as ability to maintain the starting position, starting too soon, beginning with the



wrong foot, stepping off the line, etc. The officer is conservative when counting errors and the benefit of the doubt is given to the driver, as is the case with the scoring of the other tests described below.

If the driver is unable to perform the test as instructed, and with sufficient skill, the officer may use the result to establish probable cause. The officer records the result of this test using the appropriate form, indicating which factors were scored poorly and the final result of the test. The information recorded on the form must include specific detail with regard to the errors made during the test, as the prosecutor will use this evidence to negotiate a plea or obtain a conviction in court. Similar documentation is also required for the other tests described below.

The one leg stand test must be performed under similar conditions to the walk and turn test mentioned previously. Again, certain weather or medical conditions may interfere with the accuracy of the results. Furthermore, sufficient light is required to perform this test, as even sober individuals have difficulty performing this test in poorly-lit areas.

There are two different stages associated with this test, the Instruction Stage and the Balance and Counting Stage. During the former, the officer provides detailed instruction with regard to the performance of the test (e.g., to stand with heels together and arms at sides, not to start the test until indicated) and the driver must acknowledge that these instructions are understood. In the latter stage, the officer tells the driver to elevate one foot off the ground approximately six inches, and to keep it in front of the foot that is on the ground. The driver may choose which foot they prefer to elevate.

The driver must perform the test, keeping one foot off the ground in the instructed position, while looking down at the elevated foot, keeping arms at their side, and counting to 30. The driver must complete the test without swaying or hopping around.

Swaying, hopping around, failing to maintain arms at their side, placing the elevated foot on the ground, failing to look at the elevated foot and failing to count out loud are scored as errors. The officer records the result of this test in considerable detail on the proper forms.



The HGN test allows the officer to identify the form of nystagmus commonly associated with intoxication. This nystagmus, or jerking movement in the eye, is involuntary, which makes the test extremely useful in identifying alcohol-tolerant offenders. The officer has the driver perform this test in a well-lit area where there is little background movement and distraction, which may interfere with the application and result of the test.

The officer requires the driver to follow a pen-light (or similar object) with their eyes in such a way as to show any nystagmus resulting from intoxication. The pen-light is held a comfortable distance from the driver's face (usually 12-15 inches), and slightly higher than the driver's eyes, so as to provide the officer with a better view of the optical responses. This test is not a vision test, however, drivers are asked to remove glasses or hard contact lenses.

There are certain conditions which will invalidate the test result, for example if the driver has vision only in one eye, has a glass eye, a "lazy" eye condition, or is color blind. This test must also be administered while the driver is in an upright position, either sitting or standing. The test cannot be administered if the driver is lying down.

The officer is looking for three clues as to the intoxication of the driver. Each eye is tested for the three clues, making a total of six points. The officer checks the left eye first for all three clues before testing the right eye for the three clues. The officer cannot test one eye only and then double the results. Further, the driver must refrain from moving their head during the test. Either of these instances would invalidate the test result.

The first clue is the "smooth pursuit" of the eye. The officer moves the pen-light slowly and smoothly in a horizontal direction from a point directly in front of the driver, to a point in front of the driver's shoulder. The eye should move smoothly, like "a marble rolling across glass". If the movement is not smooth this is the first indication of intoxication. This clue is the easiest for the officer to spot and is repeated two or three times to verify the result.

The second clue is "distinct jerkiness at maximum deviation". This is measured by moving the pen-light, again starting in front of the driver's face, as far to the side until the



white of the eye is not apparent in the corner, hence the term maximum deviation. The officer will require the driver to hold this position for two or three seconds so as to observe the eyeball for jerkiness, which must be distinct and obvious. It is necessary to hold this “maximum deviation” position for a few seconds because this position is somewhat uncomfortable for the driver, and some twitching may be apparent. The driver is instructed to hold the position so the officer does not mistake this twitching for nystagmus.

The final clue is the “angle of onset” at which nystagmus begins and this is the most difficult clue to identify. If the angle of onset of nystagmus is less than 45 degrees this is indicative of intoxication. Typically, the rule of thumb is that 45 degrees occurs when the pen-light is approximately halfway between the driver’s nose and ear on the side being tested.

It is important that the officer accurately gauge the angle of onset because studies in this area demonstrate that as alcohol increases, the angle of onset decreases. If the jerking of the eye begins prior to 45 degrees, when the white of the eye is still visible in the corner, then this is another clue of intoxication. This latter clue is the most reliable and generally, if the officer identifies this last clue, then most likely the other two clues will have been present as well.

If the officer can identify four of the six possible clues, while maintaining a conservative approach to scoring, then the officer can arrest the driver for DWI. The test result is also thoroughly documented on the appropriate form.

Following the application of the SFST, the officer will determine the necessity of requesting a PBT, assuming this device is available. If the driver performed relatively well on the SFST, then the officer will inform the driver that they are free to go. If the officer decides that there is sufficient evidence of intoxication, then the PBT will be requested.

The PBT is a small device designed to detect alcohol in a breath sample provided by the driver. These devices are approved by the Department of Transportation, if they meet accuracy and reliability standards. The results of the PBT are used to substantiate the



officer's opinion that the driver of a particular vehicle is impaired or intoxicated. These devices can be calibrated to the appropriate level depending on the law within the state where the device is being used, typically either 0.08 or 0.10.

The driver must provide a deep-lung breath sample in order for the device to give an accurate reading of their BAC. If the driver does not provide a sufficient sample, the reading will be invalid. The result of this test most often confirms an officer's decision to arrest or release a driver suspected of DWI. This test is not direct evidence of intoxication that can be used in court, because of the level of accuracy associated with these devices. However, the PBT reading can be used as probable cause for an arrest.

#### 4.1.4 Surveillance by Accident Investigation and Checkstops

As mentioned previously, the majority of DWI arrests result from some form of patrol. However, as indicated in the schematic, arrests can result from accident investigations, sobriety checkpoints and citizen reports. The first two methods are also of relevance to this report due to the detection problems associated with each.

Officers report that accident investigations account for 20 to 30% of DWI arrests and the identification of DWI suspects presents particular problems for police officers depending on the nature of the accident. Many alcohol-related crashes involve a single vehicle. Consequently, when the officer arrives at the scene, it may be difficult to determine if alcohol was a factor in the crash. There may be no witnesses to the accident and the officer may not be able to identify any driving cues that were indicative of impairment. At this point there could be insufficient evidence to suspect the driver, or initiate a DWI investigation.

It may also be difficult for the officer to identify the driver of the vehicle. Depending on the seriousness of the accident, the driver may have left the scene, may be unconscious, or may have already been transported to a hospital (see Section 6.5). Even if the driver is identified, the officer may have limited or no contact with them, which may preclude the officer from determining if the suspect was impaired and collecting any evidence to support this belief. The officer has to then rely on any evidence that can be provided by witnesses or by EMT staff.



Even if the driver is still at the scene, the officer is often obliged to permit the suspect to seek medical attention if requested. Many of these offenders are also alcohol tolerant, and familiar with the loopholes in the system, which can prevent the officer from collecting sufficient evidence to support a DWI charge.

There are also a variety of responsibilities at an accident scene for which an officer is accountable. These competing demands significantly decrease the officer's ability to investigate DWI charges in a timely manner. Among other things, an officer must make certain that all victims receive adequate medical attention, interview witnesses, and restore the safe flow of traffic. These demands may limit the amount of time the officer has to interview the suspect. In serious accidents, officers are often unable to interview the suspect until much later, usually at the hospital. By this time the suspect's BAC may have decreased significantly.

If the officer is able to collect sufficient evidence to warrant a DWI investigation, the officer must then identify the attending physician who is responsible for the patient and make a request for a blood sample of the suspect. As discussed in Section 6.5, the officer may encounter difficulty when attempting to collect these samples from medical staff. Blood evidence is of the utmost significance in an accident investigation because the officer may have limited opportunity to request, or the suspect may be unable to comply with, the SFST or the PBT. Consequently, the only substantial evidence that can be used in court is the BAC reading.

Sobriety checkpoints also present officers with limited opportunities for detection, most often because the officer has little time to observe the vehicle before making the stop. The guidelines which govern the operation of sobriety checkpoints vary from state-to-state, and limit the ability of the officer to detect impaired drivers.

The officer typically has only a few seconds to observe the vehicle as it approaches the checkpoint. During that time, the officer must make an initial determination as to the intoxication of the driver. Following this, the officer stops the driver and makes a few inquiries as to where the driver is going, if the driver has been drinking, and if so, how much. The officer may also request the license and registration of the driver. If the driver exhibits no apparent signs of intoxication, the officer is obliged to let the driver



leave. In light of this, it is readily apparent why officers miss up to 50% of intoxicated drivers at sobriety checkpoints. As mentioned previously, repeat offenders are often alcohol tolerant and display few obvious signs of intoxication.

#### 4.1.5 Rights

The officer's authority with regard to the driver interview, the SFST request, and the PBT request is also governed by the constitutional rights of the driver. Once a motorist is stopped, the driver is considered to be "detained" or "under detention". This means that the officer has assumed control over the movement of the person by demand or direction. The detention may have significant legal consequences and also prevents or impedes access to counsel. At this time, the driver is only obliged to provide personal identification to the officer upon request.

The driver is not obligated to cooperate with the officer's request to answer questions, perform the SFST or submit to a PBT. The 5<sup>th</sup> Amendment prevents the officer from depriving the motorist of "life, liberty, or property without due process of law". So while detained, the driver has no duty to cooperate with the officer because the driver is not under arrest. Consequently, the onus is on the officer to gather sufficient evidence of intoxication to warrant an arrest, without violating either the 4<sup>th</sup> or 5<sup>th</sup> Amendment rights of the driver. If the driver refuses to cooperate with the officer's requests, and the officer cannot gather sufficient evidence to establish probable cause, the driver must be released.

#### 4.1.6 Arrest

Following the decision to arrest a motorist, the officer must inform them of their constitutional rights. At this time, the driver has the right to refuse to answer questions and must be provided with the opportunity to retain and instruct counsel without delay. The driver is then transported to the station by the officer and booked.



#### 4.1.7 Post-arrest Investigation

During the post-arrest investigation phase the officer will complete a number of activities, which are indicated in the schematic, the most notable of which is requesting the driver to voluntarily submit to a chemical test. The driver is also informed of the consequences of refusing to submit to the test. The driver may either agree to or refuse the chemical test. The chemical test results are an extremely valuable and important form of evidence in a DWI case. Considerable weight is given to BAC results in court and often a prosecutor relies on this to establish a “prima facie” case, meaning that the evidence speaks for itself. Furthermore, officers must follow precise methods when conducting the chemical test, in order to meet acceptable standards that will determine the admissibility of results.





# 5.0 Identifying Problems and Solutions

As mentioned above, this report -- the first in the series -- deals with the enforcement segment of the DWI system. It seeks to identify problems that impact the efficient and effective detection and apprehension of hard core drinking drivers and solutions to the problems.

## 5.1 Literature Review

A comprehensive review of the related literature was undertaken, specifically to identify problems in the detection and apprehension of hard core drinking drivers (the bibliography contains a list of the articles reviewed). Concern over the successful detection and apprehension of drinking drivers, particularly repeat offenders, is not new. There is a reasonably extensive literature on the subject but, with only a few exceptions (e.g., Jones et al. 1998), it is fragmented, with most articles dealing with only one or two specific problems. As a result, the relative importance of the various problems is difficult to gauge. Nevertheless, our review of the literature did uncover a reasonably wide range of issues.

The problems identified in the literature were collated and expanded, based on our own knowledge of the system. This initial list was then synthesized and condensed to reduce redundancy and overlap. This process yielded a list of key problems that affect the detection and apprehension of hard core drinking drivers -- problems such as paperwork, test refusal, medical cooperation, and failure to appear.

Because the list of problems was generated from the research literature, some of which was neither contemporary nor national in scope, it was imperative to perform a "reality check" on the problem list. The first step in this process involved a series of workshops/focus groups with front-line officers.



## 5.2 Enforcement Workshops

The purpose of the workshops was to validate, expand and prioritize the list of problems generated from the existing research literature. Details on when, with whom, and how these workshops were held are provided below.

### 5.2.1 Site Selection

To achieve some degree of representativeness in the information obtained from the workshops, it was decided to hold them in a variety of states and to obtain participants from different police agencies within each state.

The selection of states was determined by several factors, not the least of which was convenience. As well, we felt it would be useful to include some states that demonstrated a more progressive approach to dealing with hard core drinking drivers and some states that had made less progress in this area. States were rated using an informal composite based on their legislative record, drunk driving statistics and evaluations conducted by other groups, such as MADD's "Rating the States".

An introductory information package and letter requesting participation in the project was sent to identified contacts in the targeted states. Follow-up discussions clarified the purpose of the workshop and what was expected from participants. We emphasized the need for participants with considerable contemporary experience in detecting and apprehending drunk drivers.

Workshops were organized and held during September, October and November 2000 in the following locations:

- Arizona (Tucson)
- California (Costa Mesa)
- Connecticut (Hartford)
- Illinois (Rockford)
- Massachusetts (Newton)
- New York (Albany)



A total of 32 officers representing 20 different districts participated in the workshops (their names and affiliations appear in Appendix B). These officers were experienced, knowledgeable, dedicated and committed to making a difference in the problem of drunk driving.

### 5.2.2 Workshop Format

All workshops were conducted and facilitated by the authors of this report. Each workshop lasted approximately three hours and followed the same format:

- ◆ an introductory presentation provided background information about our organization and the purpose of the project;
- ◆ the problem list was distributed (see Appendix E) and participants were asked to independently rank order these problems in terms of their impact on the efficient and effective detection and apprehension of hard core drinking drivers;
- ◆ discussion and clarification ensued as needed;
- ◆ the rank-ordered lists were collected and collated by the workshop facilitators -- during this process, participants were asked to independently identify important problems that were not on the list;
- ◆ each participant was, in turn, asked to describe a problem they felt should be added to the list -- open discussion sought to clarify the nature of the problem, to determine if it was considered an issue by the other officers and, if so, to determine where it ranked in relation to those on the primary list; and
- ◆ finally, beginning with the problem that was ranked as the most serious, participants were asked, in round-table discussion format, to identify cost-effective, practical solutions to the problems.

Discussion in each workshop was lively and productive and consistently demonstrated the high level of commitment and passion the officers had for enforcing DWI laws. Officers shared their concerns, views and opinions openly and freely. They had little difficulty understanding the problems contained on the list, or in rank-ordering them. Of some interest, many other problems were elicited during the open discussion but virtually all of them were variations of those on the primary list or were more specific instances of problems that were subtended by those on the primary list. This speaks to the validity and generality of the problems identified in the literature review.



Despite the differences in the states represented in the workshops and the differences across police departments, there was considerable consistency in the rankings as well as in the solutions suggested for overcoming or minimizing the effect of these problems. The results from the workshops are not discussed here but have been combined with the results from the survey (Section 5.3) and reported in a single, integrated section (6.0), that describes the overall findings and recommendations.

## 5.3 Survey of DWI Officers

The workshops yielded a list of priority problems in the detection and apprehension of hard core drinking drivers as well as suggested solutions to these problems. Despite the overall consistency of findings across the six workshops, it was deemed useful to enhance the generality or representativeness of these findings through a broader survey of police officers. Moreover, such a survey provided the opportunity to obtain other relevant information, such as the frequency with which various problems are encountered.

### 5.3.1 The Survey Instrument

Given the volume of information we wanted to obtain, it was decided that two separate surveys would be constructed -- one focusing on issues related to problems; the other focusing on issues related to solutions. However, both surveys included a section that asked officers to rank order the problem list that had been generated from the workshops. Copies of the surveys appear in Appendix F.

### 5.3.2 Obtaining Participation in the Survey

To facilitate a broad survey of police officers across the country, we sought the assistance of the Highway Safety Committee (HSC) of the International Association of Chiefs of Police (IACP). A presentation about the project, along with a specific request for assistance in fielding the survey, was made to the HSC Executive Board on February 19, 2001 in Savannah, Georgia. The Executive Board recognized the value of the



project and agreed to facilitate contact with members of the HSC, who could elect to participate on an individual basis.

A list of HSC members was subsequently provided to us. A representative sample of 18 of the 24 members was contacted, provided a formal backgrounder on the project, and asked for assistance in surveying their officers.

### 5.3.3 Survey Distribution and Response

Cooperation was outstanding -- 16 of the 18 members we contacted agreed to take part in the survey. Various arrangements were made to accommodate individual jurisdictions -- e.g., in some cases the two surveys were e-mailed to the contact person, who copied, distributed and collected the surveys; in other cases we provided the surveys individually packaged, including a self-addressed envelope.

A total of 4,220 surveys was distributed in this manner and 2,731 were returned -- a response rate of 65% -- making this one of the largest surveys ever conducted of police officers' views on issues related to drinking and driving. Table 1 shows the number of surveys returned by state, separately for local police departments and state police. Of the 2,731 completed surveys, 1,460 dealt with problems in the detection and apprehension of hard core offenders, and 1,271 with solutions.

### 5.3.4 The Survey Respondents

Officers participating in the survey varied considerably in their years of experience, ranging from 1 to 38 years. However, the mean number of years of experience was 10.3, showing that the respondents were anything but new to the job. Indeed, ¼ of the officers who participated in the survey had 15 or more years of experience. The distribution of years of experience was as follows: 25% had < 4 years experience; 25% had 4-8 years experience; 25% had 9-14 years experience; and 25% had 15+ years experience.

**Table 1**  
**Location of Survey Respondents**

<b>STATE</b>	<b><u>Number of Surveys Returned</u></b>		<b>Total</b>
	<b>Local Police</b>	<b>State Police</b>	
Alabama	-	222	222
Alaska	-	43	43
Arizona	8	447	455
Connecticut	26	-	26
Florida	58	-	58
Illinois	15	-	15
Massachusetts	-	452	452
Minnesota	-	263	263
Missouri	-	182	182
New York	313	193	506
Ohio	-	100	100
Pennsylvania	-	5	5
Rhode Island	6	-	6
Texas	-	293	293
Virginia	-	16	16
Washington	-	89	89
<b>Total</b>	<b>426</b>	<b>2,305</b>	<b>2,731</b>

Respondents were asked if their duties covered a full range of enforcement issues, or if they were DWI officers. Slightly over half the respondents (57%) were DWI officers; the balance (43%) were general patrol officers, whose duties included DWI.

# 6.0 Findings and Recommendations

This section integrates the findings and recommendations arising from the literature, workshops and the survey of front-line enforcement personnel from across the country. It describes problems encountered when detecting and apprehending hard core drinking drivers and how these problems can be overcome.

Nine key problems that impede the efficient and effective enforcement of DWI laws were identified. In order of priority, the problems are:

- paperwork
- test refusal
- detection
- incomplete evidence
- medical cooperation
- failure to appear
- records
- testimony
- resources

In the sections that follow, for each problem, we present:

- ◆ a description of the problem itself and quantitative information on its extent -- i.e., what it is, and how big a problem it is;
- ◆ the consequences of the problem -- i.e., the ways it can impact the effective and efficient detection and apprehension of hard core repeat offenders; and
- ◆ recommended solutions for addressing the problem.



For convenience, this rather extensive information is summarized in an introductory paragraph at the beginning of each problem.

## 6.1 Paperwork

◆ **The problem.** Paperwork was consistently identified as the number one problem that impedes the effective and efficient apprehension of hard core drinking drivers. Paperwork associated with a DWI arrest is voluminous -- it can take hours to fill out as many as 13 different forms; more paperwork than virtually any other criminal charge.

**It can take hours to fill out as many as 13 different forms for a DWI arrest.**

◆ **The consequences.** Time spent on paperwork is time taken away from direct enforcement and the general deterrence that arises from officers being on the road. Moreover, due to competing demands and the frustration created by entering excessive, often repetitive information, officers sometimes do not complete forms in sufficient detail. This poses a special problem in the subsequent prosecution of repeat offenders.

◆ **The solution.** Officers want to see paperwork requirements simplified, the forms standardized, and technology used more frequently to reduce processing time and recording errors.

### 6.1.1 Problem Description and Scope

The paperwork associated with a DWI arrest is extensive and, in many states, often exceeds the amount of paperwork required for a homicide or a domestic assault. The time-consuming paperwork for a DWI arrest is often a consequence of the repetitive and detailed nature of the information required on each form.

Although the paperwork requirements vary among agencies, the following is a list of just some of the standard police paperwork required for a typical DWI arrest:

- alcohol influence report
- arrest report



- probable cause affidavit/narrative
- implied consent form
- Standardized Field Sobriety Test (SFST) forms
- DWI investigation report
- breath testing forms
- summons/citation/ticket
- license suspension
- constitutional rights waiver
- vehicle tow/impound
- booking form

In addition, officers usually must complete other forms that go to the courts and the Department of Motor Vehicles (DMV), or its equivalent. These forms often include much of the same information that is found in standard police reports. Officers may also need to complete additional forms that are specific to a medical or jail facility where the offender is being held.

As a result, it can take up to six hours to complete a DWI arrest, depending on the circumstances. As shown in Table 2, our survey found that, on average, 45% of the officers take 1-2 hours to process a typical DWI arrest; but half of the officers take in excess of two hours -- 34% indicated that it takes 2-3 hours, and 16% reported that it takes three or more hours. *Officers consistently agree that much of this time is devoted to completing paperwork.*

<u>Number of Hours</u>	<u>Percent of Respondents</u>
<1	5
1-2	45
2-3	34
3 or more	16



Officers dedicated to making DWI arrests consider it a personal best to complete three during one shift. In other jurisdictions, officers are pleased to complete just two, because the demands created by paperwork make three arrests impossible. Under ideal circumstances, this means that an officer could make several hundred DWI arrests over the course of a year. And, there certainly are officers who do this. However, the realities of the job dictate that even “dedicated” DWI officers are not available 100% of the time for DWI enforcement, owing to competing policing demands. As a consequence, dedicated DWI officers conduct, on average, 62 DWI investigations a year and arrest 33 suspects; general patrol officers will investigate an average of 31 annually and arrest 17.

These figures are revealing in two ways. First, they indicate the relatively low volume of DWI arrests an officer can handle each year, largely because of the time taken to fully process just one suspect and to handle competing enforcement demands. Even when police departments have specialized or dedicated DWI officers, they are often required to take on other service calls because regular officers cannot handle the volume received during peak times. These officers handle both emergency and non-emergency calls for service, so depending how many calls are received, officers may have little time for DWI enforcement.

Traffic personnel also fill the role of a traditional patrol officer and respond to a wide variety of calls for service. The level of calls for service actually determines how much time an officer can spend on self-initiated activities -- DWI enforcement is most often a self-initiated activity. Furthermore, calls for service are highest in the early/late evening and early morning hours, which is also when most DWI offenses occur. Unless the DWI suspect is involved in a crash, or commits an obvious violation, he or she may not even be detected, simply because the volume of traffic can be heavy at these times.

State police agencies face the same issues. In rural areas, troopers may get involved in domestic abuse cases and other calls for service, especially if there are no municipal officers to respond to them. DWI may be only one focus of the trooper, especially on the night-shift. Day-shift officers may be less inclined to focus on DWI enforcement as the majority of these offenses occur in late evening and early morning hours. Other traffic enforcement such as speeding or aggressive driving may get a stronger focus



depending on the area, and in some instances these investigations will result in a DWI arrest.

Second, the figures show that *the arrest rate is just over 50%* -- apparently, only half of the DWI investigations lead to an arrest. This occurs for a number of reasons: officers have difficulty detecting alcohol-tolerant offenders; officers are frustrated by paperwork and would rather just apply an immediate administrative sanction to avoid it; other service calls are higher priority; officers feel pressure to stay on the road instead of having other officers cover their patrol area while they complete a DWI arrest; and, of course, in some cases the suspect is not impaired by alcohol but may show signs of impairment as a result of such things as fatigue or medication.

This speaks volumes about the efficiency of the system and explains, in part, why there are not more arrests each year and why the probability of being arrested can be so nominal -- e.g., it has been estimated that, "The number of undetected drunk-driving trips for each arrest lies somewhere between Borkenstein's (1975) estimate of 2000 and Voas and Hause (1987) roadside survey estimate of 200 occasions (Marques et al. 2001, p. 617).

### 6.1.2 Consequences of the Problem

The extensive paperwork required for most DWI arrests has far-reaching consequences both for the arrest process itself and the documentation associated with it.

◆ **Impact on the arrest process.** Officers must bear in mind the coverage of an assigned patrol area and their availability for other service calls. When an officer is taken off the road for two or more hours to make a DWI arrest, other officers must cover that area in the interim and the overall level of enforcement in a given jurisdiction is reduced. This is not a trivial problem but one that is often overlooked by those who simply demand greater enforcement of drunk driving laws. With constrained budgets, an increase in drunk driving arrests can often be achieved only at an opportunity cost of fewer arrests for other types of crimes or traffic violations (Kenkel 1998; Rasmussen and Benson 1994). Officers are only too aware of these competing demands, which



influence their decision to proceed with a DWI arrest that takes them off the road for several hours.

For these reasons, many officers rely on administrative actions that can be taken at the roadside -- actions such as license suspension or vehicle seizure. It may be more expedient for an officer to suspend the driver's license, send the driver home in a cab and/or tow the vehicle. In this way, at least some swift and certain sanction is imposed when it is not feasible to proceed with a full arrest, due to competing demands.

Paperwork can also discourage officers from making an arrest. They admit that, in some circumstances, the time-consuming nature of the investigation and the paperwork associated with the arrest oblige them to exercise discretion in terms of the action taken. Discretion at the roadside has been the subject of substantial research (see Meyers 1991 for a review), which confirms that factors such as competing demands and paperwork influence the decision to arrest.

**60% of the officers said that paperwork discouraged them from making a DWI arrest.**

Indeed, nearly 60% of the officers we surveyed said that the time-consuming nature of the arrest and the associated paperwork were major factors that discouraged them from making DWI arrests.

Moreover, the end result of the time devoted to paperwork can also be discouraging. Officers discover that the driver is often out on the road again within a week. Cases may be dismissed or plea bargained, with the driver receiving little in the way of sanctions. This can create the impression that drunk driving arrests are not a priority and that time completing forms is wasted. Even experienced officers eventually become frustrated with the end result of the arrest, stating that "It's easier to get a shaky murder conviction than a slam-dunk deuce". As a result, officers may focus on other crimes and direct their efforts away from drunk driving arrests.

The complexity of the paperwork can also be intimidating, especially for new officers, who are unsure what forms are required and how they should be completed, because paperwork requirements vary among police agencies. This means that standardized training at an academy, which serves many departments, is not feasible. Consequently, new officers will hesitate to pursue DWI arrests.



◆ **Impact on documentation.** Extensive paperwork requirements increase the likelihood of recording errors and incomplete information. The downstream effect of this can be profound, since it will limit the prosecution's ability to sustain charges and obtain a conviction.

There are a number of reasons why paperwork may be incomplete or inaccurate. Officers may not have time during an arrest to fill in detailed information and not have an opportunity to go back at a later time to add information before forms are submitted. Some of the information required on a form, for example, a complete driver record, may not be available at the time of the arrest. Errors copying repetitive information such as the driver's license number, vehicle registration number, or the suspect's date of birth are possible.

The dynamic, variable and often volatile conditions under which the arrest occurs can also affect the officer's ability to complete paperwork accurately. When an arrest results from a routine traffic stop, weather and/or road conditions may prohibit certain kinds of detailed documentation. Depending on where and when stops are made, it may be extremely difficult for an officer to fully document all of the details of a stop and arrest, including what road conditions were at the time, traffic volume, or what elements of the SFST were performed erroneously (e.g., what steps were missed in the walk-and-turn test). Furthermore, an officer must maintain vigilance with regard to personal safety while collecting this information.

Officers can also be called away to respond to other serious incidents and not have an opportunity to complete DWI paperwork until much later. When a stop results from a sobriety checkpoint, many officers may be involved in the stop and arrest, however, only one officer will complete the paperwork, so important details may be omitted.

The time of the stop illustrates how easily errors can enter the process. Officers making DWI arrests at the beginning of their shift frequently are not able to complete paperwork until the end of the shift. If the arrest occurs before midnight and the forms are completed the following morning, the date indicated on them may be incorrect -- such small details can provide sufficient grounds for a dismissal of the charges.



In summary, the length, complexity and repetitive nature of arrest paperwork, coupled with competing enforcement demands, increase the likelihood of recording errors and an error, even a small one, increases the likelihood of a dismissal. The paperwork can be intimidating, frustrating and discouraging.

### 6.1.3 Recommended Solutions

In our estimation it is surprising that more errors do not occur in the paperwork associated with DWI arrests, given its volume and complexity. That this does not happen is testimony to the dedication of the police officers who operate in this often frustrating environment of paperwork. Action is needed to redress the problem.

Three solutions were recommended: simplify the paperwork; standardize the forms used by departments; and increase the use of technology.

◆ **Simplify the paperwork.** There is virtually unanimous agreement among the officers we surveyed that there is a desperate need to reduce the paperwork requirements associated with a DWI arrest -- 89% of the officers supported streamlining or simplifying the current paperwork requirements.

**9 out of 10 officers support simplifying and streamlining the paperwork.**

Overall, it appears that this need is somewhat less among state police organizations, where forms are typically easier and less complicated to complete than those in local police departments. Nonetheless, improvements would be welcomed and beneficial in all cases. In our survey, the two forms most commonly identified by police as requiring simplification were the arrest report (also called the incident report, the DWI report) and the alcohol influence report. Also mentioned as needing simplification were forms pertaining to administrative license suspension.

Similarly, in their major study, Jones, Lacey and Wiliszowski (1998) recommended that no more than four forms should be filled out by the arresting officer, the incident report should be reduced to just one or two pages, and clerical transcription functions could be performed by personnel other than the officer.



Jurisdictions are encouraged to review the forms required for a DWI arrest for the purpose of eliminating repetitive, redundant and unnecessary information. The goal is to ensure that the needed information can be recorded efficiently and accurately.

◆ **Standardize the forms.** In our survey, there was considerable support among the police for the idea of standardizing report forms, which often vary in content and structure from department-to-department and state-to-state. The standardization of forms would be beneficial for comparing information across jurisdictions as well as for training, since officers would need to learn only one standardized set of paperwork. Typically, forms are overlooked at the academy as part of the DWI training because officers are often members of different departments with different paperwork demands. With sufficient training, new recruits would be less intimidated by paperwork requirements and engage in DWI detection more enthusiastically.

A considerable amount of information contained in the police reports is also required in DMV or court forms. Officers feel there should be participation and agreement between these agencies with regard to how the form should be structured and what information it should contain. This would save an officer considerable time by reducing the overall number of forms to be completed.

States are encouraged to examine the feasibility of adopting a statewide, standardized set of report forms for DWI arrests; this process could also be extended to the national level. Some guidance as to how this can be achieved is offered in the 1991 NHTSA report, entitled “An assessment of police traffic services”. When these recommendations were tested in Louisiana, significant reductions were achieved in the time to complete the necessary paperwork (Lewis et al. 1994).

◆ **Use technology to reduce processing time and errors.** Officers would like to see more extensive use of technology in the reporting process. For example, officers feel that recording and transcription errors could be reduced substantially and the process expedited if all states had magnetic-stripe drivers licenses and police were equipped with hand-held magnetic-stripe readers. Some police agencies in Arizona, Florida, Iowa, North Carolina and Wisconsin are equipped with bar code or magnetic stripe readers. The effectiveness of this system warrants careful monitoring, since



police see it as having considerable potential. In this context, the West Des Moines Police Department in Iowa has equipped their officers with mobile data computers (MDC) with bar code readers. When the license is swiped, the information is stored and can be uploaded at the end of a shift.

At the same time, police are fully aware of the practical factors that mitigate the effectiveness of this approach -- repeat offenders often drive unlicensed and some states do not require the driver to carry their license with them. Nonetheless, on balance, officers believe the system will have benefits.

Another innovative way to use technology was demonstrated in a pilot project conducted in Utah under funding from NHTSA. Highway Patrol officers could dictate the arrest report, either at the jail or by phone, substantially improving the accuracy of detailed information because it could be done almost immediately. Time reductions were also substantial yielding an annual savings of \$62,000 (Traffic Safety Digest – Fall 1998).

Technology also needs to be extended to paperwork in general. Officers supported computerization of paperwork to facilitate the entering of repetitive information, which would save time and prevent errors associated with recopying a significant amount of information. Such software is in use and more advanced systems provide for immediate notification to DMV and related agencies. They not only reduce the number of forms an officer must complete but also improve the accuracy of driver records. Available systems are very sophisticated. For example, in North Carolina not only is the State Highway Patrol equipped with bar-code readers but their in-vehicle computer system permits immediate reporting of the incident, which improves accuracy and reduces time. Subsequently, DMV receives notification and can update driver records accordingly.

In Scottsdale, Arizona, the long range goal is to equip each officer with a personal laptop computer or hand-held device. The unit can be used to enter reports, thereby reducing the amount of paperwork, increasing the legibility of reports, and reducing errors.

However, even some of the computerized systems already in place require further modifications. Computer programs may not branch from one form to the next, depending on the nature of the arrest, so the officer is still left to determine which forms



are necessary for various types of arrests. Other officers have indicated that there are problems entering data because systems will be shut down at irregular times to upload all of the data entered each day to main files. Consequently, accessing the computer system to complete reports during their shift can be problematic.

## 6.2 Test Refusal

◆ **The problem.** The second major problem in the enforcement of DWI laws is test refusal. This encompasses a variety of activities from refusing to answer questions posed by the officer, to refusal to take or complete the SFST, to refusal to provide an evidentiary breath test. It has been recognized for some time as a significant problem in the apprehension and subsequent conviction of drunk drivers (American Bar Association 1987; Elliott 2000; Jones et al. 1991; Ross et al. 1995).

Refusal rates vary widely across jurisdictions from as low as 2% to as high as 71% (e.g., Jones et al. 1991; Tashima and Helander 2000). Despite this variability, it is a problem that virtually all officers encounter at some time. The officers we surveyed said that, on average, *they experience some form of refusal to cooperate in one out of every three cases they process.*

The variation in test refusal rates appears to be a function of several factors, the most important of which is the consequences for refusing. In most states, the consequences for refusing to take the chemical test are nominal and in a few states, the fact that the offender refused cannot be entered as evidence; in other states, such as California and North Dakota, penalties are substantial and test refusal is admissible evidence.

◆ **The consequences.** The problem of test refusal is of particular concern with repeat offenders who are more likely to refuse tests for impairment at the roadside or at the police station. This makes it difficult to establish probable cause and/or to sustain charges. Indeed, 95% of the officers we surveyed said that refusals are much more common among repeat offenders.

**Test refusal is a general problem but it is much more common among repeat offenders.**



◆ **The solution.** Police officers identified several ways to reduce the problem of test refusal, including making it a criminal offense in all jurisdictions, increasing the penalties so there are no benefits to refusing, and allowing test refusal to be admitted as evidence.

### 6.2.1 Problem Description and Scope

In a typical DWI investigation, the gathering of evidence proceeds systematically. It often begins with a series of questions posed by the officer. If a suspect's answers or behavior provide grounds for further investigation, the officer will request the SFST and also a PBT if available. If the results of either indicate intoxication, the officer can arrest the suspect. Subsequently, the suspect is transported to the nearest facility for chemical testing (usually a breathalyzer).

In the broadest sense, "test refusal" encompasses a variety of activities, including refusal to answer the officer's questions, refusal to complete the SFST, refusal to submit to a PBT, or chemical test. Repeat offenders are familiar with this system and will often refuse to cooperate with all aspects of the investigation. Many officers say they actually recognize a repeat offender by the fact they refuse to cooperate with some or all aspects of a DWI investigation. Due to the protections engendered by the 4<sup>th</sup> and 5<sup>th</sup> Amendments of the U.S. Constitution, (as discussed in Section 4.1.3), refusal to cooperate with interview questions, the SFST, and PBT, are without resolution at this time. Because refusal to take the chemical BAC test is the only element of the process that carries sanctions, legislation addressing the issue of chemical test refusal offers a number of possibilities.

Test refusal is a significant problem -- the average chemical test refusal rate for the nation has been estimated at approximately 20% (Jones et al. 1991) -- i.e., in nearly 1/5 of the DWI investigations, the suspect refuses to cooperate. If this is extended to include all forms of refusal, the problem is even greater. Our survey results, which include all forms of refusal, indicate that, on average, officers experience some element of refusal to cooperate in one out of every three cases (32% of the time). And, of considerable relevance to this report, *95% percent of officers surveyed indicated that refusals are much more common among repeat offenders.*

**Officers encounter refusal to cooperate in 1/3 of their DWI cases.**



While this problem exists in all jurisdictions, its extent varies considerably. In some states, such as California, officers experience a refusal rate as low as 5% (Tashima and Helander 2000), whereas in other states the refusal rate can be in excess of 50% (Ross et al. 1995).

This variation appears to be a function primarily of the penalty structure for chemical test refusal. In most states, the penalties involve an administrative license suspension of 90 to 180 days. This is considerably less severe than the criminal penalties imposed for failing a chemical test. Moreover, the administrative sanctions are often discretionary and, therefore, lack sufficient consequences to be a deterrent (NHTSA 2000).

For repeat offenders, many of whom have already had their license suspended, the threat of another short-term suspension is likely not much of a deterrent. In response to this problem, some states (e.g., California, North Dakota) have significantly increased the administrative penalties to a year's suspension or revocation. However, given that the likelihood of detection for driving while suspended is very low -- as evidence of this, it has been estimated that as many as 75% of suspended drivers continue to operate their vehicles (Nichols and Ross 1989) -- the deterrent effect of a lengthier suspension is likely nominal.

Some states have instituted criminal penalties for chemical test refusal. However, even these are often significantly less severe than the penalties associated with taking the test and failing. For example, refusal is a criminal offense in New York but it carries a fine of \$300.00.

Some officers in our survey also noted that the problem of test refusal is further compounded when judges fail to impose sanctions for test refusal, even when law mandates such sanctions. Essentially there is little, and often no, deterrent effect associated with test refusal.

The central issue is that the consequences of refusal are far less significant than the consequences of cooperating and being convicted. Logically, under these circumstances, it is sensible for a drunk driver to refuse chemical testing, and repeat offenders recognize this more so than first offenders.

**The consequences of refusal are far less severe than the consequences of failing the test.**



An associated problem is that evidence of refusal is still inadmissible in a few jurisdictions. This creates a serious disadvantage for the officer when collecting evidence of intoxication to be presented in court. Juries and judges are unaware of this important element of the investigation, and this omission of information tends to reflect badly on the officer and his/her ability, rather than on the behavior of the defendant. A jury will incorrectly assume that the officer failed to conduct the test and this makes the officer appear careless in the investigation. Consequently, almost all states now allow test refusal to be entered as evidence. However, even in some of these states there are no criminal penalties for refusing the test in the first place (e.g., Connecticut, Colorado, Maine).

Another nuance of test refusal involves language. In many states, drivers obtain a license without being able to speak English -- they can take the written and practical driver's test in their first language. This has implications for officers trying to enforce DWI laws. In some jurisdictions there are in excess of 50 languages spoken by residents. Accordingly, some suspects legitimately have difficulty understanding and following an officer's instructions. This often results in considerable delays while the investigating officer waits for an available officer with translation capabilities to conduct testing.

Such delays can be costly. Due to the nature of drunk driving offenses, it is imperative that an officer collects the necessary evidence as soon as possible, to exclude the possibility of a suspect "sobering up" while awaiting testing. The language barrier also results in additional paperwork involving translations for interview questions, SFSTs and implied consent forms. This problem is of sufficient magnitude in some jurisdictions that officers now carry standard translations of many different forms (officers in our workshops in Illinois, Massachusetts and Arizona indicated they do so). However, translated forms are not a complete solution to this problem, as some suspects may be illiterate and others simply feign ignorance.

### 6.2.2 Consequences of the Problem

Essentially, test refusal obstructs an officer's ability to gather sufficient evidence to lay charges. When charges are laid, many ultimately result in dismissals because of



insufficient evidence. Since this occurs more often with repeat offenders, they continue to evade prosecution and sentencing, providing no reason for changing their behavior.

In a typical DWI case the officer must initially establish reasonable grounds for proceeding with an investigation. This is often achieved by the officer detecting the odor of alcohol, or noting that a suspect slurred their responses and was unbalanced when exiting the vehicle. However, beyond that point, when a suspect refuses to answer questions or cooperate with an officer's requests, some feel it is pointless to continue with a DWI investigation because the likelihood of a later conviction is so remote.

If the subject refuses to cooperate with the SFST, it prevents the officer from gathering further evidence of intoxication. The SFST evidence becomes extremely important if the offender subsequently refuses chemical testing, because the SFST results become the only evidence of intoxication. Many prosecutors agree that the BAC results from chemical tests carry the most weight with judges and juries. Without that scientific evidence, it is debatable if the defendant was intoxicated, tired, or having a diabetic reaction. There are a variety of defenses, which can be easily argued by an experienced attorney in order to establish reasonable doubt. BAC results are much more difficult to refute.

The inadmissibility of test refusal in court also benefits the defendant, especially those opting for a jury trial. The jury is typically unaware that the test was requested by the officer and refused by the defendant. It is common for juries to incorrectly assume that the officer failed to request a test, maybe because the defendant did not appear to be that intoxicated. Typically juries rely on breath test evidence and without those results, reasonable doubt often exists among jury members. The outcome can be an acquittal.

A dismissal allows the offender to avoid a possible drunk driving conviction and sanctions that could reduce recidivism. Moreover, the lack of criminal penalties for chemical test refusal means that the suspect will not be identified subsequently as having a prior alcohol-related offense and will be treated as a first-offender.



### 6.2.3 Recommended Solutions

Test refusal is relatively commonplace and the effects on a subsequent conviction can be profound. Officers identified several solutions for dealing with chemical test refusal.

- ◆ **Make refusal a criminal offense.** In most jurisdictions the sanctions for chemical test refusal are administrative, not criminal, which means that upon a subsequent arrest, a suspect will not be identified as having a prior alcohol-related conviction. Criminal sanctions should be associated with test refusal to ensure that hard core offenders can be identified correctly.

- ◆ **Increase the penalties for test refusal.** If they are to be effective, penalties for test refusal should be at least equivalent to penalties for taking the test and failing it. This essentially removes the benefits of refusing testing -- suspects will face the same penalties whether the test is refused, or taken and failed. Indeed, the first choice of 53% of the officers in our survey was to increase the penalties for test refusal.

- ◆ **Make refusal admissible evidence.** A related solution to the problem of test refusal involves the admissibility of this evidence in court. Fortunately, this problem has all but been corrected. Only a few states (e.g., Massachusetts, Hawaii) do not permit information regarding test refusal to be entered as evidence. In a few other states (Maryland, Michigan and Virginia) its admissibility is limited, meaning it can only be entered by the prosecution if it is raised by the defense (NHTSA 2000). Officers from these states, who participated in our survey, overwhelmingly supported admitting evidence of test refusal.

- ◆ **Other Ideas.** Another solution raised with some frequency by officers was to remove the opportunity for a Judicial Driving Permit (JDP -- hardship license) if a suspect refuses to cooperate with testing. The parameters which permit the application for a permit are too broad/vague. In rural jurisdictions these permits are frequently granted due to a lack of public transportation. Also, many offenders argue that they require a vehicle to get to and from work. Allowing a driver to refuse testing and still be eligible for a driving permit contradicts the intent of the implied consent law. An



additional line could easily be added to the warning to motorists informing them that test refusal makes them ineligible for a JDP.

Another option is to facilitate the drawing of blood from DWI suspects. To illustrate how this works, in California, officers will instruct suspects that upon refusal to submit to a chemical test, a warrant can be issued ordering a blood test. It is the experience of a majority of the officers in our California workshop that most suspects cooperate with testing procedures following this warning. They indicated that test refusal was really a non-issue because blood can be obtained by trained medical personnel with or without a suspect's consent (currently, Federal case law provides authority for such action in certain circumstances). This may account for the very low refusal rate in California.

This is, however, a controversial solution due to the privacy rights embedded in many State constitutions. While this solution has had considerable success where implemented, such as in California and parts of Illinois, it likely will not receive broad support. Indeed, only 25% of the officers we surveyed support the idea of blood draws. Those who do support the use of blood draws generally believe that medical personnel should take the blood sample -- 49% believe that these draws should be conducted with the assistance of trained medical personnel in hospitals, and an additional 25% believe they should be conducted by medically-trained personnel employed at the police agency. Only 26% support the training of police officers to conduct blood draws without medical assistance. It is suspected that liability issues account for the hesitance of officers to do blood draws.

Some officers even went so far as to suggest that a governing body should sanction defense attorneys who instruct their clients to refuse testing and all other investigation procedures. Officers find this instruction frustrating as these attorneys are perpetuating the problem of test refusal. To illustrate how far this has been taken, an Illinois defense attorney has created a DWI kit that is being marketed on the Internet for \$99.95 and can be carried in a driver's glove box. The kit includes a recording and a written card, which communicates the driver's refusal to answer any questions or submit to sobriety tests without an attorney present. The driver is instructed to open the window enough to play the recording and pass the card to the officer, along with their driver's license and proof



of insurance. This prevents the officer from having any contact with the driver or collecting evidence of intoxication (Monday Morning Report July 23/01).

## 6.3 Detection

◆ **The problem.** Hard core drinking drivers are difficult to detect because they have developed tolerance to the obvious effects of alcohol and may display only subtle signs of impairment while driving and/or during a roadside investigation. Such signs are necessary before an officer can administer the SFST. Detection based on the smell of alcohol or other behavioral signs is not particularly reliable as evidenced by the fact that half the drivers with BACs over the legal limit are not detected at sobriety checkpoints (Ferguson et al. 1995; Jones and Lund 1986; Transportation Research Circular 1999).

◆ **The consequences.** It is evident that if drunk drivers go undetected, they will not enter the DWI system -- they will not be sanctioned, and the next time around they will not be treated as a repeat offender.

◆ **The solution.** There is a need to improve the ability of police officers to detect drunk drivers, particularly those who are alcohol tolerant. To do so, officers in our study recommended improved training and a greater use of technology, such as passive sensors, a device held near the driver to capture a sample of exhaled breath.

### 6.3.1 Problem Description and Scope

The detection of drunk drivers involves at least two stages. The first involves the identification of a suspect within the traffic stream, usually through routine patrol where the officer notices such things as erratic driving, or less obvious cues such as an open window when the temperature is well below freezing. The second level of detection involves determining if the driver of the identified vehicle has consumed alcohol.

The first stage of detection depends on the level of enforcement and the officer's ability to identify signs of driving impairment. The odds of being detected for drunk driving have never been estimated but it is known that the probability of being arrested can be



quite low, even in areas that are heavily enforced (1 in 300 trips -- Voas and Hause 1987). The chances of being arrested in areas where enforcement resources are less concentrated, are much less (e.g., as low as 1 in 1000).

The next stage depends almost exclusively on the ability of the officer to determine if the driver they stopped has been drinking. This is far more difficult than might be imagined. Even the smell of alcohol is not always a dependable sign. Moskowitz et al. (1999) studied the ability of experienced officers under ideal conditions to detect alcohol in breath. They concluded, "...that even under optimum laboratory conditions, breath odor detection is unreliable, which may account for the low detection rate found in roadside realistic conditions" (p. 175). This situation is even more complex in the case of hard core drinking drivers. Many of them are alcohol tolerant -- for example, Wieczorek et al. (1990) estimate that 84% of second-offenders are alcohol dependent, so many of them have developed tolerance to the obvious behavioral effects of alcohol.

Individuals with a high tolerance to alcohol become accustomed to performing a variety of everyday tasks, including driving, even at relatively high BACs. This does not mean they are safe drivers, however, since any unusual change in the driving environment can result in a crash. But their performance of routine tasks appears unaffected. This is underscored by the finding that approximately 50% of drivers with a BAC above the legal limit make it through sobriety checkpoints undetected (Jones and Lund 1986; Ferguson et al. 1995).

**Alcohol tolerant offenders are difficult to detect.**

Some officers refer to the alcohol-tolerant driver as "a walking 2-0", meaning that the BAC of these individuals rarely drops below .20. These offenders can walk and talk coherently despite high levels of blood alcohol and do not typically exhibit the common signs of intoxication (e.g., slurring words, poor balance), making them difficult to detect at the roadside.

This problem is further documented by studies on admissions to emergency rooms and trauma centers -- many drunk drivers are undetected in emergency rooms (e.g., Maull et al. 1984). Other studies report that a physician can examine individuals with a BAC as high as .35 without noting any evidence of intoxication (Perper et al. 1986, cited in Transportation Research Circular 1999). It is understandable how these individuals can



respond to an officer's routine questions without incident and successfully avoid detection.

Moreover, because these individuals are more likely to have been stopped on previous occasions they are familiar with the rigors of a DWI investigation. Officers reported that, in their experience, repeat offenders will do such things as attach their driver's license to their vehicle registration so they do not have trouble locating them and presenting them to the officer on request without fumbling (one of the many signs of intoxication that an officer will look for).

Even if an officer is able to detect relevant signs of intoxication and establish probable cause for proceeding to the SFST, the problems with detection do not end there. Many hard core drinking drivers perform reasonably well on SFSTs -- some offenders have even been known to practice these tests. These tactics make repeat offenders difficult to detect, at least by less-experienced officers, who are not as skilled with the SFST.

More experienced officers find that, if other tests fail to provide evidence of intoxication, the HGN test is extremely reliable for identifying even alcohol-tolerant offenders (see Section 4.1). Numerous research studies clearly validate HGN testing as accurate 96% of the time (NTLC 1999). However, not all officers are trained in this technique and this creates inconsistent enforcement. To compound this problem, the HGN test has limited admissibility in jurisdictions throughout the U.S. For example, in Massachusetts a majority of officers are trained in HGN but the test results are inadmissible in court. In other jurisdictions, HGN results are admissible, but this can be a time-consuming and costly process involving separate hearings with testimony from expert witnesses in order to get these results admitted. In most instances, courts do not have sufficient time to hold such hearings.

Inadequate equipment also detracts from an officer's ability to accurately determine a suspect's level of intoxication. Officers report it is much more difficult to detect drunk drivers at the roadside without the consistent use of breath testing devices, such as PBTs and passive sensors.



PBTs are legislatively authorized in 29 states and D.C. and are used in Georgia, Maine, and Wyoming absent of specific legislation but based on case law (NTSB 2000). A majority of officers find that these devices are very useful in detecting intoxicated motorists. Indeed, the Century Council reports that the distribution of PBTs to state and local police in Minnesota resulted in a substantial increase in the arrest rate.

The main issues with regard to these testing devices are availability and training. Significant resources are required to equip all patrol and DWI officers and, more importantly, officers must receive adequate training in the use of this equipment. Nonetheless, 69% of the officers surveyed indicated they would like increased availability of PBTs.

Increased availability and use of passive sensors would also greatly facilitate detection. Passive sensors have proven effective in field tests in helping officers detect drinking drivers (Foss et al. 1993; Jones and Lund 1986; Leaf and Preusser 1996; Voas 1983).

Another way that offenders avoid being detected is by leaving the scene, most usually the scene of an accident in which they have been involved. Given that in excess of half of the collisions involving drunk drivers do not involve another vehicle, there are often no witnesses whatsoever. This is not a trivial problem. Most certainly, in the opinion of the police, there has been an increase in the frequency of leaving the scene in recent years, probably because the consequences of a DWI conviction can be so profound today and probably because the consequences of getting caught for “leaving the scene” are relatively minor, compared to a DWI conviction. And, if the offender is apprehended for leaving the scene, a DWI charge is obviated by the passage of time (no BAC may be evident) and by the lack of witnesses to the offender’s behavior.

### 6.3.2 Consequences of the Problem

The consequence of failing to detect drunk drivers is that many offenders are never apprehended, sanctioned or discouraged from driving while impaired -- indeed, failure to detect can actually serve to perpetrate this behavior. Even if these individuals are stopped by police, there is a reasonable possibility that they will not be detected,



especially if the officer is not experienced in DWI detection, trained in HGN testing, and/or lacks access to roadside breath testing equipment.

In addition to the fact that problems with detection allow hard core drinking drivers, in particular, to escape sanctioning, there is a related issue. Because no charge is laid or sustained, there is no conviction and the driver is not officially identified as a repeat offender. Incidentally, it is because of problems such as this that official statistics seriously underestimate the magnitude of the problem of the repeat offender.

**Official statistics seriously underestimate the repeat offender problem because so many slip through the cracks.**

Finally, if the offender is not detected because they leave the scene of an accident before the police arrive, it is very difficult to establish probable cause to initiate an investigation, unless a reliable witness comes forward. The officer may be unable to locate the driver of the vehicle until much later, during which time the suspect might have had an opportunity to “sober up”, making it impossible for the officer to determine if the suspect was legally intoxicated at the time of the accident. At most, the officer will be able to charge the suspect with leaving the scene of an accident but the penalties for this offense are considerably less than penalties associated with a drunk driving conviction. Consequently, the offender can go undetected and successfully avoid conviction. This means they will not be identified as a repeat offender at a later time.

### 6.3.3 Recommended Solutions

Officers identified three primary solutions to the problems associated with detection.

◆ **Increase opportunities for experience and enhance training.** A third of the officers in our study say the best solution for identifying repeat drunk drivers is more experience. Officers need to conduct DWI investigations on a regular basis in order to become adept at detection. With experience, officers learn which clues to look for and which tests work well.

Training at the academy can also be enhanced. New recruits attending the academy typically receive, on average, eight hours of training in the detection of DWI offenders. However, this is insufficient to fully educate officers with regard to repeat drunk drivers,



many of whom know the law better than recruits and who do not exhibit the standard signs officers are trained to look for.

Over ¼ of the officers cite the SFST as the best way to detect hard core offenders, but more training in its use is needed. In this context, 32% of surveyed officers would like more training in SFST application, and 24% would like more training in HGN testing. And, many believe this training would have a substantial impact. Fifty-eight percent of surveyed officers with 1-5 years of experience reported they would make more DWI arrests with more training, and 45% of officers with 6-10 years experience would do the same.

In-service training for new recruits rarely includes making DWI arrests unless the recruit is partnered with a field training officer who actively makes these arrests. Furthermore, some agencies lack training officers who are competent in the latest detection methods and are unable to assist new recruits. Without adequate training in DWI investigation techniques, new officers are unable to consistently identify repeat drunk drivers.

Forty-four percent of officers support the idea of on-the-job training in DWI detection with an experienced field training officer. They feel it is best to train new recruits to effectively use the appropriate techniques and give them experience in this kind of detection while academy training is still fresh in their minds. An additional 37% of officers would be interested in participating in periodic workshops or conferences focused on refreshing and improving their own detection skills.

◆ **Increase availability of technology.** Access to PBTs and passive sensors would greatly improve the ability of police to detect intoxicated drivers. Sixty-nine percent of the officers we surveyed support greater availability and use of PBTs.

More experienced officers did voice a note of caution with regard to the use of PBTs. In their experience, newer officers come to rely extensively on these test results. However, if the officer cannot establish reasonable grounds for applying the test, the results will be of no utility in the prosecution of the case. It is still vital that newer officers are familiar with standard signs of intoxication, and are adept at conducting the SFST.



◆ **Enhance the penalties for leaving the scene.** A final solution addresses the issue of leaving the scene of an accident in order to avoid a drunk driving charge. The majority of officers surveyed (96%) believe that the only viable solution to this problem is to increase the penalties for leaving the scene.

## 6.4 Incomplete Evidence

◆ **The problem.** DWI arrest procedures are detail-laden and potentially relevant evidence must be recorded clearly and documented concisely. The complexity and dynamics of the arrest procedure increase the likelihood that errors can occur. The potential for error tends to be greater among inexperienced officers.

◆ **The consequences.** Recording errors result in incomplete and inadequate evidence. This means the evidence can be of insufficient quality to sustain charges and successfully prosecute offenders.

◆ **The solution.** Officers believe that better training in the collection of evidence, including the use of standardized interview procedures and testing, is needed. They would also like to see the entire arrest process reviewed with the goal of having it simplified.

### 6.4.1 Problem Description and Scope

DWI arrest procedures are very detailed and the officer must be aware of and record all potentially relevant evidence that will justify the stop, investigation and arrest. Details, such as slurred speech (what, and how), physical appearance, and behavior must be clearly and concisely documented.

This is particularly important when dealing with hard core drinking drivers who may exhibit few of the usual signs of intoxication. The officer will have to attend more closely to the subtle signs of intoxication to obtain sufficient evidence to support an arrest. Evidence that is overlooked, not recorded, or recorded incorrectly can result in a dismissal or acquittal.



The complexity of the arrest procedure can create evidentiary issues, which interfere with the successful prosecution of a suspect. For example, if statutory warnings are not properly administered, the arrest can be voided. Such omissions and/or procedural errors most often result in a dismissal.

In part, procedural problems arise because of a lack of standardization in the testing and interview techniques used by various police organizations. Police officers readily admit that, in their experience, they have witnessed many situations where, despite its name, even the SFST is not administered consistently and/or other tests, whose validity has not been established, are used instead of it, or in addition to it. Both these approaches result in evidentiary problems in court.

A related issue involves follow-up investigations. The purpose of this is to collect additional evidence of intoxication that may assist the prosecutor in challenging alternative explanations presented by the defense. The main reason that officers do not consistently conduct follow-up investigations is the lack of resources. Officers may not have time to gather this additional information because of other job demands or calls for service. Many departments are forced to limit overtime as a result of budgetary constraints.

#### 6.4.2 Consequences of the Problem

An inadequate quantity and/or quality of evidence translate into fewer convictions and, inevitably, suspects not being identified as a repeat offender during a subsequent arrest. This can impact the charges laid at the roadside (see Section 6.7). As well, without sufficient documented evidence prosecutors find it difficult to demonstrate a level of intoxication that warrants the DWI charge. Prosecutors can lose pre-trial hearings as a result of inadequate evidence, so many offenders never even go to trial. To illustrate, in the next report in this series dealing with the prosecution of hard core drinking drivers, it will be shown that technicalities and the suppression of key evidence are significant factors in over half of the DWI cases that are dismissed.

When there is enough evidence to sustain charges, cases may still be lost on technicalities, owing to such things as improper procedures in the gathering of evidence



(e.g., warnings not administered, insufficient waiting period before administering breathalyzer, officer missed a question on a form). This can result in valuable evidence being excluded.

### 6.4.3 Recommended Solutions

To minimize the problem of incomplete evidence, officers want the arrest process simplified and support the need for enhanced training.

- ◆ **Simplify the arrest process.** The complexity and dynamics of the arrest procedure create opportunities for technical errors when making an arrest. Officers would like to see the arrest process reviewed with the goal of having it simplified.

- ◆ **Enhance understanding of evidentiary requirements.** Officers believe this can best be achieved through workshops with prosecutors. This would allow for the exchange of information with regard to the collection of evidence needed to convict a repeat DWI offender. Seventy-seven percent of officers felt that such workshops would be beneficial not only to police but prosecutors as well. Meetings would encourage the development of a stronger working relationship between the two groups. It could give officers a new perspective on what evidence is permissible and the conditions under which it ideally should be collected. It would also give prosecutors an opportunity to better understand the dynamics of the arrest process and why it is conducted in a certain fashion. Workshops also provide an excellent opportunity for keeping officers abreast of new case rulings that impact the rules of evidence.

Informal programs of this nature have already been implemented in Middlesex County, Massachusetts and Fulton County, New York. In the opinion of the officers who have participated in them, these programs are working with considerable success.

- ◆ **Enhance training in arrest procedures.** Most new officers believe that more emphasis needs to be placed on the collection of evidence during recruit training at the academy. Officers with greater job experience support the development of periodic workshops/conferences, which would allow them to refresh their skills.



## 6.5 Medical Cooperation

◆ **The problem.** Hard core drinking drivers are more likely to be involved in a crash, more likely to seek medical attention and, if taken to medical facilities, avoid conviction because medical staff may be reluctant to provide requested blood samples. This problem is more significant in some areas than others -- some officers receive excellent cooperation from medical staff. However, our survey revealed that, on average, officers encounter some resistance from medical staff in about 25% of the cases involving medical attention. Nearly 20% of the officers said they experience such problems in more than half of their cases.

◆ **The consequences.** When officers are prohibited from obtaining blood evidence from suspects, valuable proof of intoxication is lost. If officers have to wait until a suspect/patient is released from the hospital, it is often too late to collect the necessary evidence.

◆ **The solution.** Police officers believe the problems associated with medical cooperation can best be resolved through formal meetings with hospital representatives to establish an agreeable policy. Nearly  $\frac{3}{4}$  of the officers we surveyed support this solution.

### 6.5.1 Problem Description and Scope

Police officers responsible for a collision investigation will accompany or follow DWI suspects to the hospital to obtain a blood sample to determine their BAC. In some states (e.g., Arizona, Illinois, New York) blood testing of drivers to determine BAC is mandatory, if a collision results in a fatality or serious injury. Often medical staff cooperates to the fullest extent to ensure a blood test is obtained. Indeed some officers say that strong working relationships have been established with members of various hospitals. Medical staff is often quick to recognize that they have a vested interest in providing assistance, as most emergency room staff in hospitals across the nation have witnessed first-hand the injuries created on the roadways by drunk drivers. This



cooperative spirit appears to have contributed to reductions in the number of offenders who escape conviction through admission to medical facilities (e.g., Krause et al. 1998).

Nonetheless, there is still evidence that "...the hospital is a safe haven for injured impaired drivers..." (Maull et al. 1983, p. 19) because cooperation from medical staff is by no means universal. Indeed, there is evidence (Orsay et al. 1994) that 80% of impaired drivers admitted to hospital are not convicted.

**Although improvements are occurring, there is still evidence that "the hospital is a safe haven for injured, impaired drivers."**

Our study found that the average officer experiences some form of refusal to cooperate, either directly or indirectly, by medical staff in approximately one in four cases. Eighteen percent of officers stated that they experienced refusal to cooperate from medical staff in more than 50% of their cases. This is not an insignificant problem, given that our survey revealed that 20-30% of DWI arrests result from crashes in which suspects require or request medical attention.

Refusal to cooperate takes many forms. In some cases medical staff flatly refuses to obtain a blood sample for the officer. In other cases, officers are faced with what they regard as evasive maneuvers. For example, staff claiming that blood testing kits are unavailable and suggesting that officers take suspects to another hospital, thereby delaying testing for significant periods of time. Some hospital employees have been known to attempt to prevent the officer from obtaining blood by making the patient unavailable for testing. Officers find the lack of cooperation frustrating particularly in those jurisdictions where it is statutorily obliged.

Other experiences include hospital employees refusing to draw blood from a patient before informing them of their right to refuse testing and even advising patients not to consent to the test. Some medical professionals refuse to draw blood from a patient that is unconscious until that individual regains consciousness and can be read a waiver form.

If blood is taken, hospital employees may also be reluctant to release the name of the staff member who drew blood from the suspect. This information is, however, necessary for the prosecutor to establish the validity of the blood sample as evidence.



A lack of medical cooperation may extend to EMT staff and/or ambulance attendants. These individuals often arrive at an accident scene before the officer and in some cases depart before the officer arrives, which means the EMT professionals may be the only reliable witnesses to signs that indicate intoxication. However, these medical personnel may often be hesitant to mention these indicators to the investigating officer or include these symptoms in medical reports.

There are several reasons why medical staff is unwilling to cooperate with police investigations. Some officers report that staff see the drawing of blood as acting as “agents of the police”, which conflicts with medical ethics; others do not want to get involved in a criminal case and be called as a witness because of either financial or personal reasons; other individuals cite liability concerns associated with invasion of privacy, assault or other civil lawsuits that might be brought by the suspect against the individual employee or the institution itself. Staff may also be unfamiliar with hospital policies and be concerned about violating “doctor-patient” confidentiality.

In addition to the problem of medical cooperation, other related issues arise when suspects go to the hospital. Once arriving at the hospital, it is apparently not uncommon for the suspect to leave without consulting a physician. If this occurs before the officer arrives, it has obvious implications for trying to locate the suspect in a timely manner. This potential problem can be compounded by the requirement, in some states, that officers comply with a suspect’s request to be taken to hospital even if no injuries are apparent. The officer may also have no grounds initially to prevent the suspect from leaving the facility.

### 6.5.2 Consequences of the Problem

The cooperation of medical and para-medical professionals in DWI investigations is important in two ways: to provide the needed blood sample for alcohol determinations, and to provide useful observational data pertaining to the suspect's possible intoxication. When officers are impeded from collecting blood evidence from DWI suspects, they lose valuable, often irrefutable, evidence of intoxication which could result in a conviction. As mentioned previously, blood test results carry significant weight in court and, without this



evidence, it is possible for defense attorneys to present plausible explanations to refute alleged intoxication.

It is also important for the officer to gather correlative evidence, such as professional opinion with regard to a suspect's intoxication. Medical professionals typically have contact with the suspect prior to the police officer and are often able to provide probable cause for an officer to proceed with a DWI investigation. Without reliable evidence, the officer may not have grounds to initiate an investigation, even if it is believed that the investigation may be warranted.

### 6.5.3 Recommended Solutions

Given that the cooperation of hospital personnel is by no means universal, there is a need to establish more effective working relationships between police and medical staff. Officers believe that the existing problems can best be overcome through informed discussions with hospital personnel. Nearly ¾ of the officers in our study supported this approach.

◆ **Improve communication with hospital/medical personnel.** Officers believe that meetings with medical staff would provide an opportunity to clarify the concerns and expectations on both sides of the issue, discuss legal requirements and move toward a policy regarding the level of cooperation to be extended to police officers investigating drunk drivers. Indeed, this approach has been implemented on an informal basis in some jurisdictions with considerable success. For example, officers in Wheeling, Illinois have been able to develop a strong working relationship with local emergency room staff. In their experience, making staff aware of the nature of the offense (i.e., an innocent individual was injured/killed as a result of the DWI accident) has resulted in blood draws being made a priority.

At the very least, officers would like to see someone on the hospital staff trained in policies and procedures to act as a liaison in the event of disputes. This would appear to be the most reasonable and diplomatic course of action. Far more dramatic, but serious suggestions, were presented which arose from the frustration engendered by the lack of cooperation from hospital/medical staff, even when they were statutorily obliged by law



to provide blood samples. A suggested solution was to arrest the medical employee who refused to cooperate and, by example, enforce the legislation that mandates cooperation. While officers had personally experienced this high level of frustration, many agreed that such action should be considered a last resort.

## 6.6 Failure To Appear

◆ **The problem.** Hard core repeat offenders are less likely to appear for arraignment or trial. Police lack the resources to execute warrants, allowing offenders to evade prosecution and sanctioning. The extent of the problem of failure to appear (FTA) is difficult to determine because official records are often not consistently kept. Reliable data on the number of outstanding warrants for DWI is equally difficult to obtain. What data are available suggest that in some state as few as 1% of DWI defendants fail to appear; somewhat more anecdotal reports indicate that, in some areas, the rate may run as high as 30%. There are very few consequences for failing to appear, since most jurisdictions do not have the resources to serve the tremendous number of outstanding warrants, especially for misdemeanors.

◆ **The consequences.** The impact of failure to appear is both obvious and significant -- the case does not proceed and the offender usually escapes any sanctions whatsoever.

◆ **The solution.** One solution recommended by police is to increase the penalties for FTA, but this must be accompanied by an increase in the perceived likelihood that the offender will suffer the consequences. Innovative ways to reduce FTA can have an impact in their own right and also increase the perceived likelihood of being caught -- phone reminders and sting operations appear to hold promise. And, to help overcome the issue of out-of-state offenders, there is a need to improve interstate information exchange and to strengthen the licensing compact.



### 6.6.1 Problem Description and Scope

To avoid prosecution and/or conviction, offenders will sometimes simply fail to appear for arraignment, hearings or trial. The magnitude of this problem is very difficult to estimate because it is not routinely recorded and many states purge their files every few years (Nalder 1997). The longer it takes to execute a warrant, the less likely the charges will be successfully prosecuted in court, so eventually these warrants are removed from the system. Warrants not executed for FTA relating to DWI offenses translate into offenders that are never prosecuted.

Available data show that the rate of FTA in DWI cases is very low in some jurisdictions -- Kansas reported an FTA rate of only 1% in 1999. However, special investigations suggest that in some counties the rate may be as high as 30% (Modie 1999). Officers in our survey estimated that the number of outstanding warrants for DWI offenses in a given jurisdiction can be as low as a few hundred or as high as several thousand. Although there are official national statistics on FTA, these reports cite misdemeanor crimes as a category and do not isolate DWIs. However, DWI offenses most often account for a significant portion of misdemeanor crimes. For example, criminal caseload data from South Dakota's Unified Judicial System indicate that DWI violations represent more than 40% of all Class 1 misdemeanors.

**As many as 20% of DWI offenders fail to appear. It is even more common among repeat offenders.**

The magnitude of this problem varies from state-to-state and appears to be influenced by the consequences of FTA, compared to the consequences for appearing. For example, officers in regions bordering Mexico indicate that FTA can occur because the suspect is an illegal alien and the consequences of appearing for the DWI charge extend well beyond the issue of drunk driving. Moreover, it is the impression of officers that FTA is more common among repeat offenders because the consequences associated with a repeat DWI conviction can be severe in some states.

When offenders fail to appear, a warrant is issued for their arrest. However, police departments often lack sufficient manpower to execute outstanding warrants. When outstanding warrants are enforced, they are more likely to be felony rather than misdemeanor warrants. Officers occasionally discover outstanding warrants during



routine traffic stops but there is typically a backlog of them to be entered into the system, so it is more usual that the officer will not be aware of the outstanding warrant (Wilson 1999).

There is also a related issue of forged driver's licenses. Many of these licenses are of good quality, making them difficult to detect, and cost as little as \$50. Officers may stop an individual with a bogus license and, therefore, miss any outstanding warrants the driver may have, if the fake license is not detected.

Out-of-state warrants are especially problematic for police. Many states will not extradite offenders for misdemeanor crimes, because the cost often exceeds the justice served. Typically the issue is one of transporting the suspect, assuming that he/she can be located. Neighboring jurisdictions are not usually willing to incur the costs required to transport the offender to the requesting state, and the requesting state may lack the resources to pick the suspect up and bring him/her back for trial. Judges in some jurisdictions have also been known to fail to honor outstanding misdemeanor warrants from other jurisdictions. Many repeat offenders know that they will not be extradited for DWI charges, so they will carefully choose their drinking location. The problem is not a trivial one, since it is estimated that between 2-18% of all DWI arrests are out-of-state drivers (NHTSA 1997).

### 6.6.2 Consequences of the Problem

FTA has become a convenient loophole which allows DWI offenders to evade prosecution and sanctioning. When offenders can fail to appear without risk of penalty, there is little deterrence. Not only is the suspect avoiding conviction but also valuable court resources are being wasted. Judges, prosecutors and police officers must be present for court proceedings, and their time is wasted when the suspect does not appear. Considering the caseload issues that exist in most courts, with some judges adjudicating over 200 cases a day (judges from Illinois and New York, who participated in workshops in the third phase of this project reported such figures), the wasted time carries implications for other cases and court functions. These delays also create inconvenience for any other witnesses subpoenaed to testify (e.g., medical practitioners) as well as any victims involved.



Furthermore, by failing to appear, DWI offenders also preclude the possibility of being identified as a repeat offender on their next arrest. A person officially becomes a repeat offender only when there is a prior conviction on their record. Failure to appear does not result in a conviction. The potential also exists for an offender to avoid harsher penalties the next time through the system, because of not being identified.

### 6.6.3 Recommended Solutions

Officers identified three ways to address the problem of FTA.

◆ **Increase the penalties for FTA.** Police officers recommended that the penalties for FTA be increased to discourage this behavior, because the current penalties are minimal in most states, usually involving a fine or, in more serious cases (felony), a short jail term might be imposed but it usually runs concurrent with any jail time for the original DWI charge -- i.e., there is no additional penalty. Repeat offenders likely realize that the possibility of being apprehended for this offense is low, especially if the offender resides in a different jurisdiction. The benefits of committing this crime far outweigh the possible risk of apprehension and sanctioning. Penalties need to be increased to create a deterrent effect and discourage FTA.

◆ **Adopt innovative ways to reduce FTA.** As noted above, increased penalties for FTA are going to be effective only if offenders believe they will be apprehended. However, the volume of warrants greatly exceeds the capacity of the system and, short of hiring the needed staff, the status quo will remain.

Accordingly, there is a need to think about creative and innovative ways to reduce FTA. For example, phone reminders are being used in King County, Washington. Prior to the court appearance, the offender receives a telephone reminder regarding their scheduled appearance much in the same way physicians and dentists remind patients about their appointments. This program has apparently been successful in reducing failure to appear rates among misdemeanor defendants from 42% to 18% (Modie 1999). It might be tempting to conclude that this suggests a major reason for FTA is that the offender simply forgot they had a court appointment. A more likely explanation is that offenders believe they are not being monitored; the phone reminder dispels this misconception.



Sting operations have also been conducted in several jurisdictions with some success. Officers will contact individuals with outstanding warrants and use false information to lure them to a particular location (e.g., they have won free shoes; Brunner 1999). When offenders appear, they are arrested on outstanding warrants. Other police departments have used this same idea to target offenders who have had their license suspended for DWI.

- ◆ **Improve interstate information exchange.** If an offender with an out-of-state license is arrested, policy in many jurisdictions does not permit an arresting officer to confiscate the license, which means the offender can return to their home state and continue driving. The onus is on the home state to either suspend or revoke the driver's license, as necessary, upon notification of the change. However, this is often not done. Drivers continue to drive in their home state without penalty, which contradicts the intent of the interstate compact. There is no incentive for offenders to appear in court in another state for a DWI arrest.

The compact needs to be implemented in a more effective manner so that states are required to take licensing action upon notification of a DWI arrest. Currently, a number of interstate compacts are under review, such as the Interstate Compact for Adult Offender Supervision (CSG 2001), as changing times demand a renewal of these cooperative efforts.

## 6.7 Access to Records

- ◆ **The problem.** Access to driving and/or criminal records at the roadside can be inefficient or incomplete, making the identification of repeat offenders difficult.

- ◆ **The consequences.** The charges laid at the roadside may not be appropriate (i.e., first offense), in light of the offender's criminal history (i.e., several priors). Although in many jurisdictions the prosecution has ten days to amend the charges and, therefore, possibly rectify the situation, poor record systems can simply perpetrate the problem even at this stage. Accordingly, the charges laid at the roadside (e.g., misdemeanor)



may be incorrect and would have been escalated (e.g., to felony level) if access to records were more efficient.

◆ **The solution.** Officers want to see improved linkages and communication between the DMV and police agencies to ensure records are contemporary and readily accessible. Improvements in technology, such as on-board computers and magnetic-stripe driver license readers would help improve accuracy and assist in detecting invalid licenses. A longer, uniform look-back period, with a consistent requirement to maintain records over this period, would assist in identifying and appropriately charging repeat offenders, as would improved interstate record exchanges (see previous Section 6.6.3).

### 6.7.1 Problem Description and Scope

Officers may encounter difficulty in accessing records, which ultimately impedes charging decisions made at the time of the arrest. Almost 30% of the officers surveyed said that their current ability to access a driver's record was inadequate. There are several common reasons why an officer is unable to access an offender's record at the roadside. First, some officers do not have computerized access to records available in their vehicle. Second, those that do have such access have found that records may often be incomplete, because updated court reports indicating case resolutions are added to an offender's record very slowly either due to staff shortages or delays in resolving cases; officers may also be unaware of pending DWI cases in other jurisdictions, multiple cases that have been consolidated into a single charge, and/or outstanding warrants.

A related problem involves the length of the look-back period -- the number of years during which a DWI conviction can be counted as a prior offense. This has implications for the identification of a repeat offender and for the escalation from a misdemeanor to a felony charge. Look-back periods vary considerably across states -- e.g., 3 years in Maryland, 5 years in Arizona, 7 years in California, 10 years in Minnesota, and 12 years in Iowa.



## 6.7.2 Consequences of the Problem

The most significant outcome of inadequate access to records is that repeat offenders are not being identified as such and treated accordingly. Many offenders are instead charged as first-offenders and ultimately face lesser penalties if this oversight is not subsequently identified and corrected. This is especially important in those states which mandate a certain number of misdemeanor offenses before a felony charge can be laid.

Inadequate record-keeping also detracts from the ability of officers to detect those drivers who have had their license suspended or revoked as a result of DWI offenses, limiting their ability to enforce the requisite sanctions. Offenders are not deterred from driving impaired, or unlicensed.

## 6.7.3 Recommended Solutions

To improve access to records at the roadside, officers recommended the following three solutions.

- ◆ **Improve the efficiency in linking the police and DMV.** Improvements are needed in some jurisdictions to enhance the accuracy and availability of criminal and driver records. This is certainly not a new recommendation, nor is it an area that has been ignored (e.g., Marine 1991; Peck 1991).

NHTSA's three-volume report on Driving While Intoxicated Tracking Systems (NHTSA 1997) identifies a number of components which are important to the success of the system and reviews model systems in seven states. Recommended systems should entail both a case management and a statistical approach. The former, which is of greatest relevance to this report, would permit an officer access to accurate, up-to-date records during a routine traffic stop or DWI investigation. Development of these records would involve excellent data from law enforcement agencies, the courts and DMVs. These records would include offender histories and the status of any current arrests or sanctions. Officers could easily identify prior convictions as well as any administrative

**The importance of police having access to accurate, up-to-date records at the roadside has been underscored by NHTSA.**



and/or criminal licensing sanctions. This would assist officers in their decision to proceed with an investigation and/or charge a suspect (e.g., if the suspect's license was invalid or there were outstanding warrants).

To achieve an ideal system will require the cooperation of all relevant stakeholders including law enforcement agencies, DMV, Department of Justice, courts, attorneys, probation agencies and treatment and rehabilitation facilities. In the context, many states are in the process of developing integrated record systems that allow police officers the ability to query many databases, including DMV, from the vehicle (IACP 2001).

- ◆ **Improve the efficiency in accessing driver records.** Many officers still do not have vehicles equipped with on-board computers that facilitate access to drivers' records. Greater availability of such technology is warranted (see Section 6.1.3 for details). As well, officers believe that greater use of magnetic-stripe readers would facilitate charging decisions and help identify counterfeit licenses. Officers would be able to swipe the driver's license to determine if it is valid and view the driving history.

- ◆ **Adopt a longer, uniform look-back period.** Officers feel that a longer, uniform look-back period of at least 10 years is needed. There is also a need to ensure that the look-back period is compatible with the length of time that records are actually maintained by the DMV.

## 6.8 Testimony

- ◆ **The problem.** Most police officers are not called to testify in DWI cases very often -- our survey revealed that 78% of the officers rarely or only occasionally testify because very few cases go to trial. Nonetheless, the presentation of accurate and credible testimony is important because some officers do testify frequently, and those who testify only occasionally are typically called in serious cases.

- ◆ **The consequences.** Officers believe their ability to serve as a credible witness is compromised by numerous factors including the lengthy time between the arrest and



trial, the lack of opportunity to prepare for cases, the lack of opportunity for gaining adequate experience in testifying in general, and the incredible level of detail that can be required under cross-examination. These problems can lead to errors of omission or insufficient detail in testimony that result in a dismissal or acquittal.

◆ **The solution.** To minimize the problems arising from inadequate testimony, officers support the idea of training forums using experienced officers as mentors, and mock trials to develop the needed skills. As well, workshops with prosecutors would allow for the exchange of information and experiences that will improve testimony.

### 6.8.1 Problem Description and Scope

Historically, officers spent a considerable amount of time in court but this appears to be less common today. Indeed, 78% of the officers report that they rarely or only occasionally testify in court. Several officers in our workshops said they have made 20-30 DWI arrests annually for most of their lengthy careers but have never been called to testify, or have only been called to testify in cases involving serious injury or death.

Nevertheless, at least 15% of the officers we surveyed testify quite often and, as noted above, even those who do so infrequently are more likely to be called in serious cases, so their ability to communicate the facts of the arrest precisely, reliably and credibly is important.

Officers require training and experience to testify effectively. However, DWI testimony is not something that many officers are called on to provide very often, so their experience is limited. Particularly in the face of skilled cross-examination, this lack of experience can be a liability -- new or inexperienced officers may fail to communicate clearly important aspects of the arrest, which are necessary to obtain a conviction. For example, if an officer states that the defendant slurred his/her words, it is often important to recall what words were slurred, and how badly they were slurred. Officers may omit these specific details, or not remember exactly, if the arrest took place several months earlier.



In this context, despite case processing guidelines, there can be up to a 4-6 month turnaround between a DWI arrest and trial. This considerable length of time can affect an officer's ability to provide detailed and reliable testimony, since subtle facts may be forgotten if not fully documented in the initial arrest report.

Testimony is also affected by restrictions placed on what the officer can say. In some states important details of the arrest may be excluded during pre-trial motions for technical reasons. This means that when testifying, an officer must omit any reference to the excluded evidence. Indeed, any mention of it can result in a mistrial or a dismissal. Such complex procedural issues can impact the quality of testimony.

When police officers are required to testify, prosecutors often have little or no time to prepare witnesses, due to caseload demands. Officers may also have limited time to review the arrest report and become refreshed as to the details of the case prior to testifying due to time constraints or other job demands. This may result in errors regarding specific details of the stop. The smallest mistake on the part of the officer may create the reasonable doubt needed to acquit the defendant.

Additionally, if the arrest was a result of a sobriety checkpoint, several officers may have participated in the arrest. However, due to a lack of resources, only one officer may be subpoenaed to testify. This is problematic if the officer is not aware of all the details of the stop, including what other officers witnessed, and on what basis decisions were made. Consequently, the officer may be unable to respond to all questions posed by the defense if the officer was not party to all aspects of the stop and arrest. This lack of information allows the defense to create reasonable doubt and win an acquittal for the defendant.

In some instances, given competing demands, officers are not always able to appear in court to provide testimony. If this happens, the defendant will often elect to proceed with the trial, and the case will likely be dismissed. However, if the officer does appear in court, the defendant will often choose to plea bargain the case or request a continuance, instead of going to trial. Ostensibly, the purpose of requesting a continuance is to create another opportunity when the officer may not be able to appear in court and this increases the possibility of a dismissal. Furthermore, an officer is rarely consulted when



cases are being scheduled, and this results in officers being called to appear in court on days off, or officers being on duty and unable to meet scheduled court appearances, which results in offenders evading prosecution.

### 6.8.2 Consequences of the Problem

A significant number of DWI cases do not go to trial. This underscores the importance of accurate and detailed documentation of the investigation and arrest (see Section 6.1) because the documentation becomes the prosecutor's only leverage when negotiating a plea.

Testifying in court on an infrequent basis also means that officers lack opportunities to gain experience and refine their skills. This increases the possibility that officers will make errors when called to testify, and these errors can result in either a dismissal or an acquittal for a defendant.

This is particularly relevant to the prosecution of repeat offenders who are more likely to elect to go to trial. Given the problems outlined above, the arresting officer may be unable to appear, or might make errors when testifying, or have his/her credibility scrutinized by the defense in an effort to create reasonable doubt. There is a distinct possibility that the offender will be acquitted.

**Repeat offenders are more likely to go to trial, making skilled testimony by officers important.**

### 6.8.3 Recommended Solutions

To improve their ability to testify effectively in DWI cases, officers recommended the following solutions.

◆ **Improve the communication between police and prosecutors.** Police enthusiastically support the idea of workshops with prosecutors to allow for the free exchange of information, which could benefit both professional groups and allow them to perform their respective jobs more effectively. These meetings would provide prosecutors with the opportunity to describe some of the common pitfalls of testifying in



court and familiarize officers with defense tactics used to discredit or refute testimony and create reasonable doubt. Prosecutors could assist officers by advising them how to be more effective when testifying and how to avoid errors in, or misunderstanding of, their testimony. At the same time, officers could illuminate for prosecutors many of the realities involved in arresting a DWI offender and documenting the investigation. Such information exchange programs are already in place in some jurisdictions (e.g., Fulton County, New York; Middlesex County, Massachusetts) and should be considered elsewhere.

◆ **Provide training opportunities.** Testimony is demanding and is a skill that requires training and practice. Officers support the idea of mentoring programs where experienced officers teach novices how to testify, either directly through instruction or indirectly through observation in the courtroom. They also support the idea of mock trials, which simulate the presentation of evidence and cross-examination. Some police academies are now using mock trials as a training technique (e.g., in Connecticut).

## 6.9 Resources

A goal of this report is to identify practical solutions to some of the most significant problems impeding the detection and apprehension of repeat drunk drivers. At one level, inadequate resources have a logical solution -- more money. However, given current economic uncertainties and the increased competition for resources, obtaining new funds will be difficult. However, the problem of insufficient resources was often raised by officers as impacting a number of different issues referenced in this report, so we felt it deserved mention.

### 6.9.1 Problem Description and Scope

An obvious resource problem is personnel. Funding for DWI units and initiatives is limited at best. Many departments do not have DWI units or officers, and many departments do not even have a Traffic Unit that is responsible for DWI arrests. Those departments that do have these units are severely limited in personnel. Smaller, rural



departments often cover larger, geographical areas, so any resources available are spread fairly thin, meaning that consistent enforcement efforts are not possible.

In a majority of jurisdictions, local populations are continually rising, but there is typically no corresponding increase in police manpower. This problem was highlighted in a recent report (Wiliszowski et al. 2001, p. 91), which noted, "...enforcement resources have remained stagnant in the face of increasing population and number of licensed drivers." Some departments have seen their city/town population double in the last few decades, without any additional officers being hired. This is especially problematic with regard to DWI arrests as an officer can be out of service for up to two hours or more to complete the arrest, and leave other patrols to cover his/her area in addition to their own. This compromises the level of protection being provided to the community as a whole.

Insufficient equipment also creates problems for officers involved in the detection and apprehension of repeat drunk drivers. Sixty-nine percent of surveyed officers would like to see increased use of PBTs. Many departments have a limited number of PBTs, so a majority of officers lack regular access to them. Officers in our survey estimate that over  $\frac{3}{4}$  of all DWI arrests result from routine patrol, so it is imperative that patrol officers have regular and consistent access to PBTs to assist with the detection of repeat DWI offenders during routine traffic stops. Indeed, nearly 20% of the officers we surveyed believe that PBTs are the best tool for identifying repeat offenders. To quote one workshop participant "If every officer working the night shift had a PBT, life would be wonderful."

Other officers would like greater access to video equipment, either at the roadside or during booking. There are differences of opinion regarding the degree of usefulness of videotaping alcohol-tolerant offenders, as these videos can sometimes be of more benefit to the defense than the prosecution. However, experienced officers believe that if well trained in the use of roadside and booking videos, the officer can demonstrate the intoxication of the defendant to a sufficient degree to allow for a conviction. Officer training will determine the success of the use of videotapes. Many officers support the greater use of videotaping suspects because this form of evidence is much more difficult to refute and should result in fewer dismissals and a higher conviction rate. Officers



need to be able to demonstrate the intoxication of the defendant at the roadside, and this can be difficult to do verbally. Officers feel that, “a picture is worth a thousand words” and the video will be able to effectively communicate in court what the officer cannot.

### 6.9.2 Consequences of the Problem

There are a multitude of consequences that result from a lack of resources. Police agencies are unable to maintain DWI units or even a sufficient number of patrols, which are the primary means for detecting and apprehending repeat DWI offenders. Even sobriety checkpoints cannot be run without sufficient personnel, since these can be quite demanding, requiring from as few as two, to as many as 30, officers per site, depending on location and scope (IIHS 2001).

Resources are needed to provide regular patrol officers with opportunities to refine their skills in detecting DWI offenders. To have poorly trained officers conducting stops and checkpoints means that the quality and effectiveness of enforcement is compromised.

A lack of equipment, or outdated or unreliable equipment means that officers will be unable to detect many of the repeat drunk drivers with whom they come into contact. Officers’ ability to detect DWI offenders can be enhanced by the availability of PBTs or passive sensors. Without these devices officers are forced to rely on their own senses to determine if a driver is intoxicated; a number of studies have proven that officers fail to detect drivers who are alcohol tolerant (Section 6.3).

### 6.9.3 Recommended Solutions

The obvious solution to this problem is more money -- either in the form of new money or a re-allocation of existing resources within enforcement. Both are intimately connected to setting DWI as an enforcement priority (Wiliszowski et al. 2001). Making it salient requires a delicate balance across enforcement issues, both within traffic safety (e.g., speeding, aggressive driving, running red lights, not wearing seat belts) and outside of it (e.g., domestic violence, gangs, illicit drug sales). This is by no means a simple task or an exacting process and recommended resolutions are beyond the scope of this project.



Suffice it to say that it is an issue mentioned frequently by officers, who generally believe that rather than relying on the usual funding mechanisms, innovative approaches are needed. For example, some departments apply for project funding to support special DWI initiatives; some groups, most notably MADD, have provided much needed equipment; some officers would like to see fines from DWI cases directed specifically to the funding of DWI initiatives.





## 7.0 Summary

It should be evident from reading this report that the DWI arrest process is complex, detail-laden, and time-consuming. Indeed, it has become so onerous that it is often frustrating, discouraging and even intimidating to some officers. Clearly, the process needs to be streamlined and simplified to improve its efficiency and effectiveness. This is a primary concern to police officers and a linchpin to successfully improving the DWI system.

In addition to this general recommendation for simplifying and streamlining the arrest process, a variety of specific changes to the DWI system can improve the efficiency and effectiveness with which police detect and apprehend hard core offenders. These improvements are organized below in terms of the general method by which this can be achieved.

### 7.1 Training and Education

Police identified several areas in which training can improve the enforcement of DWI laws:

- ◆ enhanced training at the academy in conjunction with more on-the-job experience in the detection of hard core drinking drivers -- the most difficult to identify because of alcohol tolerance and familiarity with the system;
- ◆ enhanced training, at the academy and in-service, in the complexities of arrest procedures;
- ◆ wider training in the use of the SFST, in particular HGN, as well as in the use of PBTs and passive sensors; and
- ◆ enhanced training and experience in providing testimony in DWI trials, through such methods as mock trials and direct observation of experienced mentors.



## 7.2 Communication and Cooperation

Police believe that improved communication and cooperation with other professionals involved in the DWI system will significantly improve the enforcement of DWI laws. They support:

- ◆ workshops with prosecutors, which would highlight evidentiary requirements for obtaining a conviction, keep officers informed about new case law, and allow police the opportunity to share with prosecutors the complexity, dynamics and realities of the arrest environment;
- ◆ dialogue with medical personnel, which would clarify concerns and expectations with respect to the drawing of blood samples for BAC tests, clarify legal requirements, and encourage a move toward a policy regarding the level of cooperation to be extended to police officers investigating drunk drivers; and
- ◆ dialogue with DMV and other stakeholders to simplify forms completed by officers making a DWI arrest.

## 7.3 Record Linkages, Availability and Access

A variety of records relevant to a DWI arrest are maintained by separate agencies. Police require timely access to these records to facilitate a DWI arrest and the laying of appropriate charges. The importance of the police having access to accurate, up-to-date records has been underscored by NHTSA as well as other agencies, and remains a critical need to improve the enforcement of DWI laws.

## 7.4 Technology

Police believe that new technological applications can improve the efficiency and effectiveness with which they enforce DWI laws:



- ◆ mobile data computers and laptop computers to improve access to information and reduce recording errors at the roadside;
- ◆ computerized forms to reduce processing time and recording errors;
- ◆ magnetic-stripe or bar-code readers to provide rapid access to driver record information and help identify suspended, revoked or bogus licenses;
- ◆ digital dictation systems to reduce paperwork and recording errors; and
- ◆ PBTs and passive sensors to enhance the officers' ability to detect drinking drivers.

## 7.5 Legislation and Regulation

Police also identified a number of legislative changes that would improve the enforcement of DWI laws:

- ◆ a consistent look-back period, specifying the timeframe during which prior alcohol-related convictions can be considered;
- ◆ criminalize test refusal and allow evidence of refusal to be admitted in court;
- ◆ increase penalties for test refusal, for leaving the scene of an accident, and for failure to appear;
- ◆ remove the opportunity for judicial driving permits; and
- ◆ revisit the interstate licensing compact to ensure that DWI charges, convictions and sanctions follow the offender from state-to-state.





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# Appendix A

## Officers Who Assisted in Organizing the Workshops



## Officers Who Assisted in Organizing the Workshops

### Arizona

1. Lt. John Owen – Operation Division Commander, Douglas Police Department
2. Chief Daniel Sharp – Oro Valley Police Department
3. Corporal Scott Elliot – Traffic Division, Pinal County Sheriff's Office

### California

1. Corporal Tony Zavala – Traffic Division, Santa Ana Police Department
2. Capt. Joe Davis – Orange County Sheriff's Department
3. Sgt. Thomas Payne – Traffic Division, San Diego Police Department

### Connecticut

1. Commander Arthur Spada – Connecticut State Police
2. Lt. Dan Mulvey – Traffic Unit, Danbury Police Department
3. Lt. Stanley Sliva – Traffic Unit, West Hartford Police Department

### Illinois

1. Sgt. T.R. Nimmo – Traffic Division, Rockford Police Department
2. Deputy Director Daniel Kent - Illinois State Police
3. Sgt. Scott Compton - Traffic Division, Illinois State Police
4. Corporal Panagakis – Traffic Unit Supervisor, Wheeling Police Department

### Massachusetts

1. Lt. Lou Griffith – Training and Administrative Services, Framingham Police Department
2. Acting Chief Haughy – Bellingham Police Department
3. Lt. William Sparda – Middleboro Station, Massachusetts State Police

### New York

1. Captain Robert Flanagan – Traffic Unit, Saratoga Springs Police Department
2. Lt. Leonard Crouch – Traffic Safety Division, Albany Police Department
3. Superintendent James McMahon – New York State Police



# Appendix B

## Enforcement Workshop Participants



# Workshop Participants

## Rockford, Illinois (September 20<sup>th</sup>, 2000)

1. Traffic Investigator Charlie Carlson – Traffic Division, Rockford Police Department
2. Officer Cheryl Taylor – Traffic Division, Rockford Police Department
3. Trooper William Dettman – District 16, Illinois State Police
4. Master Sergeant Peter Howe, District 15, Illinois State Police
5. Master Sergeant Jeff Hedrich, District 2, Illinois State Police
6. Corporal Panagakis – Traffic Unit Supervisor, Wheeling Police Department
7. Patrolman Eric Paul – Wheaton Police Department
8. Patrolman Max Wilson – Wheaton Police Department

## Newton, Massachusetts ( September 27<sup>th</sup>, 2000)

1. Trooper Ken Wong – Middleboro Station, Massachusetts State Police
2. Trooper Michael Michno – Middleboro Station, Massachusetts State Police
3. Sergeant Steve Cronin – Traffic Unit, Framingham Police Department
4. Officer Richard Pomaes – Traffic Unit, Framingham Police Department
5. Patrolman Scott Provost - Bellingham Police Department

## Hartford, Connecticut (September 28<sup>th</sup>, 2000)

1. Trooper Richard Cournoyer – Troop H, Connecticut State Police
2. Trooper Michael Pendleton – Troop H, Connecticut State Police
3. Officer Doug Frink – West Hartford Police Department
4. Officer Joseph LaRose III – Danbury Police Department

## Costa Mesa, California (October 25<sup>th</sup>, 2000)

1. Sergeant Dan McDermott – Traffic Division, Santa Ana Police Department
2. Sergeant Paul Gonzalez – Traffic Division, Santa Ana Police Department
3. Sergeant Hal Brotheim – Orange County Sheriff's Department
4. Deputy Doug Bertoglio – Orange County Sheriff's Department
5. Officer Bryan Young – Traffic Division, San Diego Police Department
6. Officer Gib Ninness – Traffic Division, San Diego Police Department
7. Officer Rick Pechin – Traffic Division, San Diego Police Department

## Albany, New York (November 1<sup>st</sup>, 2000)

1. Officer Patrick Fox – Traffic Safety Division, Albany Police Department
2. Lt. John Tibbitts – Traffic Division, New York State Troopers
3. Trooper Timothy Hard – Troop G, New York State Troopers



**Tucson, Arizona (November 16<sup>th</sup>, 2000)**

1. Corporal Scott Elliot – Traffic Division, Pinal County Sheriff's Office
2. Deputy Matt Thomas – Traffic Division, Pinal County Sheriff's Office
3. Officer Rob Lolmaugh – Traffic Unit, Oro Valley Police Department
4. Officer Pio Damiano – Douglas Police Department
5. Officer Kraig Fullen – Douglas Police Department





# Appendix C

## Senior Officers Facilitating National Survey of Front-line DWI Officers



## Senior Officers Facilitating National Survey

Lieutenant Colonel Charles E. Andrews  
Major Patrick Manning  
Alabama Department of Public Safety  
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Montgomery, AL 36102-1511

Director Russell Arend  
L. R. "Bob" Jacob  
Institute of Police Technology and Management  
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Jacksonville, FL 32224-2645

Colonel Anne L. Beers  
Major Kevin Kittridge  
Minnesota State Patrol  
444 Cedar Street, Suite 130  
St. Paul, MN 55101-5130

Assistant Chief Steven Casstevens  
Lt. Brad Hollister  
Hoffman Estates Police Department  
1200 Gannon Drive  
Hoffman Estates, IL 60194

Colonel Paul J. Evanko  
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Pennsylvania State Police  
1800 Elmerton Ave.,  
Harrisburg, PA 17110

Colonel John DiFava  
Sgt. Eric Anderson  
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Framingham, MA 01702

Director Dennis Garrett  
Lt. Col. William Reutter  
Arizona Department of Public Safety  
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P.O. Box 6638  
Phoenix, AZ 85005-6638



Deputy Chief Michael Geraci  
Town of Colonie Police Department  
312 Wolf Rd.  
Public Safety Center  
Latham, NY 12110

Commissioner Glenn G. Godfrey  
Lt. Steve Dunnagan  
Alaska State Troopers  
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Anchorage, AK 99507

Chief Robert Leichner  
Lt. Curt Hattell  
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Lieutenant Colonel W. Gerald Massengill  
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Albany, NY 12226-2252

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Suzan Cogswell – Research Administrator  
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P.O. Box 182074  
Columbus, OH 43218-2074

Chief Murray J. Pendleton  
Waterford Police Department  
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Major E.C. Sherman  
Texas Department of Public Safety  
Traffic Law Enforcement Division  
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Lincoln, RI 02865-1312

Colonel Weldon Wilhoit  
Lt. Greg Kendel  
Missouri State Highway Patrol  
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P.O. Box 568  
Jefferson City, MO 65101

Chief John D. Wintersteen  
Paradise Valley Police Department  
6433 East Lincoln Drive  
Paradise Valley, AZ 85253-4399

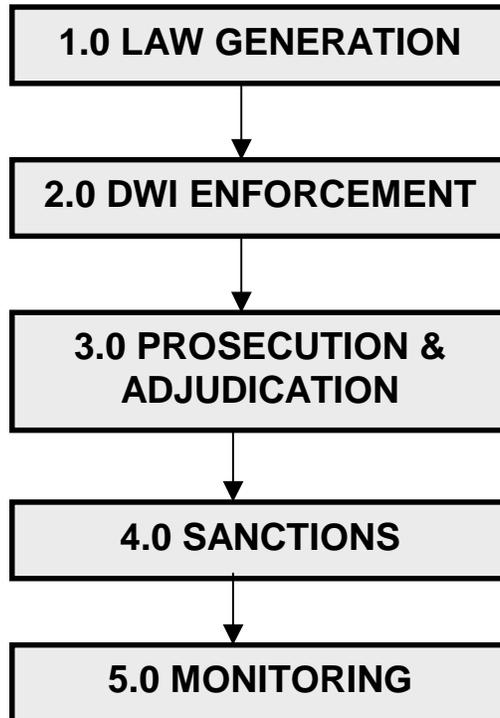


# Appendix D

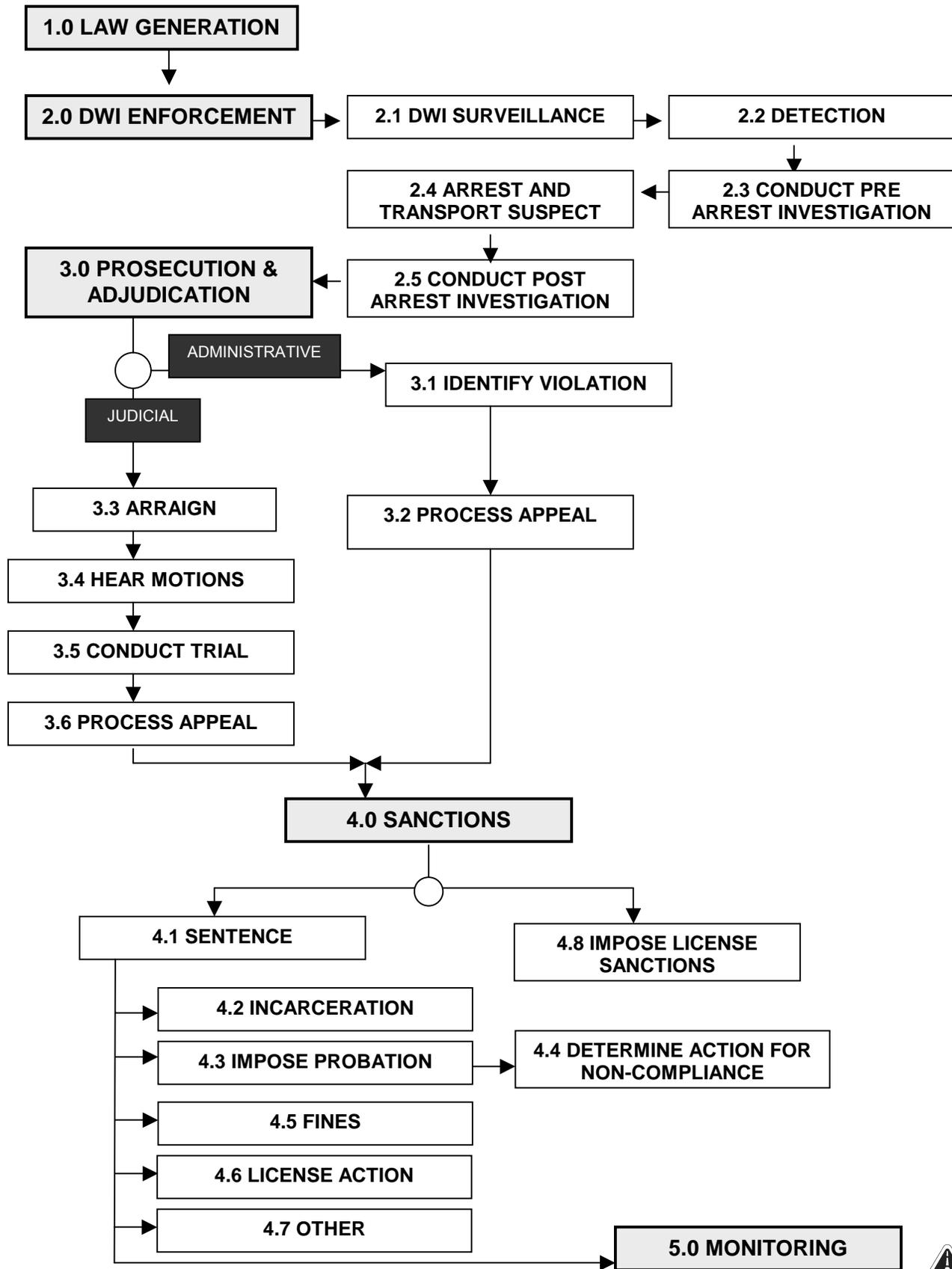
## Schematic Representation of the DWI System

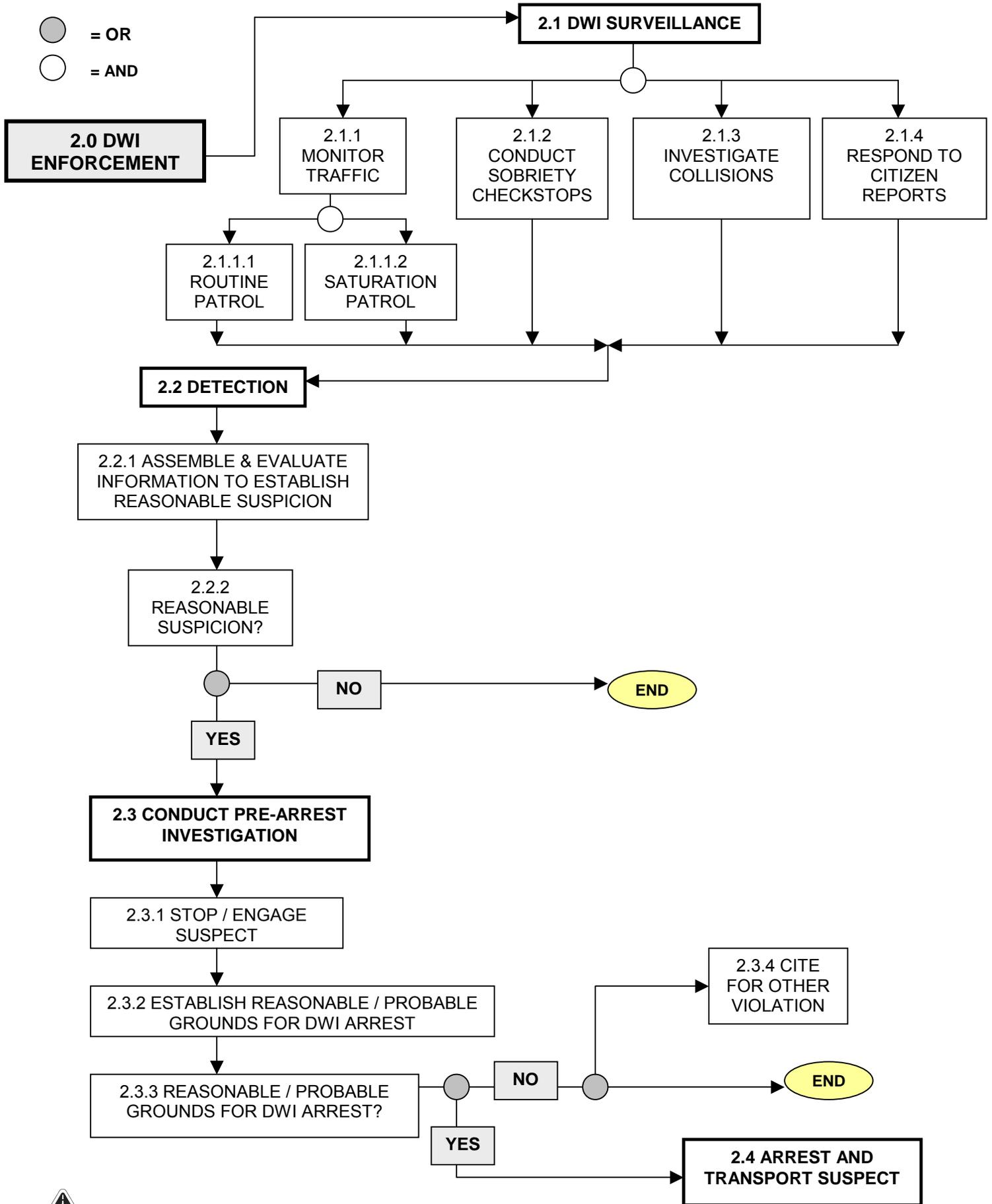


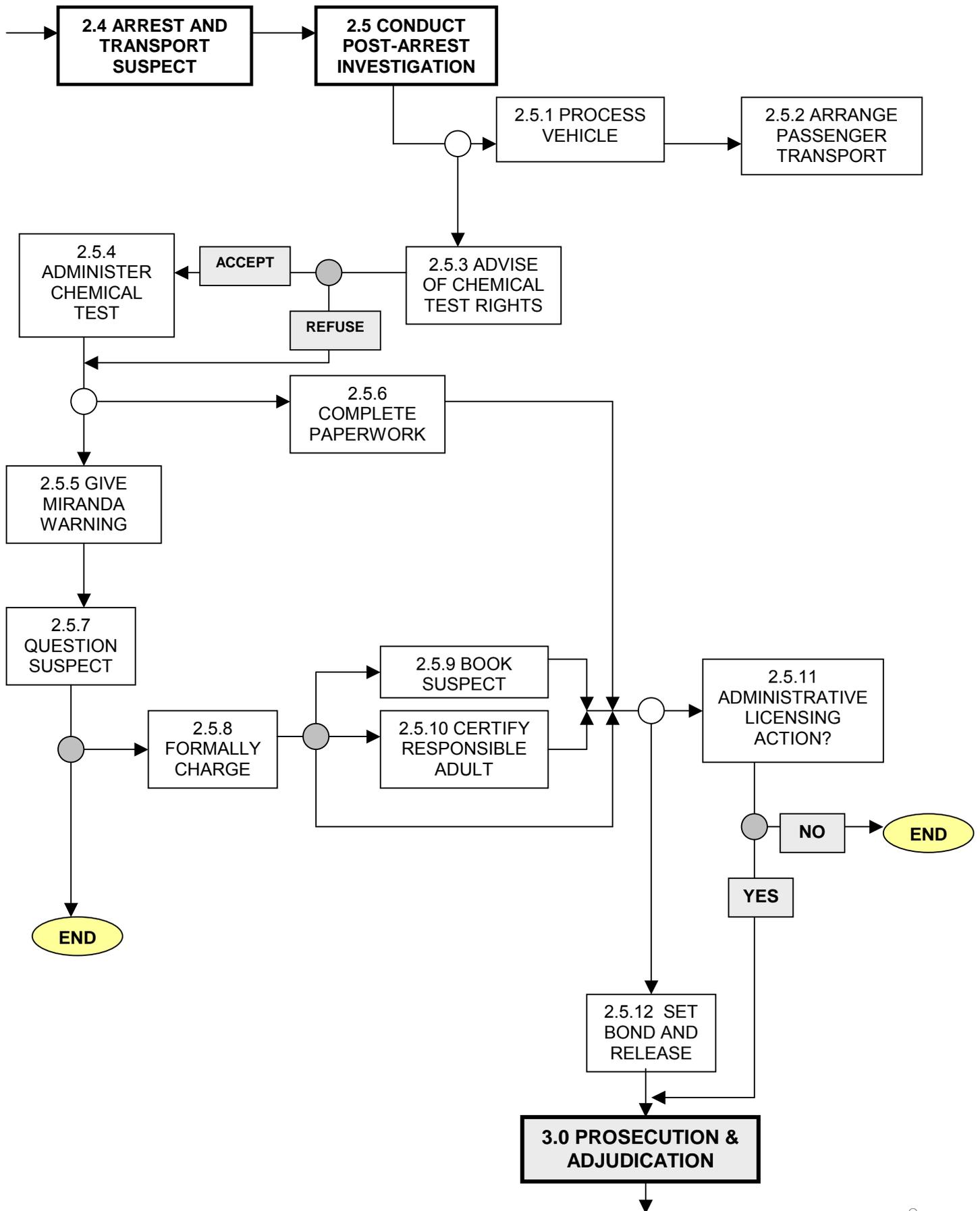
# Overview

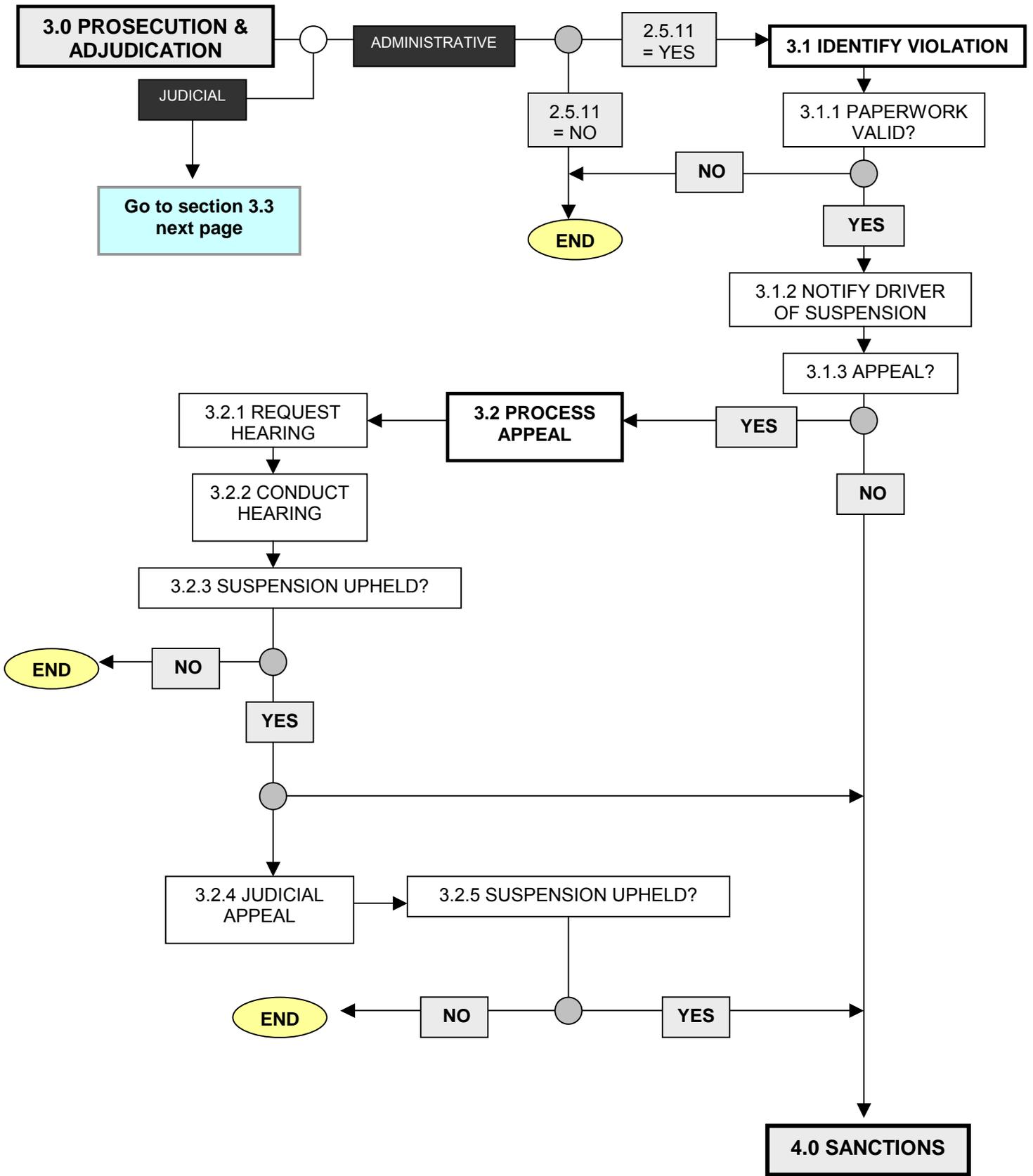


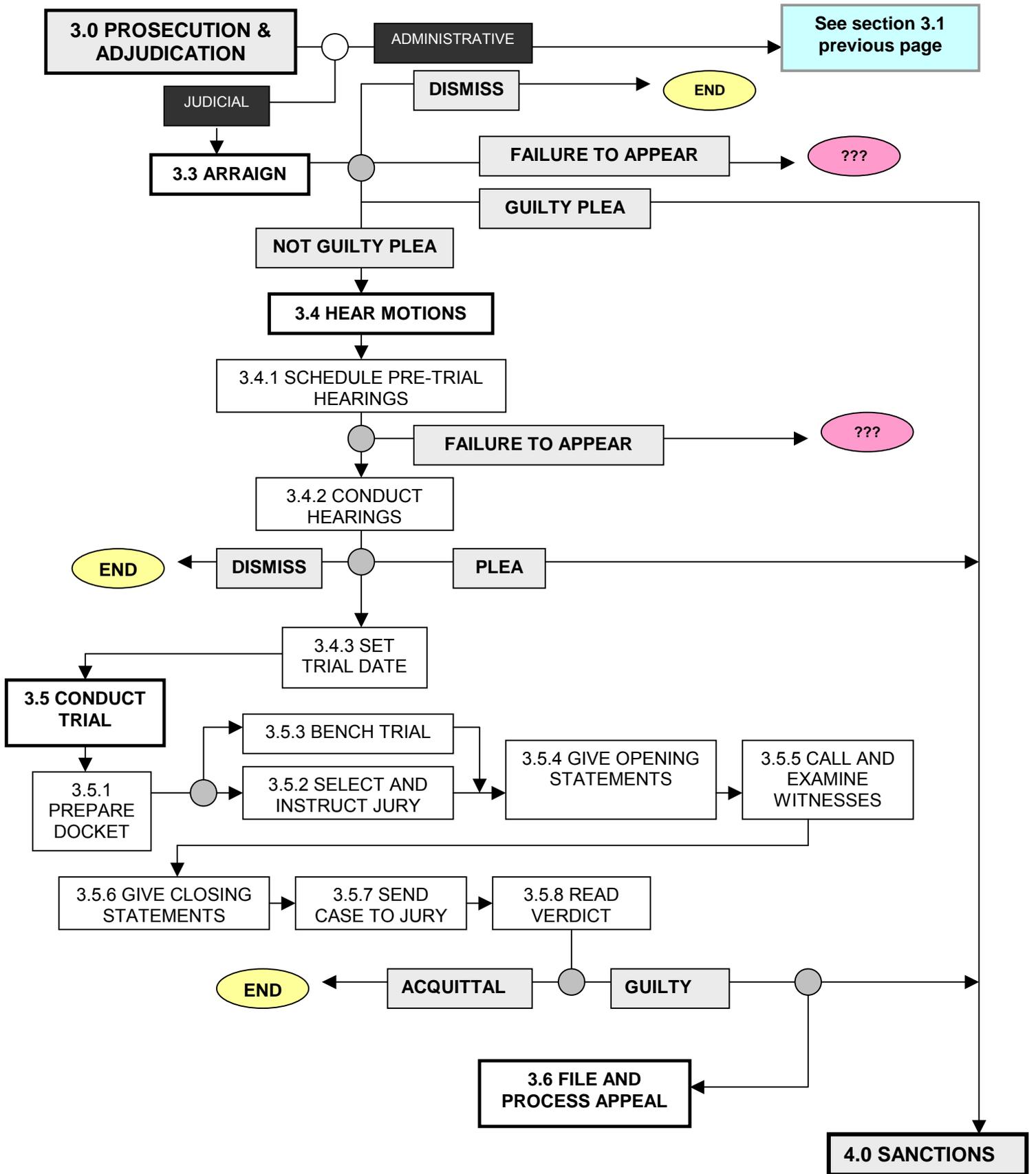
# Overview

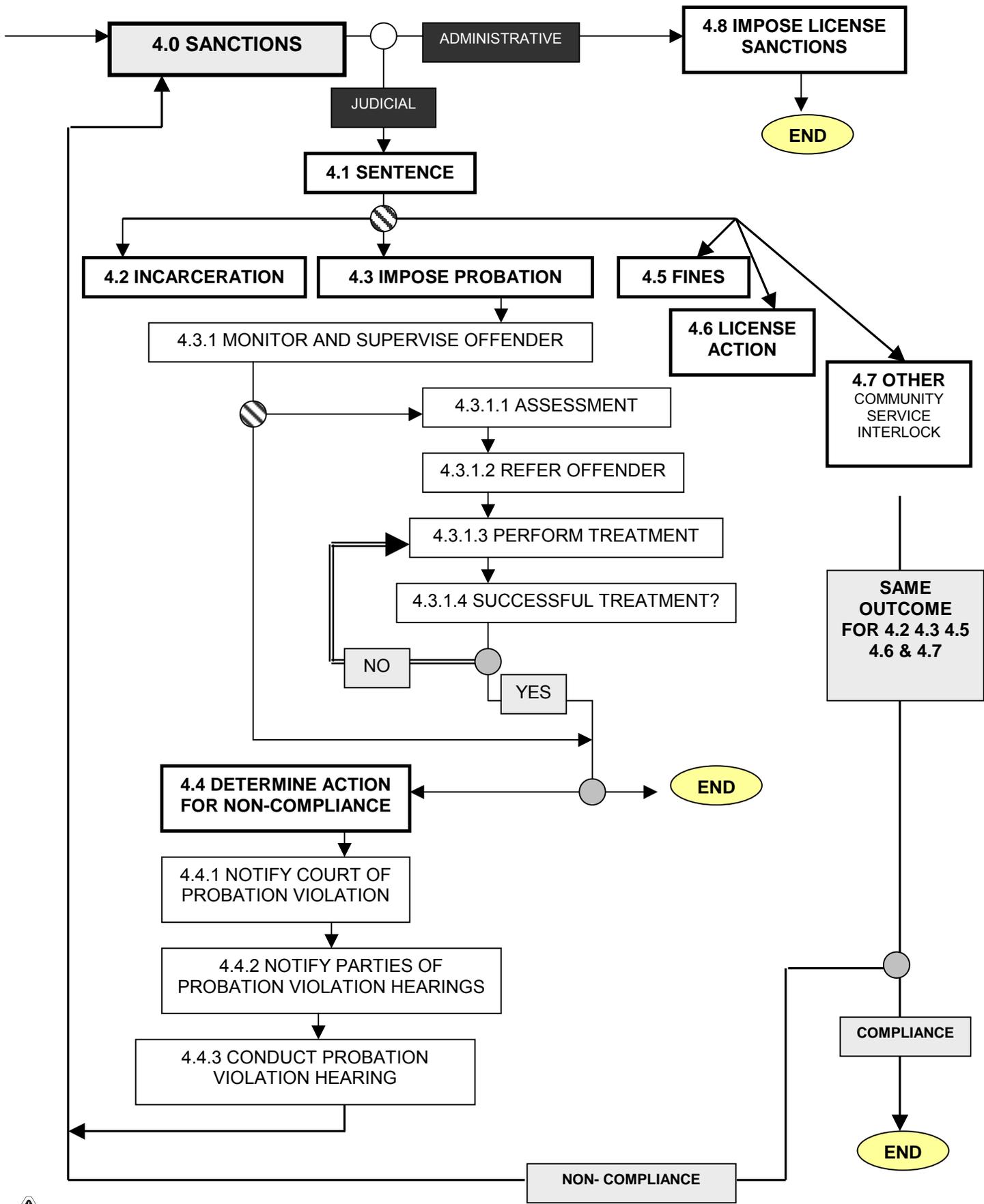












# Appendix E

## Problem List Distributed at Enforcement Workshops



# Problems in Detecting and Apprehending Hard Core Drunk Drivers

**RANK\***

- **DETECTION:** Hard core drunk drivers are difficult to detect because they are often alcohol tolerant and may display only subtle signs of impairment. \_\_\_\_\_
- **TEST REFUSAL:** Repeat offenders are familiar with the system, so they are more likely to refuse tests for impairment at the roadside and at the station, making it difficult for prosecutors to establish probable cause and/or prove guilt. \_\_\_\_\_
- **RECORD AVAILABILITY:** Access to driving and/or criminal records at the roadside is inefficient or incomplete, making the identification of repeat offenders difficult. \_\_\_\_\_
- **MEDICAL COOPERATION:** Hard core drunk drivers are more likely to be involved in a crash and, if taken to medical facilities, often avoid conviction because medical staff are reluctant to provide requested blood or breath samples in a timely manner, despite statutory requirements. \_\_\_\_\_
- **PAPERWORK:** The paperwork associated with DWI arrests is extensive. Officers often fail to complete forms in sufficient detail due to competing demands, and this poses a special problem when prosecuting repeat offenders who refusing testing. \_\_\_\_\_
- **INADEQUATE EVIDENCE:** The needed evidence is not always collected and documented thoroughly by police, especially those new to the job or unfamiliar with DWI procedures, making it difficult to successfully prosecute repeat drunk drivers. \_\_\_\_\_
- **FAILURE TO APPEAR:** Hard core repeat offenders are less likely to appear for arraignment or trial. Police lack the resources to execute warrants, allowing offenders to evade prosecution and sanctioning. \_\_\_\_\_
- **RESOURCES:** Limited resources prevent officers from conducting follow-up investigations. Consequently, vital information is not available to prosecutors to contradict/disprove defense arguments presented at trial, so repeat offenders may escape conviction and sanctioning. \_\_\_\_\_
- **TESTIMONY:** During trial, officers may be unable to describe arrest proceedings and observed behavior in a detailed and credible manner. Without thorough and specific testimonial evidence from officers, prosecutors are often unable to win a conviction. \_\_\_\_\_

\*Note: Highest priority problem rank #1, Lowest priority problem rank #9.



# Appendix F

## Police Surveys

# DETECTING AND APPREHENDING REPEAT DWI OFFENDERS

A National Survey of  
Police Officers

**Traffic Injury Research Foundation**  
[www.trafficinjuryresearch.com](http://www.trafficinjuryresearch.com)

March 2001



## PURPOSE

The purpose of this survey is to obtain your views about solutions to the key problems associated with the detection and apprehension of hard core DWI offenders<sup>1</sup>.

## PRIVACY

To ensure the anonymity of individual respondents, only aggregate results will be published. Moreover, you are not being asked to provide personal information that could lead to your identification.

## GENERAL INFORMATION

1. How many years have you worked as a police officer? \_\_\_\_\_yrs.
2. Approximately how many officers are employed by your organization? \_\_\_\_\_
3. Does your organization have a Traffic Unit<sup>2</sup>? \_\_\_\_\_
4. Are you a DWI officer? \_\_\_\_\_
5. Approximately how many DWI investigations do you conduct annually? \_\_\_\_\_
6. Approximately how many DWI arrests do you make annually? \_\_\_\_\_
7. In which state are you currently a police officer? \_\_\_\_\_

---

### Footnotes

<sup>1</sup> Hard core drunk drivers are repeat offenders who frequently drink and drive with high BACs.

<sup>2</sup> Traffic Unit refers to any division or section within a police organization responsible for either traffic enforcement, DWI arrests, or both.

For convenience, the abbreviation DWI is used throughout the survey, although the specific term used in state statutes may vary (e.g., DWI – driving while impaired, OUI – operating under the influence of alcohol, etc.)



1. The nine problems listed below impede the detection and apprehension of hard core drunk drivers in many areas of the country. Rank order these problems in terms of how important they are to you. Give a rank of 1 to what you believe is the most serious problem affecting your ability to detect and apprehend hard core drunk drivers, a rank of 2 to the next most serious problem, and so on.

**RANK**

- |   |       |
|---|-------|
| Detecting alcohol tolerant repeat DWI offenders   | _____ |
| Test refusal  | _____ |
| Driver record availability at the roadside  | _____ |
| Cooperation of medical personnel in identifying/testing DWI offenders involved in accidents | _____ |
| Extensive paperwork   | _____ |
| Complex interview and testing procedures  | _____ |
| Failure to appear (by the offender)   | _____ |
| Limited resources (e.g., manpower, funding, equipment)                                      | _____ |
| Lack of experience in/preparation for court testimony                                       | _____ |

2. Which form of surveillance results in most of the DWI arrests within your organization? (Please check **one** of the following.)

- routine patrols  
 saturation patrols  
 sobriety checkpoints  
 other \_\_\_\_\_ (please specify)

3. Which of the following tools do you feel best assist you in identifying repeat DWI offenders? (Please check **two** of the following answers.)

- preliminary breath testing devices  
 standard field sobriety tests  
 experience  
 interview questions  
 driver records



4. Would you make more DWI arrests if you received more extensive training in this area?

Yes  No

5. Would you like to see increased availability and use of preliminary breath testing devices in your department?

Yes  No  Not applicable

6. Which of the following solutions do you believe would be most effective in dealing with DWI suspects who refuse testing? (Please check **one** of the following.)

\_\_\_\_\_ increasing penalties for test refusal  
\_\_\_\_\_ make test refusal evidence admissible in court  
\_\_\_\_\_ permitting forced blood draws

7. What do you think would be the most appropriate method for conducting forced blood draws from DWI suspects? (Please check **one** of the following.)

\_\_\_\_\_ using hospital staff  
\_\_\_\_\_ using medical personnel hired by police agency  
\_\_\_\_\_ using police officers (with appropriate training)

8. How do you think medical/hospital cooperation with forced blood draws could best be resolved? (Please check **one** of the following answers.)

\_\_\_\_\_ meet with hospital administration to create policy and clarify legislative requirements  
\_\_\_\_\_ identify and train one hospital staff member to deal with police requests  
\_\_\_\_\_ enforce legislation and arrest hospital staff that refuse to cooperate

9. Do you think that police officers in your organization should be trained to conduct forced blood draws without the assistance of medical personnel?

Yes  No  Already trained

10. Do you think penalties for leaving the scene of an accident should be increased in order to curtail this behavior among those trying to avoid a DWI charge?

Yes  No

11. Do you think that greater access to driver records at the roadside would significantly improve your ability to make arrest and charging decisions with regard to DWI offenders?

Yes  No  Access currently sufficient



12. At what point do you think DWI training would be most beneficial? (Please check **one** of the following.)

- \_\_\_\_\_ the academy
- \_\_\_\_\_ on-the-job training with experienced coach officer
- \_\_\_\_\_ training within the traffic unit
- \_\_\_\_\_ periodic training workshops/conferences

13. What form of DWI training do you feel would benefit officers the most? (Please check **two** of the following.)

- \_\_\_\_\_ training in SFSTs
- \_\_\_\_\_ training in HGN testing
- \_\_\_\_\_ training to complete paperwork/ DWI forms properly
- \_\_\_\_\_ training in establishing probable cause
- \_\_\_\_\_ training in giving testimony in court

14. Do you feel that meeting with local prosecutors to discuss DWI enforcement and prosecution would improve your ability to gather the necessary evidence required to sustain DWI charges?

- Yes                       No

15. Which two DWI report forms would you like to see simplified or omitted, and why?

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16. Would you like to see arrest report forms streamlined and simplified across police organizations and/or across the country?

- Yes                       No

17. If you could change one thing to improve the detection and apprehension of hard core drunk drivers, what would it be?

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THANK YOU.



# DETECTING AND APPREHENDING REPEAT DWI OFFENDERS

A National Survey of  
Police Officers

**Traffic Injury Research Foundation**  
[www.trafficinjuryresearch.com](http://www.trafficinjuryresearch.com)

March 2001

## PURPOSE

The purpose of this survey is to obtain your views about key problems associated with the detection and apprehension of hard core DWI offenders<sup>1</sup>.

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4. Are you a DWI officer? \_\_\_\_\_
5. Approximately how many DWI investigations do you personally conduct each year? \_\_\_\_\_
6. Approximately how many DWI arrests do you make annually? \_\_\_\_\_
7. In which state are you currently a police officer? \_\_\_\_\_

---

### Footnotes

<sup>1</sup> Hard core drunk drivers are repeat offenders who frequently drink and drive with high BACs.

<sup>2</sup> Traffic Unit refers to any division or section within a police organization responsible for either traffic enforcement, DWI arrests, or both.

For convenience, the abbreviation DWI is used throughout the survey, although the specific term used in state statutes may vary (e.g., DWI – driving while impaired, OUI – operating under the influence of alcohol, etc.)



1. The nine problems listed below impede the detection and apprehension of hard core drunk drivers in many areas of the country. Rank order these problems in terms of how important they are to you. Give a rank of 1 to what you believe is the most serious problem affecting your ability to detect and apprehend hard core drunk drivers, a rank of 2 to the next most serious problem, and so on.

**RANK**

- |   |       |
|---|-------|
| Detecting alcohol tolerant repeat DWI offenders   | _____ |
| Test refusal  | _____ |
| Driver record availability at the roadside  | _____ |
| Cooperation of medical personnel in identifying/testing DWI offenders involved in accidents | _____ |
| Extensive paperwork   | _____ |
| Complex interview and testing procedures  | _____ |
| Failure to appear (by the offender)   | _____ |
| Limited resources (e.g., manpower, funding, equipment)                                      | _____ |
| Lack of experience in/preparation for court testimony                                       | _____ |

2. On average, do you feel that the number of DWI arrests within your department is low, average, or high?

- Low (go to item 3)     
  Average (go to item 4)     
  High (go to item 4)

3. Which factor do you believe is **most** responsible for the low number of DWI arrests made by your organization? (Please check only **one** of the following responses.)

- \_\_\_\_\_ lack of funding for DWI programs  
 \_\_\_\_\_ lack of manpower/equipment  
 \_\_\_\_\_ low incidence of drunk driving in region  
 \_\_\_\_\_ lack of experience/training  
 \_\_\_\_\_ other (please specify) \_\_\_\_\_



4. In your opinion, which of the following problems most often discourages an officer from deciding to stop/investigate/arrest DWI offenders? (Please check **two** of the following responses.)

- \_\_\_\_\_ paperwork is extensive
- \_\_\_\_\_ arrests are time-consuming
- \_\_\_\_\_ lack of resources/manpower/equipment
- \_\_\_\_\_ lack of training/inability to detect
- \_\_\_\_\_ more important calls for service

5. Do you think DWI arrests should be the responsibility of all police officers or just specifically assigned officers?

- Yes (all officers)                       No (specifically assigned)

6. What degree of emphasis would you estimate was placed on DWI detection and apprehension when you first attended the training academy?

- Weak                       Moderate                       Strong

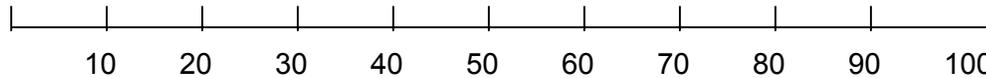
7. Are preliminary breath testing devices (PBTs, PASs) available to officers in your department?

- Yes (go to item 8)                       No (go to item 9)

8. Did officers within your department receive adequate training in the use of preliminary breath testing devices (PBTs, PASs)?

- Yes                       No

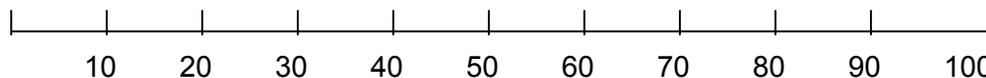
9. In your experience, what percentage of DWI suspects refuse to cooperate with interview questions, SFSTs, and/or chemical testing? (Please circle the appropriate percentage on the scale below.)



10. In your opinion, are suspects who refuse testing more likely to be repeat offenders?

- Yes                       No

11. In what percent of cases would you estimate that hospital staff fail to cooperate (either directly or indirectly) with a request for blood alcohol tests, or other evidence of intoxication? (Please circle the appropriate percentage on the scale below.)



12. How significant is the problem of offenders leaving the scene of an accident in order to avoid a DWI charge?

- Uncommon                       Common                       Very common

13. On average, how long does it take you to process a typical DWI arrest when working alone?

- less than 1hr.             1-2 hrs.             2-3 hrs.             3+hrs.

14. Which **two** DWI report forms contain the most repetitive information?

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15. How many DWI arrest warrants, would you estimate, are currently outstanding in your jurisdiction at any given time? How often are these warrants purged? \_\_\_\_ yrs.

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16. How often have you been required to provide testimony in court with regard to a DWI arrest?

- Never.             Rarely             Occasionally             Often.

17. If you could change one thing to improve the detection and apprehension of hard core drunk drivers, what would it be?

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THANK YOU.