



DWI System Improvements for Dealing with Hard Core Drinking Drivers

PROSECUTION

Executive Summary



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DWI System Improvements for Dealing with Hard Core Drinking Drivers

Prosecution

Robyn D. Robertson and Herb M. Simpson

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The Traffic Injury Research Foundation

The mission of the Traffic Injury Research Foundation (TIRF) is to reduce traffic-related deaths and injuries.

TIRF is an independent, charitable road safety institute. Since its inception in 1964, TIRF has become internationally recognized for its accomplishments in a wide range of subject areas related to identifying the causes of road crashes and developing programs and policies to address them effectively.

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About the Authors —●

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Herb Simpson is President & CEO of the Traffic Injury Research Foundation (TIRF). Previously he was a Clinical Psychologist in the Federal Penitentiary System and a Professor of Psychology at several universities. Dr. Simpson serves on numerous national and international road safety boards and committees. He has been recognized for his contributions, particularly in the areas of young drivers and drinking-driving, and has received a number of prestigious awards for them. During his 26-year career in traffic safety, he has produced several hundred reports and articles on traffic safety issues, is a member of the editorial board of several journals, and a consultant to government and industry around the world.



Acknowledgements

This report is the second in a series dealing with DWI system improvements. The first dealt with problems in the detection and apprehension of hard core drinking drivers. The current report examines ways to improve the prosecution of hard core drinking drivers. It would not have been possible without the assistance and participation of prosecutors from across the United States.

We acknowledge with special gratitude the technical expertise and assistance provided by Gregor G. Datig, Supervising Deputy District Attorney in Riverside County, California and Todd F. Sanders, former Director of the National Traffic Law Center, who is currently in private practice in Leesburg, Virginia. The efforts of these two exceptional attorneys allowed us to provide the depth of detail and explanation required to convey the complexity of this phase of the DWI system and accurately communicate the concerns and recommendations of prosecutors nationwide.

We acknowledge the assistance of James Catterson Jr., former District Attorney for Suffolk County, New York, who facilitated our contact with several District Attorneys who, in turn, assisted us with the organization of workshops. These District Attorneys arranged for prosecutors to participate in workshops held in six states – their names and jurisdictions appear in Appendix A and we acknowledge them with gratitude. In particular, we also acknowledge the 28 prosecutors from 23 different jurisdictions that participated in these workshops. Their passion, expertise and experience provided valuable insights into prosecution problems and how to solve them. Their names and affiliations are provided in Appendix B.

We are also grateful to the 424 Offices of District Attorneys in 36 states that assisted us by providing the names of experienced DWI prosecutors who could be surveyed, in order to determine the generality of the findings obtained from the workshops and to gain further insights into prosecution problems and their solutions. A total of 390 prosecutors from 35 states provided us with their views, opinions, and experiences.

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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, the offices of the participating District Attorneys, or individual prosecutors who participated in this project.



Executive Summary —●

Synopsis

- ◆ This is the second report from a major study designed to identify ways to improve the efficiency and effectiveness of the DWI¹ system for dealing with hard core drinking drivers.
- ◆ The present report underscores the need for system improvements by identifying key problems in the prosecution of DWI offenders and recommends practical solutions derived from prior research and validated by the experiences of several hundred prosecutors who participated in the project.
- ◆ Forthcoming reports will examine system improvements related to the adjudication/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 not been sustained, suggesting that the characteristics of the problem have changed.
- ◆ 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.

¹ 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.



- ◆ 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.

Legislation and regulation are necessary but not sufficient for success.

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 prosecution phase of the DWI system.

Goal: Identify priority problems and recommend practical, cost-effective solutions.

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 28 prosecutors experienced with DWI prosecutions, from 23 different jurisdictions. 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 prosecutors was conducted.
- ◆ A total of 390 misdemeanor and felony prosecutors from 35 states responded to the survey, ensuring the findings are representative of the problems facing prosecutors across the country.

Findings and Recommendations

- ◆ Prosecutors consistently acknowledge the need for improvements in the DWI system to enhance the prosecution of hard core drinking drivers.
- ◆ Evidentiary issues are the primary concern of prosecutors . A lack of evidence, the poor quality of evidence, or other technical aspects associated with evidence have made the



prosecution of repeat DWI offenders frustrating, discouraging and even intimidating to some prosecutors.

- ◆ A linchpin to successfully improving the efficiency and effectiveness of DWI prosecution is to improve the quality and quantity of evidence.
- ◆ In addition to the need for better evidence, a variety of other problems and needed changes to the prosecution system were identified by prosecutors.
- ◆ They identified ten key problems that impede the effective prosecution of hard core drinking drivers, and recommended ways to overcome these problems. The problems, in order of priority, include: evidentiary issues, test refusal, motions and continuances, incomplete records, inadequate or inconsistent penalties, failure to appear, legislative complexities, expert witnesses, plea agreements, and prosecutor training.

◆ Evidentiary Issues

- *The problem:* The effective prosecution of DWI cases depends heavily on the quality and quantity of evidence gathered by an officer during a DWI investigation, the precision with which such evidence is documented, and the accurate presentation of that evidence in court. When the evidence is compromised by errors or omissions during its collection, documentation or presentation, it diminishes the prosecutor's ability to obtain a conviction.
- *The consequences:* The consequences of evidentiary problems are straightforward and profound. First, it means that the appropriate and needed sanctions and/or treatment are not imposed because of potential dismissals, acquittals, or unsatisfactory plea agreements. Second, it means that the alcohol-related offense may be avoided by the defendant, which then prevents them from being identified as a repeat offender subsequently.
- *The solution:* Prosecutors recommend a number of solutions that can improve the quality of evidence collected, documented and presented in a DWI prosecution.

Prosecutors urge the consistent use of sobriety tests to facilitate the presentation of evidence in court. Moreover, they recommend the use of validated tests, in particular, the Standardized Field Sobriety Test (SFST), which must be administered according to protocol, to improve the strength of the evidentiary test results.

The need for greater training in DWI investigations and arrests has already been acknowledged by police officers (Simpson and Robertson 2001) and prosecutors agree that this would improve the collection and documentation of evidence.

Prosecutors also believe that better communication is required between them and police officers. Each professional group has a unique perspective with regard to the collection, documentation and presentation of evidence and they need opportunities for dialogue to improve understanding of their respective issues and, thereby, the effectiveness and efficiency of the system.

97% of prosecutors support initiatives that will improve communication with police officers.

◆ Test Refusal

- *The problem:* Test refusal in the broadest sense encompasses a variety of activities, including refusal to cooperate with police questioning, refusal to submit to SFSTs, refusal to take a Preliminary Breath Test (PBT) and refusal to take a chemical BAC



test at the station following an arrest for DWI. The latter is the most critical issue because of the importance of the BAC test result to a successful prosecution. Almost $\frac{3}{4}$ of the prosecutors surveyed reported that a BAC is the single most convincing piece of evidence that can be presented to a jury.

$\frac{3}{4}$ of the prosecutors said that a BAC result is the single most convincing piece of evidence.

Unfortunately, as detailed in our enforcement report (Simpson and Robertson 2001), test refusal is by no means uncommon – officers experience some form of refusal in $\frac{1}{3}$ of their DWI investigations. Chemical test refusal rates vary substantially – from 2% to 71% (Jones et al. 1991; Tashima and Helander 2000) but the average for the nation has been estimated at approximately 20% (Jones et al. 1991). Of considerable importance, 92% of prosecutors reported that test refusal is more common among repeat offenders.

The variability in refusal rates appears to be a function of the penalty structure associated with chemical test refusal. The sanctions for test refusal are far less severe than those for taking the test and failing it.

- *The consequences:* Chemical test refusal impedes the prosecutor's ability to sustain charges during the pre-trial process. Without hard evidence, the success of the case relies heavily on the accuracy and detail found in reports completed by the officer and the strength of his/her observations, much of which is open to interpretation without actual test results. At trial, the lack of BAC evidence also makes it more difficult for a prosecutor to refute alternative theories of the crime.

As a result, when a defendant is allowed to refuse testing, it is more likely that he/she will successfully avoid conviction on DWI charges altogether and/or avoid being identified as a repeat offender if they appear subsequently on another DWI charge.

Chemical test refusal also significantly impacts what penalties a prosecutor can request, so a conviction without a BAC result means that the offender often faces lesser sanctions.

- *The solution:* Prosecutors have identified several solutions for dealing with the problem of test refusal.

They recommend making test refusal a criminal offense. This ensures a record is available so that subsequent DWIs will be treated accordingly. To date, only 11 states have passed legislation making test refusal a criminal offense or sentencing enhancement.

To date, only 11 states have made test refusal a criminal offense or sentencing enhancement.

Whether test refusal is an administrative or criminal offense, prosecutors recommend that the penalties be sufficient to remove the benefits of refusing. Nominal penalties for refusal encourage this behavior, especially when compared to the substantial penalties faced upon conviction of DWI charges.

◆ **Motions and Continuances**

- *The problem:* Motions are written arguments initiated by either the prosecution or the defense regarding how a particular case should proceed. Governed by strict procedural rules, they are commonly initiated during pre-trial proceedings (but are not limited to this phase) and cover a broad range of issues including: discovery, the admissibility of evidence, limits placed on the use of particular kinds of evidence, and requests for continuances.



Although motions have a purpose and function in ensuring the fairness of the trial process, they can be overused or used in a “frivolous” manner in an effort to delay proceedings. Prosecutors often encounter difficulty, particularly when responding to evidentiary motions, since the availability of, and access to, legal research and reference materials may be lacking.

- *The consequences:* Excessive motions can both complicate and prolong the trial process, and when prosecutors are unable to respond adequately to motions filed, the defense is more likely to be successful in obtaining a dismissal or acquittal. Moreover, the lack of adequate legal resources needed to respond to technical motions may result in the exclusion of valuable evidence and greatly diminish a prosecutor’s ability to obtain a conviction.

Excessive continuances increase the time between the commission of the offense and the imposition of sanctions, and diminish the likelihood of a conviction, thereby eroding any deterrent effect.

- *The solution:* Prosecutors identified two principal ways to reduce the impact of frivolous motions and unreasonable requests for continuances.

They would like better access to current materials that would assist them in promptly responding to some of the more complex motions filed by the defense. In addition, prosecutors would like to see more timely information – newsletters or journals – that keeps them abreast of new rulings, especially with regard to scientific evidence. Although some progress has been made in this area, it is evident that more needs to be done to improve the efficiency with which needed state-specific information is transmitted to, or can be accessed by, prosecutors.

To ensure that a case is processed in a reasonable timeframe almost half of the prosecutors in the survey (45%) want to see case processing guidelines adhered to more closely.

◆ Records

- *The problem:* Records containing data and information pertinent to the prosecution of DWI cases are maintained by a diversity of agencies. Such records vary in terms of how up-to-date the information is, their content (both in terms of the nature of the information and its scope), accuracy, completeness as well as ease and timeliness of access.
- *The consequences:* Inaccessible, incomplete or inaccurate records and associated documentation impede the proper identification of repeat offenders and result in ineffective or inappropriate sanctioning. The gravity of this problem was illustrated by the findings from a recent study conducted at Brown University on the accuracy of DWI charges filed by Rhode Island police agencies. Approximately 40% of DWI offenders were incorrectly charged as a first-offender instead of a repeat offender (Grunwald et al. 2001). Nationally, our survey results show that prosecutors estimate at least 15% of defendants are incorrectly charged as a first-offender. Those offenders that are not charged appropriately face lesser sanctions and are often able to negotiate diversion programs or minimal plea agreements.

As many as 40% of repeat DWI offenders are incorrectly charged as first-offenders.



- *The solution:* Prosecutors want all key agencies to maintain appropriate records for the look-back period specified in DWI statutes. Prosecutors are often unable to locate the paper record of offenses that should be included in the look-back period and, consequently, defendants are not consistently identified as repeat offenders and subject to the appropriate sanctions.

Prosecutors support standardized court reporting practices and the development of guidelines that establish the minimum necessary information that should be included in these reports. This would greatly facilitate the prosecution of repeat offenders.

Driver abstract forms should be standardized so that prior convictions can be clearly established. This will enhance charging and sentencing. Almost all (94%) prosecutors surveyed agree that standardized record-keeping practices and driver abstracts would improve the prosecution of out-of-jurisdiction or out-of-state drivers.

94% of prosecutors believe that standardized record-keeping practices would improve the prosecution of out-of-state and out-of-county drivers.

Prosecutors also believe that records of diversion programs should be maintained so that repeat offenders can be identified and prohibited from evading harsher sanctions.

◆ Inadequate or Inconsistent Penalties

- *The problem:* Prosecutors believe that the penalty structure available to judges and/or the sanctions imposed in many DWI cases are inadequate (or applied inconsistently). DWI statutes in some states do not include significant tiered penalties for repeat DWI offenses. Tiered penalties refer to increasing penalties for each subsequent offense, regardless of whether or not there is a corresponding increase in the severity of the offense.

However, even in states that do have tiered sanctions for repeat offenses, these elevated penalties are not consistently imposed and/or may not be severe enough to deter repeat offenses. This can be a result of inadequate resources for sanctioning offenders, the outcome of plea agreements, judicial discretion and/or the cultural atmosphere of some jurisdictions, and a lack of opportunities for judicial training. Even in cases where mandatory minimum sanctions are specified by statute, they may not be consistently imposed for the same reasons.

- *The consequences:* The consequence of inadequate or inconsistently applied penalties is that offenders are not sanctioned effectively, thereby diminishing the specific and general deterrent effects. It is especially important to impose effective sanctions for repeat offenses to deal with the persistence of the behavior. Because repeat offenders often avoid detection and apprehension, and can also avoid conviction even when apprehended, it is essential that effective sanctions are imposed in those cases where offenders are convicted.
- *The solution:* Prosecutors support the continued development of tiered penalties for repeat drinking drivers. They also believe that penalty structures should be carefully examined to ensure they will effectively deter future offenses. Those states that do not currently rely on tiered penalties for DWI offenses are strongly encouraged to examine this option. Those states that do have tiered penalties are urged to review the penalties in place and determine if they need to be enhanced.



Prosecutors believe that tiered strategies should include the development of stricter sentencing guidelines for repeat offenses to ensure that the sanctions specified in the legislation are imposed. Although it is important for judges to be able to adjust sentences according to case specifics, the sentencing guidelines should be the rule, rather than the exception. Three-quarters of the prosecutors surveyed (75%) strongly supported stricter sentencing guidelines that mandate harsher sanctions for repeat offenses.

Prosecutors feel that the development of more dedicated DWI courts and judges would improve the effectiveness of the criminal justice system's response to hard core drinking drivers because prosecutors and judges will work exclusively on DWI cases and thereby become more proficient and consistent.

The inadequate and/or inconsistent imposition of sanctions can arise indirectly from a lack of familiarity with technical issues pertaining to DWI, or more directly from a lack of confidence in the effectiveness of the penalties. These problems can be addressed in part by education and training. Almost all prosecutors (91%) surveyed believe that more DWI educational opportunities, such as workshops and conferences involving all criminal justice professionals, would be beneficial.

◆ Failure to Appear

- *The problem:* To avoid prosecution and/or conviction, offenders will sometimes simply fail to appear for arraignment or trial. When a defendant fails to appear, a bench warrant ordering the arrest of the defendant is issued by the presiding judge. However, as documented in our previous report on enforcement (Simpson and Robertson 2001), there are substantial problems associated with executing warrants. Accordingly, those who fail to appear are not likely to be apprehended or sanctioned. Warrants that are not executed for failure to appear relating to DWI offenses translate into defendants that are never prosecuted.

According to prosecutors in our survey approximately 22% of defendants fail to appear at some point in a typical DWI case. However, hard core drinking drivers are more familiar with the loopholes in the justice system and are more likely to fail to appear for either arraignment or trial because they are aware of the low risk of apprehension – indeed, 65% of prosecutors say that this behavior is more common among repeat offenders.

22% of defendants fail to appear at some point in a DWI case; 65% of prosecutors say this is much more common among repeat offenders.

- *The consequences:* By failing to appear on DWI charges, the defendant, if guilty, can often evade prosecution and conviction, most often because the police are unable to locate them. Limited resources impact the number of warrants that officers are able to execute, meaning that few offenders are returned to custody to face charges.
- *The solution:* Prosecutors identified three ways that the problem of failure to appear can be addressed. Defendants that have failed to appear on one or more occasions should be held in custody until trial. Another approach is to impose significant bail to ensure appearance when it is not practical to hold the defendant in custody.

As well, penalties for failure to appear need to be increased to reflect the severity of the crime, especially those committed by repeat offenders. In this context, efforts



must also be made to ensure that the increased penalties can be imposed. Their mere presence will do little to deter offenders if they cannot be enforced.

◆ Legislative Complexities

- *The problem:* The remarkable growth in DWI legislation over the past two decades is unparalleled. This has strengthened DWI laws but has also served to complicate an already complex system.
- *The consequences:* The complexities in legislation at various levels have produced incompatibilities and inconsistencies within the system. In turn, this has created loopholes that provide opportunities for repeat offenders, in particular, to avoid identification and prosecution.
- *The solution:* Prosecutors have recommended a comprehensive legislative review to identify and correct inconsistencies and loopholes. Participation and cooperation from a broad range of sectors is needed to ensure the review is comprehensive and effective. Important stakeholders in this process include criminal justice professionals – police, prosecutors, judges, probation and parole officers – as well as representatives from the DMV and other agencies charged with maintaining key records, individuals from Traffic Safety Commissions who are often in a key position to implement and coordinate strategies between various groups, legislators and their representatives from the state and local levels who have an active role in this issue, and members of interest groups.

◆ Expert Witnesses

- *The problem:* Scientific and technical evidence from expert witnesses is often needed by prosecutors to support their case. Indeed, prosecutors estimate that they require some form of expert testimony in 56% of cases, especially those involving breath and blood analysis, retrograde extrapolation, or HGN. Such testimony may be unavailable due to a lack of funding, scheduling problems, or judicial decisions to exclude expert testimony.
- Prosecutors estimate they require some form of expert testimony in 56% of cases.**
- *The consequences:* When expert witnesses are either unavailable or not permitted to testify at DWI trials, the prosecutor loses valuable evidence that may have resulted in the conviction of a guilty defendant. Further, without an expert witness to qualify the evidence or explain results, technical evidence may be incorrectly interpreted, or attributed greater or lesser weight than it should have, resulting in an inappropriate verdict. This may result in guilty defendants being acquitted instead of being sanctioned and, by avoiding conviction, they also avoid being identified as a repeat offender if apprehended again.
 - *The solution:* To facilitate the prosecutor's decision about the potential need for expert testimony and to facilitate the identification and contact of experts in the event testimony is deemed necessary, it was recommended that a databank be created containing a record of expert testimony on various technical issues as well as the witnesses who provided it. The National Traffic Law Center (NTLC) does have some information on this subject. Additionally, some prosecutors feel that the State should hire a small number of expert witnesses on a permanent basis who can be called upon to testify at DWI trials on a priority basis.



Currently, in order to admit some newer scientific testimony, the prosecutor may be required to request a hearing, pursuant to *Frye v. U.S. (1923) 293 Fed 1013*. The *Frye* rule requires a demonstration to the court of the reliability and general scientific acceptance of the evidence prior to it being introduced in court. It is often difficult to have this evidence admitted because caseload demands and time constraints often prohibit these hearings. Prosecutors believe that once a Court of appropriate jurisdiction has recognized the admissibility of the evidence, the hearing requirement in each DWI trial to get this evidence admitted should be eliminated.

◆ Plea Agreements

- *The problem:* Despite the efficiency merits of plea agreements – negotiated settlements that can result in reductions of the charge and/or the sentence – it is commonly agreed that the use of plea agreements “undermines the integrity of the justice system” and the deterrent effect of criminal sanctions by allowing offenders to avoid mandated penalties. This may be especially true in the case of repeat drinking drivers. Anecdotal reports and survey results from some prosecutors indicate that up to 75% of DWI cases are resolved with some form of a plea agreement.
- *The consequences:* The plea process can significantly reduce the penalties associated with a DWI offense and, thereby, both its specific and general deterrent effect. In addition, pleas to lesser charges prevent prosecutors from elevating charges from misdemeanors to felonies because prior convictions involving pleas may not be counted. Finally, this process detracts from the ability of the criminal justice system to identify repeat offenders, especially those that are allowed to plead to a non-alcohol offense.
- *The solution:* Prosecutors generally tend to be satisfied with the frequency of plea agreements and, on balance, believe that the negative consequences of reduced penalties are tolerable, relative to the benefits associated with plea agreements – namely, an efficient processing of cases. If caseloads were reduced substantially, plea agreements would be needed less. For this reason, only 18% of prosecutors surveyed would like to see the frequency of plea negotiations reduced.

However, prosecutors would like to see the contents of plea arrangements restricted – i.e., remove the opportunity for pleas to non-alcohol offenses and pleas in high-BAC cases, and they support the requirement for prosecutors to state the reasons for plea agreements on the court record if pleas are used in these instances.

◆ Prosecutor Training

- *The problem:* DWI cases have been referred to as a training ground for prosecutors as they are often handled by those new to the job. This is unfortunate given the complexities of DWI laws and the specialized defense attorneys that new prosecutors face. Almost half (48%) of the prosecutors in our survey reported that they did not receive adequate training or preparation in the prosecution of DWI cases before assuming their position. As well, some prosecutors indicate that it is difficult to hire and retain good prosecutors in this area – relatively high turnover rates exist in many offices. Although

Half of the prosecutors said they did not receive adequate training or preparation in the prosecution of DWI cases.



some prosecutors find working on DWI cases extremely challenging and rewarding, others are disappointed with the lack of recognition or reward involved.

- *The consequences:* Newer, less experienced prosecutors are more likely to hesitate to proceed to trial and may be more likely to negotiate an unsatisfactory plea. And, if a prosecutor is unsure about handling a misdemeanor DWI case, they are even less likely to feel confident about pursuing a felony DWI. Consequently, many offenders are not being sanctioned appropriately or are not being sanctioned at all.
- *The solution:* Almost all prosecutors (94%) would like to receive more training in the area of DWI prosecution and feel this would be a benefit – they would be better able to win convictions of guilty offenders.

Prosecutors would also welcome the opportunity to meet with other DWI prosecutors from surrounding jurisdictions and/or states in order to discuss common problems encountered in DWI prosecution, new case law, and new tactics for approaching these cases. Prosecutors would also like greater access to educational and reference materials.

Prosecutors also support the development of specialized training courts that would allow them to practice and learn in mock trial situations. Some attorneys also recommend the use of “turn-over” binders, which contain relevant notes and explanations with respect to specific issues involved in DWI cases. When the attorney moves on to another department, he/she would turn over the binder of relevant information to the next DWI prosecutor.

Prosecutors believe that the introduction of vertical prosecution – one prosecutor handling the case from start to finish – would improve the efficiency and consistency with which DWI cases are processed. Because more than one prosecutor may be involved in a DWI case this may create inconsistencies in prosecution, especially when a misdemeanor case becomes a felony.

Finally, prosecutors also believe, that in some instances, more recognition should be given to those who successfully and consistently prosecute DWI cases.

Summary

It should be evident from reading this report that the prosecution of a DWI case involves highly technical evidence, complex and often overlapping legal issues, and relies heavily on work completed by other agencies. The unprecedented growth in DWI legislation in the past decade has made an already complicated system even more so. Indeed, it has become so complex and technical that it is often frustrating, discouraging and even intimidating to some prosecutors. There is a need to streamline and simplify the prosecutorial process to improve its effectiveness and efficiency. This is a primary concern to prosecutors and a linchpin to successfully improving the DWI system.

In addition to this general recommendation a variety of specific changes to the DWI system can improve the prosecution of hard core drinking drivers. These improvements are organized below in terms of the general method by which this can be achieved.

◆ **Training and Education**

Prosecutors identified several areas in which training can improve the prosecution of hard core drinking drivers:

- ◆ enhanced on-the-job training of new prosecutors in the complexities of DWI evidentiary issues, trial proceedings, and legislation in general;
- ◆ specialized training courts that would allow prosecutors to learn to prosecute using technical, scientific evidence, to cross-examine witnesses with regard to scientific evidence and refresh their trial skills periodically;
- ◆ enhanced training of police officers at the academy in conjunction with more on-the-job experience in the collection of evidence to improve its quality and quantity; this is particularly important in the prosecution of the alcohol tolerant repeat offender; and
- ◆ continuing education for the judiciary to provide contemporary information on the effectiveness of alternative sanctions.

◆ **Communication and Cooperation**

Prosecutors believe that improved communication and cooperation with other professionals involved in the DWI system will facilitate the prosecution of hard core drinking drivers. They support:

- ◆ workshops with police officers, that 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;
- ◆ the mentoring of newer prosecutors by those who have more experience;
- ◆ facilitating the use of blood evidence based on its greater reliability and validity;
- ◆ the use of a 'turnover' binder which contains learning notes on key issues and procedures in DWI cases. This binder would provide a source document for new or replacement prosecutors;
- ◆ the development of vertical prosecution that would allow one prosecutor to handle a DWI case from start to finish and eliminate confusion and unnecessary delays; and
- ◆ dialogue with legislators, criminal justice professionals and other stakeholders external to the justice system to undertake a comprehensive review of current DWI legislation and practices in order to improve the effectiveness and efficiency of the system.

◆ **Record Linkages, Availability and Access**

Records containing data and information pertinent to the prosecution of DWI cases are maintained by a diversity of agencies. Such records vary in terms of how up-to-date the information is, their contents (both in terms of the nature of the information and its scope), accuracy, completeness as well as the ease and timeliness of access. Prosecutors require

timely access to accurate, contemporary and comprehensive records to facilitate the filing of DWI charges and the subsequent prosecution of offenses. The importance of this has been underscored by numerous agencies, and remains a critical need to improve the prosecution of hard core drinking drivers. Prosecutors support the following changes to record systems:

- ◆ uniform driver abstracts;
- ◆ uniform look-back periods for driver and associated records that are consistent with look-back periods specified in criminal legislation;
- ◆ consistent and uniform records on offenders participating in diversion programs; and
- ◆ standardized court reporting practices.

◆ **Technology**

Prosecutors believe that greater use of technology can improve the efficiency and effectiveness with which they prosecute hard core drinking drivers:

- ◆ consistent, computerized access to Westlaw and related legal web sites as well as greater access to legal research materials and court rulings such as the Brief Bank maintained by National Traffic Law Center (NTLC); and
- ◆ development of an expert witness databank that tracks testimony and expert opinion on various kinds of evidence as is currently done in Connecticut.

◆ **Legislation and Regulation**

Prosecutors also identified a number of legislative changes that would improve the prosecution of hard core drinking drivers:

- ◆ increase bail amounts for defendants who have previously failed to appear, or require that these defendants be held for arraignment with higher bail amounts as a condition of release;
- ◆ reduce or eliminate hearing requirements once a court of competent jurisdiction has ruled as to the admissibility of certain kinds of evidence (e.g., HGN results);
- ◆ criminalize test refusal and allow evidence of refusal to be admitted in court or make refusal a rebuttal presumption of fact;
- ◆ increase penalties for test refusal and for failure to appear;
- ◆ greater use of tiered penalty systems that specify increased sanctions for repeat offenders; and
- ◆ stricter adherence to case processing guidelines to minimize unnecessary continuances or delays.

Appendix A

District Attorneys Who Assisted in Organizing the Workshops

Arizona

1. Barbara LaWall – County Attorney, Pima County
2. Robert Carter Olson – County Attorney, Pinal County

California

1. Tony Rackaukas – District Attorney, Orange County
2. Grover C. Trask – District Attorney, Riverside County
3. Paul J. Pfingst – District Attorney, San Diego County

Connecticut

1. Mr. John M. Bailey – Chief State's Attorney
2. Mr. Jack Cronan – Office of the Chief State's Attorney
3. Ms. Mary Galvin - State's Attorney, Ansonia-Milford District

Illinois

1. Mr. Don Hays – Senior Staff Council, Illinois State's Attorneys Appellate Prosecutors Office
2. Mr. Scott Manuel – Illinois State's Attorneys Appellate Prosecutors Office

Massachusetts

1. Ms. Geline Williams – Massachusetts District Attorneys Association

New York

1. Hon. James M. Catterson, Jr., District Attorney, Suffolk County
2. Hon. Sol Greenberg – District Attorney, Albany County
3. Hon. William V. Grady – District Attorney, Dutchess County
4. Hon. Polly A. Hoyer – District Attorney, Fulton County
5. Hon. Kenneth R. Bruno – District Attorney, Rensselaer County
6. Sean M. Byrne, Executive Director NYPTI
7. Caran Curry, NYPTI



Appendix B

Workshop Participants

Albany, New York

1. Jennifer Gill – Albany County
2. George Hazel – Dutchess County
3. Karina Hojraj – Albany County
4. David Rynkowski – Rensselaer County
5. Louise Sira – Fulton County

Tucson, Arizona

1. Janet Altschiler – Pima County
2. Bruce Chalk – Pima County
3. Jan-Georg Roesch – Pinal County
4. John Woodring – Pinal County

Newport Beach, California

1. Blaine Bowman – San Diego County
2. Janice Chieffo – Orange County
3. Creg Datig – Riverside County
4. Jim Pippin – San Diego County

Boston, Massachusetts

1. William Melkonian – Essex County
2. Gerald Stewart – Suffolk County
3. Patrick Bomberg – Plymouth County
4. Michael Leary – Middlesex County
5. Richard Locke – Berkshire County
6. Brian O'Neill – Norfolk County

Rocky Hill, Connecticut

1. John Malone
2. Christopher Godialis
3. Angela Macchiarulo
4. Anne Holley

Springfield, Illinois

1. Jon Hurst – Morgan County
2. Dick Koritz – Dewitt County
3. Kelly Griffith – Champaign County
4. Terry Costello – Montgomery County
5. Pete Cavanagh – Sangamon County



Appendix C

Schematic Representation of the DWI System











