

THE PUBLIC COSTS OF
DRIVING UNDER THE INFLUENCE PROCESSING:

A Study in the
California Municipal Courts

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EXECUTIVE SUMMARY

An analysis of the total public cost of processing Driving Under the Influence (DUI) cases was performed for a sample of defendants in Alameda County, California. During a two-year project 152 cases were tracked for up to fourteen months postarrest, and public expense monitored for each government agency which had any responsibility for processing any portion of each DUI case. Costs were gathered starting from the first point of contact, the arrest, and included costs for chemical analysis for any blood alcohol content, jailing a defendant, all court procedures, the District Attorney (DA), the Public Defender (PD), any court interpreters, probation, volunteer work programs, and state driver license actions. Revenue collected from defendants for fines, fees and assessments was also analyzed; revenues and costs were then compared.

Costs were further analyzed for certain case characteristics, including such factors as the court, the number of prior DUI convictions charged, the number of appearances in court, whether the defendant had legal representation, and the number of jail days served. A separate analysis was performed for six selected jury trial cases.

The total governmental mean case processing cost for the DUI defendant came to \$1,108. The median was \$649. These costs are shared by city, county and state agencies which together process DUI offender. Total case costs were found to range from \$354 for the cheapest incomplete case, to \$6,587 for the most expensive case (excluding jury trials). After crediting revenues actually collected from defendants, mean net public cost came to \$631 per DUI defendant, with a median net public cost of \$172. Costs for the jury trial sample were found to range from \$4,128 to \$11,173, with a mean cost of \$6,457.

Additional costs are presented which display differences for the individual components of the case, such as law enforcement, formal probation, prosecution, public defender, and for other public safety agencies. The costliest components of processing are jail, jury trials, and other court costs. High jail costs are primarily attributable to the high daily per capita cost of incarceration in a lock-up facility rather than to numerous long sentences. Court costs, at a combined mean for all agencies involved of \$218 per appearance, mount up quickly with continued appearances. Total case processing costs were found to vary with number of appearances, increasing with legal representation and for defendants who had prior convictions. Jury trial costs stem from repeated continuances necessitating repeated case preparation, and court days required for jury voir dire and presentation of evidence.

Defendants' revenues are presented as received by level of government (city, county, state), indicating the largest share goes to cities or the state, according to a formula dependent upon arresting agency. A large gap was found between defendant revenue owed, according to court sentence imposed, and defendant revenue actually collected. Collection payment schedules are long, uneven, and frequently unenforced. Furthermore, many defendants are not assessed court fines, based upon assumed indigency.

The total annual volume of DUI defendants charged in Alameda County was multiplied by the case processing costs unsupported by defendant monies, and the net cost to the public is estimated to be \$6.3 million per year for this one county. In California the estimated yearly public cost, in excess of those costs borne by defendant revenue, is approximately \$191 million, based upon 336,644 statewide filings for the most recently reported year. On a national level, the number of persons arrested for driving while intoxicated brings the annual net public cost to an estimated \$926 million, based upon 1,467,822 arrests for the latest year reported.

Recommendations are presented, containing discussion on suggestions for narrowing the gap between case cost and actual defendant revenue. These are:

1. Investigate designating courtrooms or court days exclusively for traffic misdemeanor cases, to be staffed with District Attorneys empowered to settle cases, to cut down on the number of appearances to final disposition.
2. Encourage judicial intervention to reduce excessive continuances, with consideration of appropriate financial sanctions against attorneys who do not comply with reasonable time standards.
3. Consider supporting initiatives aimed at reducing DUI jury trial costs, including practices adapted from the federal court system, such as exclusive judicial voir dire; and limiting the number of misdemeanor trial jurors. Alternatively, encourage judicially imposed time limits on attorney voir dire.
4. Conduct a cost-benefit analysis of vertical representation in very large courts for disposition for DUI cases handled by the Public Defender, District Attorney, and the judiciary, to eliminate duplicative case preparation expenses.
5. Install computer automated transcription (CAT) service and facsimile (FAX) machines in the courts, to speed up availability of records from previous convictions, thereby reducing delays in currently pending cases.
6. Explore the feasibility of lowering jail per diem expense by housing low-risk DUI defendants in lower security, and therefore lower cost, facilities. Construction or conversion of lower cost facilities could be made with accommodations for alcohol education and treatment.
7. Expand use of court financial interviewers, to obtain accurate information on defendants' means and indigency, and thereby improve the capacity of assessing and collecting fines.
8. Establish a shorter, defendant fine repayment schedule, to replace the current repayment terms, now coinciding with the three to five-year probation periods.
9. Explore ways to improve collection of defendant financial obligations by the county collections agency, including a tax intercept program, assumption of Probation Officer collection duties, and garnishment of wages. Alternatively, if not empowered with these additional tools, conduct an analysis of the costs and benefits of using a professional collection service for fines outstanding instead of the county agency.

10. Investigate authorizing and reimbursing the county sheriff to serve the bench warrants that are issued for defendants who fail to pay fines, rather than city police who are currently responsible.
11. Improve the computerized information interface between criminal justice agencies and collection agencies; compatibility of systems would improve collection.
12. Initiate discussions between the cities, counties and state, to revise the statutorily controlled percentage split of defendant fines, so as to more accurately reflect true costs of processing DUI offenders by level of government responsibility.

Chapter 1

INTRODUCTION

This introduction describes the evolution of an idea which resulted in this project to identify the cost to the taxpayer to process Driving Under the Influence (DUI) offenders in Alameda County, California.

In 1986 the Alameda County Office of Court Services (OCS) initiated discussions with the California Office of Traffic Safety (OTS) about the possibility of obtaining a grant to support a research effort whose purpose would be to identify the public costs associated with adjudication of DUI cases. The OCS had recently published a major review of the impact and consequences of California's revised DUI laws on court procedures, and the cost to the public for carrying out those new laws was noted as a concern.¹ The OCS provides a research and staff function for the Alameda County Municipal Court judges who come together through the Judicial Coordinating Committee to jointly address issues of mutual concern. As DUI case filings represent the single largest category of misdemeanor filing in the Alameda County Municipal courts, developments in the DUI field are of major interest to the courts, the county, and related agencies.²

In the course of OCS conducting this 1985 review of California's new DUI laws, it became apparent that, although considerable work had been done by others on many aspects of the DUI problem, including deterrence, treatment, appropriate sentencing, countermeasures, etc., a real gap existed in the information available to policy makers who must grapple with this very complex issue. While we were learning more in virtually every other aspect of drunk driving, the total cost to the public for handling these cases remained essentially unknown. At the same time, the cost of government services was coming under increasing public scrutiny, and government, particularly local government, was forced to search for new sources of revenue. How could government officials who manage the criminal justice system make informed decisions about operating in an era of scarce resources without knowing the cost of the services they provide? Taxpayer financing of local government services, including criminal justice services, had eroded steadily since the passage of that now famous Proposition 13 in California in 1978. The cost of the justice system was no longer something that could be ignored.

It was the combination of these circumstances that led to a determination by the Alameda County Municipal Court judges that the cost to local government of carrying out the state's DUI adjudication laws warranted a review.

¹ Office of Court Services, *The Impact and Consequences of the 1982 Law on Drunk Driving Adjudication*, Final Report of the DUI Adjudication Evaluation Project (Dorie Klein, Project Director) (Oakland, CA: OCS, 1985).

² Fiscal year 1986/87 total annual DUI filings for Alameda County were 11,577, as reported in the *Judicial Council of California, 1988 Annual Report* (San Francisco, CA: California Administrative Office of the Courts, 1989), Table A-41.

In 1987, a small planning grant was awarded to the OCS by OTS to determine the feasibility of conducting such a research project. The planning phase resulted in a preliminary research design, with plans for a two year project period, to including time for setting up the project, fourteen months for tracking cases, and the remaining time for data analysis and preparation of the written report. Full funding for the project was received later that year, and a project director contracted to conduct the analysis.

Objective of the Analysis

In particular, what was unknown in the field was the total public expense for the court's mandated adjudication of drunk drivers according to the state's laws. While budgeting practices vary among city, county and state jurisdictions, nowhere does a single agency's budget display the complete direct and indirect cost of a particular service. This is because so many functions are shared by numerous government agencies. This is especially true for processes involving the courts, where the shared responsibilities of numerous city, county and state agencies make cost estimates for court procedures such as DUI adjudication very complicated.

The real challenge in attempting to assemble public costs for DUI case processing is in gathering direct and indirect expense data from a variety of government agencies, each with its own unique fiscal practices. The goal was to come up with total costs, including recognition of those expenses that are often hidden, or at least not overtly expressed as part of that budget. For example, in "Comparing Costs of Public and Private Prisons: A Case Study,"³ Logan and McGriff point out that in the corrections field up to about one-third of the real cost of prison operations may be omitted from a correctional budget. This is not because these costs are intentionally hidden; rather, they are functions carried out by related agencies and costs for these functions therefore appear in the budgets of those related agencies rather than in the prison budget itself. In this example by Logan and McGriff the point is that one cannot look only at a prison budget to know the full cost of corrections. Likewise one cannot look only at a court budget to know the full cost of a DUI adjudication.

An October, 1989 report to the Minnesota state legislature⁴ describes the difficulty of determining the true cost of alcohol abuse due to the cost-sharing formulas of different levels of government using different definitions of direct and indirect costs. This report to the legislature contained a recommendation to shift the cost of drunk driving law enforcement from the general taxpayer to the consumer of alcoholic beverages via the addition of an excise tax on those beverages. However, even this recommendation was tempered with the caveat that it is extremely difficult to know precisely the extent of the publicly supported costs to be shifted.

The same difficulty arose in our own attempts to identify total public costs for a DUI case. The criminal justice system, as it pertains to prosecuting a misdemeanor driving under the influence case (as illustrated later in this chapter) is very complex, with many interrelated activities performed by separate government

³ Charles H. Logan and Bill W. McGriff, "Comparing Costs of Public and Private Prisons: A Case Study" *National Institute of Justice Reports* (Washington, DC: U.S. Department of Justice, September/October 1989, No. 216).

⁴ Ray R. Lewis, "Recommendations to the Legislature for Legislative Action #10 by the Minnesota Criminal Justice System DWI Task Force" (Minneapolis, MN: University of Minnesota, October 1989).

departments, or even by different levels of government. Our objective was to identify total public expenses for each mandated function in a DUI case, to include all levels of government and each public agency involved.

Description of Study Sites

Alameda County is a very suitable locale for examining DUI case costs. It covers over 700 square miles, including urban areas concentrated along the east edge of the San Francisco Bay and more sparsely populated, rural areas inland. There is a total of over 3000 miles of roadway, including a major state highway and the access to three bridges linking the east and west sides of the Bay. The county population of over one million is ethnically diverse in character: 60 percent white, 18 percent black, 12 percent Hispanic, and 9 percent "other," primarily Asian. Its fourteen incorporated cities represent diversity in virtually every respect: size, ethnicity, affluence, density, economic composition and urban/suburban flavor.

The Municipal Courts are divided into six separate court districts with thirty-four judges and nine commissioners among them. Of those six court districts, two served as study sites for this cost analysis.

The Oakland-Piedmont-Emeryville court, located in the county seat of Oakland, is the largest court with fourteen judges and three commissioners hearing 196,057 cases per year.⁵ Oakland is an inner city whose population is over half minority groups, many of whose members are low-income. Also within the court district is the small, affluent enclave of Piedmont, and the industrial town of Emeryville.

The Pleasanton-Livermore-Dublin court is the most geographically remote court in the county, serving the fast-growing suburban pockets clustered along the booming Highway 580/680 corridors. It is home to some "high-tech" research, the county jail, and undeveloped land largely used for ranching. Two judges and one traffic commissioner hear 57,228 filings annually.⁶

Overview of the DUI Process: A "Walk Through"

DUI enforcement begins with the initial roadside stop, in California by either the California Highway Patrol (CHP) or the local police. Although roadside sobriety checkpoints have been used periodically by the CHP on the highways, none were in operation in our sites during the period sampled.

An arrest usually occurs when an officer sees a driving violation, makes a stop, and then detects possible alcohol on the driver. The driver is requested to exit the vehicle. If there is no second officer riding in the vehicle the arresting officer generally radios for a cover officer before administering the field sobriety tests. The subject is then advised that she/he is under arrest, and is placed in the back of the patrol vehicle. If the arrest has taken place on a highway the officer radios for a tow truck to remove the defendant's car. The officer reads to the defendant a statement of rights, and asks which blood alcohol chemical test is preferred. In California persons arrested for driving under the influence have

⁵ Judicial Council of California, *1988 Annual Report*, Table A-33, as reported for fiscal year 1986/87. Filings exclude parking, include all criminal and civil actions.

⁶ Ibid.

a choice of blood, breath or urine testing for blood alcohol content. Breath and urine testing most often take place at the booking and detention facilities. If a breath test is selected, it will be administered upon arrival at the jail. The intoxilyzers are operated by the arresting officer, who follows a standard procedure consisting of two tests preceded by a waiting period. This waiting period, usually fifteen to thirty minutes, is to assure that the arrestee has not vomited or ingested anything immediately prior to the testing. Time is needed to conduct a first test, clear the machine, conduct a second test and record the results. Urine testing, by contrast, consists of two separate tests with a waiting period of about 20 minutes in between. The cost for officer time to administer these procedures, as distinct from the equipment maintenance expense, accrue to the arresting agency.

The driver is detained in jail—in our study either the Oakland City jail or the Alameda County jail. In some cases there may be a detour to the hospital for a blood test before continuing on to the jail.

During the late night hours at the Alameda County jail a traffic backup occurs, with patrol cars from different law enforcement agencies waiting for their turn to enter with their arrestees. Many DUI arrests take place on late weekend evenings, and this backup can account for two hours or more.

Some variation in procedure occurs upon arrival at the jail site, depending on which site is being used. If the breath test is administered, the suspect is booked if the result is greater than .10%.⁷ As results from urine and blood analyses do not come back immediately, the suspects choosing those tests are booked at this point too.

Custody of the arrestee is then transferred to the jailer, and the arresting officer leaves to write his/her report and to drop off the blood or urine samples to the privately contracted laboratory. Results from these chemical analyses performed by the independent lab are mailed to the District Attorney (DA), with a copy to the arresting agency, usually within seven to ten days.

The person arrested is given a court date by police and released from custody when sober, typically after about four hours, although this can vary depending upon whether the individual has any outstanding warrants or additional charges pending.

Meanwhile, the arresting officer submits the arrest report at the end of his/her shift, to be reviewed by a court liaison officer, usually a supervisory level officer. This person typically makes a daily trip to the District Attorney's office with all arrest reports, and meets with the senior DA to discuss them.

A senior level, or "charging" DA, reviews the report and decides whether to charge that case. For those charged, a complaint is sent to the Municipal Court's criminal division, where a docket number and court date are assigned, and the case is officially "filed." The court date is usually in three to four weeks, unless the defendant is in custody.

Appearing in court, the defendant is arraigned: in most cases the charges are announced, and the judge advises the defendant to obtain legal counsel. At that point a new court date may be assigned, to give the defendant the opportunity to see a lawyer. Some defendants choose to plead guilty "pro per" (representing themselves) at the arraignment, although many judges discourage this practice. The return to court to enter a plea is typically set for two to four weeks later.

⁷ During the period of this study the legal limit in California was .10%. It was subsequently reduced to .08%.

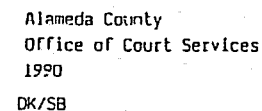
Upon returning to court the defendant will be asked if he/she is ready to enter a plea. If the defendant pleads guilty at this time a sentence is pronounced, and the court portion of the case is closed. The sentence depends upon whether this is a first or subsequent (multiple) conviction for driving under the influence. Fines, fees and assessments levied on defendants at this time can be paid directly to the court at the time of sentencing, or over an extended period of time through an installment account maintained by the county's collection agency, Central Collections. Defendants who report to the court an inability to pay are assigned community service in lieu of the financial obligation. The sentence also includes attendance at either a driving under the influence school, or a longer alcohol treatment program for multiple offenders, restrictions or suspension of the driver license as a possible alternative to these programs, and two days (or longer for multiple offenders) of assigned roadside clean-up as a form of "jail". Persons will be placed on either informal court probation, or for more serious cases formal probation with a supervising deputy probation officer, for a three to five year period. The court will also send an abstract of the proceedings to the State Department of Motor Vehicles (DMV) for their action on the defendant's license to drive. The person convicted of DUI may have additional dealings with DMV to restore their license or remove the restrictions on the license.

Following a conviction, the defendant's obligation to the court is not yet over. It is the defendant's responsibility to supply the court or the probation officer with evidence of satisfactory completion of the terms of probation, such as attendance at DUI school, treatment or roadside clean-up. Information on the defendant's payments to the collections agency is supplied to the court clerk by that agency. Failure to submit any of these documents to the court clerk within the specified period or breaking any of these conditions of probation can result in issuance of a bench warrant by the court, and the defendant may be returned to court.

This is the routine course of events. Many cases, however, do not fall into the routine. Often defendants fail to appear at their scheduled court dates, and bench warrants are issued for their arrest. Many times defendants have not obtained legal counsel prior to their return to court, and additional court dates must be scheduled. Attorneys representing DUI defendants, particularly private counsel juggling numerous clients, often request continuances. Many defendants initially plead not guilty and request a jury trial: further court dates are set, and only after many additional appearances is the original plea changed to guilty. Conditions of probation may not be followed, and the defendant may return to court numerous times after sentencing for probation violations. There are occasional dismissals and acquittals, and more frequently, permanent failures to appear with cases remaining open for several years.

Figure 1-1 illustrates the possible paths taken by DUI cases through the California Municipal Court system. Note that as many as six separate county agencies, up to two state agencies, one city police department, a privately owned lab, and several private, community-based organizations offering treatment or voluntary work services may be involved, all to process a single Driving Under the Influence offender. It is this multitude of separately managed yet interdependent agencies which together comprise the "system" for a DUI offender, and make for great difficulty in conducting a cost analysis of DUI cases.

Figure 1-1



Chapter 2

METHODOLOGY

Literature Review

When the study was initiated, a comparative literature search was conducted to locate other analyses of the costs of DUI and other court procedures. The search at that time proved to be unproductive, except to identify a bare framework for a methodology for determining court-related costs. No analyses which included cost data from multiple agencies were found.

Two studies were identified which focused on the combination of courts, the time required for procedures, and the resultant costs. These studies were an analysis of the court expense of robbery prosecutions in New York that was conducted in 1980,¹ and a 1987 National Institute of Justice (NIJ) sponsored analysis of the costs of prosecution in the Santa Barbara, California, District Attorney's office.²

Considerable work has also been done on the time required for case processing, efficiency efforts leading to court delay reduction, case weighting standards, and various approaches to calendaring. For example, the National Center for State Courts has sponsored several works dealing with court costs and management.³ However, the major thrust of all of these works has been a macro view of court finance and management, rather than a micro review of the costs incurred per case or per procedure. Our

¹ Mott-McDonald Associates, Inc., *The Cost of Justice: An Analysis of Case Processing Costs in the Bronx Criminal Justice System*. A report to the Special Committee on Criminal Justice of the Association of the Bar, City of New York, Vol. 1 (Washington, DC, 1980).

² Joan Jacoby, "Caseweight System for Prosecutors: Guidelines & Procedures," (Washington, DC: National Institute of Justice, Jefferson Institute for Justice Studies, October 1987).

³ Samuel Conti, William Popp and Don E. Hardenbergh, *Finances and Operating Costs in Pennsylvania's Court of Common Pleas*, National Center for State Courts, Massachusetts (September 1980); Don E. Hardenbergh and Sharman Shostak, "Budgeting for Court Management," *State Court Journal* 6 (no. 1, Winter 1982), Williamsburg, VA: National Center for State Courts; James A. Gainey, Don E. Hardenbergh and Robert W. Tobin, "Unit Cost System Aids Court Planning," *State Court Journal* 5 (no. 4, Fall 1982):24-25, Williamsburg, VA: National Center for State Courts; James M. Parkinson and Stephen G. Buckles, "Cost Analysis of Court Systems: A Case Study," *State Court Journal* 2 (no. 1, Winter 1978):13-20, Williamsburg, VA: National Center for State Courts.

objective was to approach the cost analysis from the perspective of costs borne by the system resulting from a single DUI case.

The New York robbery study relied upon a large number of observers stationed in the courtrooms throughout the day who used stopwatches to time each segment of the cases being monitored. Once the time required for court procedures was determined, a cost per minute for keeping a courtroom in operation was multiplied by the case time to come up with a cost per type of robbery case. That approach was very precise in its results, but clearly required more personnel than was feasible for our project.

The Santa Barbara prosecution analysis used time sheets which were completed by the individual District Attorneys as they worked on their cases. As with the New York study, once the case time was known, it was multiplied by the cost per minute for the total DA office expense, to arrive at a cost per prosecution. This self-reporting time sheet approach seemed to be a more reasonable model for our project. A modification of this method was ultimately used.

A further confirmation of our chosen approach was made in a National Institute of Justice paper released as this report was in preparation for publication. The NIJ report contained a thorough, detailed, step-by-step approach to conducting exactly the kind of study just completed by this project.⁴ While it is gratifying to find that others have simultaneously concluded that steps similar to ours are necessary to determine the cost of court procedures, we find that the level of detail advocated by the NIJ report requires substantially more resources than were available to conduct our analysis. Without doubt the procedures outlined in the NIJ report for calculating costs such as capital consumption, capital procurement, depreciation, and accrued liability as it relates to accumulated but unused benefits will yield the most precise results, but they do so at a major cost in staff time on the part of many agencies. That was simply not feasible for this analysis. More basically, to estimate costs the NIJ methodology relies upon time reports from staff to determine most figures, using a "loaded resource unit" (LRU) which is the sum of hourly salary plus benefits, other direct costs, and indirects, to arrive at a total overall cost per hour. This is precisely the approach used in this analysis.

Agency Data

We recognized that the participation of a large number of government agencies, including city, county, and state, would be essential in identifying the total public cost of a DUI case as it is processed through the criminal justice system. Yet we also knew that securing the participation of staff to report data to us for this project, in addition to their ongoing job responsibilities, would be difficult. To mitigate against this possible obstacle, we decided to obtain information for this study whenever practical by simply requesting access to the records of the many departments and agencies involved in the DUI process. We would gather most of the data ourselves. It was these agencies which provided the data that we converted to costs for this analysis.

Most cost information from the participating departments and agencies was not in a form readily usable for our purposes and had to be developed for this cost analysis. Most basic to the study itself, no court cost data existed. These were the primary data developed by the study participants.

⁴ Billy L. Wayson and Gail S. Funke, *What Price Justice? A Handbook for the Analysis of Court Costs*. National Institute for Justice "Research In Brief" report # NCJ10677 (August 1989).

Data were provided in two forms. In some instances we obtained records that provided non-case specific costs, which project staff converted for use in determining total case processing costs. In other instances it was possible to obtain cost data that were specific to a particular case in the sample.

A cost per minute per employee calculation was made in cooperation with the budget or finance manager for each agency contributing to the study, to include both direct and indirect costs. This calculation was multiplied by the minutes of staff time for each activity, to arrive at costs for different segments of the case process as well as an overall cost per case.

Fortunately some agencies kept cost information in a form easily usable for this analysis. For example, the Probation Department maintains records showing the number and type of cases assigned to each deputy probation officer (DPO). In cooperation with their budget office we were able to divide total agency operating costs by caseload per DPO to arrive at a cost per case for persons assigned formal probation. This standard supervision cost was used for each case in our sample, tailored only to the length of time that formal probation was ordered on each defendant.

Similarly, the county Department of Alcohol and Drug Abuse maintains cost information on chemical analyses, because it reimburses law enforcement agencies a specified fee for usage of the intoxilyzer, which is the breath blood alcohol measurement device. The cost per use was obtained from this department for machinery at both the Oakland city jail as well as the county jail.

Data were obtained from each police agency which made arrests in our sample permitting cost calculations specific to that agency but standardized for all arrests made by that agency for cases in the sample. For example, there are two California Highway Patrol (CHP) district offices within Alameda County, and supervisory staff at each were asked to provide information that would permit determining arrest costs made by the officers who patrol from that district location. Even though state traffic officer salaries are set on a statewide basis, senior staff at each district office were interviewed to determine the specific time required for arrests and prisoner transports in that geographic area. Those officers making arrests in more remote locations might be expected to take more time, and therefore generate greater cost, in transporting prisoners for testing and to jail. In addition, policy information was requested from each police agency governing payments to officers for their in-court testimony also. This permitted the determination of actual officer overtime cost for those arrests which went to jury trial.

In brief, the city, county, and state agencies which process DUI cases provided the records which became a primary data source. Each department provided operating expense information, including salaries and benefits paid to those staff who handle any aspect of the DUI cases, costs for supervisory and support personnel, and both internal indirect cost percentages applicable to those departments, and external government indirect rates. Once these costs were known, a per-minute all-inclusive cost was calculated and multiplied using the time to process reported by staff for each case handled by that agency.

The Sample

To document complete public costs from the first point of contact to the court's final disposition and beyond, a sample of cases was drawn and costs for each procedure were monitored, starting from the arrest, through booking, writing of the police report, chemical testing, detention, all of the court processes both in the courtroom and behind the scenes, including all court-related functions, through completion

of sentence. Court-related functions include prosecution and public defense, court interpreters, alcohol education and treatment attendance, jail and jail alternatives, probation, the billing and collecting of court fines, the volunteer work which defendants perform in lieu of fines, and the state driver license actions taken.

We identified a desirable sample size by reviewing the annual volume of misdemeanor DUI cases (California Vehicle Code Sections 23152 and 23153) in Alameda County. It was determined that the sample would be drawn from more than one court location to ensure a balance of court and defendant characteristics (e.g. large court vs. small, and diverse defendant demographics).

The sample selected included every case that was prosecuted by the charging DA over a three week span in one court and during a four week span in the second court.⁵ At the end of this period a sufficient sample was obtained. Over the course of data collection some files were lost, as described later, and the final sample size analyzed was 146 cases. Later a complete description of the sample is contained in the Methodological Appendix.

Since we did not know which variables, if any, would prove to affect costs, a number of DUI case characteristics were identified and tracked through the entire project. These included arresting agency, type of chemical test, number and length of court appearances to disposition, use of legal representation, final plea of case, number of jail days or work alternative days sentenced, attendance at education or treatment programs, and license sanctions or other sentencing imposed. At the conclusion of case tracking each of these factors was examined to determine their impact on public funds expended to process that case.

Since few cases go to trial, and the analysis would have been incomplete without inclusion of the costs of jury trials, it was necessary to supplement the original sample with a separate sample of cases that did go to trial. Although many trials were scheduled for defendants in the original sample, judges appeared to actively seek resolution of the cases, even at the last minute prior to the scheduled start of a trial. Thus none of the cases in the original sample actually went to trial. A separate jury trial sample was selected and pretrial costs retrospectively developed for it. Over a period of many months, six trials were monitored, three in each court.

Law Enforcement Costs

A total of seven law enforcement agencies made arrests for the sample drawn in this analysis. The CHP made highway arrests in both court districts studied. In the Oakland court district the Emeryville Police Department, the Piedmont Police Department and the Oakland Police Department made the city street arrests, while in the Pleasanton court district city street arrests were made by the Livermore Police Department, the Dublin Police Department and the Pleasanton Police Department.⁶

⁵ A small number of police reports were not prosecuted. This could be as high as 15 percent. This sample does not include these, nor suspected DUIs stopped by the police on whom no report was sent to the DA for charging.

⁶ The Dublin Police Department is a contracted operation using Alameda County Deputy Sheriffs to provide city police services to this small, suburban community. Employees of this department are actually Alameda County Deputy Sheriffs, and cost information for this agency was based upon pay and benefit data for the County Sheriff.

The California Highway Patrol made nearly half the total DUI arrests in the sample and the Oakland Police Department made the next largest number. In addition to arrest costs, jail operating expense information was also obtained from the Oakland Police, since it is their city jail which houses persons arrested in the northern portion of the county. Data to identify the cost for operating the jail intoxilyzers were obtained from another agency, the Alameda County Department of Alcohol and Drug Abuse. The Sheriff's Department does not normally make DUI arrests, and did not make any for the cases in our sample.

Sentencing Related Costs

The Alameda County Probation Department provided information on supervision costs for those defendants placed on formal probation.⁷ Another sentence-related cost is incurred when defendants receive assignments to community service in lieu of fine. The Probation Department contracts with a non-profit Volunteer Center to match court-referred defendants performing work with nonprofit organizations seeking workers. The Volunteer Center contract, using county funds, partially supports the Center's work. Contract funding and defendant caseload data were provided by Probation.

Alcohol and drug education and treatment programs are a contracted service through the County Alcohol and Drug Department. Services are rendered to clients with fees charged on a sliding scale based upon the client's ability to pay. Data provided by this Department indicate that the cost of services to indigent clients is fully offset by fees from the paying ones, and that there is no public expense involved.

The county jail, where sentences requiring jail time are most often served, is run by the Sheriff. Alternatives to incarceration, such as weekend work, roadside clean-up, electronic monitoring of house arrest, and work furlough, are all operated by the Sheriff in this county. Costs for defendants sentenced to these alternatives are included in the analysis. During the study period a new jail facility was opened, and daily operating costs at this new facility were at a higher rate than the old one. Since some defendants in the sample served time in the old facility and some at the new, different costs per defendant were calculated.

The Sheriff's Department also provides the courtroom marshals, and the prisoner transport between the courts and jail for persons who are in custody at the time of their court appearance. Costs for these functions were obtained.

Driver license sanctions undertaken by the California Department of Motor Vehicles (DMV) are another cost element added into total case costs. Driver license actions may include some combination of the following: license issuance, reissuance, suspension, restriction, removal of restrictions, or administrative appeals. The appeals are the least frequent action, but the most costly to perform, as an administrative hearing officer in a formal setting must hear evidence presented most often by the defendant's attorney challenging revocation of the driving privilege. Final court action on a DUI case is transmitted to the DMV in the form of an abstract, to enable state action on the defendant's license.

⁷ As few DUI cases require pretrial release services or a presentence investigation, these costs were not included.

Most cases are charged as misdemeanors and handled by the Municipal courts. Offenses charged as felonies, and appeals from Municipal court are heard by Superior court.

DUI cases charged as felonies and appeals of DUI convictions occurred so infrequently in this jurisdiction at the time of sampling for this study that, upon consultation with a Superior Court representative, we decided to omit these costs as not representative or significant in the DUI picture.

As it developed, however, two defendants from our sample appealed their convictions, and those cases were still pending in Superior Court at the time of this writing. Thus the costs of these appeals were omitted.⁸ Furthermore, one case in our sample was charged as a felony, convicted, and sentenced, as legally required, by Superior Court. Another case, charged as a felony in our original sample, was still outstanding on a bench warrant at the time of this writing for the defendant's failure to appear.

Court Related Costs

Central to DUI case processing is the court action on each case. Participation by the county's Municipal Courts was essential to this analysis. Five courts consented to participate in this project. However, in order to most efficiently manage this project, it was decided that a small number of study sites should be selected from among these five. Court characteristics, such as court size and population served, were evaluated to select two sites as diverse as possible.

The approach identified through the literature review as having been used by other court cost studies was to monitor court activities to gather time data, and then convert the time data to cost. This approach seemed a good basis for this analysis. However, it was clear that we lacked resources to personally record time spent in the courtroom on each case. Despite their cooperation and support for the study, the judges and courtroom clerks were too busy in court to become timekeepers for this project. Courtroom marshals, interpreters and court reporters were only intermittently present in court, or too occupied with other tasks to be project timekeepers. The only other consistent courtroom participants were the District Attorneys and Public Defenders handling cases. As part of this project they had already been asked to record all of their time, both in and out of the courtroom. It was decided to use their reports of in-court time as the basis for determining courtroom costs. The use of attorneys as surrogate courtroom timekeepers appeared to be the most practical method of determining the courts' time. Therefore, each Public Defender or District Attorney who spent time on any aspect of a DUI case was asked to record actual courtroom time, as well as all other case time. Time sheets on each case were also completed by supervisory and support staff.⁹ A description of the time sheets follows later in this chapter.

Meanwhile, the project manager tracked the progress of sampled cases "behind the scenes" in the court, to document out-of-court time associated with the variety of clerical tasks which take place. This was to supplement the courtroom and judicial costs that were being separately tallied. Behind-the-scenes activities include preparing and printing court calendars and court dockets, pulling cases and refiling; filing of other case-related documents such as probation reports, correspondence, restitution related data, and referrals to and completion evidence for court-ordered programs. Other activities include electronic

⁸ See the "Suggestions for Further Research" section in Chapter 5, Limitations of the Analysis.

⁹ For a description of this process see the Methodological Appendix.

input to the countywide criminal justice database, issuance and recall of bench warrants, sending court abstracts to DMV in connection with driver license actions, collection and distribution of defendant fine payments, and any other work necessary to continue the flow of cases through the system.

The original intent was to develop a cost per minute for these many court clerk functions, to multiply by sampled case processing time. As the project progressed, however, it became increasingly clear that the complexity and variety of court actions prohibited such specific analysis of each case. Thus an average court processing time per case was developed, using a complex formula created by project staff together with clerk administrators at the court study sites. This formula is discussed in the Methodological Appendix.

Judicial time spent out of the courtroom was documented through the use of a one-time questionnaire distributed to bench officers who handle DUI cases.¹⁰ In the smaller court this included both judges and the court commissioner, while in the larger court the questionnaire was distributed to judges who hear DUI jury trial cases as well as those who rotate through the general DUI calendar court. To supplement this relatively small number of potential respondents, the questionnaire was also sent to judges in the remaining four courts who process a substantial volume of DUI cases. A total of fourteen questionnaires were distributed and four were returned. The time reported spent off the bench in each DUI related category was averaged for respondents, and a total judicial cost factor was added to each case total. As with every other department participating in this project, actual judicial time for DUI related work was converted to cost by determining the average Municipal judge's salary per minute. A percentage was added to reflect benefits paid, internal court indirect costs and external indirects. The cost per minute so developed was multiplied by the average amount of time spent out of court that was reported by the judges, and the resulting total was divided by the average caseload in each court to yield a total cost per case factor. This final result was added to the overall cost for each case in the sample.

Time sheets for DAs and PDs were pretested for three days in the Oakland court in August, 1988, with revisions to the form finalized the following month. The time sheets had originally proposed nine categories of prosecution work for the typical DUI case, eight categories for the defense. While that would have yielded very precise data, the resulting form was perceived by the users as too burdensome. As the courtroom is often hectic, there was concern that a complex form might be overlooked by harried staff. Therefore the categories were collapsed into five for both DAs and PDs.

Then the court-related data collection process began, with a DA's time sheet attached to each police report entering the DA's office. This stayed with the case, becoming a part of the DA office case file. Meanwhile, as incoming cases were identified by the charging DA, they were added to a list which was regularly updated with the Office of the Public Defender. If that client whose case was already included in the DA sample came to the office of the Public Defender to seek counsel, the client would have been identified from the DA listing, and a time sheet was added to the client's PD folder. In this way both prosecution and defense on the same case were tracked for costs.

¹⁰ A judicial questionnaire was used to document off-the-bench time and cost. This is attached to the Methodological Appendix.

Revenues

During the period that cost data were being collected, revenue data were also being collected and analyzed. To do this project staff obtained revenue information from two sources: the courts and the county's Central Collections Agency. Only amounts actually paid, either to the courts or to Central Collections, could be specifically recorded for this analysis. This is in contrast to the total amount due from defendants, because some defendants do not pay the entire amount ordered. In fact, some defendants stop paying their monthly installment amounts as time goes by.

Actual payments received to the end of the period available for analysis, fourteen months postarrest for most defendants, represent only a portion of the total due. As defendants who pay often need to use the entire period of probation, from three to five years, to pay their financial obligation on an installment basis, the majority of the balance owed for most defendants remained outstanding at the conclusion of case tracking.

In order to meet the study objective of determining total actual revenue received, we had to make projections of total payments to be collected for the sample.

To best make these revenue projections, specific analyses would have been required for each defendant's likelihood of continued payments. This was impossible to do, given the study's resources. Instead, a review of the regularity of each defendant's payment history, on this and previous debts payable to the county's collection agency was made, and two basic assumptions emerged: (1) Accounts with regular payment records would continue this way and the total amount due would be paid in full; (2) Accounts with irregular payment histories, or where payments had stopped and bench warrants had been issued, would not produce any further revenue. In other words, it was assumed that persons would maintain their initially demonstrated behavior, either paying or not. The need to make these assumptions was due to the absence of any more information with which to accurately predict variations in payment patterns.

Difficulties with the Study

Staff turnover, particularly with the DA and PD, led to continuity problems with case monitoring. In the DA's office DUI cases are generally viewed as among the simplest type, and so are assigned as a form of training to new attorneys. This is done early in their rotation, before they proceed to more complex cases. In some instances law clerks are assigned certain tasks in DUI cases, and their turnover is even greater than the new attorneys. Retention of clerical staff has been an ongoing challenge; so they too are rotated to provide for more interest and greater job development. Consequently, despite the training video,¹¹ meetings, memos, regular on-site visits, and instructions printed on the face of the time sheet itself, the high staff turnover resulted in confusion and omission. This was especially true in Oakland, with its larger staff and greater complexity. Some of the project data were thereby lost.

We checked the court dockets frequently for activity on each case, and also checked for other evidence of work performed by regularly reviewing the contents of the DA and PD files. We sometimes found no corresponding entry on the time sheets. When this occurred the file was returned to the staff member with a request to fill in the gap. In this manner some time entries were made after the fact. Sometimes

¹¹ The training video is described in the Methodological Appendix.

just the data sheet was retained while the DA file itself was routinely destroyed, making it impossible to check for omissions.

At the PD's office, although files are not destroyed at the conclusion of a case as are DA files, frequent staff rotation and turnover posed similar difficulties. The larger and busier the office, the more confusion we found. While everyone was cooperative and willing to assist, they were transferred so often—even managers—that we would sometimes return to follow up on a case and find those involved had been reassigned. In Oakland the PD's filing area posed additional obstacles in retrieving files. Files are stored in cardboard boxes crowded between desks and along the hallways. These conditions hampered locating our files. Consequently, some data were lost during the tracking phase of this work, decreasing the final sample size.

Cases move through the courts at very different rates. Some conclude quickly, others require numerous appearances, and some cases are still pending at the time of writing this report, more than one year after the originally charged offense. Even after the disposition there are postconviction court appearances for some defendants. A defendant may fail to complete a condition of probation, which results in a return to court. Defendants returning to court postdisposition often receive a modification of the original conditions of probation, or perhaps a reassignment to the originally imposed terms and conditions. This can go on for five years from the date of sentencing, the maximum period of probation, incurring additional costs at each return to court. However, we did not track these cases for that full five year probation period. Consequently, costs identified were for activities occurring within the tracking period, rather than for the full five years postsentence.

Chapter 3

COST ANALYSIS FINDINGS

Total Sample Results

The case tracking results from the total sample of 152 DUI cases are analyzed in this chapter. This includes the 146 cases from the original sample, plus 6 additionally selected jury trial cases. Total case costs were compared for the factors and case characteristics noted in the sample description, Chapter 2, Methodology, and in the Methodological Appendix. These characteristics and variables include number of jail days served, use of legal representation, number of priors charged, number of court appearances to final case disposition, whether the case went to jury trial, and number of court appearances to final disposition of the case. Costs are presented generally in their order of overall importance in determining the final expense of processing a DUI case.

The mean DUI case processing cost for the total sample (excluding the jury trial cases) was \$1108. That amount reflects average total expense for the 131 completed cases, as well as the 15 cases which had not yet reached disposition by the time case monitoring ended. Excluding the separate sample of jury trial cases, the median complete cost was \$649, reflecting a range from \$354 to \$6,587. The difference between the mean and the median reflects the impact of a few costly cases.

Overview of Cost Findings

Figure 3-1 displays the relative components which together comprise mean case processing costs for all cases in the total sample. Some explanation of the segments may assist the reader in understanding this illustration.

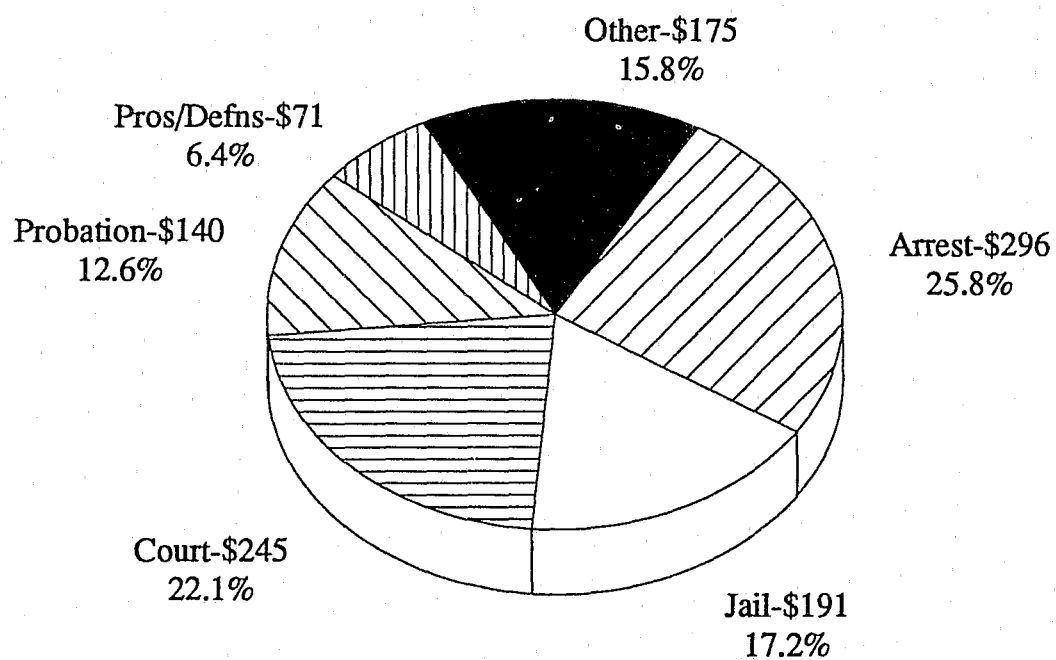
First, the arrest wedge represents those costs described in the "Impact of Law Enforcement on Cost" section later in this chapter. These arrests were made by city police departments as well as the California Highway Patrol. Thus this wedge represents both city and state expenditures. Jail expense, another wedge in the pie, represents another shared cost category. For cases in this study, in-custody expense occurred through either the county Sheriff in operating the jail, work furlough and electronic home monitoring programs, or through the city jail in Oakland. Thus expenses in this category may be either city or county cost.

The wedge showing total court costs includes courtroom expense, judicial expense both on and off the bench, and the cost for the numerous behind-the-scenes court clerk functions required for DUI case processing. Thus this section is exclusively county expense. The wedge in the pie that displays prosecution and defense costs portrays exactly what is described in those sections in this chapter. Probation includes the cost of formal probation only. The "other" category groups together costs for

Figure 3-1

Total Mean Case Cost

Total = \$1108



Pros/Defns = Prosecution and Defense

interpreters, Central Collections, and DMV license actions. Analysis of each of these individual components of total case cost is presented in this chapter.

Figure 3-2 displays median case processing costs for the total sample. In contrast to the mean costs depicted in Figure 3-1, this pie chart shows five wedges as cost components of the median case for the total sample. Note that the jail cost is much lower, reflecting the one-night stay that most defendants experience upon arrest; court costs are also lower, showing shorter adjudication time, and there is no formal probation expense.¹

Impact of Jury Trials on Cost

Not one of the cases in the originally selected sample went to trial during the fourteen-month period that case monitoring was conducted for this study. Consequently a supplemental sample was drawn of six jury trial cases, three from each of the court study sites. The method of selecting these additional cases is discussed in Methodology, Chapter 2. The impact of the defendant opting for a jury trial was the single most significant element affecting overall public costs of processing that case.

The mix of employees staffing the courtroom during a trial was one factor contributing to overall cost for the trials. During a jury trial this employee mix is different than that required for other courtroom actions on a typical DUI case. In addition to the prosecutor, judge, clerk and perhaps the public defender, who are present in virtually all instances, during a jury trial an Alameda County Sheriff acting as courtroom marshal is present, as is a court reporter. On the other hand in an arraignment court there are often two court clerks, while there is never more than one clerk present for a jury trial. An arraignment court would not usually include a court reporter, and sometimes does not include a marshal. Number and classification (and therefore salary expense) of personnel required to staff the courtroom contribute to the bottom line courtroom cost.

Of the cases that did include a jury trial, two defendants were represented by private counsel and four were represented by the public defender. None were pro per. All but two defendants had prior convictions, so that another conviction would have meant the defendant faced the possibility of substantial jail time and a stiff fine if convicted. This is in contrast to the general sample, where the average number of prior convictions per defendant was .55. Defendants choosing jury trials had an average of exactly one prior conviction charged, or about double that of non-jury trial defendants. Prior convictions appeared to contribute to the defendant's decision to go to trial.

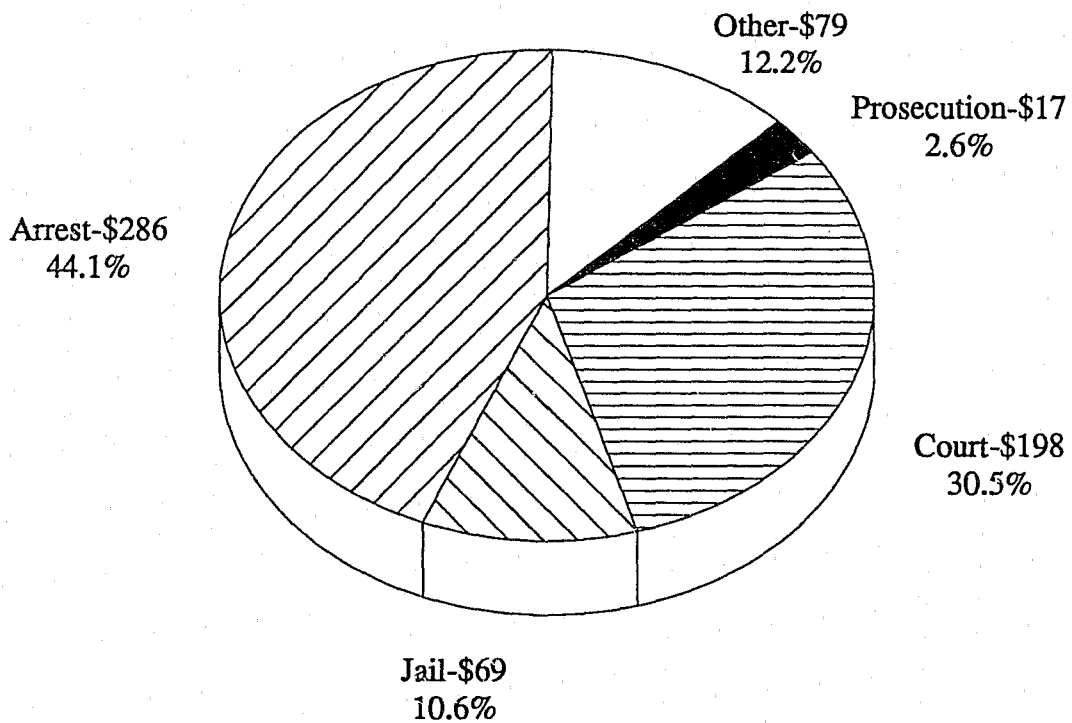
Of the two cases with no prior convictions, each defendant had a strong personal reason relating to employment for avoiding a guilty verdict. For example, one defendant was an airline employee participating in a company sponsored training program leading to promotion within that company. A DUI conviction would have precluded career advancement for that individual. Four of the jury trial defendants (or two-thirds of jury trial cases sampled) refused the chemical test at the time of arrest. This is in contrast to the general sample of cases in this study, where about 19 percent of defendants refused this test. Ultimately each of the jury trial defendants was found guilty.

¹ The median probation cost was \$718 for defendants assigned to formal probation. See the section in this chapter titled "Impact of Probation on Cost."

Figure 3-2

Total Median Case Cost

Total = \$649



None of the jury trials lasted very long. Two and a half to three days was the norm, including jury selection, which often took up nearly a full day itself. Testimony, opening and closing arguments, deliberations, were all covered within this two and a half to three day time. Outside of regular courtroom hours, however, new attorneys assigned to these cases (both DAs and PDs) reported on their time sheets that they were spending long hours on the case on trial days. These extended attorney preparation hours, beyond the normal courtroom eight-hour workday, were another factor contributing to jury trial total case cost.

One variance in the cost of conducting a trial is the date of sentencing. Is sentence pronounced immediately after the conclusion of the trial, on the same day, or do all parties return on another date? Judicial practices vary, as well as the desires of the defendants and their counsel. Some judges prefer to conclude the proceedings, including sentencing, all at once. Other judges feel that it is appropriate to delay sentencing, to permit time for the guilty verdict to "sink in," and to allow defendants time to arrange their private affairs before the beginning of a jail sentence. Still others sentence immediately, but delay imposition of sentence for a period of time for similar reasons. Calling the defendant back after the end of trial for sentencing at a later date adds yet another court appearance and therefore increases the case cost.

Total mean case cost for those defendants who chose jury trials are compared to the mean cost of all types of cases in Table 3-1 and Figure 3-3. Due to the relatively small number of jury trials at each study site the results are presented for the total sample only. On average, jury trials increased the cost of a DUI case by nearly six times (582 percent) over the cost of all cases in the sample.

Arrest cost for the jury trial defendants did not vary much from the general sample, but law enforcement cost increased overall, reflecting overtime payment for officers to provide in-court testimony. Each law enforcement agency in the study had a somewhat different payment policy for officers required to provide courtroom testimony, but in general officers received hourly overtime pay (either time and a half or double time), at a guaranteed minimum of perhaps four hours, to attend court. Frequently more than one officer was involved in the arrest, so each attended court and received the overtime pay, further increasing case cost. Typically witnesses in jury trial cases must be present on trial days, and spend considerable time waiting to be called to testify. Jury trial cases in our sample were no different, and officers being paid at the overtime rate often spent entire days, or returned to spend a second day, waiting to be called. Eligibility for police officer salary at the overtime rate results from the fact that most DUI arrests occur during the nighttime hours, and trials occur during the day, not during the regular work shift for these officers.

As shown in Table 3-1, the mean cost of all cases was only \$1108, while the mean of a jury trial case was \$6457. With a cost range from \$4128 to \$11,173, it becomes quite apparent that the decision to seek a jury trial substantially increases total case cost.

Figure 3-3

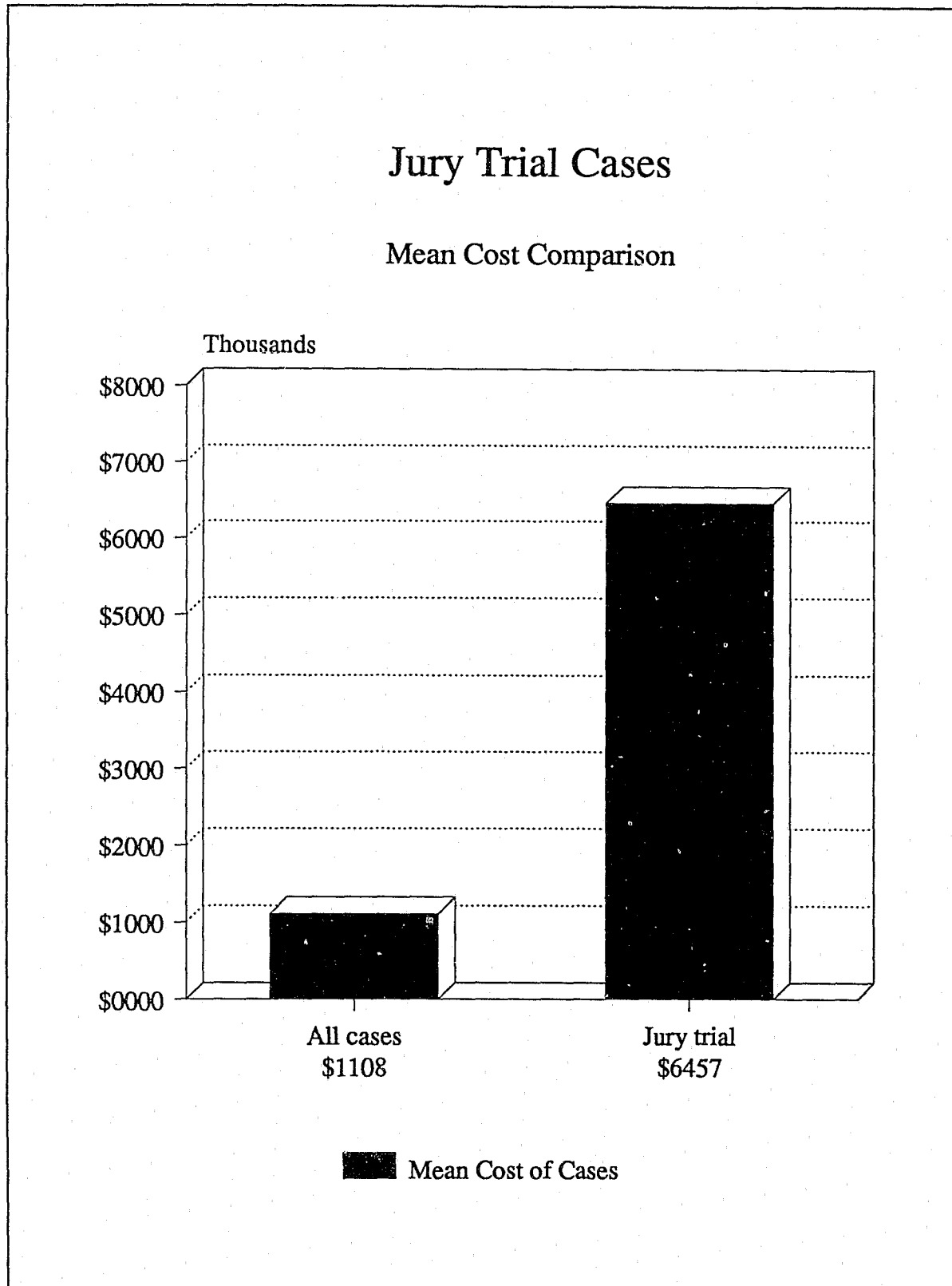


Table 3-1

TOTAL CASE COSTS FOR JURY TRIALS				
All Cases Mean Cost	Jury Trial Cases Mean Cost	Difference ±	Jury Trial Cases Median Cost	Jury Trial Cases Range of Costs
\$1,108	\$6,457	\$5,349 (+482%)	\$5,823	\$4,128-\$11,173

Impact of Time In Custody on Costs

The cost for jail time served represented an average of about 17 percent of the mean total case processing cost, and was the second most significant factor contributing to overall case cost.² Jail costs ranged from a low of \$28 per defendant, up to \$3837, with the median for the total sample at \$69. Variation in the number of days served and the type of facility in which they were served ultimately affected net case cost. When total jail expense was averaged among all DUI defendants, the mean jail cost was \$191 per person.

There is a wide variation in jail costs by geographic area, as illustrated in Table 3-2. In one end of the county where the smaller court is located, mean jail expense was \$151, while in the northern portion of the county the larger urban court mean jail expense was \$220. Median jail expenses were, respectively, \$28 and \$69. This difference in jail expense between the two courts was initially puzzling. Jail time is more commonly assigned, more in-custody arraignments occur, and more local police make misdemeanor arrests resulting in incarceration in the smaller, suburban judicial district. It had been anticipated that these factors would actually drive up the jail expense for defendants in the smaller court, but the analysis showed the jail costs in the smaller court were lower than the larger court. Their lower cost was found to be only partly due to the fact that there were a few serious cases in the larger court which were sentenced to lengthy jail terms, driving up the mean (but not the median) for all cases in the sample. Figure 3-4 displays the range of days served; as can be easily seen, most defendants served one day in jail.

One reason for the cost differential appears to be that daily jail operating costs are higher in the city-owned jail at the northern end of the county where many Oakland arrestees are initially detained. This is in contrast to a lower daily operating expense at the larger county-operated facility at the other end of the county used by Pleasanton. During the period of this analysis daily jail expense reported at the city-operated facility was \$69, while the county-operated daily jail costs were reported in the \$28-\$35 range, depending upon occupancy. This difference in daily operating cost between the two jail facilities further widened the gap between the two courts for in-custody expense. In other words, even after controlling for a few cases in the sample with lengthy jail terms, total case costs were higher for cases with defendants who served time in the more expensive city jail.

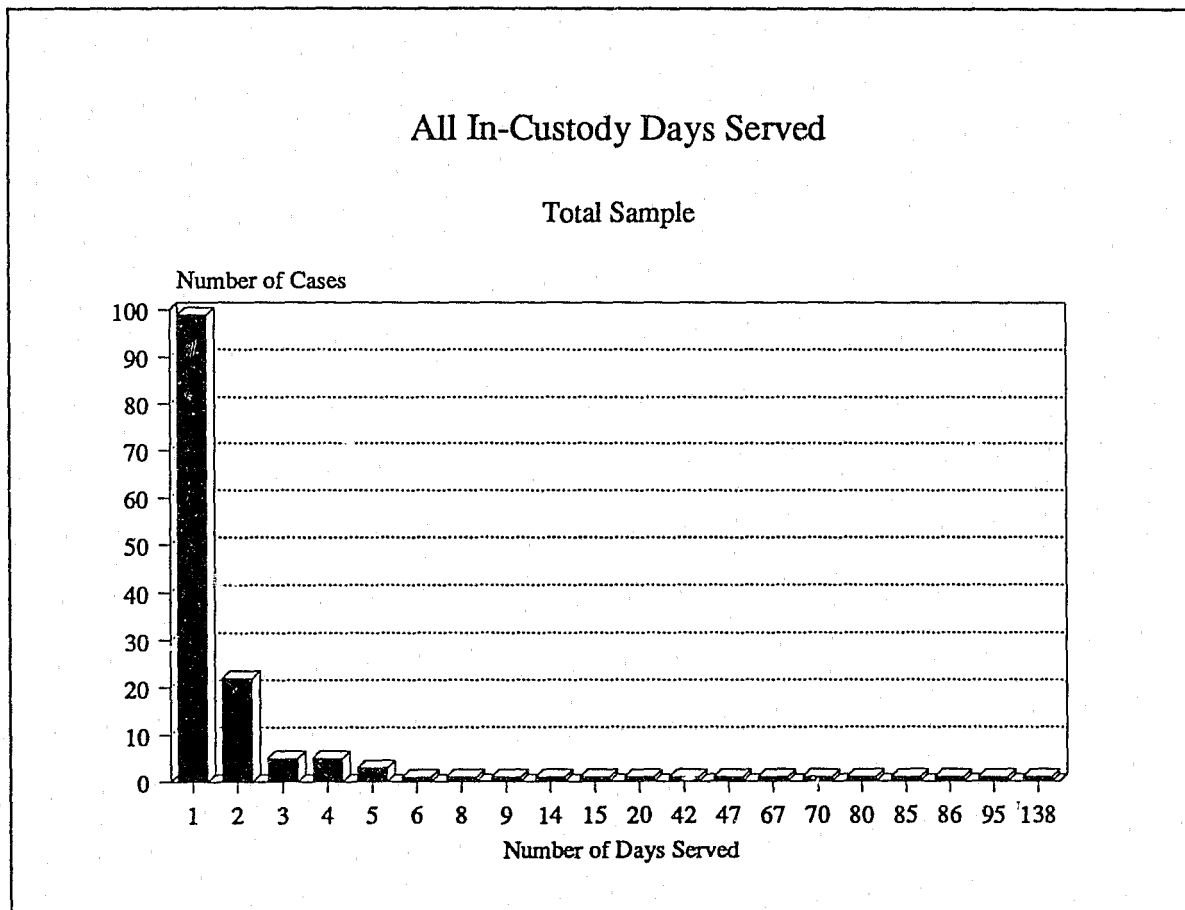
There is another element to consider in evaluating in-custody expense as a determinant of overall case processing costs, and that is the inter-relationship between some of the most costly factors affecting a case. In our sample all defendants who had a jury trial were convicted and several of them, due to their number of prior convictions, were sentenced to serve a considerable number of jail days on this case. These cases were costly both because there was a jury trial and because of the length of the in-custody period. Defendant awareness of the possibility of an extensive jail sentence appeared to contribute to the jury trial decision, and thus the linkage between the two most costly factors determining final case processing costs.

² Records were searched for costs based on actual time served, whether in the county jail, in work furlough, or on the electronic home monitoring program. Time served sometimes differed from sentenced time, due to credit for time served and a court-ordered early release program to control jail overcrowding.

Table 3-2

IN-CUSTODY COSTS AS PERCENTAGE OF TOTAL CASE COSTS					
	Total Mean	% Total Case	Median	% Total Median	Range of Costs
Total Sample	\$191	17.2%	\$69	10.6%	\$28-\$3837
Large Court	\$220	19.9%	\$69	10.6%	\$69-\$3837
Small Court	\$151	13.6%	\$28	4.3%	\$28-\$2408

Figure 3-4



Impact of Legal Representation on Cost

The total case cost aggregated for those defendants who represented themselves ("pro per"), those cases with a Public Defender, and those cases where the defendant engaged private counsel are presented in Table 3-3. Although the mean cost of Public Defender services represented an average of just over 4 percent of total case costs for the entire sample, total expense for any defendant with legal representation was nearly twice that for pro per defendants (\$1396 vs. \$707). Thus, obtaining legal counsel emerged as the third most important factor contributing to overall case cost. This is not to imply that the decision to obtain counsel by itself exclusively determines final case cost; rather, there are associated factors.

Why Representation Adds Cost

Both PDs and private defense attorneys alike reported that they believed only those defendants who have the more complex cases seek legal representation in the first place. They believe it is the complexity of these cases, rather than the fact that the defendants are represented by lawyers, that is the underlying cause of their higher cost.

We sought to determine if defendants facing additional charges besides the DUI offense might seek legal counsel more frequently, thereby increasing their total case cost. In the sample of cases tracked, additional charges included most often California Vehicle Code Section 14601, driving on a suspended license, and section 16028, no proof of insurance. A complete list of other citations for defendants in this study is found in the Appendix.

The sample showed some differing patterns for additional charges throughout the county. For the suburban area 49 percent of the sample had other citations in addition to the driving under the influence arrest, while in the urban court 26 percent of the cases had additional charges. Thus it is nearly twice as common to find additional charges on a DUI case in the suburban court district as the urban court district.

It is not known whether this difference is a result of charging practices followed by the senior District Attorneys in each court location, whether it is the result of differing police practices at the local law enforcement agencies in each court district, or some combination of these two possibilities. One theory is that more individuals sought legal representation in the suburban court because so many of the cases in that court had additional charges made. This would tend to support the assertion of the defense bar that individuals seek legal counsel generally for the more complex cases. However, in the absence of direct interviews with the defendants, no one can absolutely know their personal motivation for seeking legal counsel.

When costs are compared for pro per defendants to those with an attorney of any kind, public or private, the more costly the case the greater the likelihood that the defendant had obtained legal counsel. As case cost increases, so does the frequency of cases with legal representation.

Defendants with legal representation of any type had more court appearances than those who represented themselves in court, providing another element driving up total case cost. (See section "Impact of Number of Court Appearances on Cost" later in this chapter.) With regard to the privately represented defendants, the attorneys queried stated that a substantial client base is necessary to support a private law practice representing DUI misdemeanants. However, this "substantial client base" can create scheduling

conflicts by its very nature, since private attorneys must sometimes represent multiple clients in different courts at the same time. These scheduling conflicts and multiple clients create the need for continuances in the DUI cases, to allow the attorney to juggle his/her calendar, with the resultant higher case costs.

Critics of the system cite other possible reasons to explain the fact that cases represented by attorneys in general cost more than those without representation. Additional court appearances are requested by counsel, creating delays in case processing which tend to benefit the defense. Delays might mean that the arresting officer will be transferred, memories of witnesses fade, and the ability to prosecute diminishes. Other observers have commented that some private attorneys intentionally postpone resolving their client's case until they have received their fee. Since some DUI defense attorneys have characterized drunk driving as an "offense of poor judgment," they realize that these clients do not always have good credit ratings and the attorneys may not likely be paid after the resolution of a case. Therefore they demand full payment prior to the conclusion of the case, and if that payment is not forthcoming from the client, the attorney requests continuances from the court to allow additional payment time. Unfortunately such continuances increase the total cost of processing the case, costs supported by the public.

Another complication involves those cases where the defendant refused the chemical test at the time of arrest and the state's eighteen-month automatic license suspension goes into effect. In our sample test refusals accounted for twenty-six cases countywide, or about 19 percent of all DUI cases. When the chemical test has been refused the defendant may request a DMV hearing on the automatic license suspension, and private attorneys agree that it is far preferable to conclude this DMV administrative hearing process before the court process. The legal burden of proof is simpler at the DMV hearing, and winning that hearing strengthens the court case, attorneys believe. These circumstances may further explain additional continuances requested by counsel, creating cases with increased cost.

Case Costs: Private Attorneys vs. Public Defenders

At the start of this analysis we hypothesized that the total costs for cases represented by private counsel would be the most expensive type. The analysis did not prove this to be true. Instead, costs for defendants represented by the Public Defender were found to be highest. While the mean cost for cases in the total sample was \$1108, the mean case processing cost for clients represented by the Public Defender was \$1645, and by private counsel \$1129. This difference cannot be explained solely by the public expense for PD representation, as the difference in total case cost (\$516) is greater than the average PD representation expense (\$151 per PD client). See Table 3-3 for additional detail.

Project staff investigated why the data showed that Public Defender cases achieved a higher total mean cost than cases represented by private attorneys. It is clear that Public Defenders representing DUI clients engage in some additional work that their counterparts in the Office of the District Attorney would not have to undertake. For example, Public Defenders employ case investigators, who serve a number of functions on a DUI case that are otherwise performed by the police agencies for DA staff. In DUI cases PD investigators go to the scene of accidents to confirm police drawings, measurements and reports, seek out and interview witnesses for their clients, and visit defendants in jail to obtain pertinent case information. While all of these functions take additional time and add expense to the processing of those cases, they are costs already included in the \$151 average expense per PD client.

Table 3-3

TOTAL CASE COSTS BY TYPE OF LEGAL REPRESENTATION ³ TOTAL SAMPLE			
	Mean Cost	Median Cost	Range of Costs
Pro Per (N=58)	\$ 707	\$ 589	\$354-\$4,191
Public Defender (N=41)	\$1,645	\$1,105	\$573-\$6,587
Private Counsel (N=38)	\$1,129	\$ 946	\$482-\$3,786
Total Sample (N=146)	\$ 108	\$ 649	\$354-\$6,587

³ N does not add to total sample (146 cases) because some defendants never appeared in court and no record of choice of legal representation was made.

One factor accounting for at least part of the difference is the mean jail expense for PD clients as compared to the rest of the sampled cases. Mean jail cost for the total sample was \$191. By comparison, mean jail cost for defendants represented by private attorneys was \$105, but \$405 for PD clients. This \$300 difference in jail expense between clients represented by private attorneys and public defenders is a major contributor to overall PD client case cost. It is not known why jail costs are higher for these defendants; a number of possible explanations as to why some defendants serve more jail time than others can be suggested. Analysis of this issue might be the subject of further study.

Cost for use of the Public Defender also varied between the courts. This could not be explained by a variance in the number of defendants who utilize PD services in each court, but came from the actual cost per case for that representation. In fact, defendants represented by the Public Defender accounted for just over 28 percent of the cases in the urban court, and just under 30 percent of the cases in the suburban court, essentially the same level of usage. One might have expected that the smaller court, with its somewhat more affluent surroundings, might rely upon the services of the Public Defender less often than the larger, urban court, but that was not the finding of this study. The mean cost per PD client for the small court sample was \$57, and for the larger court sample was \$240. Mean cost for the total sample was \$151. Public Defender costs by clients served at each court are shown in Table 3-4.

To discover why differences in case cost might occur, discussions were held with PDs and with several private attorneys specializing in the defense of DUI cases in the Alameda County courts to better understand the nature of cases each type of attorney typically represents. The attorneys also were asked for their views on case processing costs in connection with absence or presence of legal counsel.

One factor contributing to the cost difference between PD and privately represented cases is the internal rotation of staff used to train the new personnel. The Public Defender's office views DUI trials as the training ground for newly hired attorneys. Not only do new Public Defenders take on most of the DUI clients, especially those clients requesting jury trials, they are also rotated frequently among the different offices and among assignments within the same office, such that the client seldom sees the same attorney more than once. Staff rotation was especially prevalent in the larger court, with its correspondingly larger staff. This rotation becomes a factor diminishing opportunities to develop a client relationship, with new attorneys repeatedly familiarizing themselves with the specifics of a trial case.

As was noted elsewhere in this report, during the period of this study some working conditions in the Office of the Public Defender were chaotic, especially among support staff, and under these conditions morale can tend to be low. This in turn can be a factor leading to staff turnover, which means that more newly hired staff handle the DUI cases. Turnover thereby contributes to the cycle of increasing case cost.

Another difference may arise in the typical initial meeting between private attorneys and their clients. Private counsel stated that they normally quickly review the case, then advise the client whether or not legal assistance would be likely to alter the final outcome of the charges. For those clear-cut cases without a chance of acquittal, dismissal or reduced charges, private attorneys reported that they would advise a client that their involvement in the case would not likely be a worthwhile expenditure for the client and it would be best for the defendant to simply appear in court and plead guilty. In other words, they attempt to determine right at the start whether it is sensible for the defendant to incur the expense of hiring a private attorney in connection with their DUI charge.

Table 3-4

PUBLIC DEFENDER COSTS AMONG PD CLIENTS ⁴				
	# Cases	Mean Cost	Median Cost	Range of Costs
Total Sample	42	\$151	\$105	\$ 7-\$931
Small Court	18	\$ 57	\$ 57	\$ 7-\$175
Large Court	24	\$240	\$165	\$24-\$931

⁴ Numbers do not add exactly due to rounding.

On the other hand, the Public Defender's office cannot turn away clients who appear to have no clear chance of acquittal or dismissal. Anyone who is financially eligible and who desires representation is entitled to receive that representation under the Constitution. Further, as noted previously in this paper, new attorneys in the PD's office are most often assigned the DUI cases, and these attorneys have often not yet developed the persuasive style that would encourage clients to plead guilty. They frequently do not yet have the experience or authority to provide such advice. While it is less costly in terms of direct salary expense to pay an entry level person, there are certainly some hidden costs in that such individuals are often not in a position to encourage early and prompt resolution of their cases.

The cost for Public Defender representation was analyzed as an element of total case processing cost. It could be argued that the Office of the Public Defender must be maintained as a required service always available to the court, so that the cost of PD services would be supported by the total volume of DUI cases, not just the defendants who utilize this service. This view spreads the cost for PD services to all DUI cases, not just to those defendants who are represented by the PD. With this perspective the cost of the service would be averaged among the total volume of cases processed by the courts. This view results in a typical cost of \$47 per DUI case, and is displayed in Table 3-5.

Impact of Probation on Cost

The cost of formal probation (as opposed to court, or bench, probation) accounted for about 18 percent of total case cost, and represented the next most significant factor determining overall case expense. When formal probation is ordered it drastically alters the final case price, at the same time driving up the mean cost for all defendants, whether on probation or not.

It is important to point out that there is no fee charged for court probation, while persons who must report to a Deputy Probation Officer on formal probation are charged an amount each month (set within a range depending upon the individual's ability to pay) multiplied by the number of months of the probation period.

Like the public defense, the cost of providing a probation function can be viewed as essential to the adjudication of DUI offenders, a service which must be continuously available to the courts, to use as needed. Considered in this light the cost of probation can be spread among all cases processed by the courts, whether assigned to a probation officer or not. When spread among the entire sample, the mean cost was \$203 per DUI defendant. Mean probation expense was lower in the urban court (\$127 per case) than the smaller court (\$303 per case) because fewer defendants were assigned formal probation, and when assigned it was for shorter periods of time. Probation expense varies only by months of formal supervision sentenced; three years costs \$712, five years costs \$1112.

Since the project analysis began fourteen months postarrest and case monitoring did not extend through the entire probation period (generally three to five years from sentencing), costs were projected through the end of the probation term.

The mean probation cost difference found among the cases is partly due to the number of persons convicted of driving under the influence who are sentenced to formal probation. Of all defendants sentenced to either type of probation, 22 percent were assigned to a probation officer in the larger court while 33 percent were similarly sentenced in the smaller court. Since proportionately more defendants were sentenced to formal probation in the suburban court the total probation cost there was higher.

Table 3-5

PUBLIC DEFENDER COSTS FOR SAMPLE ⁵					
	# Cases	% of Total Sample	Mean	Median	Range
Total Sample	146	32%	\$47	\$0	\$ 7-\$931

⁵ Since just 32 percent of the total case sample used Public Defender services, the median cost was \$0.

Impact of Number of Court Appearances and Continuances on Cost

Number and length of court appearances was an obvious factor contributing to overall case cost. Those familiar with the courts recognize that the range of possibilities runs from the defendant who pleads guilty at arraignment, is sentenced, and never returns to court, to the other extreme where a defendant requests numerous continuances, has a jury trial, and/or after sentencing cannot meet conditions of probation and repeatedly returns to court for probation violations. Clearly additional court appearances result in additional cost, both for the court and for the adjunct agencies which support court operations.

The mean total case cost per appearance was \$218. This is a public expense shared by all departments and agencies which together process DUI offenders. Figure 3-5 illustrates the range of costs for the sample (excluding the jury trial cases) by number of court appearances required to close a case. This graph illustrates that for most defendants, the average cost per appearance holds fairly constant for each additional court action, regardless of the total number of appearances required to adjudicate that case.

For the total sample of 131 cases dispositioned by the court, the mean number of court appearances, both pre- and postdisposition, is exactly 5. For this calculation the incomplete cases were omitted from the analysis.⁶ This includes 4.1 mean appearances presentence, and .9 mean appearances postsentence. The range of appearances for the dispositioned cases, excluding the incomplete cases where defendants did not usually come for their first court date, was from one to 16. This is illustrated in Figure 3-6.

Some difference in the average number of postdisposition appearances was found between the two court sites monitored, for reasons believed to stem mainly from local police practices. Many postdisposition appearances stem from bench warrants issued by the courts for a defendant's failure to comply with conditions of probation. In the larger court city police find themselves extremely busy dealing with urban crime, and do not routinely physically serve misdemeanor warrants issued by the court. Therefore the frequency of postdisposition hearings were lower in this court, since fewer defendants are brought in on bench warrants issued for DUI probation violations.

What Influences Court Costs?

Since the number of appearances range widely, it is apparent that this substantially influences court cost variance. One major factor is whether defendants request trials.

Many defendants in the original sample initially indicated that they wanted a jury trial, although they subsequently decided to plead guilty. These cases were continued many times as the defendants and their attorneys prepared for the trials which never took place. In fact, as a cost indicator, desire for a jury trial turned out to be nearly as costly as a trial itself, particularly if the Public Defender was being used rather than a privately hired attorney.

One of the main reasons for the costliness of these continuances is the rapid rotation of staff assignments and turnover of entry-level attorneys typically assigned to the DUI cases. As noted in the section on attorney costs, particularly in the larger court, new staff in the DA and PD offices are assigned to handle

⁶ These were the fifteen cases which had not yet been concluded, mostly because the defendants had failed to respond to bench warrants issued.

Figure 3-5

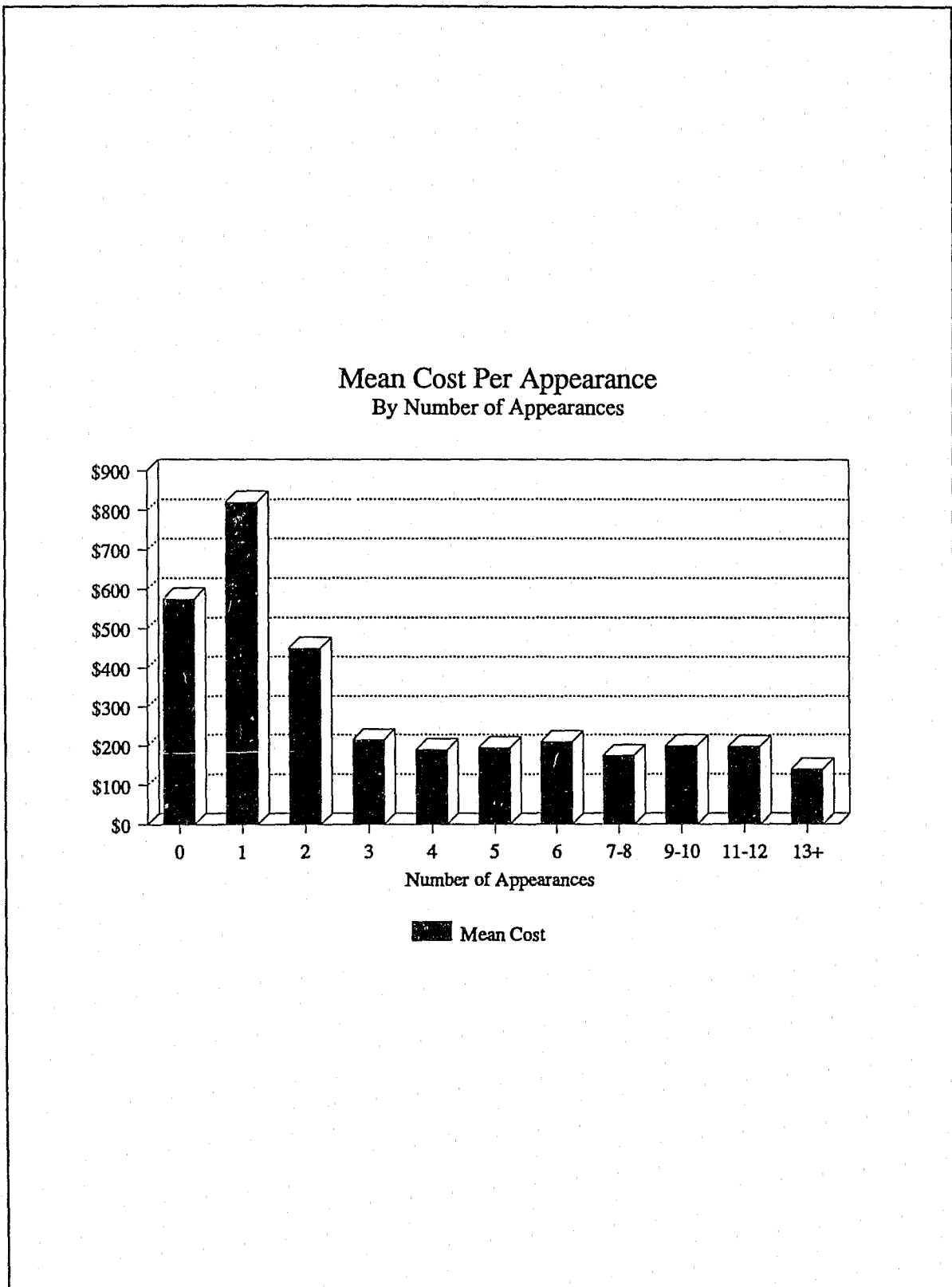
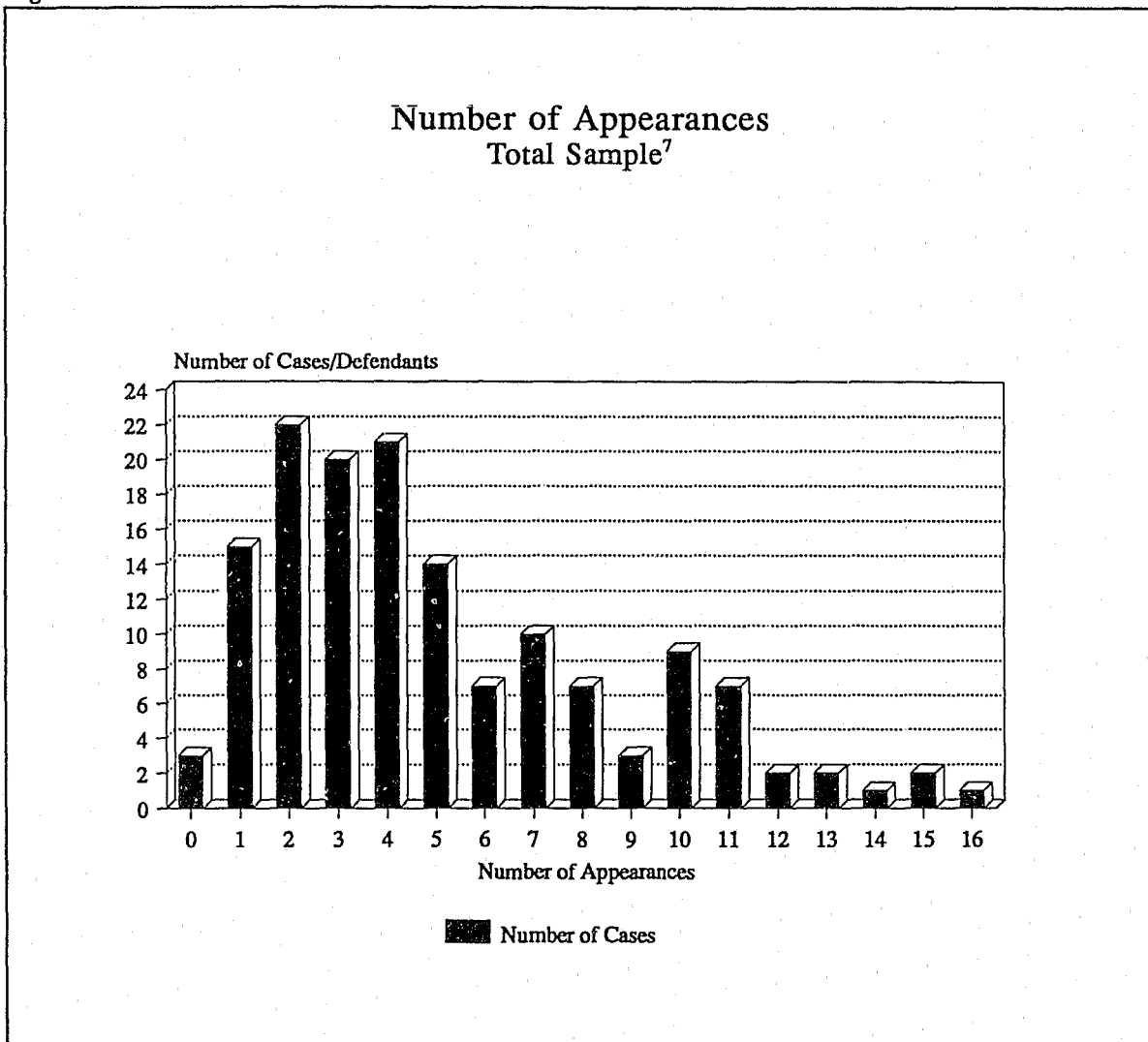


Figure 3-6



⁷ The total number of cases = 131. The range of number of appearances = 0 to 16. Zero appearances were defendants who failed to appear in court, and did not respond to bench warrants.

the cases of lesser importance, including primarily DUI cases. High staff turnover means that the case is prepared for trial by a different staff attorney nearly every time it is calendared. The file is reviewed, witnesses are interviewed, subpoenas are issued, case law is researched, advice is sought from the more senior staff in the office, and when the court date arrives, the entire matter is put over until a month or two or three down the road. Usually when that court new date arrives there are once again new attorneys assigned to the DUI calendar, and the cycle of preparing the case starts anew.

Often the continuances are the result of private defense attorneys juggling their own multiple court commitments. Public and private defense attorneys may be challenging the defendant's prior convictions, and thus may be waiting for transcripts to arrive dealing with previous cases for that defendant. It is not that new attorneys are requesting the continuances simply because they are new. Rather, the court system allows continuances, and the new attorneys on the DA and PD staff must repeat their own case prep activities with each successive court date.

Some continuances are clearly unavoidable. However, there were a few cases in the sample with unusually large numbers of continuances, with the end result that the defendant decided against trial, pled guilty, and received the standard sentence. One case had fourteen continuances, even after counsel was admonished by the judge that no further continuances would be granted. The judge on this case had been reassigned to a new department, and his admonishment was lost with successive delays. In most of these instances the attorneys were private counsel, sometimes with conflicting schedules (as noted in the court docket). Sometimes no reason for the attorney's continuance request was shown in the docket.

Each time that cases are continued court personnel must also undertake repetitive tasks, thereby increasing court costs as well. Court calendars are compiled, printed and distributed, files are pulled and delivered to court, courtroom clerks prepare the docketed minutes, copies are filed in the court folder, and data entries are made to the county's automated court record system. These tasks are repeated for each continuance, and more costs are incurred.

In some instances the need for a continuance arose when the docket contained the note "no court available," indicating lack of courtroom space and/or judges for trial. Clearly numerous continuances add to court costs, thus increasing overall case cost for jury trials. Additional discussion and analysis of continuances and case cost follows later in this chapter.

Impact of Law Enforcement on Cost

Costs for the law enforcement segment of a DUI case ranged enormously. While the mean cost for the total sample was \$286, representing 26 percent of the mean total case cost, the range of law enforcement cost was from a low of \$150 to a high of \$872.

In some instances law enforcement expense was very low; in other cases the costs were quite high and accounted for a major percentage of the overall cost for that defendant. The law enforcement total included all costs to local city police departments, as well as two geographic divisions of the California Highway Patrol.

Table 3-6 illustrates the range of expense for law enforcement, and displays the percentage of the total cost attributable to law enforcement. The basis for these cost calculations is described in the Methodology chapter of this paper.

Table 3-6

TOTAL SAMPLE LAW ENFORCEMENT COSTS				
Mean Law Enforcement	% Total Case Cost Mean	% Total Case Cost Median	Range of Costs Law Enforcement	Range of % of Total Case Cost Mean
\$286	26%	44%	\$150-\$872	3%-74%

In this analysis, costs for law enforcement include not only expense associated with making the arrest, but also costs for officer time in court for testimony and waiting in jury trial cases. Also included is a separate charge for conducting the chemical analysis, either blood, breath or urine. Charges for blood and urine testing are billed to the arresting agency by the outside private laboratory which conducts the analysis. This separate charge was found to range from \$35 to \$70 per test. The cost of conducting a breath test on the intoxilyzer at the jail site was between \$19 to \$21 per defendant. Intoxilyzer expense was calculated from the law enforcement agency's machine maintenance cost. Defendants in the sample were tested on breath machines that were owned either by the Sheriff's Department or by the Oakland Police Department; however, they are used by a number of other law enforcement agencies which book their DUI arrestees into the two jail sites in this study.

Some cost variation among police agencies were found, and several factors can be identified which contributed to this. While salaries and benefits paid by the different agencies did vary somewhat, other factors seemed to have a greater effect on agency cost variation. For example, some law enforcement agencies routinely have one officer riding in the vehicle, while others have two officers, at least for evening shifts when the majority of DUI arrests occur. Paying for two officers' time nearly doubled the cost of a typical arrest. Proximity to the jail and booking facility, and proximity to the hospital where the blood draw can take place (for those defendants who choose a blood test) also greatly affected costs, as did transport time to or from geographically remote areas. Size of the city jurisdiction where the arrest occurred seemed to be another factor. Frequently local police policy requires calling for a cover officer, to assist the original arresting officer. In a small city response to a cover call can take no more than 5 minutes. In a larger jurisdiction this can take much longer.

City police departments often left the arrestee's vehicle parked by the side of the road, while arrests made on the highway required calling and waiting for a tow truck to remove the car. Waiting for a tow by the side of the highway prior to taking the arrestee to jail added another time element to the overall cost for officer expense.

Clearly accidents made some arrests more complex, and taking measurements, drawing diagrams, writing more complex reports, etc., lengthened overall officer time and therefore increased the cost of those arrests. Arrests with accidents accounted for 24 percent of the total sample.

Finally, each law enforcement agency had a somewhat different officer payment policy for in-court time when required to testify on a case. Some guaranteed a minimum number of paid overtime hours, either time and a half or double time, regardless of the actual amount of time spent in court. In some cases the officer's eligibility to receive pay at the overtime rate was tied either to the most recent shift worked, or to the next shift due to be worked. Particularly if more than one officer was required in court (e.g. if the cover officer and the arresting officer were both subpoenaed), overtime pay was a substantial portion of total police expense.

Impact of Prosecution on Cost

Excluding the separate sample of jury trial cases, the total sample mean prosecution cost for all types of cases was \$24, representing just 2 percent of total case cost. See Table 3-7 for an illustration of these costs.

Table 3-7

PROSECUTION EXPENSES AS PERCENTAGE OF TOTAL CASE COST ⁸			
	Total Sample	Large Court	Small Court
Mean Cost	\$24	\$ 28	\$ 21
Median Cost	\$17	\$ 15	\$ 16
Range of Costs	\$7-\$283	\$ 7-\$283	\$ 7-\$104
% Total Case Cost	2%	3%-10%	1%-11%

⁸ Percentage of cost is percentage for that case.

When a case did not include a jury trial the mean prosecution expense in the smaller court was \$21 per defendant, while in the larger court this came to an average of \$28. This seems an incredible bargain in relation to the overall expense of adjudicating DUI defendants. For non-jury trial cases this expense is negligible. One practice which may cut prosecution cost is the DA use of law clerks, who are second year law students, to perform case preparation work. These individuals receive no salary. Such practices tend to lower overall prosecution expense.

Impact of Number of Charged Prior Convictions on Cost

One of the early hypotheses was that cases would be more costly to process for those defendants with a history of prior DUI convictions. Of the total sample, 40 percent had at least one prior charged conviction (N = 55), ranging up to a maximum of four prior convictions for the total sample.

Figure 3-7 and Table 3-8 illustrate the total cost per case based upon the defendant's number of charged prior convictions for DUI. A clear increase in total case cost is apparent as the number of prior convictions increases. While the mean total for a first offender was \$741, for a second offense cost rose to \$1356, and for three or more it was \$2305. Jurisdictions with repeat offenders can expect higher costs.

Complete vs. Incomplete Case Costs

Another defendant characteristic affecting cost was whether the person failed to appear in court and complete case processing. While the total sample analysis showed a mean cost of \$1108, this included cases still pending when case tracking for this project was terminated. As expected, the mean cost rose when the fifteen incomplete cases were removed. Thus, a second mean cost \$1114 was calculated for completed cases only. The fifteen incomplete cases represent about 11 percent of the total sample. These were generally where defendants had failed to appear in court or to respond to bench warrants issued by the court. The mean cost for these is \$744.

Case processing costs for the incomplete cases represent actual public expense despite the fact that the cases were not concluded. In contrast to the completed cases, some costs had been incurred for the incomplete cases, such as the expense for initial arrest, chemical test, and jail expense, but usually there was little or no court-related expense as yet.

All but one case in the completed sample were convicted. The one exception was a dismissed case. Since the incidence of conviction is so high, there is the expectation that many of the incomplete cases would also result in conviction if the defendant completed the court process. Completed cases offer the opportunity for defendant revenue, to offset costs of case processing. Incomplete cases incur only public costs, yet generate no defendant revenue.

As demonstrated in Table 3-9, an incomplete case accounts for nearly half of the cost of a complete case. It could be argued that not much is accomplished for the effort despite the costs created within the criminal justice system. Table 3-9 displays costs for complete and incomplete cases.

Figure 3-7

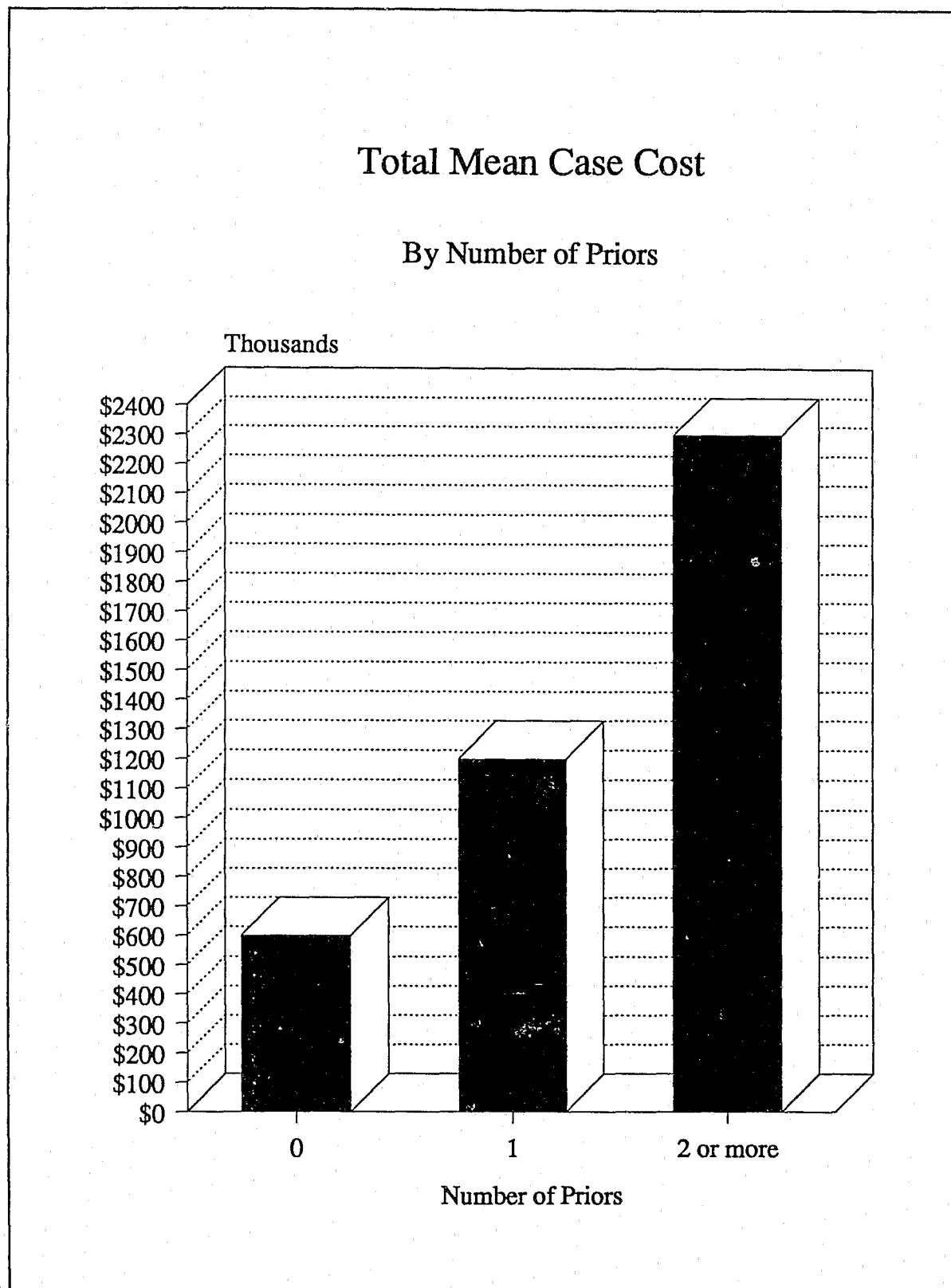


Table 3-8

MEAN CASE COST BY NUMBER OF PRIORS CHARGED			
TOTAL SAMPLE			
	# Cases	Mean Cost	Difference (±) Mean Cost Total
TOTAL SAMPLE	146	\$1108	—
2+ Priors	16	\$2305	+\$1197
1 Prior	39	\$1356	+\$ 248
0 Priors	91	\$ 741	-\$ 367

Table 3-9

COST FOR COMPLETE AND INCOMPLETE CASES ⁹					
	# Cases	Percent	Mean Cost	Median Cost	Range of Costs
Complete	131	89%	\$1,114	\$ 667	\$ 354-\$6,587
Incomplete	15	11%	\$ 744	\$ 661	\$ 365-\$1,505
Total	146	100%	\$1,108	\$ 649	\$ 354-\$6,587

⁹ Note: A complete case denotes any case that reaches disposition by the court and, if convicted, has been sentenced. An incomplete case denotes any case without a conviction, dismissal or acquittal.

Chapter 4

REVENUE

Revenue for DUI cases as analyzed here consists of fines, fees and assessments imposed by the courts and collected from defendants. Upon conviction of a DUI defendant, a sentence is imposed which includes (1) a criminal fine; (2) a state "penalty assessment" which is calculated as a percentage of the fine; and (3) fees for various court and correctional services utilized by the defendant. Persons who report to the court an inability to pay the total due for these three categories are assigned a certain number of days of community service to be performed instead, the number of days corresponding to the amount due. Revenues from the fines, fees and assessments are mainly collected by two agencies in the criminal justice system, the courts and the county's collection agency. In addition, fees for some specific programs are collected directly by the agency providing that program, such as the Sheriff's work furlough program.

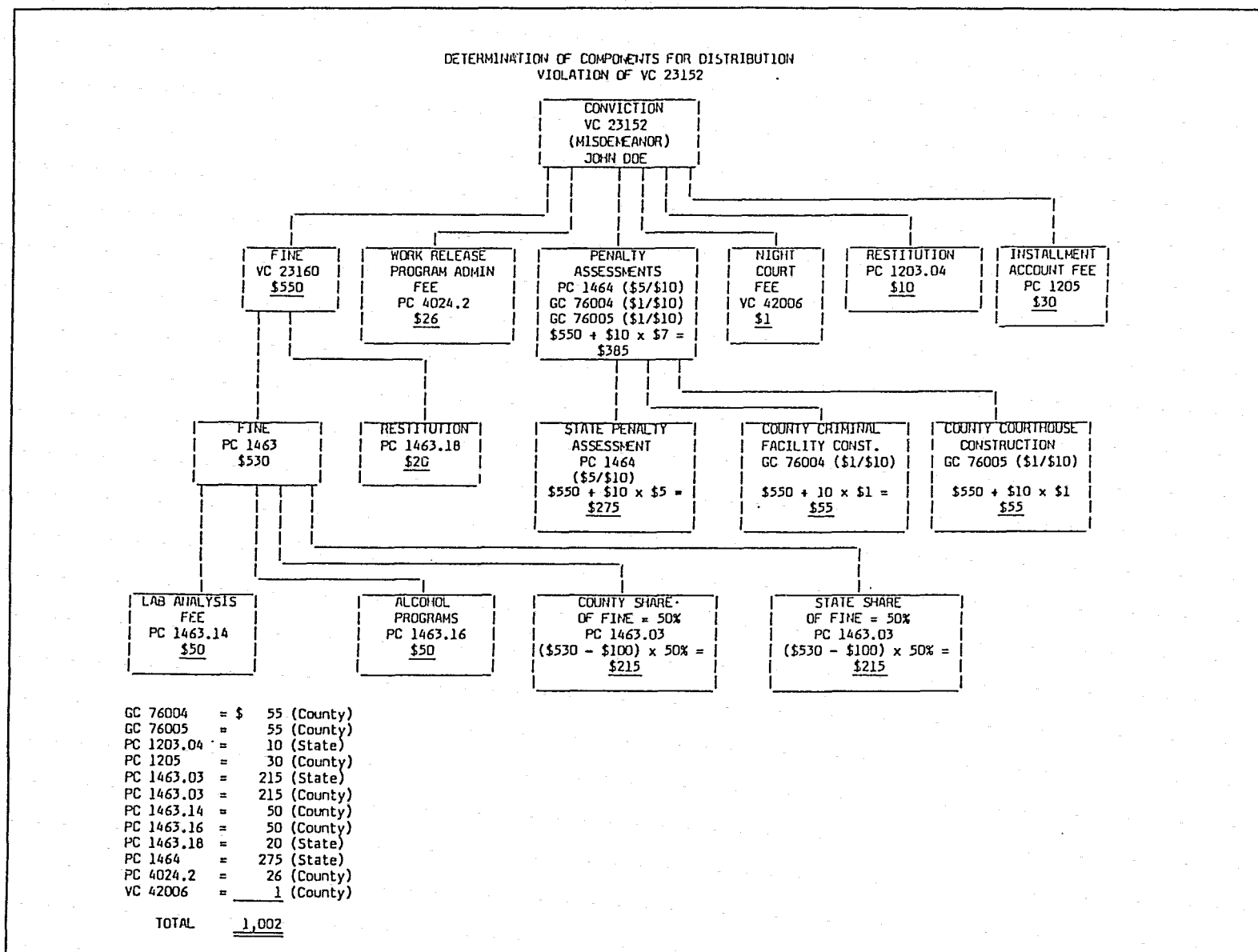
The California Vehicle Code provides a range for a DUI fine from \$390 to \$1000 for first or subsequent offenses. In most cases the minimum \$390 amount is levied by the judge for first and subsequent offenses. Even with the minimum fine, the total amount ordered and due is frequently over \$1000, once the penalty assessments and fees are added, as illustrated in Figure 4-1. Because of this high amount, defendants frequently request that payment be made over an extended period of time, usually during the three to five year term of probation. Persons who opt to pay on this extended installment basis, rather than in full shortly after sentencing, are referred to the county's central collection agency. With authority from the court this agency sets up an account, establishes a repayment schedule, bills the defendant each month, and disburses revenue received to the appropriate city, county and state funds and agencies earmarked to receive DUI revenue.

Revenue Distribution

The disbursal of revenues collected on DUI cases in California has been described as resembling a plate of spaghetti. This is an apt description of the tangled path taken by cash collections and disbursals to the numerous funds and accounts.

Figure 4-1 illustrates some of the different formulas for receipt and disbursal of revenue for arrests made by city police and the California Highway Patrol. This schedule illustrating revenue distribution is reprinted from the State Controller's Manual that was issued to assist county governments with this complicated revenue disbursal.

The distribution of DUI revenue varies according to formulas established by California Government Code. The split in the distribution of just the fine amount is dependent upon whether a city, county, or state made the DUI arrest. The formula for distribution of revenue dictates that a percentage of the fine



amount (not the fees or assessments) will go to the city if its police made the arrest, or will be divided equally between the state and county if the California Highway Patrol made the arrest. The formula governing distribution of the fine amount is different for each city listed in the Government Code, but is a fixed amount specified in the law. According to the existing law the division of the collected fine for arrests made by city police averages about 20 percent to the county, 80 percent to the arresting city. However, this split can range from a 7 percent county and 93 percent city share of the fine amount for an arrest made by one city police department, up to a 44 percent county and 66 percent city split. In no instance is the county share of the fine greater than 44 percent for arrests made by city police. Fines collected for all arrests made by the CHP are evenly split (50/50) between the county and state.

Distribution of the remaining fees and assessments collected from defendants is made to approximately fourteen additional funds specifically earmarked to receive revenue from DUI convictions is also made according a schedule established in the Government Code. Some of these funds are controlled by the state, some by the county.

One important factor in the disbursal of revenue to these accounts is the order of priority given to the different funds. Since the majority of defendants who pay off their financial obligations do so over an extended period of time, funds which receive defendant revenue early in the distribution period tend to do better. These accounts accrue their deposits when defendants are most likely to adhere to their court ordered payment schedule, rather than toward the end of the three- or five-year probation period when there is a greater likelihood of failure to pay. As was described earlier in this report, local police agencies which have the responsibility of serving most bench warrants usually do not have the resources to serve misdemeanor warrants. Consequently defendants who stop regular payments at some point during their probation will, in all likelihood, not be rearrested, despite the bench warrant issued by the court for this probation violation. As a result the most successful collection efforts are early in the probation term, gradually decreasing over time.

Revenue Received

Of the total sample of convicted cases ($n = 130$), 90 cases were sentenced to pay fines, fees and assessments, or 69 percent of the total 146 cases originally charged. Another 40 cases (31 percent) had been sentenced and not required to pay.¹ The remaining cases in the original sample were still incomplete by the end of case monitoring, and because they had not been convicted, did not produce any defendant revenue.

In Tables 4-1 and 4-2 we compare the amount due and the amount collected for those cases sentenced to pay. The mean amount due from those defendants fined was \$1,107. This is quite remarkable given that the total case processing cost documented from this analysis was \$1108. The mean amount that will be collected from this same group is projected to be \$780 per defendant, or about 70 percent of the amount due. This projection includes defendants who have already paid in full to the court upon sentencing, those paying consistently on the installment basis to the collections agency, and those who have stopped paying their monthly installments or never paid their monthly installments, and are not expected to make further payments.

¹ These individuals were assigned community service in lieu of fines, fees and assessments.

Table 4-1

REVENUE COLLECTIONS Projected Paid Compared to Actual Fined		
	Mean Amount Due	Mean Proj Coll
All Cases ² (n=146)	\$ 677	\$477
Sentenced Cases (n=131)	\$ 757	\$529
Fined Cases (n=90)	\$1107	\$780

² Includes cases not convicted or dispositioned.

If we look at Table 4-1 and analyze this information for all defendants processed through the courts, convicted or not, or whose cases are incomplete, the mean amount due is \$677, while the mean projected collection is \$477. See Table 4-1 for an illustration.

The assumption used in making the projection of collecting only 70 percent of the owed amount was based on defendants' payment history during a period of up to one year postsentence, projected to the end of their probation term. More detail on these projections can be found in Chapter 2, Methodology. Table 4-2 shows the number of persons paying, under these assumptions, out of the total sentenced and fined. The purpose of this review is to compare who is being served by the criminal justice system and who is paying for that service. Table 4-2 illustrates this comparison; that approximately one-half of the defendants processed by the courts pay their fines, and one half do not.

The Purpose of Fines

Historically, criminal fines have been intended not so much as revenue generators but as criminal sanctions. More recently, some research has been conducted on the effectiveness of fine sanctions as a deterrent to repeat offenses. To date the conclusions are mixed. For example, a combination of increasing DUI fines and rising insurance premiums have been cited by some officials as reducing the frequency of alcohol related crashes in New Jersey.³ The Scandinavian countries are often regarded as pioneers in the field of DUI enforcement, and the "day fine" system for DUI offenders has been used in Sweden in recent years. In this model a fine tailored to the individual's ability to pay, calculated as one-tenth of 1 percent of the offender's annual income, is the usual amount ordered paid by the court.⁴ While the effectiveness of neither the New Jersey nor Swedish fine processes have been thoroughly validated, some researchers believe that placing emphasis on fine enforcement and collection has positive effects. Given that only 30 percent of DUI defendants in our study are currently paying the total fine due, additional attention to the assessment, enforcement and collection efforts may well be warranted.

Cost Minus Revenue: The Net Public Cost

From the earlier discussion we saw that just under one-half of all DUI defendants pay fines, fees and assessments. The remaining 50 percent who do not pay include those deemed financially unable to pay, as well as those who are sentenced to pay, yet do not. While there is no doubt that, under the current system, taxes support the criminal justice process, in another sense it could be argued that defendant fines are at least partially intended to support the cost of service. This could be construed as a type of user fee for the courts. In that sense it is this group of about one-half of the total DUI defendant population which supports the cost of processing their own cases, as well as some portion of the cost of processing the remaining DUI defendants. This is of greatest concern when we compare actual collections to the total public expense of processing DUI cases. (See Table 4-3)

³ James L. Nichols and Laurence H. Ross, "The Effectiveness of Legal Sanctions in Dealing with Drinking Drivers," background paper for the Surgeon General's Workshop on Drunk Driving (Washington, DC, 14-16 December 1988).

⁴ There is increasing interest in the U.S. in the day fine concept. See also Sally Hillsman, the Vera Institute, in the Bibliography.

Table 4-2

COMPARISON OF DEFENDANTS FINED ⁵ TO THOSE WITH NO FINE DUE			
	Large Court	Small Court	% of Total
Total Sample	85	61	141 (100%)
Total Sentenced	75	56	131 (90%)
Total Fined	36	54	90 (62%)
Total No Fine	39	2	41 (29%)
Total Proj to Pay	28	45	73 (50%)

⁵ It should be noted that some defendants in the smaller court were required to pay the cost of formal probation only, usually a minimum payment of about \$10 per month, or \$600 for the five year probation period. These defendants were not required to pay court fines or assessments. In the larger court defendants were not charged for the cost of probation.

Table 4-3

COMPARISON OF PROJECTED REVENUE TO TOTAL CASE COST	
	Total Sample
Mean cost, all cases	\$1108
Mean project collections, all cases	\$ 477
Net difference	\$ 631
Mean projected collections as percentage of mean cost	43%

This report shows that the mean cost of a DUI case is \$1108, yet the mean cash collection from all defendants served by the system is \$477. This defendant revenue is just 43 percent of the total public cost of a case. From this comparison an important policy issue arises: To what degree should the convicted DUI population, or to what degree should the general public, be footing the bill for DUI offenders?

The magnitude of the public expense for DUI adjudication becomes clear if we examine costs for the county, state, and nationwide. If we multiply the net cost of \$631 per case by the annual filings of about 10,000 cases in Alameda County, total cost unreimbursed by defendant revenue in this jurisdiction alone is over \$6.3 million annually. Looking at this further, the total annual public cost for DUI offenders for California, using this same formula, is estimated to be over \$191 million.⁶ Nationally, the public cost created in processing persons charged with driving while intoxicated is estimated to be \$926 million per year, based upon 1,467,822 arrests for driving while intoxicated.⁷ This is net case processing costs, supported by taxpayer dollars.

Net Cost by Level of Government

We also compared which level of government incurs which portion of this unreimbursed cost for carrying out the state's drunk driving laws, as exemplified by Alameda County, California. Tables 4-4 and 4-5, and Figures 4-1 and 4-2, display costs for DUI case processing, with costs aggregated according to city, county, and state responsibility. These illustrations bear some clarification. The county share in each case represent costs for those bookings at the county jail, the entire court procedure and all the necessary county agencies which support court operations.⁸ State expense consists of costs associated with driver license actions on these cases, and also includes law enforcement costs if the arrest is made by the California Highway Patrol rather than city police. City expense is for law enforcement for city police arrests, and some in-custody cost if the defendant was held at the city jail.

It is also useful to compare costs incurred by each level of government in contrast to the revenues actually received by each level.

From these tables and accompanying graphs, it is clear that the level of government incurring the highest cost does not receive proportionate defendant revenues to offset those costs. Local government in particular bears a disproportionate amount of the expense in relation to the revenue received to support these activities mandated by state law. It is noteworthy that the formulas controlling distribution of DUI revenue in California is also state legislated, controlled through the California Government Code.

⁶ 1988 Annual Report, Judicial Council of California, 90% of Group C filings reported for fiscal year 1986-7. California Administrative Office of the Courts (San Francisco, 1989).

⁷ Katherine M. Jamieson and Timothy J. Flanagan, eds., *Sourcebook of Criminal Justice Statistics—1988*, U. S. Department of Justice, Bureau of Justice Statistics (Washington, DC: USGPO, 1989).

⁸ County agencies are the Municipal Courts, the District Attorney, the Public Defender, the Probation Department, the Sheriff and Central Collections Agency.

Figure 4-2

Cost-Revenue for Cases with CHP Arrests By Level of Government

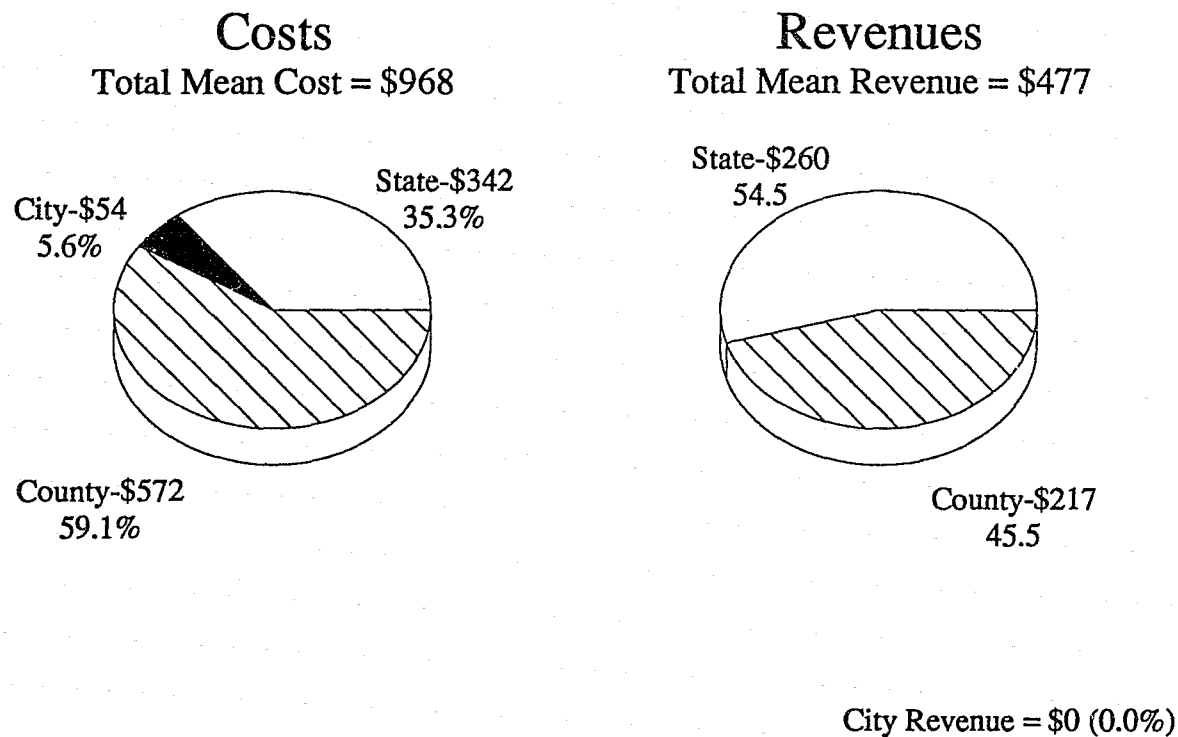


Figure 4-3

Cost-Revenue for Cases with Police Arrest By Level of Government

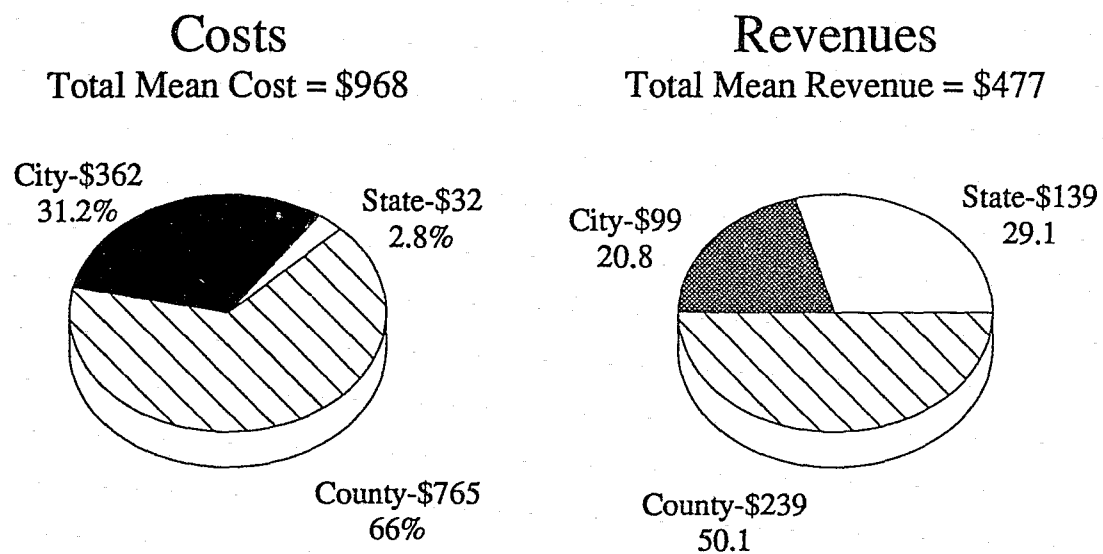


Table 4-4

COMPARISON OF REVENUE DISTRIBUTION TO CASE COST ⁹			
ARREST BY STATE			
	Mean Cost Incurred	Mean Revenue Received ¹⁰	Diff (±)
City	\$ 54 (6%)	\$ 0 (0%)	-\$ 54
County	\$572 (59%)	\$217 (45%)	-\$355
State	\$342 (35%)	\$260 (55%)	-\$ 82
Total	\$968 (100%)	\$477 (\$100%)	-\$491

⁹ Numbers may not add exactly due to rounding.

¹⁰ Revenue includes actual cash collections to date and projected collections.

Table 4-5

COMPARISON OF REVENUE DISTRIBUTION TO CASE COST ¹¹			
ARREST BY CITY POLICE			
	Mean Cost Incurred	Mean Revenue Received ¹²	Diff (±)
City	\$ 362 (31%)	\$ 99 (21%)	-\$263
County	\$ 765 (66%)	\$239 (50%)	-\$526
State	\$ 32 (3%)	\$139 (29%)	+\$107
Total	\$1159 (100%)	\$477 (\$100%)	-\$682

¹¹ Numbers may not add exactly due to rounding.

¹² Revenue includes actual cash collections to date and projected collections.

Handling DUI cases according to the state mandate results in significant policy problems for decision makers in this jurisdiction, a county which faces chronic budget shortfalls and agonizing choices among programs competing for limited dollars. Some possible remedies addressing these inequities are discussed in the Recommendations chapter.

Chapter 5

LIMITATIONS OF THE ANALYSIS

In the course of conducting this study lessons were learned which may assist others contemplating similar analyses of court procedures. Anyone preparing to conduct a study similar to this one should anticipate and plan for the fact that most data will not be as available or complete as desired. It will have to be generated and then converted into usable form.

Incomplete and Unverified Data

Given resources available for this project, it was not possible to document all costs or all revenues. For example, capital expenses, described by others as being among the most difficult cost items to fully document, were omitted here.¹ While recognizing that this omission of capital expense understates true overall case cost, practical considerations precluded analysis of this item.

A second problem was limited verifiability of some data. In some instances project staff prepared an outline of costs to be provided by a court adjunct agency participating in this analysis, and project staff had to accept the data provided by that agency without verification or documentation. Project staff were not in a position to ascertain the accuracy or completeness of furnished data. The bottom line on overall costs is that the conclusions in this analysis are only as good as the data provided by participants. However, it is our belief that participating agencies, to the best of their ability, provided accurate and complete information.

The main cost area pertinent to DUI case processing not fully developed in this study was state DMV licensing costs. Given resources available to the project, combined with the need to not greatly intrude on agency personnel meeting their normal commitments, it was necessary to accept generalized DMV cost information rather than develop case costs specific to the defendants in our sample. Grant timetables precluded further development of driver license costs for actions taken on DUI offenders. A good follow-up to this study would be to supplement the costs and revenues documented here with an analysis of driver license action costs for persons convicted of DUI. This could be added to the net public cost described in this report, and a more complete cost would result.

Some revenue items were omitted from this analysis. Any revenue collected by cities under the "emergency response" provision recently enacted in the California Government Code was also omitted

¹ Billy L. Wayson and Gail S. Funke, *What Price Justice: A Handbook for the Analysis of Criminal Justice Costs*, The Institute for Economic and Policy Studies, Inc., National Institute of Justice Research Report (#NCJ 10677), chapter 5 (Washington, DC: Jefferson Institute, August 1989).

from the analysis.² Under this provision, cities are permitted to bill DUI offenders up to \$1000 to recover the cost of providing emergency response to DUI-related incidents.³ During this study a few jurisdictions within the county began to bill to recover some of these costs, mostly for police services. Some controversy exists as to the circumstances under which cities are permitted to recover their costs, and therefore not all cities are choosing to exercise this option. For example, it is debated whether billing can only take place after a DUI conviction (which can take up to a year or more after the arrest), or if the offender can be billed immediately after arrest. Some jurisdictions have established uniform fee schedules; others compute costs individually for each arrest. Further differences exist in cities' understanding of which costs are subject to recovery under this new law. There is little uniformity in who is billed, when, and how much. Because of these differences in local cost recovery, no attempt was made by this project to include in the analysis revenue collected by cities for cases in the sample.

Another piece of cost and revenue data not included was that for certain court-ordered programs. For example, convicted DUI defendants generally spend two or more days picking up trash along the highways in the Sheriff's weekend work program, and this program charges a one-time administrative fee to register plus another daily charge per defendant. Managers at the Sheriff's department, which contracts for this service, state that the defendant fees collected support the program and it is revenue neutral. Similarly, the Sheriff's work furlough program, a jail alternative where the defendant is permitted to continue his/her employment but returns to a locked facility in the evening, charges most participants a daily fee of \$14. Defendants are highly motivated to pay this fee, it should be noted, because failure to pay would result in the defendant's return to the regular county jail. A Sheriff's Department representative states that fees collected support operating expense. Thus no further analysis of this item was conducted by project staff. By the same token, Driving Under the Influence School and the longer Drunk Driver Program operate under an agreement with the county's Alcohol and Drug Department, and the report from that agency is that these programs are supported entirely from participant revenue. That there is no public funds involved was accepted by project staff without documentation.

In comparing cost information obtained from so many agencies, it was not at all surprising to find that most agencies had their own unique budgeting system, such that costs identified by one budget process might include some expenses not included for another. Cost data obtained from such a multitude of separate agencies and from different levels of government would understandably encompass different elements. To the extent possible project staff adjusted figures to allow for such differences. Still, some understanding of the inevitability of differing budgeting practices would assist anyone in preparing for similar projects.

Some costs and revenues included in the analysis could not be collected but had to be projected in the time period allotted. These are actual expenses and revenues projected to occur during the adjudication and postadjudication period of three to five years. Projections were used based upon limited information available at the time of analysis. Both costs and revenues on a DUI case accrue over a period of several years, even after "final" disposition by the courts, a period well beyond that practical for our case monitoring. A useful follow-up project would be to fully track actual defendant costs and revenues received during the full probation period.

² California Government Code Sections 53150-58.

³ During the period of this study the maximum amount that could be collected per offense was \$1000. This limit was subsequently increased to \$1500.

In sum certain items not fully explored or verified in the analysis are items representing real costs or revenues to different degrees, and merit further study. In some instances these items were so removed from the adjudication process that the effort required to analyze them would have been out of proportion to the benefit of including them. In other cases it was just not feasible to incorporate the cost or revenue into the study.

Chapter 6

RECOMMENDATIONS

With a documented mean net cost supported by taxpayer dollars of \$631 per DUI offender, the obvious issue facing policy makers is a critical need to investigate ways of reducing that cost. How can we close, or at least narrow, the gap between case processing expense and defendant revenue? There are two approaches: to reduce expenses and/or to increase defendant revenues. Clearly there are steps which may be taken to narrow the gap. This chapter presents suggestions developed during the course of researching this project, including those gathered from persons who are a part of the current DUI system. Any or all of these could be implemented, with the cumulative effect being a reduction in public cost for adjudicating those offenses against the state's driving under the influence laws. This is especially important for local governments which face hard decisions about allocation of scarce revenues to support needed services.

Court Related Recommendations

1. Consider establishment of special courts or court days designated exclusively for DUI cases, staffed with District Attorneys empowered to settle cases. With a DA present and able to settle a case, especially at first arraignment, subsequent returns to court by the defendant and all adjunct court agencies would be eliminated.
2. Encourage active judicial intervention in promoting early settlement, to make clear the court's intent to keep costs down. Since total case cost increases with each additional appearance, eliminating excessive court appearances would result in savings both to the courts and to the adjunct agencies which support court operations. Accurate monitoring of excessive continuances, even with judicial assignments to other calendars, would empower court policies prohibiting unusually high numbers of continuances per case or per attorney. Other measures likely to reduce the number of continuances would include automated court calendaring and case management systems. These too should be evaluated for their cost savings potential. Judicial sanctions could be meted out for excessive continuances. Since a public cost of \$218 per court appearance was documented with this study, imposition of a fine in that amount under the existing authority of Penal Code Section 1050.5 should be considered by judges when excessive or unnecessary continuances take place. Funds so collected could be deposited into a special trust account established for the purpose of funding delay and cost reduction efforts by the courts.
3. Consider supporting initiatives aimed at reducing jury trial costs, adapting from the federal court system to include exclusive judicial voir dire and a reduction in the number of jurors on misdemeanor DUI cases. These measures would speed up trials and therefore lower trial costs. Cases in this study took about two and a half to three days for a complete trial, including jury selection. Judicial questioning

of prospective jurors reduces the time needed for jury selection, thereby lowering the duration and cost of the trial. Since judicial voir dire is already the federal court jury selection process, and is being considered for others reasons in the lower courts, cost savings should be added as yet another reason to support conversion to this system. A 50 percent reduction in the number of jurors for DUI misdemeanor trials would further shorten the length of time needed for jury selection and thus the cost of the trials. Selection of six jurors with alternates, rather than the twelve presently required, would speed up the trial and achieve time savings. Since DUI jury trials are nearly six times more costly than DUI cases without trials, any efforts to effect trial economies serve to make the entire DUI system less costly.

4. Consider a cost-benefit analysis to evaluate converting to vertical integration of DUI cases for the Public Defender, District Attorney, and the judiciary. The aim of such vertical handling of cases would be to cut back on the duplicative case preparation expense documented in this report. Case preparation costs were higher in some areas due to internal staff rotation and training, as different attorneys (both prosecution and defense) repeated the same steps in preparing cases continued from earlier dates. Having the same attorney handle the case from start to finish would eliminate that duplicate preparation. Also, additional court appearances increase case cost, so reducing the number of court appearances by allowing the same attorney on a case to establish a client relationship will assist in encouraging early settlement. In this analysis any savings possibly generated by conversion to vertical representation would have to be balanced against any costs created by that system.

5. One reason cited for trial delays was the wait for transcriptions from previous trials, so installation of computer assisted transcription (CAT) systems and facsimile (FAX) machines should speed up availability of those records. A generalized shortage of court reporters makes any record request subject to delay, so steps taken to alleviate those delays should improve the court's ability to enforce a minimum of continuances and thus keep the case processing costs down.

Law Enforcement Recommendations

6. Explore the possibility of lowering jail expense by lowering security for DUI inmates. Since jail expense represents about 17 percent of the mean case cost (about \$191), and since DUI defendants often do not represent security risks, the possibility of housing DUI defendants in a lower cost minimum security facility should be explored. Also, as jail overcrowding is an issue most jurisdictions are already facing, use of another, separate, low-cost facility exclusively for persons convicted of DUI may also help to release much needed high-security jail space for other offenders. Finally, construction or conversion of these lower cost, low security facilities could be undertaken with accommodations made for alcohol education and treatment for persons while incarcerated.

Collections Recommendations

7. Some courts have started using financial interviewers to obtain accurate financial information about defendants, both to determine their ability to pay court assessments and to set up installment accounts. Preliminary information indicates that the more complete defendant data obtained by the interviewers yields improved collection results. Further evaluation of the cost benefits of financial interviewers should be made, to verify that use of this technique offers improved defendant revenue.

8. Consider establishment of a uniform repayment schedule for those persons who pay their court fines, fees and assessments on the installment basis. Currently formal probation terms may be as short

as two years, but most often run from three to five years. Most installment accounts routinely divide the amount due by the number of months that formal probation has been assigned. In the past when defendants were sentenced to formal probation for a maximum of three years, the time allotted for repayment was set for the same time period. When the time available for formal probation was extended to five years, the repayment time was also extended. For a five-year probation term the monthly payment might be less than \$20, while a defendant assigned three years of probation pays the same amount during the three-year period, or about \$34 per month. Inflation also takes its percentage when payments stretch out over the longer, five-year period, so speeding up collections to a maximum of three years increases the value of the collections. A uniform repayment schedule would increase total cash collections since experience shows that over time people tend to drop off in the regularity of making payments. Therefore, any effort to collect more money quickly, up-front, will undoubtedly increase total collections. Fines also serve a punishment aspect in sentencing, and smaller amounts paid monthly lack the punishment effect of somewhat larger amounts. The deterrent aspect of fines will be better served by a uniform, three-year maximum payback period.

9. Explore ways to improve the collection of defendant amounts owed. Such improvements might include implementing a tax intercept program, where federal or state tax refunds owed by persons who have outstanding court debts would be withheld; transfer from Probation Officers to the collection agency the current collection tasks for persons assigned formal probation; and authorizing the collections agency to garnish wages and utilize other collection measures now available for civil measures. Alternatively, if not empowered with these additional collection tools, consider the costs and benefits of using a professional collection service for DUI cases. Professional collection agencies do not usually charge a set fee but rather retain a fixed percentage collected amounts. Government agencies might be better off netting some amount from delinquent defendants who owe on their DUI installment accounts, even after the collection agency has retained its percentage fee. An independent agency whose sole income is derived from a percentage of what it collects is well motivated to ensure collection of outstanding court debts. An analysis of the costs and benefits of contracting for this service could be explored.

10. Investigate authorizing county sheriffs to serve DUI warrants, and if determined cost effective, support legislation granting that authority. Most local police agencies do not have the staff available to serve misdemeanor warrants, and usually DUI warrants issued by the courts are only served incidental to some other routine police matter, such as a traffic stop. There is the occasional local city police department which has the resources available to serve all warrants, but that is more the exception than the rule. A primary reason for low defendant collections is the inability of local city police to serve bench warrants issued by the court for failure to pay court assessments. City police, who currently are charged with most warrant service responsibility, have no special incentive to devote scarce city staff resources to this task because most revenue, after the first few monthly payments, is due to the county and state, not to the cities which incur expense in warrant service. The present warrant service process is based on misplaced incentives. As an alternative to the current confused incentive system it would be worthwhile to evaluate the cost-benefits of a special county sheriff position charged with DUI warrant service. Savings could be generated both from the defendant revenue that could be gained from this action as well as avoidance of the cost of additional DUI charges against repeat offenders.

General System Improvements

11. Improvements are sorely needed in the information interface between existing court data systems and the Central Collections agency. Defendant revenue collections would be enhanced with improved accuracy, reliability and speed with information systems shared between the courts, the collections agency

and the criminal justice database. At present the separate systems are incompatible and information cannot be shared among them. When other counties establish court and collection systems care should be taken to assure compatibility between the systems. Enhancement and interface among existing information systems should be evaluated for revenue generating potential.

12. With the documented imbalance between costs incurred and defendant revenue received, consider opening discussions leading to renegotiation of the percentage split of the fine amount between cities, counties and the state. In some cases it now makes little sense for government agencies to expend funds to collect defendant amounts owed, when the bulk of the funds successfully collected will go elsewhere. Distribution of defendant revenue now collected nearly serves as a disincentive to collect, for the cash neither goes to the agency collecting, nor the county government which has incurred the bulk of the expense for adjudicating that DUI offender.

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APPENDICES

METHODOLOGICAL APPENDIX

Support for the Project

This Appendix is presented to provide sufficient detail for anyone undertaking a cost analysis of this type. It is intended to offer advice gained by our experience in conducting this study.

One critical step in the process was to gain the active support and participation of the management as well as line members of each agency which handled any segment of a DUI case. Countless meetings were held, telephone calls made, letters written, all to assure continued access to records and continued completion of the data sheets by DA and PD staff. This proved to be an on-going, time-consuming task, more so than was initially estimated. This was especially critical for the attorneys in the DA and PD offices, who were so central to the study's data collection process. Do not underestimate the effort required to maintain the continued support of staff who have their own jobs to do, and whose agency is not conducting this analysis.

To further reinforce the reasons and procedures for the project, a training video was produced and shown to both DA and PD personnel. The video was designed to introduce the study, demonstrate managerial support and to encourage staff participation. The time sheet was displayed, and the method of completing it was described. The form was clearly referred to as the "data collection sheet," rather than the "time sheet," to emphasize that this was not an efficiency study. (See description of this sheet later in this Appendix.)

Periodically throughout the project consultations were held with judicial members of the Judicial Coordinating Committee's (JCC) Subcommittee on Substance Abuse. The JCC includes judicial and administrative representatives from the county's six court districts. It coordinates policy-making among the courts, and monitors impending changes which might affect court operations. In 1987, with increasingly frequent changes in the state's DUI laws, a permanent DUI Subcommittee was formed. Subsequently the scope of this Subcommittee was broadened to include all substance abuse issues confronting the courts, and the name changed to the Subcommittee on Substance Abuse to reflect this new scope.

This Subcommittee became the expert steering committee for this analysis, and ongoing consultations with its judicial members helped focus the project, kept the membership informed as to the project's progress, and broadened support and participation in the study.

Court Sample Tracking

All police reports on DUI arrests coming into the two DA offices starting September, 1988 were included in this analysis. The sample is described in Table A-1. Each police report received had a data sheet attached, regardless of whether charges were filed or not. On this form the DA would indicate the time required to review the report (and chemical test results, if available), and decide if and what to charge. Data sheets were affixed to all reports received from local police departments and from the California Highway Patrol.

As protection against defendant identification, project case numbers were assigned to the sample cases, to be used in lieu of docket numbers or defendant names. These project case numbers were used in all subsequent analyses by the project staff. Furthermore, agency staff who expressed concerns about defendant confidentiality were reassured by the implementation of a project case number system, and this may have helped contribute to their support.

Form Design

The originally designed form was tested during a pretest in August, 1988. Some modifications were suggested during the pretest, including layout revisions, clarifications in some of the category definitions, and a suggestion to color code the form. This would make it stand out among the papers in the file folders taken into court by the attorneys.

A bright purple legal size paper was selected for use as the data collection form for both prosecution and defense, to make the form noticeable in the large number of papers typically included in a case folder. That objective was clearly accomplished. Additionally, when the case files were originally assembled by the DA and PD clerical staff, a purple sticker of the same color as the data sheet was affixed to the outside of the file, to flag the cases being tracked. The forms that were used by both offices follow.

Court Out-of-Courtroom Documentation

A way of determining the cost of judicial time spent off the bench on DUI case-related work also needed to be developed. For this purpose a one-time questionnaire was distributed to identify this time. The questionnaire was intended to quantify time judges routinely spend for work outside of the courtroom related to their DUI adjudication responsibilities, such as reading case law, in conferences with counsel, attending training or engaged in public speaking.

The questionnaire was developed and distributed to all bench officers who hear DUI cases countywide, not just those at the study sites. The wide distribution was intended to assure a response rate from which we could generalize. Even so, out of fourteen questionnaires distributed, only four were returned. The questionnaire is attached.

Judicial time thus reported was converted to cost in the same manner as was accomplished for all other participating agencies; that is, by determining the average judge's salary, with percentages added to reflect benefits, court indirect and county indirect costs, arriving at a total judicial cost per minute. This cost per minute was multiplied by the average amount of time reported spent off the bench, and the total was divided by the average caseload in each court to yield an average cost per case. The standard per-court judicial cost factor developed through this process was added to each sampled case total cost.

Table A-1

DESCRIPTION OF SAMPLE IN TWO COURT LOCATIONS						
Description	Total Sample		Oakland % for that court		Pleasanton % for that court	
Sample Size	152	(100%)	88	(100%)	64	(100%)
Charged as felony	2	(1.3%)	2	(2.3%)	0	(0%)
Cases with add'l charges	57	(37.5%)	24	(27%)	33	(0%)
Cases with jury trial	6	(4%)	3	(3.4%)	3	(52%)
Cases pro per	58	(38.2%)	39	(44%)	19	(4.7%)
Cases with private attorney	41	(27%)	20	(23%)	21	(30%)
Cases with Public Defender	45	(29.6%)	26	(30%)	19	(33%)
Cases using Interpreter	15	(9.9%)	12	(14%)	3	(5%)
Cases with no chemical test	30	(19.7%)	21	(41%)	9	(14%)
Accidents	35	(23%)	22	(25%)	13	(20%)
Number of cases concluded	137	(90%)	78	(89%)	59	(91%)
Cases with FTA	68	(44.7%)	29	(33%)	39	(61%)
Average BAC			.177		.165	

In addition to judicial time, a precise method for identifying behind-the-scenes court clerk costs was also developed. As a first step in this portion of the analysis all court personnel who handle DUI actions were identified. Their salary was then multiplied by the actual percentage of their total work time devoted to DUI matters, to which the standard benefit rate was then added. This calculation resulted in an employee total cost.

At the same time as this calculation was being made, the fractions of each employee's total DUI related worktime were also tallied, to determine the full-time equivalent (FTE) for that court. This FTE amount was taken as a percentage of total court personnel. Once that FTE percentage was known, it was applied to the total court budget (service and supply items, plus fixed assets) and then added to the previously determined employee cost, to arrive at an aggregate court cost total exclusively for DUI work.

Finally, once the total court cost was known, it was divided by the total annual filings for all DUI cases, to come to a cost per case figure.¹

¹ Monthly figures are submitted by each court to the Judicial Council, showing total case filings according to certain categories. For this analysis a percentage of annual "Group C" filings was taken to represent all DUI cases charged in that court.

**Data Collection
Form Samples**

JUDICIAL QUESTIONNAIRE

DUI COST ANALYSIS PROJECT

We recognize that time spent on the bench processing DUI cases represents only a portion of judicial time required for these cases. Please estimate your time, in minutes, spent on any of the following DUI-related activities in a typical month.

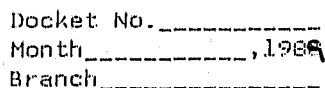
(We will be averaging the responses received, then dividing this time by the overall DUI caseload in your judicial district. I believe this will give us a cost reflecting judicial expense per case to be added to the previously documented in-court time.)

(Time in minutes per month)

Minutes/month:

- _____ Case law review or updating, law & motion research
- _____ Conference, workshop attendance, Substance Abuse Subcommittee meetings, professional development, and other
- _____ Conferences in chambers with counsel
- _____ Reading (other than cases and statutes)
- _____ Discussion with other judges
- _____ Review of currently pending cases
- _____ Community education or other community speaking engagements
- _____ Other _____

Please return to Joan Harris at QIC 21408 by November 17, 1989.



DUI COST STUDY

[illegible]

INSTRUCTIONS: Please indicate above the amount of time spent on any aspect of this DUI case by entering 3 items per line: the date, time code and job class as shown on your pay stub (eg. DDA or Steno II) for the person performing this function. An entry should be made for ANY work performed on this case. This form will be removed from the case folder at month-end. Thank you for your participation.

A = 1-10 minutes	D = 31-45 minutes	G = 91 minutes - 2 hours
B = 11-20 minutes	E = 46-60 minutes	H = 2 hours 1 minute - 4 hours
C = 21-30 minutes	F = 61-90 minutes	I = 4 hours 1 minute - 8 hours

Clerical includes steno and clerk time on this case.

**List of Additional
Charges on Cases**

LIST OF ADDITIONAL CHARGES ORIGINALLY FILED ON CASES IN SAMPLE

California Vehicle Code:

- 12500 - no driver license
- 12951 - no driver license in possession
- 14601 - driving on a suspended license
- 16028 - no proof of insurance
- 20002 - hit and run
- 23103 - reckless driving
- 23157 - refusal of chemical test
- 23206 - probation violation from prior DUI conviction

California Health and Safety Code:

- 11350 - possession of an illegal substance
- 11377 - possession of an illegal substance

California Penal Code:

- 148 - resisting an officer
- 1320 - failure to appear in court