

DELAWARE
DRIVING UNDER THE INFLUENCE LEGISLATION

Procedures and Problems
of Implementation

Phase I Report

by

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ABSTRACT

On July 11, 1978 a bill to reform driving under the influence legislation was signed by Governor duPont. The primary authors of the bill were members of a committee first called together by the Delaware Criminal Justice Planning Commission (DCJPC) in September, 1977. Representatives from DCJPC, the Motor Vehicle Bureau, State Police, Police Chiefs' Council, Highway Safety, Bureau of Substance Abuse, Division of Highways, Delaware Safety Council, Magistrate Courts, Attorney General's Office, and Representative Ruth Ann Minner participated.

The legislation was designed to encourage DUI offenders to get treatment rather than just paying a fine and/or going to prison. It was hoped that this would make strides toward increased highway safety, decreased recidivism, and less crowding in the prisons. Other states, notably New Jersey and Massachusetts, had reported success with such a focus.

The nucleus of the bill is its administrative alternative to the court process for first offenders. Whereas under prior legislation a first offender went through the court process and was subject to a fine and/or imprisonment, the person now has the option of choosing a trial waiver and going into a treatment program instead. In order to encourage participation in the treatment programs several incentives are offered. After 8 hours of program, payment of course fee and 30 days license revocation, the person may apply for a conditional license. After successful

completion of the program and 6 months revocation, the person may apply for full license reinstatement. This is in contrast to 1 year license revocation normally. In addition, if the person chooses trial waiver but does not successfully complete the course he or she is brought to court on criminal charges and is subject to a total of 18 months of license revocation.

In addition, the bill removes the prior mandatory sentence for a subsequent offense by giving the judge the discretionary power to send the person to a residential treatment program in lieu of incarceration.

There were many implementation problems compounded by the fact that the bill became effective the day it was signed. There was no provision for an official implementation period whereby procedures could be worked out. Consequently there was a great deal of confusion. Copies of the bill did not reach courts until 2 or 3 weeks after it was signed. It was not until early September that implementation began to proceed more or less smoothly.

While implementation problems are for the most part solved, as of this writing there are both some minor and major things that still need to be worked out. The flow of information from one component to another is not yet totally satisfactory and the process by which individuals are assigned to one treatment program rather than another needs improvement. Those things will be relatively easy to do. However, there were also major concerns

expressed about, for example, the difficulty of keeping track of out-of-state offenders who choose the waiver option.

In addition, and perhaps most serious, is the fact that in the course of interviews it was clear that there is much overt and some covert dissatisfaction with the legislation from all components except the treatment programs. The primary dissatisfactions have to do with the cumbersome administration, the lack of clarity between the judicial and administrative functions, and the lack of strength of the legislation as a whole.

On the positive side, less people have been detained or sentenced on DUI charges since the law went into effect than a comparable period in 1977. However, other factors were at work during this period and it cannot be stated that the law was the cause of the decrease. Further analysis will take place during Phase II of this evaluation.

This evaluation represents a Phase I overview - descriptive in nature. Phase II will be analytical, focusing on any apparent changes as a result of the new legislation.

As stipulated in the legislation itself, the Secretary of the Department of Public Safety will provide a comprehensive report on the results of the implementation of the provisions of the bill in January, 1982, for review by the legislature. It is strongly recommended that steps be taken, under the auspices of the Delaware Criminal Justice Planning Commission, to form a committee with the working staff of all components involved, to provide a forum for exchange of information and discussion of problems.

The success of this legislation, or the successful rewriting of it, should that be necessary, will be dependent upon collective input.

INTRODUCTION

This evaluation represents a Phase I follow-up on the change in legislation pertaining to the charge of Driving Under the Influence (DUI). Driving under the influence is defined as having a blood alcohol content of one-tenth of one percent or more by weight, within four hours of arrest. The new legislation went into effect on July 11, 1978, as part of the Corrections Master Plan. Since DCJPC was charged by the Governor to evaluate the elements of the Master Plan, this report was undertaken as a Phase I report.

The focus of Phase I is upon description of the implementation process, of problems communicated by those interviewed, and of data gathered. Phase II will be analytical in focus, emphasizing data analysis to ascertain what effects the new legislation has had.

In the summer of 1977 the Delaware Criminal Justice Planning Commission (DCJPC) did a research paper on persons incarcerated for DUI in Delaware's correctional institutions, and on the DUI problem in general. The report showed that recidivism was less when persons had been through treatment than when sentenced to prison. Other states (New Jersey and Massachusetts) had documented the same thing. At the time Delaware faced severe overcrowding in its prisons and was under pressure to reduce the prison population of DCC.

At the initiative of DCJPC, a meeting was called of people who had an interest in the DUI problem (MV Bureau, Police, Courts, Treatment programs) to discuss the issues dealt with in the research. Out of that first meeting grew a Committee which came to be called the "4177 Committee". It was this committee which drafted the legislation that ultimately became law.

The committee met between September 1977 and January 1978. In February 1978 the bill was introduced to the legislature by Rep. Ruth Ann Minner (a committee member).

The intent of the legislation was to deal with a number of concerns, among them highway safety, rehabilitation of drivers, crowding in prisons and court congestion. The old legislation did not require any instruction or rehabilitation for drivers whereas the new legislation was written so as to encourage first offenders to undergo treatment (through incentives). In addition, under the old legislation 2nd offenders had a mandatory prison sentence. That sentence was very infrequently imposed, however, the sentences rather being suspended, or charges reduced. The new legislation removes the mandatory clause by providing the possibility of residential treatment, at the discretion of the judge. An overview is as follows:

1st offenders

OLD

- 1) fine of \$200-\$1,000 and/or 60 days to 6 months imprisonment
- 2) revocation of license for 1 year
- 3) possibility of license reinstatement after 6 months if successfully completed a rehabilitation course and paid the fee for that course

NEW

- 1) offender choice between two options -
 - a) fine of \$200-\$1,000 and/or 60 days to 6 months in prison, revocation of license for 18 months and (3) from above.
 - b) waiver of trial (and thus court process) and enrollment in a treatment program.
- 2) If b) is chosen and the course fee (not to exceed

the minimum fine) is paid and 8 hours have been successfully completed an application may be made for a conditional license after 30 days. If the course is successfully completed, and 6 months have elapsed, an application for reinstatement of license may be made.

- 3) If b) is chosen and the course is not successfully completed the person goes back to court for criminal processing and the license may be revoked for a total of 18 months from revocation.

Subsequent offenders (within five years)

OLD 1. fine of \$500 - \$2,000 and imprisonment from 60 days to 18 months

2. revocation of license for 1 year

NEW 1. fine of \$500 - \$2,000 and imprisonment from 60 days to 18 months - no suspended sentence possible; or

2. At the discretion of the judge, confinement for treatment up to 15 months, the fee for which may not exceed the minimum fine

While the legislation affects both 1st and subsequent offenders, the emphasis has been upon first offenders thus far.

The provisions of this new legislation expire on July 1, 1982. Prior to that date the Secretary of the Department of Public Safety will present to the legislature a comprehensive report on the results of the implementation of the provisions.

There have been many objections and problems raised since the legislation went into effect. The most frequently heard objection is that the legislation is not strong enough. The objections and problems, as well as the implementation procedure, are discussed in the body of the evaluation.

It is hoped that this Phase I evaluation will inspire open discussion by all departments and offices concerned, and that out of those discussions will come legislation that both improves highway safety and is workable for those who are responsible for implementation.

METHOD

The information contained in this evaluation was obtained through a review of the literature at DCJPC, interviews conducted in December 1978, and data provided by the Department of Corrections, the Revocation Section of the Motor Vehicle Bureau, Delaware State Police Traffic Section, the Delaware Safety Council and the Problem Drinking Driver Program. Personal interviews were held with: Tom Nagle, Administrative Office of the Courts; Marie Monaghan, and Hazel Plant, NCC Magistrate Court Presentence investigator and evaluator; John Russo, Delaware Safety Council; Joe Allmond, Problem Drinking Driver Program; Connie Morgan, Revocation Section, MV Bureau; Martin Johnson, Police Satellite Planner DCJPC; NCC Chief Magistrate Morris Levenberg, Magistrate Court; Carole Kirshner, Administrator, Court of Common Pleas; Ed Carter, Public Defender's Office; Charles Lee, Clerk, Municipal Court; and Sgt. Nelson Mesick, Smyrna Police Department. Telephone interviews were held with: Jana Mollanhan, Sussex County presentence investigator, Magistrate Court; Monica Rash, Kent County presentence investigator; Ms. Nelson, Clerk, Newark Aldermans Court; Stanley Lowicki, City Prosecutor, Newark; Lt. Townsend, Newark Police Department; Patrolman Al Beatson, Wilmington Police; Sgt. Ron Perry, NCC Police; Captain Ron Allen, Delaware State Police, Captain Clyde Leonard, Delaware State Police; Bob Voshell, Motor Vehicle Bureau; Jack Downey, Motor Vehicle Bureau; Raymond Pusey, Division of Highways; Rep. Ruth Ann Minner; Pat Ryan, Classification, Department of Correction; Don Davis, Deputy Superintendent for Treatment, DCC and Keith Trostle, Attorney General's Office.

FINDINGS

Three broad issues regarding the bill were addressed in the interviews: the mechanics of, and any problems with, its implementation; available descriptive data; and observations or feelings about how the new legislation is operating now, as well as its long term prognosis.

I. Mechanics of Implementation:

The period of transition between the signing of the bill and the implementation start up for the Motor Vehicle Bureau and the courts was approximately a month and a half. This was due to a number of factors including the normal and expected confusion at the start of a new process, the fact that the courts didn't receive copies of the bill immediately, necessary forms from the Motor Vehicle Bureau had to be sent out, and a good bit of confusion over interpretation of the bill itself. Many of the initial implementation problems have now been resolved. An outline of the implementation process, as relayed by persons interviewed, is given below, followed by a list of some of the problems still remaining.

A. The implementation process

POLICE: The arrest procedure is the same as it was before the new legislation. The police test for blood alcohol content at the time of arrest (OMICRON reading), fill out arrest and medical forms, and take the person to court. This is all quite time-consuming and one department estimated that it takes approximately 45 min. to take the reading and fill out the forms. But the only new task

for the police resulting from the changed legislation is, upon notification from the Motor Vehicle Bureau, to bring back to court the people who have not complied with the requirements of the treatment programs.

COURTS: DUI cases enter through the Magistrate, Common Pleas, Municipal and Alderman's courts. In all the courts it is the judges who explain the options under the new legislation to the offenders.

In the Magistrate Courts it is suggested that the offender might want to ask the advice of a lawyer. The person is given three days to think over the options and then return to court for arraignment. All persons appearing before the magistrate judges are considered to be first offenders. If the offender opts for the waiver/treatment program, the judge fills out form #484 provided by the Motor Vehicle Bureau (Exhibit A) and sends one copy to MV and one to the JP pre-sentence investigator. The offender is instructed to contact the pre-sentence investigator, whose phone number and address is provided at that time, for an interview within 72 hours. Anyone not appearing for the interview is reported to MV by the pre-sentence investigator (though usually not until one or two weeks have elapsed). It is the pre-sentence investigation which determines if the person is, in fact, a first offender. If the criminal history check shows a prior offense within five years, the person must return to court for trial.

(Exhibit B). According to the J P pre-sentence investigators, only 2 or 3 second offenders have slipped through in each county. First offenders are assessed at the pre-sentence investigation office for assignment to a treatment program. Two measures are used: the Omicron reading and the score on the Mortimer-Filkins test (given by a trained evaluator). In Kent and Sussex Counties the pre-sentence investigator is trained to do the test; in New Castle County there is an investigator and an evaluator, both employed by the court. The assessment determines whether the person participates in the Delaware Safety Council (DSC) course (for social drinkers) or the Problem Drinking Driver Program (PDDP) under the Bureau of Substance Abuse (for problem drinkers). The pre-sentence investigator then sends an evaluation form on each person to the appropriate program. The offender is instructed to report to the program and is provided with the address and phone number.

In Municipal Court the determination of first offense is made at the court through the computer and MC files if the arresting officer has not already made it. The offender must decide immediately on the option desired. All persons opting for waiver/treatment are continued for six months and referred to the DSC program. Municipal Court does not have any staff equipped to do an assessment. Second offenders go through the court but are not necessarily excluded from being sent to the DSC program so long as the State does not offer an objection. All offenders sent to DSC sign a revised version of MV form #484 which includes an acknowledgement of the

conditions of the option chosen (Exhibit C). A copy is given to the offender, a copy kept at Municipal Court and a copy sent to MV. In addition, Municipal Court sends a verification form to the program (Exhibit D) and after 6 months does a control on each person to see if the course has been completed. If a person enrolls but does not attend, the program sends a form to the court and the person is subpoenaed.

Common Pleas Courts require the person to make an immediate decision, but a public defender tries to see the person before arraignment to make an assessment of whatever records are available. A criminal history check is run (by court presentence investigator in NCC and by corrections presentence investigator in Kent and Sussex counties) and the Omicron reading reviewed. The public defender discusses the situation with the offender. If a first offender decides to take the waiver option at arraignment, the case is continued for one month to give the person time to enroll in the program. He or she is provided with the phone number. All persons are referred to DSC unless the public defender suspects a serious problem. In such cases the person is referred to either the Wilmington Criminal Justice Service Center or PDDP for a more thorough evaluation (Exhibit E). MV form #484 is sent to the MV Bureau after the 1 month continuance. Common Pleas Courts eventually issue a capias if someone fails to enroll in or attend classes at the program. All second offenders are screened by the Criminal Justice Service Center or PDDP.

In Newark, a person is charged under the Newark City Ordinance. Until November 6, 1978, the city ordinance had not been changed to fully correspond to the state code and a first offense was a first conviction. As of November 6, the waiver is an option under the city ordinance. The Aldermans Court requires the offender to make a decision at arraignment if a determination of first offense has been made. Since the court is not equipped to do evaluations, everyone choosing the waiver is read the conditions of that option and sent to DSC.

Originally the law was written to allow judges to take a person's license at arraignment, regardless of the option chosen. (Exhibit F). Since a first offense waiver does not result in a conviction, however, judges did not feel they had the authority to take licenses in those cases. Thus, on August 29, 1978 the Secretary of Public Safety changed the procedure so that the judge takes the license only for convictions (Exhibit G), including for out-of-state offenders.

None of the courts reported any problems with congestion or backlog due to the new legislation.

All persons choosing the waiver option pay a \$5 court fee and according to court stipulation, are to report to the pre-sentence investigator (JP) or the program within 72 hours.

It should be mentioned that there are plans for central arraignment in NCC - before completion of the new multi-purpose facility. This would facilitate DUI processing greatly.

MOTOR VEHICLE BUREAU: Upon receipt of form #484 and a ticket from the court, the MV Revocation section writes the offender

requesting that he or she send in the license. Between September and December, 1978, MV was two to three weeks behind in sending the revocation letters. This was due to the fact that waivers had been held at the courts between July 11 and September 1 (while implementation procedures were worked out) and were all sent in beginning in September. MV is now caught up. Upon receipt of a notice from a pre-sentence investigator, from DSC, or from PDDP that a person has not shown up, enrolled or attended, MV first checks to see if the license is revoked. Then it is verified that the person is not enrolled in either course. If that is the case, a letter is sent to the State Police for non-compliance. The State Police will then contact the arresting agency.

Upon receipt of a person's enrollment notice and later completion of eight course hours, the offender can apply for a conditional license so long as 30 days have elapsed since receipt of license by MV. When MV gets notification of completion of the course, the person can apply for reinstatement of his or her license as long as six months have elapsed since receipt of license by MV.

TREATMENT PROGRAMS: The two programs utilized primarily for first offenders are run by the Delaware Safety Council (DSC) and the Bureau of Substance Abuse (Problem Drinking Driver Program: PDDP). The DSC Program has been officially approved by the Secretary of Public Safety, the PDDP Program has not - but apparently will be.¹

¹PDDP and residential treatment programs (Fortnight and Carp) were approved by the Secretary of Public Safety effective 1/2/79.

a conditional license. In NCC there are 5 classes running simultaneously. Intake interviews are done at the main office but classes are held at the Hudson Center in Newark and William Penn High. There are 2 counselors (who do both intake and teaching). In Kent County there is one class. Intake is done at the Dover Satellite Office of DSC, class is held at the Highway Administration Building in Dover. Kent County has one counselor/teacher. Sussex County has one class. Intake is done at the Georgetown Satellite Office of DSC, class is held at Delaware Technical and Community College in Georgetown. Sussex County has two counselor/teachers.

Since the signing of the new legislation DSC enrollment has gone up. Prior to the bill DSC got a list of DUI offenders from the courts or MV and wrote to each person encouraging participation in the classes. It would take several months to fill a class. Now, with direct referral from the courts, it takes approximately a month to fill a class.

If an out-of-state offender wants to take a course in his or her home state instead of coming to Delaware, DSC must approve it first.

Anyone assigned to DSC who should be at PDDP is sent back to the court.

PDDP: Course is 72 treatment hours (approximately 6 months). One hour per week is individual counseling, usually during the day, and two hours/week is spent in group counseling, usually at night. Adjustments are made to each individual, however. Enrollment is continuous. The program began 5 years ago under a grant from the National Institute of Alcohol Abuse and Alcoholism. So far there has been no charge for the course, though under the new legislation they can charge up to the minimum fine (\$200). A sliding fee scale is being developed so that no one will be refused for inability to pay. This will go into effect around January 1, 1979. The primary way people enter the program now (about 90%) is through the courts, though an increasing number are being referred directly from attorneys and thus are already in the program before arraignment.

Each county has a PDDP administrative office (In NCC-Delaware State Hospital, Kent - Dover, Sussex - Georgetown). All groups meet in state service centers, at about 6 locales in each county. Sessions are arranged so as not to interfere with employment and people can stay for more than 72 hours if they so desire. In Sussex County, where AA is not very active, people tend to stay.

Federal funds for PDDP will run out in one year and thus the 10 1/2 federally funded staff positions will be in jeopardy. However, 3 1/2 other positions are currently state funded and the state has approved funding for 6 new positions.

Both the DSC and PDDP programs are provided with a form from the MV Bureau (Exhibit H) which they are requested to send to MV when a person enrolls, again when 8 course hours are completed, and finally when the whole program has been completed. Anyone who does not show up for enrollment or for classes is reported to MV.

DSC has designed an informational pamphlet to be given to DUI offenders at the time of their arrest so that they have an understanding of the options prior to arraignment (Exhibit I).

B. Problems of Implementation

Through numerous meetings, memos and phone calls, and the cooperation of everyone concerned, many of the early problems have been solved. Everyone interviewed said decidedly that the initial confusion of implementation is behind them. Of the current problems mentioned and observed many, though not all, can probably be resolved through simple procedural changes.

1. Apparently MV form #484 is not always filled out completely by the judges. Sometimes only the name of the offender is filled in. JP pre-sentence investigators need the additional information to do their investigation and evaluation.
2. Access to Omicron reading. This was a problem only for the NCC JP evaluator. (Kent and Sussex pre-sentence investigators have established procedures whereby they get the arrest slips). On occasion the offender does not know his or her reading. Neither the reading nor the arresting agency is noted on form 484, and the office does not always receive a copy of the arrest slip. Thus, in order to get the reading the evaluator has to find out the arresting agency in a more circuitous manner than should be necessary.
3. It is somewhat unclear in NCC who has the responsibility of informing the pre-sentence investigator of a person's enrollment in, and completion of, a course. That information is needed to close court records.
4. Return of MV verification form to MV. The procedure was set up for the form to be sent to MV by the treatment program when the person actually began enrollment. Since at DSC there is sometimes a 2-3 week lag before the person can start classes (courses do not have open enrollment) the MV form may not get to MV for several weeks.

This means MV has no knowledge of the status of that person for a long period of time.

5. Residential rehabilitation programs for second offenders have not been approved by the Secretary of the Department of Public Safety as required by the bill (4177D). The bill removes the mandatory sentence clause for second offenders by providing an option to the court to send the person to such a program (4177e). The Court of Common Pleas expressed particular concern about this. They have been sending people both the CARP and FORTNIGHT but cannot be certain that this will be acceptable. According to the MV Bureau criteria for approval are in the process of being developed at this time.²
6. The PDDP program has not been officially approved by the Secretary of the Department of Public Safety.³
7. There is no formal mechanism for directly transferring a person from one program to another if he or she wasn't sent to the most appropriate one initially. As of now the person is sent back to court. At Municipal Court the policy is to send the person through the court proceedings. (There has been one case like this at MC).
8. There is not yet enough uniformity in the evaluation/assessment criteria to insure that persons are assigned to the appropriate program. While problems haven't been numerous, both treatment programs expressed the importance of evaluation. Generally the error that is made is defining a problem drinker as a social drinker, according to PDDP. As noted

²PDDP and residential treatment programs (Fortnight and Carp) were approved by the Secretary of Public Safety effective 1/2/79.

³Ibid.

in the previous section, Municipal Court and the Newark Aldermans Court do not do any evaluation and the Court of Common Pleas screening process does not include a full evaluation on all offenders.

9. Enforcement when waiver option is chosen by out-of-state offenders. Normally out-of-state persons, merely passing through the state select the court process and pay a fine. However, persons living in a nearby state may be more likely to choose the trial waiver. Their Delaware driving privileges are revoked but their licenses cannot be taken. There is a problem in finding equivalent programs in other states and in keeping track of the person if he or she does enter one. MV must depend upon the program in that state to send in the documentation. If documentation isn't sent the burden would be on the individual to prove course completion if ever picked up in Delaware again. So far, each case had been treated individually. This was an area of concern expressed by the Magistrate and Common Pleas courts and by MV.
10. There is no sensible way to enforce the court 72 hour requirement for reporting to either the pre-sentence investigator or the program. According to Municipal Court it usually takes 2-3 weeks to get DSC acknowledgement back. It would be virtually impossible to keep track of when each person's 72 hours was up and then call the programs for verification. The JP pre-sentence investigators usually report a failure to appear to MV after 2-3 weeks.
11. If the first offense is not a conviction under the waiver option how can the second offense be a second conviction? Though this problem has not yet been an issue in the courts, it was discussed by all the courts, by MV, and the police interviewed, as perhaps the biggest problem with the legislation.

According to 4177B(d) in the legislation, however, this is provided for. The only question might be the use of the word "offense" rather than "conviction". However, "offense" is used throughout the bill. In addition, according to the Attorney General's office, each person should be told at arraignment that (a) even though there is no official conviction record, a notation is made on the driving record by the MV Bureau that the person waived trial and was a first offender and (b) that if he or she is picked up a second time within 5 years the first offense shall count as a conviction and the person will be tried as a second offender.

II. Descriptive Data:

It is certainly too early to make analytical statements about the effects of the legislation but some descriptive data is available: arrests, number of court waivers, detentions and sentences for DUI. Of course this data must be followed for some time even before any definitive descriptive statements can be made.

SEPTEMBER ARRESTS FOR DUI by county, sex and year

	Male		Female		Total	
	1977	1978	1977	1978	1977	1978
September						
NC	113	67	8	8	121	75
Kent	37	8	5	1	42	9
Sussex	31	24	4	2	35	26

Source: Delaware State Police, Traffic Section

Arrest data will be followed by month for at least the next year and be compared to the year prior to implementation of the new legislation. Since September was essentially the start-up month for the legislation those figures are presented above. The data for October and November was not yet compiled by the Traffic Section at the time of this writing. There is a very noticeable drop in the number of arrests in both NC and Kent Counties from 1977 to 1978. In NCC the drop is accounted for solely by arrests of males. Obviously the drop cannot now be explained by program

success. Should a trend be visible in the next months it would be necessary to explore alternative explanations, perhaps by also checking 1976 and by talking in more depth to the police.

According to the Motor Vehicle Revocation Section, as of December 6, 1978 there had been:

361 trial waivers

357 revocations (of the 361)

133 enrolled in treatment programs

47 who had completed classes

31 who had obtained conditional licenses

} it is assumed - although not certain - that the remainder are waiting for openings in classes.

Apparently 16 persons either decided not to drive or decided to drive without a conditional license. The revocation section said that as far as they know no one who had applied for a conditional license had been denied.

Between September 1 and November 30, 1978 there were 100 court processed DUI's. Of those, 93 were processed under 4177(d) (fine and imprisonment) and 7 under 4177(e) (rehabilitation program). The data supplied by the revocation section did not indicate how many of those were first and how many second (or over) offenses. An additional 63 cases were reduced according to MV data (61 reduced to 4175 - reckless driving - and 2 reduced to another charge) during that same time period.

In the preliminary report done by the Delaware Criminal Justice Planning Commission (which in part led to the formation of the 4177 Committee) a good deal of concern was expressed about persons arrested for DUI being sentenced and taking up much needed

bed space at DCC. Looking at both detentions and sentences for the year prior to the enactment of the legislation, and through October for the year post enactment, a few observations can be made (Exhibit J).

The arrest rate for DUI is fairly stable at around 1,200 - 1,300 per year (1975: 1,324; 1976: 1,227; 1977: 1,242 Source: UCR Reports). Between July 11, 1977 and July 11, 1978 a total of 85 persons were sentenced for DUI. Assuming that the 1978 arrest rate between January 1 and July 11 was not unusual, approximately 7 percent of persons arrested would be sentenced. However, the sentenced figures don't reflect actual time spent in prison.

All persons admitted through the male institutions (WCI is excluded from this procedure) are screened by the Deputy Superintendent for Treatment at DCC, for furlough or the Plummer Center, as soon as the name appears on the 100 form. According to the Deputy Superintendent, as of early November, 1978, for those with a 30 day sentence or less, furlough or release to the Plummer Center, if recommended, can be granted directly by the warden. Usually this takes place within 24 hours. For those with a sentence over 30 days, a furlough or Plummer Center recommendation, if made, would take anywhere from one to two weeks to process (according to the Deputy Superintendent and the Classification Officer). Prior to November, 1978, those with a 30 day or less sentence went through the same procedure as those with a sentence over 30 days. Since most DUI sentences are 60 days or over (all but eight of the men and both women sentenced from July 11, 1977-July 11, 1978, and 4 of 5 men sentenced from July 12, 1978 through October 31, 1978 Exhibit K), many people sentenced for DUI are, in all likelihood, spending one to two weeks incarcerated. Only those who have received a sentence to be served only on weekends would be excluded. Ten males and no females sentenced between July 11, 1977

and July 11, 1978 are noted on the 101's as having received such sentences. According to the Deputy Superintendent these people are not reviewed for furlough. They report to the institution at the required time. If the institution is too crowded they are credited with reporting and sent home. If it isn't too crowded, they serve the time.

It would also make sense to look at the Detentions. Those people spend time in prison, though usually only 1 or 2 days. Again, assuming that the arrests for Jan-July 11, 1978 are not unusual, it could be expected that some 15% of persons arrested would be detained for some period of time in a correctional institution (total July 11, 1977 - July 11, 1978: 194). Usually this means that the person was not sober enough for arraignment or could not post bail. These people represent a constant use of correctional bed space.

Comparing July 11 through October 31, 1977, with the same period in 1978 the number of persons sentenced prior to enactment was significantly higher (27) than the number sentenced in 1978 (5). The number of persons detained also dropped (from 74 in 1977 to 51 in 1978). The drop in this case is accounted for by only two of the four months (July 11-30 and September).

Again, nothing definitive can be said, but the data should be watched in the next months to see if the drop continues and also if changes in the sentencing and/or detention pattern reflect anything about changes in the arrest rate.

In addition to actual numbers from descriptive data several of the persons interviewed offered observations.

1. A definite decrease in the numbers of people who appear for trial at MC on DUI charges.
2. A decrease in the amount of congestion in the JP courts (though this was not seen as terribly significant).
3. At CCP many second offenses get reduced. Few people went to trial in the past and few do now. However, now that program options are available the State is less eager to plea bargain.
4. The attorney general's office reports a distinct drop in the number of DUI cases in Superior Court. The only ones coming in now are second offense cases.

III. Observations

If one thing stood out in doing interviews on this legislation it was that the issue is highly charged. There were very specific objections raised as well as many general concerns. Perceived differences are leading to some of the objections and concerns. For example, some police think that the courts are sending second offenders to DSC and PDDP when they shouldn't be. Some of the courts believe that the police are arresting fewer people on DUI charges now than they were before. DSC and PDDP however, think the police would be arresting more people now - because treatment is available. Or, some police feel that one

of the reasons the legislation was written was because it was believed that persons sentenced for DUI were taking up bed space at DCC - when in fact, they say, most of those persons are furloughed. Regardless of the accuracy of the statements these general concerns reflect underlying tensions about the legislation. In fact, neither the courts or the MV Bureau feel they had enough input into the formulation of the legislation when it was drawn up.

Some of the specific objections raised included: that the law is not strong enough and is not designed to protect the driving public (voiced many times); the law is good only for those who drink too much and drive once in their lifetime; that most DUI arrests are one time offenses and therefore recidivism won't be affected one way or another by the legislation; that the bill has made the courts into an administrator for the MV Bureau; that the work load will go up for the police because they will be responsible for tracking down those who ~~violate~~ the waiver obligations.

The majority, but not all, of the observations were negative. The treatment programs probably had the fewest problems with the legislation and were the most positive in long term prognosis. Several police officers felt that since what was in existence before (ASAP) didn't work it was time to try something new and that certainly treatment was a good thing. And the opinion was voiced that while the legislation is good in concept there are some big problems to surmount.

The following recommendations were offered by persons interviewed:

1. First offenders should pay the \$200 fine and be required to attend a treatment program with \$75 waived to the program. Revocation should be for 6 months with no conditional license.
2. First offenders should have a mandatory fine and mandatory treatment but should still have the conditional license after 30 days.
3. The police should run the criminal history check and then advise the court if the person is eligible for waiver.
4. The legislature should review the bill in 1979 and give 4177B as an option to the court, thereby putting the first offense back on the record. That way there can be some judicial discretion.
5. Put the first offense back on the record with the option that at course completion the record can be cleared. That way neither the court or police have to be involved if someone doesn't complete the course, and there is less chance of losing witnesses and evidence needed for trials (because the trial would take place immediately).
6. The police should be authorized to take licenses right after determining the Blood Alcohol Level. This would have a psychological impact on the offender and would ease MV's task of getting revocations.
7. On first offense the persons should report to MV to choose the option, not to the court. If the person doesn't choose 4177B MV would then get the arresting agency to take the person to court. If the person does opt for the waiver MV would make the program assessment and assignment. That would put all the administrative functions in the proper administrative place and the court functions in the courts.

8. Court 14 be used for all DUI court cases so as to provide better scheduling, remove overtime for officers and provide better legal representation (public defender) to the offender.

CONCLUSION

Much has been accomplished in implementing the new legislation given the confusion that existed in July. That things have gone as smoothly as they have is to the credit of everyone concerned. However, it is controversial legislation and there are many strong feelings and ideas. It would appear that the success of this legislation, or the successful revision of it, will depend upon serious attention being given to both the specific objections and the general concerns. Data will be collected and analyzed, but data can at best only partially explain what is going on if that serious attention is not forthcoming.

For example, the police are the crucial element in the implementation since they make the arrests. Some police are opposed to the current legislation.

A drop in the arrest rate in years to come might reflect rehabilitation. But it also might reflect a change in police activity. Unless all components are behind the legislation it will be impossible to make any assessment of its "success". Numbers cannot provide a solution to philosophical differences yet those differences can affect the data.

In addition to the DCJPC Phase II evaluation, the legislation requires that "The Secretary shall provide the General Assembly with a comprehensive report on the results of the implementation of these provisions on the third day of the session beginning in January of 1982" (p. 10).

RECOMMENDATIONS

1. That the Delaware Criminal Justice Planning Commission act as a facilitator and call a meeting of the working staff of those components involved in implementing the DUI legislation. Recommendations made by that working committee should be presented to the original 4177 Committee. The working committee should include consideration of the following procedural changes and problems:
 - a) Send a memo to the judges requesting that form 484 be completely filled out.
 - b) Add the Omicron reading to form 484 or set up a system whereby NCC pre-sentence investigators always receive arrest slips.
 - c) Decide who is responsible for informing NCC pre-sentence investigators of enrollment status.
 - d) Send a memo to treatment programs requesting that the verification form be sent to MV as soon as an offender makes contact with the program.
 - e) The Secretary of the Department of Public Safety give official recognition to the PDDP program.⁴
 - f) Put into operation a mechanism whereby persons assigned to the wrong treatment program can be transferred without going back to court. The MV Revocation Section has devised a form which would allow for this.
 - g) The Courts change the 72 hour stipulation for reporting to the pre sentence investigator and the program to two weeks.
 - h) Set up a process by which evaluation screening can be done on persons coming through MC and Aldermans Court.
 - i) Standardize the criteria for making the program assessment in all courts.

⁴Ibid.

- 3) Add the PDDP program to the 484 form.
2. The working committee set up in #1 should hold as many sessions as necessary to discuss problems with the legislation that do not necessarily have to do with implementation procedures.
 3. That appropriate staff from the Motor Vehicle Bureau and the Administrative Office of the Courts meet to work on a resolution to the problems resulting from out-of-state offenders choosing the waiver option.
 4. That a form be devised, which the first offender choosing the waiver option would sign in court, that states that the offender understands that a second offense within 5 years will be processed as a second conviction.
 5. That any questions from any component in regard to 4177B(d) (second offense status of those choosing the waiver option) of the legislation be submitted to the Attorney General's office for review, particularly the question of whether prior knowledge of a DUI person's record is needed for the purpose of describing first/second offense options) prejudices the judge.
 6. That the Secretary of the Department of Public Safety, with the greatest speed possible, approve residential treatment programs. ⁵
 7. That the Attorney General's office research the question of whether or not there is any problem involved with the courts referring persons to a private treatment program (DSC) and for which program the offender pays.

⁵ Ibid.

8. That the question of whether or not judges can take the license of a person choosing the waiver option be researched by the Attorney General's office so that it is known if that would be an alternative for getting certain and rapid license revocation.
9. As requested by the Attorney General's office, that DCJPC look into the question of whether or not the potential problem of persons choosing the waiver option at the appeal level (Superior Court) demands an amendment to the legislation. One case has come to the attention of the A.G. where a person pleaded not guilty at the Magistrate level, was found guilty, and then appealed de novo to Superior Court. In Superior Court the person opted for the waiver. The A.G.'s office will lend any support necessary.
10. That a meeting be held with the Bureau of Alcohol and Substance Abuse, and appropriate Department of Correction staff (including the Deputy Superintendent of Treatment at DCC) to discuss possible proposals for changes in the DUI law and/or in the detentioners law, to provide alternatives to incarceration for DUI offenders.
11. That all components involved begin to have input now into the data collection design for Phase II of the DCJPC's evaluation to assure that everyone's questions will be looked into. Attached is my own outline of data needs which can be used or not as a starting point. It is recommended that after reviewing the attached outline a meeting be set up specifically for the purpose of discussing data collection.

12. That the working committee begin input now into the evaluation design for the evaluation to be done by the Secretary of the Department of Public Safety to assure that the concerns of all components will be addressed.
13. That the state budget pick up the 10 1/2 federally funded positions in PDDP when they run out during FY 1981.
14. Explore the option of a summons by police for DUI arrests as is used for other motor vehicle violations.

EXHIBIT A.

MOTOR VEHICLE FORM 484

COURT DISPOSITION AND
DRIVER'S LICENSE RECORD

DEFENDANT'S NAME (LAST) (FIRST) (MIDDLE)

STREET ADDRESS

CITY STATE ZIP CODE

Summons No. () Arrest Date ()

License No. () State Issued ()

Check One

License Taken by Court Date() ()Yes()No

Trial Held Date() ()Yes()No

Convicted of 4177(a), Date() ()Yes()No

Sentenced Under 4177(d), Fine(\$) ()Yes()No

Sentenced Under 4177(e), Fine(\$) ()Yes()No

Trial Waived 4177(b), Must attend DSCS ()Yes()No

Must attend Del. Safety Council School ()Yes()No

Dismissed / Nolle Prosequi ()Yes()No

JUDGE

COURT NO.

EXHIBIT B

NEW CASTLE COUNTY
PRESENTENCE OFFICE
JUSTICES OF THE PEACE COURTS
STATE OF DELAWARE

ADDRESS ALL QUERIES TO:

3808 KIRKWOOD HWY.
WILMINGTON, DELAWARE 19808
571-2488

TO:

FROM: Marie Monaghan
Presentence Office

DATE:

RE: Second Offense of 21 Del.C., Sec. 4177

The following defendant has a prior conviction of driving under the influence of alcohol. The defendant has appeared in your Court and was referred to this office for evaluation.

As this is a second offense, he is not eligible for the education/rehabilitation program and must be brought back into Court to stand trial on this offense.

If the defendant does not appear in Court after notifying him/her of the arraignment date, please contact this office.

NAME

ADDRESS

SUMMONS NO.

CASE NO.

IN THE MUNICIPAL COURT
FOR THE CITY OF WILMINGTON
DELAWARE

EXHIBIT C

Court Disposition : M.C. No. _____
and :
Owner's License Record :

Defendant's Name (Last) (First) (Middle)

Street Address

City State Zip Code

Summons No. WM-B Arrest Date

License No. State Issued

	Check One
License Taken by Court (date: _____)	(Yes) _____ (No) _____
Trial Held (date: _____)	(Yes) _____ (No) _____
Convicted of 4177(a) (date: _____)	(Yes) _____ (No) _____
Sentenced Under 4177(d) (Fine: \$ _____)	(Yes) _____ (No) _____
Sentenced Under 4177(e) (Fine: \$ _____)	(Yes) _____ (No) _____
Trial Waived under 4177(b) Must Attend DSCS _____	(Yes) _____ (No) _____
Must Attend Delaware Safety Council School _____	(Yes) _____ (No) _____
Dismissed/Nolle Prosequi _____	(Yes) _____ (No) _____

JUDGE

COURT NO. 90

ACKNOWLEDGEMENT

I, _____, do hereby elect to apply to the Secretary of the Department of Public Safety for enrollment in a course of instruction or a program of rehabilitation established pursuant to Title 21, Section 4177(d)(e) of the Delaware Code of 1974, in lieu of standing trial for the charge of Driving a Motor Vehicle While Under The Influence of Alcohol. In making this application, I hereby relinquish my right to a speedy trial.

I further acknowledge that failure to comply with the terms of the enrollment or failure to complete the course or program of rehabilitation will be cause for my being brought back before the Municipal Court for the City of Wilmington, Delaware and upon determination by the Court that the terms have been violated, I shall be promptly arraigned for the charge of Driving a Motor Vehicle While Under the Influence of Alcohol.

I further acknowledge that upon satisfactory completion of the course of instruction and/or program of rehabilitation including payment of all fees under schedule adopted by the Secretary, the criminal charge of Driving a Motor Vehicle While Under the Influence of Alcohol shall be dropped.

Signed: _____

Witnessed: _____

Date: _____

Please note you must report to this Program through the Delaware Safety Council, 300 Foulk Road, Wilm., Del. - Phone 654-7786 within 72 hours of this date.

EXHIBIT D
MUNICIPAL COURT
FOR THE
CITY OF WILMINGTON

CHARLES R. LEE
CLERK OF COURT

COURT HOUSE
1000 KING STREET
WILMINGTON, DELAWARE 19801
TELEPHONE: 571-4530

DATE: _____

Delaware Safety Council
300 Foulk Road
Wilmington, Del 19803

RE: TITLE 21, SECTION 4177B
REHABILITATION PROGRAM

Dear Sirs:

Please verify if the following individual has enrolled in your
alcohol rehabilitation program.

Thank you.

CHARLES R. LEE

Defendant: _____

Address: _____

Race _____ SEX _____ DOB: _____

Oper. Lic. No.: _____ State: _____

M. C. Case No.: _____

Date Referred by Court: _____

Verification Information Requested

Date Enrolled: _____ Date Completed: _____

Comments or Problems: _____

BY _____ TITLE _____

DATE: _____

COURT OF COMMON PLEAS
OF THE STATE OF DELAWARE
WILMINGTON, DELAWARE 19801

CAROLE B. KIRSHNER
COURT ADMINISTRATOR

Court House
Wilmington, Delaware 19801
(302) 571-2807

Joseph S. Allmond
Project Director, P.D.D.P.
Bureau of Substance Abuse
Division of Mental Health
1901 N. DuPont Highway
New Castle, Delaware 19720

RE: _____

Dear Joe:

This is to notify you that I represent _____
in my capacity as Assistant Public Defender assigned to the Court of
Common Pleas. _____ is charged with Driving Under The
Influence and pursuant to 21 Del.C. §4177 this matter has been continued
until _____ while the defendant is evaluated by the Criminal
Justice Service Center or the P.D.D.P. office and accepted into the
appropriate program.

This represents the _____ offense for the defendant and
therefore you should proceed accordingly to determine whether it would
be appropriate to send the defendant to just the Problem Drinking
Driver Program or whether he or she should also be committed for more
extensive alcohol services treatment.

Please provide me with an evaluation report and, if the individual
is accepted, a copy of his enrollment form in the appropriate program.

Thank you for your kind assistance in these matters.

Very truly yours,
Edward B. Carter, Jr.
Edward B. Carter, Jr.
Assistant Public Defender

EBC/dkk
cc: file

EXHIBIT F

STATE OF DELAWARE

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

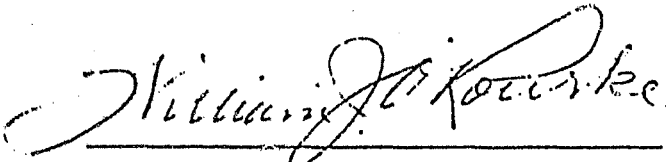
POLICY REGULATION NUMBER 31

JULY 25, 1978

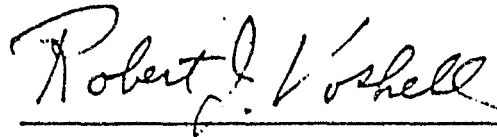
CONCERNING: Authorization of Judges and Aldermen in Delaware Courts to
Take Possession of Driver Licenses

Pursuant to Title 21, Chapter 41, Section 4177A, all judges and aldermen in the Delaware Court System are immediately authorized to take possession of any driver's license issued by any state after a conviction for a violation of Section 4177, Title 21, Delaware Code or for any person charged with a violation of Section 4177 who is applying for enrollment in a course of instruction and/or rehabilitation pursuant to Section 4177B, Title 21, Delaware Code.

Whenever a judge takes possession of a driver's license, such license shall immediately be forwarded to the Revocation Section of the Division of Motor Vehicles in Dover.



William J. O'Rourke, Secretary
Department of Public Safety



Robert J. Voshell, Director
Division of Motor Vehicles



STATE OF DELAWARE
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF MOTOR VEHICLES
P.O. BOX 698
DOVER, DELAWARE 19901

OFFICE OF THE
DIRECTOR

PHONE: (302) 678-4421

August 29, 1978

M E M O R A N D U M

TO: John Fisher
Arthur Carello
Thomas Nagle
John Downey
William R. Ringler
Marvin Fortney
Ray Turner

Frances Biddle
✓ Connie Morgan
Wanda Hutson
Wanda Atkinson
Norval Robinson

FROM: Robert J. Voshell, Director
Motor Vehicle Division

The attached Policy Regulation No. 31 has been revised

The court is not to pick up the driver's license of any person charged with a violation of Section 4177 who is applying for enrollment in a course of instruction and/or rehabilitation pursuant to Section 4177B, Title 21, Delaware Code.

The court is only to pick up the license of a person convicted of a violation of Section 4177.

RJV/lad

Attachment

EXHIBIT H

STATE OF DELAWARE - DIVISION OF MOTOR VEHICLES
DELAWARE SAFETY COUNCIL
DWI DRIVER RE-EDUCATION PROGRAM

PLEASE NOTE: THE FOLLOWING PERSON IS ENROLLED IN THE DELAWARE SAFETY COUNCIL'S "DWI" REHABILITATION EDUCATION PROGRAM.

NAME: _____
(LAST) (FIRST) (MIDDLE)

ADDRESS: _____
(STREET) (CITY) (STATE) (ZIP CODE)

DATE OF BIRTH: _____ DRIVER'S LICENSE NUMBER: _____

DATE ENROLLED: _____ LOCATION: () NEW CASTLE () SUSSEX () KENT

ENROLLED FOR PROGRAM UNDER: () 4177d () 4177e () 2740 (Implied Consent) () 4177B

() SATISFACTORILY COMPLETED EIGHT (8) HOURS OF INSTRUCTION AND/OR REHABILITATION

() PAID ALL FEES

() SATISFACTORILY COMPLETED INSTRUCTION AND/OR REHABILITATION PROGRAM.
TOTAL HOURS OF INSTRUCTION _____

() SATISFACTORILY COMPLETED ANY ADDITIONAL REHABILITATION PROGRAM AND/OR COURSE OF INSTRUCTION.

() ENROLLMENT DENIED:

REASON FOR DENIAL: _____

COMMENT/RECOMMENDATION: _____

DATE COMPLETED: _____ BY: _____
(SIGNATURE OF AUTHORIZED REPRESENTATIVE)

THE NEW D.U.I. LAW

In July, 1978, the Governor of the State of Delaware signed into law a program effecting individuals who have been arrested for the first time or driving while intoxicated. This folder attempts to explain the penalties and options a first offender has in connection with his arrest.

D.U.I. WHAT IS IT?

The charge of Driving Under the Influence (D.U.I.) can be made on the basis of:

1. Observation by the arresting officer about driving behavior.
2. A blood-alcohol content (BAC) test resulting in a level of .10 percent or greater.

WHAT HAPPENS NOW

At the time of arraignment for D.U.I., you may elect to apply to the Division of Motor Vehicles for enrollment in a course of education and/or rehabilitation in lieu of standing trial. If you elect to apply, that application will constitute a waiver of the right to a speedy trial and the court will notify the Motor Vehicle Department of your decision. The Motor Vehicle Department will ask you to turn in your license subject to the conditions outlined in this folder.

PENALTIES FOR FAILURE TO COMPLETE PROGRAM

Should you for any reason fail to satisfactorily complete the Safety Council Program, you will be brought before the court, and upon determination by the court that the terms have been violated, you shall promptly be brought to trial on the original charge.

IMPLIED CONSENT - WHAT IS IT?

Delaware has an "implied consent" law which means, if you drive in Delaware, you automatically agree to a chemical test to determine the degree of intoxication if you are arrested for D.U.I. If you refuse to take a test, you are charged with a separate offense.

Failure to take the test carries a penalty of loss of license for a period of one year from the date your license was received in the Division of Motor Vehicles. You may request a hearing by writing to:

The Driver Improvement Section
Division of Motor Vehicles
P.O. Box 698
Dover, Delaware 19901

EXHIBIT J

DUI SENTENCES* AND DETENTIONS (Most Serious Charge)

ADULT INSTITUTIONS

July 11, 1977 - July 11, 1978; July 12, 1978 - July 12, 1979
(Pre Legislation) (Post Legislation)

		SENTENCED														DETAINED													
Institution		July 11-30	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July 1-11	Tot.	July 11-30	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July 1-11	Tot.
DCC	Pre Legis.	3	3	3	3	4	5	1	4	6	2	5	5	2	46	5	3	5	3	1	3	1	1	3	6	3	2	1	37
	Post Legis.**	0	1	1	1											1	5	2	3										
SCI	Pre Legis.	1	3	6	3	4	1	5	3	4	1	3	1	2	37	9	16	14	5	10	10	6	3	8	9	14	6	9	119
	Post Legis.	0	1	1	0											7	13	7	6	(1)									
WCI	Pre Legis.	0	0	0	2	0	0	0	0	0	0	0	0	0	2	1	3	6	4	3	4	1	2	5	3	4	2	0	38
	Post Legis.	0	0	0	0											1	4	0	2										
TOTALS	Pre Legis.	4	6	9	8	8	6	6	7	10	3	8	6	4	85	15	22	25	12	14	17	8	7	16	18	21	10	10	194
	Post Legis.	0	2	2	1											9	22	9	11										

*Data does not reflect furloughs. Therefore sentenced figures do not give accurate picture of actual bed space taken.

**Data for post legislation begins July 12, since legislation was signed late on July 11, and ends on July 12, 1979. Only information through October, 1978 is included in this report, but all columns will eventually be filled in.

SOURCE: Department of Corrections, Records Department 101's

EXHIBIT J

DUI SENTENCES* AND DETENTIONS (Most Serious Charge)

ADULT INSTITUTIONS

July 11, 1977 - July 11, 1978; July 12, 1978 - July 12, 1979
 (Pre Legislation) (Post Legislation)

		SENTENCED														DETAINED													
Institution		July 11-30	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July 1-11	Tot.	July 11-30	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July 1-11	Tot.
DOC	Pre Legis.	3	3	3	3	4	5	1	4	6	2	5	5	2	46	5	3	5	3	1	3	1	1	3	6	3	2	1	3
	Post Legis.**	0	1	1	1											1	5	2	3										
SCI	Pre Legis.	1	3	6	3	4	1	5	3	4	1	3	1	2	37	9	16	14	5	10	10	6	3	8	9	14	6	9	11
	Post Legis.	0	1	1	0											7	13	7	6	(1)									
WCI	Pre Legis.	0	0	0	2	0	0	0	0	0	0	0	0	0	2	1	3	6	4	3	4	1	2	5	3	4	2	0	3
	Post Legis.	0	0	0	0											1	4	0	2										
TOTALS	Pre Legis.	4	6	9	8	8	6	6	7	10	3	8	6	4	85	15	22	25	12	14	17	8	7	16	18	21	10	10	19
	Post Legis.	0	2	2	1											9	22	9	11										

*Data does not reflect furloughs. Therefore sentenced figures do not give accurate picture of actual bed space taken.

**Data for post legislation begins July 12, since legislation was signed late on July 11, and ends on July 12, 1979. Only information through October, 1978 is included in this report, but all columns will eventually be filled in.

SOURCE: Department of Corrections, Records Department 101's

EXHIBIT K

DUI SENTENCES*

ADULT INSTITUTIONS *

July 11, 1977 - July 11, 1978; July 12, 1978 - October 31, 1979
(Pre Legislation) (Post Legislation)

		30 Days or Less	60 D	61-89 D	90 D	91-79 D	6 mos	8 mos	11 mo 15 D	14 mos	18 mos	Totals
MALE	Pre Legis.	8	51	2	7	3	9	1		1	1	83
	Post Legis.	1			2				1		1	5
FEMALE	Pre Legis.		1		1							2
	Post Legis.											0

*Does not reflect actual time served

Weekend sentences: Male - 10 (9 for 60 days) all pre legislation
(1 for 120 days)

Female: 0

SOURCE: Department of Coreection, Records Department 101's

ATTACHMENT

DATA DESIGN-DRAFT (Effect of Change in DUI Legislation)

I. To assess the impact of the legislation, data should be collected from all components of the system (police, courts, motor vehicle bureau, corrections, treatment programs) for both a pre and post legislation time period. In addition studies or findings from other jurisdictions with similar legislation should be reviewed. The outline which follows is not meant to be exhaustive.

A. Police

1. The arrest figures are crucial to the whole analysis. The data is obtainable from the Delaware Police, Traffic Section (Lt. Jarmin).

- a) It must be determined whether or not the period between July 11, 1977 and July 11, 1978 (when the new legislation was signed) was characteristic in regard to arrest rates. Arrest data should be obtained for that period of time for 1974-75, 75-76 and 77-78. Total figures would probably suffice.
- b) If the arrest rates are characteristic it would be safe to take the year immediately preceeding enactment of the legislation as the control time period. Data should then be collected by month, sex and county for July 11, 1977 - July 11, 1978 and then for July 12, 1978 thru at least July 12, 1979 and probably until July 12, 1980 in case 1978-1979 is not characteristic.
- c) If the arrest rates are not characteristic, a characteristic time period must be chosen.

In assessing any changes in the arrest rate pre and post legislation it must first be determined that the police are not, by a change in their practices, responsible for the differences, e.g. increased or decreased staff, change in shift loads, attitude about legislation.

2. The number of traffic accidents where DUI has been involved.

The data is obtainable from the Delaware State Police Traffic Section (Lt. Jarmin) but it should be noted that it is not possible to obtain the data by seriousness of the accident.

- a) Again, it must be determined if July 11, 1977-July 11, 1978 is characteristic. The accident rate involving DUI should be examined for 1974-5; 75-6; 76-7; 77-8. Total figures should suffice.
- b) If the rate for July 11, 1977-July 11, 1978 is characteristic, the year immediately preceeding the legislation would be a sufficient control period. Total figures, but by county and sex should suffice. Data would be collected for July 11, 1977-July 11, 1978 and then for July 12, 1978 at least through July 12, 1979 and probably until July 12, 1980 in case 1978-79 is not a characteristic year.
- c) If the rate for July 11, 1977-July 11, 1978 is not characteristic, a characteristic time period must be chosen.

B. Courts

The courts through which DUI cases enter, and which must be considered, are the Magistrate Courts, Municipal Court, Court of Common Pleas and Aldermans Courts.

It has been suggested that in the past many DUI charges were reduced to reckless driving. With the emphasis on treatment programs for first offenders in the new legislation, one would expect that most people would waive trial and thus reduced charges for first offenders would be less prevalent. The introduction of a residential treatment program in lieu of a mandatory sentence on a subsequent offense may or may not affect the amount of plea bargaining.

Assuming that it has been found through (A) that July 11, 1977-July 11, 1978 was a characteristic year for arrests, and there is no reason to presume that the courts are operating differently than usual*, the following information should be obtained from the 4 courts (Magistrate and Common Pleas should be by county) for 1st offense, 2nd, 3rd, etc. offense and by sex, Delaware nor non-Delaware resident, and month for July 11, 1977-July 11, 1978 and July 12, 1978-July 12, 1979:

Total # DUI cases

waiving trial and program to which referred

going thru court process and disposition (dismissed, nolle prossed, reduced, fined, sentenced, fined and sentenced, referred to residential treatment).

*It should be noted that the judges were requested, in November, 1978, by the Department of Correction, to make a special effort to keep the prison population down.

For JP courts # second offenders sent back to court after pre-sentence screening.

The data is obtainable only by going through court dockets by hand. If a data form is drawn up and a request is made, however, it might be possible to have the court begin to compile the information beginning now. For the prior time period it would have to be done by the researcher.

C. Corrections

There had been a concern prior to the new legislation that persons arrested and convicted for DUI were taking up prison bedspace when they would be better placed elsewhere.

Taking the year prior to (July 11, 1977 - July 11, 1978) and post (July 12, 1978 - July 12, 1979) passage of the new legislation, the following information should be collected.

1. # detained -- Where DUI is the most serious charge
 # sentenced

for both detained and sentenced the following should be recorded:

Name of Person

ID #

Birthdate

Date admitted

Days held or sentenced

Judge

Court

2. For those sentenced, go to the individual file, to find out time actually served in prison. Furloughs should be noted. As of June 28, 1978 Don Davis, Deputy Superintendent for treatment at DCC, has records of furloughs for male institutions. He does not have them for WCI.
3. For those sentenced, send the list of names and birthdates to Connie Morgan, Revocation Section MV Bureau. She will supply the information on whether it was a 1st or subsequent offense (by the number - 2nd, 3rd, 4th, etc.)

D. Motor Vehicle Bureau

Motor Vehicle Bureau information reflects conviction dates and not arrest dates. Therefore information obtained by month from MV cannot be compared to arrest rates in the same month.

The information obtainable from MV concerns revocations and reinstatements as well as other court dispositions on DUI cases. The data is obtainable from the Revocation Section Reports (Connie Morgan).

For the period July 11, 1977 - July 11, 1978 and July 12, 1978 - July 12, 1979 the following should be obtained, by month, county, 1st, 2nd, 3rd, etc. offense:

- a. # waivers
 - # enrolling in treatment
 - # receiving conditional license
 - # completing treatment
 - # receiving reinstatement of license
- b. # going to trial
 - # fined
 - # fined and sentenced
 - # sentenced
 - # in residential treatment
- c. # Reduced to \$175
- d. # Reduced to other
- e. # Dismissed
- f. # Nolle Prosequi
- g. # Not guilty

Information is not obtainable by sex and county thru Connie Morgan.

E. Treatment Programs

1. If it is decided to examine recidivism rates for those who underwent treatment as opposed to those who didn't a primary problem would be the ability to get control groups. In all likelihood those who do not choose the waiver option on the first offense are a select group of people (e.g. predominantly out-of-staters). The number of variables decided upon will make it more or less difficult, but some considered to be of definite importance are: age, race, sex, education, employment history, type of drinking problem, previous driving record, blood alcohol at time of arrest, Delaware or non Delaware resident (it would be good to have all Delaware residents), method of entry into treatment program (e.g. waiver option or referred at conviction). One would want to have a control group both for first offenders and subsequent offenders. It would be best to have a probability sample using perhaps the first year of the new legislation as the pool-if a large enough sample could be drawn given the matching problems. The groups would have to be followed for 5 years.

The data is obtainable from DSC and PDDP for the treatment groups. At DSC it would have to be retrieved by hand. At PDDP the information is computerized. In order to have access to the data at PDDP a confidentiality agreement must be signed (contact Bill Merrill) and then a data request made to Bill Davis in the Statistical Bureau.

The data for the control groups would have to come from either the courts or the MV Bureau. Obtainability has not yet been explored.

It would be advisable to read recidivism studies done by other states who offer a treatment option for DUI.

Any attempts to suggest causality will have to be made with extreme caution and alternative explanations for differences found would have to be explored. (e.g. changes in number of staff on police force, shifts in police assignments).

2. For each of the treatment programs - PDDP, DSC, and any that are approved for second offenders - the following information would be useful to know for the year prior to and post to passage of the legislation:

of first, second, third, etc, offenders referred by courts (specify which) and other means (specify)

by month

county

waiver option

conviction referral

sex

- II. In addition to the numerical data it would be appropriate to interview some participants, in the treatment programs, some who went through the court process, and the general public on their perceptions about the legislation.
- III. Interviews should be held again with those involved in implementing the system.

END