Executive Summary of Five Alcohol Safety Action Projects' Judicial Systems

DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA

67195

National Highway Traffic Safety Administration

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*Evaluation and Systems Description of ASAP Judicial Systems, Volume I—Technical Report, Contract No. DOT-HS-4-00958, Institute for Research in Public Safety, Indiana University, July, 1977; Volume II—Puerto Rico; Volume III—Idaho; Volume IV—Hennepin County; Volume V—Phoenix. All are available from: National Technical Information Service, Springfield, Virginia 22161.

General

Studies were conducted at five sites where researchers believed that the Alcohol Safety Action Project (ASAP) had brought about major changes in the judicial system or had developed innovative approaches to the adjudication of drinking-driving cases. These five sites were the Commonwealth of Puerto Rico; the State of Idaho; Hennepin County, Minnesota; Phoenix, Arizona; and Los Angeles, California.

The purpose of the Puerto Rico study was to determine how significant changes in the island's laws affected the treatment of offenders. Prior to 1973 the law on driving while intoxicated (DWI) was a criminal law only, with harsh penalties for both first-time and repeat offenders. Because of the harshness of the penalties (for example, mandatory 1- to 2-year suspension of driver's license for first offenders), many in law enforcement were reluctant to enforce the law. This resulted in a relatively small number of DWI prosecutions. Furthermore, loopholes in the law on testing for blood alcohol content (BAC) and certain procedural rules made it easy for many defendants to avoid conviction.

The new DWI law combines punishment with rehabilitation. It calls for presentence investigations to determine whether offenders are problem or social drinkers, and allows judges to issue restricted licenses until offenders take part in education or rehabilitation programs. At the same time the BAC law's loopholes have been closed.

Although other changes in the law were also believed advisable, the statute revisions had some notable effects on DWI case processing. The number of presentence investigations went up significantly, as did the number of problem and social drinkers who were identified. Judges came to rely increasingly on presentencing investigators and probation officers to determine the proper disposition of DWI cases.

The purpose of the *Idaho* study was to examine the impact on local court processing of DWI offenders of several changes; including much more stringent State laws (for example, a BAC of 0.08 percent as presumptive evidence of driver intoxication), and (2) reorganization of the State court system.

The legislative changes also included a mandatory 90-day license suspension for first offenders. The changes caused local magistrates to "withhold judgment" rather than to find offenders guilty and thereby suspend their licenses. In that large rural State, magistrates felt that suspension was a real hardship. A further change in the system was hiring presentence investigators for 11 of the 67 magistrate courts. The result was that many magistrates in those courts withheld judgment while awaiting the investigator's report. Previously, no attempt had been made to investigate the background of persons convicted of misdemeanors. Through withheld judgments, magistrates attempted to persuade offenders to take part in rehabilitation. One criticism of withheld judgments was that they wiped out records of DWI arrests, thus making it difficult to identify recidivists.

Court reorganization did little to increase consistency among the magistrate courts. Most of the magistrates were lay judges who continued to operate under their own rules, based on their long familiarity with the community and personal knowledge of those charged with DWI offenses.

The purpose of the *Hennepin County* study was to determine the effects of innovative State legislation on local court processing of DWI cases. In Minnesota this legislation included a law making a BAC of 0.10 percent absolute evidence of driver intoxication rather than presumptive evidence; another law allowing police officers to give suspects a prearrest breath test (PBT); and a third law establishing limited driver's licenses. This last law was intended to encourage judges to suspend permanent licenses for transgressions of the implied consent law.

These laws resulted in a record number of pending DWI court cases. To deal with this backlog , authorities revived a previously used plea negotiation process. At first, judges supervised these negotiations, but after defense lawyers objected to that practice, the county introduced Judicial Officers (JO's), who were private attorneys paid $100 a day to supervise plea bargaining. The JO program aroused controversy within the legal community. JO's did not dispose of as many cases as judges did, but under JO's about the same number of defendants pleaded guilty to reduced charges.

The effect of the innovative laws was mixed. Generally speaking, judges and juries were reluctant to convict offenders solely on the basis of a 0.10 percent BAC test result. The effect of the PBT program could not be determined with precision because other new enforcement measures were put into effect at the same time. The limited license law apparently did cause more suspensions of permanent licenses, as intended.

The *Phoenix* study was carried out to determine the effects of an innovative plea bargaining program designed to deal with a large backlog of court cases. This program, called the Prosecutor's Alternative to Court Trial (PACT), was established as a substitute for the traditional legalistic plea bargaining that reduced the backlog without putting offenders into education or rehabilitation programs. The PACT plan required offenders to complete a rehabilitation program before they could plead guilty to a reduced charge. In short, they had to take a positive step to earn the reduced charge.

PACT aroused ambivalent feelings among many in the Phoenix criminal justice system, particularly police and defense attorneys. The city attorney responsible for DWI prosecution was initially unfavorable to PACT but later changed his mind. Some legislators were also unhappy, in part because PACT allowed first-time offenders to evade the statutory penalty of at least 1 day in jail upon conviction.

Despite these misgivings, statistics showed PACT's success. During 1975, the first calendar year of operation, virtually all of those charged with a DWI offense pleaded not guilty, and more than four out of five defendants (82 percent) enrolled in education or rehabilitation programs to have their charges reduced. Under PACT, cases were processed faster and the hundreds of appeals of DWI convictions were reduced to almost zero.

The study in *Los Angeles* was conducted to determine the advantages and disadvantages of differing methods used in five county courts to investigate and classify recidivist DUI (driving under the influence of alcohol) offenders. These five courts ranged in size from Downtown Traffic Court in Los Angeles, with 30,000 DUI cases a year, to Pomona, with an average of 1,000. Two courts assigned personnel from the county Bureau of Public Health (Public Health Investigators—"PHI") to make presentence investigations; two courts used Probation Department employees for either pre- or postsentence investigation; one court used volunteers from a local Alcoholism Council for both pre- and postsentence investigations. The time spent for each investigation in the five courts varied from 20 minutes to 4 hours, and the average cost per case during the study period ranged from $55.37 to $8.67.

Researchers studied not only cost and time spent per case, but also such factors as how often investigators classified offenders as social or problem drinkers; the percentage of offenders who were referred to education or treatment programs; and how often judges accepted investigator recommendations. The study concluded that the PHI investigation model used in Downtown Traffic Court and in El Monte was superior to the Probation Department and Alcoholism Council arrangements, primarily because of the PHI system's efficiency. Researchers concluded that the Alcoholism Council approach was satisfactory for investigation, referral, and monitoring, while the Probation approach was satisfactory only for long-term monitoring.

Policy Considerations

On the basis of these five studies and experience in other jurisdictions, the study team developed a series of hypotheses about court systems and the way they process DWI cases. The most important of these hypotheses are stated below as policy considerations that should be taken into account by persons seeking to improve DWI case processing in other courts.

1. Changes in legislation did not always change court practices as quickly or as fully as had been hoped. Legislation alone is not enough to bring about change in judicial systems.

In Idaho, magistrates began to use the device of withheld judgment as an "out" in order to avoid suspending the license of a driver who had a BAC of 0.08 percent. The Idaho judges tended to convict only those persons charged with DWI who had a BAC above the previous limit of 0.15 percent. In Los Angeles, the prosecutors commonly allowed pleas to reduced charges (typically reckless driving) for DWI cases where the BAC was below 0.15 percent, despite the statutory presumption of 0.10 percent. In Minnesota, despite the law setting a BAC of 0.10 percent as absolute proof of guilt, municipal judges required a BAC above 0.15 percent and supporting evidence from a police officer about the defendant's demeanor before they would accept a guilty plea in a DWI case. In Phoenix, the study team collected no information on this because virtually all defendants entered PACT and avoided the statutory consequences of their conviction. It seems likely that despite the legislative intent to reduce the blood alcohol concentration which defines intoxication, for all *practical* purposes the illegal BAC remained at or about 0.15 percent.

2. The full range of statutory penalties is applied rarely, making some penalties irrelevant except in terms of general deterrence.

For example, Minnesota law required a 6-month license suspension for drivers who refused to submit to a chemical test. In most such cases, however, the State failed to revoke licenses, and judges began exercising their powers of suspension routinely only after the legislature gave them discretion to provide a limited license. Further, although the Minnesota statutes allow for both a fine of up to $300 and a jail sentence of up to 90 days, 42 percent of those convicted for DWI received *neither* penalty in 1975, and only 12 percent received the maximum fine.

3. Law enforcement officials usually do not suspend or revoke licenses if they believe that as a result the defendant would have trouble getting to and from work.

In all five sites, loss of driving privileges was seen as a hardship—even as an undue hardship. Many officials referred to the "necessity" of having a driver's license, not only so the person could drive but also so he or she could use the license as an identification document. Where a person needed a license to work, it was almost certain that he or she would *not* lose that license.

The power to threaten license suspension was widely used, as was the power to restore it. Many judges used a restricted or limited license to encourage the defendant to cooperate with the court. In Puerto Rico, for instance, defendants who attended treatment sessions were given a restricted license; after they completed a Driver Improvement Course, their licenses were restored as a reward. This concept has been written into the statutes in California, reflecting a pattern already widely used by judges, and applicable to all offenders regardless of prior convictions. Minnesota statutes allowed judges to issue a limited license even after a person's license had been suspended under the implied consent law. In Idaho, after a person was found guilty of DWI, the Department of Law Enforcement was required to suspend the person's license for 90 days, and the judges were required to take custody of the license and forward it to the Department of Law Enforcement. In reality, however, the technique of "withheld judgment" enabled everyone to avoid these requirements; the proportion of suspensions was small, and there was considerable irritation between the DLE and the judges, whether they suspend or fail to suspend the license.

4. Few trials actually take place, but the threat of trial and the right to trial do much to determine what happens in the court system.

Both prosecutors and judges universally tried to avoid trials. They offered two reasons for this. First, the volume of drinking-driving cases was so great that trials for even a small proportion of cases would overload the court system. Second, the cost of trials would be so great that the community would not tolerate it.

Those fears led to widespread avoidance of statutes. Almost as a national policy, prosecutors and defendants engaged in plea-bargaining when the BAC was 0.15 percent or lower. The rationale was that cases below that limit would go to trial and be found not guilty by either jury or judge. This attitude reflected the general lack of faith of many people in the court system in other members of the system—either arresting officers, or prosecutors, or juries, or judges themselves. There was a similar lack of faith in the breath-test equipment and the procedures connected with the breath test—even in the relationship between BAC and impairment.

In each site, the study team asked local personnel what advice they would give to someone with a BAC in the 0.10 to 0.14 percent range wanting to "get out of" a DWI charge. In every case, officials said they would recommend that the person plead not guilty.

Phoenix is the best example. Before PACT, the city never *held* a large number of trials for DWI, but did *schedule* a large number, causing great confusion. Many people felt that the threat of trial disabled the system, and PACT removed the incentive for asking for trial by offering lesser charges. In Idaho, the desire to avoid jury trials was a major reason for the popularity of "withheld judgment." In Minnesota's Hennepin County, only 1.4 percent of all dispositions in 1974 resulted from jury trials, and in 1975 only 0.6 percent. More than half of all arrests in that county led to plea-bargaining to a reduced charge. One reason was the poor success rate of prosecution in jury trials—in 1974 the prosecution was successful in 70 percent of jury trials, and in 1975 in 52 percent.

Experience with other sites indicated that these patterns were common around the country. Generally speaking, the courts regarded their power to withdraw or not withdraw licensing privileges as one of their most important weapons. If the statute gave the court no discretion, as in Idaho, judges found some way of creating it. In four of the five States studied, the statutes included judicial discretion over some aspect of licensing withdrawal, though in all States the driver licensing agency remained the focus of most authority over the license.

5. There is no evidence that lay judges are any less proficient in handling drinking-driving cases than legally trained judges.

In Idaho, several informants thought that the lay judges performed better than legally trained judges because (1) most lay judges had a longer tenure on the bench; (2) most were familiar with the offenders, especially in rural areas where lay judges knew most offenders; (3) most lay judges were not concerned with niceties of criminal procedure but rather with the equitable and speedy disposition of the case; and (4) most lay judges were quicker to accept and adopt "people oriented" programs such as ASAP.

In Minnesota, at present, nonlawyers in the clerk's office handle judicial aspects of pretrial procedure. The development of this system to replace the previous lawyer-dominated system supports the idea that persons with no formal legal training can handle drinking-driving cases, as well as judges.

6. Law enforcement record systems fail to indicate that a person has been arrested or convicted for a previous drinking-driving offense; this is a major problem.

Prosecutors and judges who try to help defendants avoid some or all of the penalties for drinking-driving offenses by encouraging not-guilty pleas, and who try to avoid losing "borderline" cases by routinely reducing charges, are undermining the records systems, both between States and inside their own State. These records systems have been built into the process of screening and referral, and are the basis for second-offense prosecution. Plea-bargaining and reduced charges undermine the courts' ability to function as they should.

Many ASAP programs have spent great amounts of energy to working with court and driver licensing records. The kinds of problems that ASAP can and cannot solve are illustrated by the experience in Minnesota. Before ASAP, the inadequacy of the records in identifying repeat offenders prevented the judges from making appropriate referrals. The ASAP and the courts largely removed the causes of this difficulty, but by the end of the ASAP courts again found it difficult to identify second offenders on DWI charges. This was because many ASAP participants earned the right to plead guilty to charges of reckless or careless driving, leaving no traces of the prior offense. This deprived the diagnostic agencies of an important piece of information for referral.

In most jurisdictions both courts and presentence investigators had their own ways of identifying prior offenses, but these ways were informal, and they certainly did not allow neighboring or out-of-State jurisdictions to make a similar identification. Eventually, the number of incidents will be so great as to lead to creation of a separate system of some kind—such as the Alcohol Data Bank envisaged by Los Angeles.

7. Increased arrest rates force courts to establish routines to process DWI cases and may therefore be a major factor in improving court procedures.

Los Angeles offers a good example of changes in the diagnosis and referral process caused by increases in the caseload. The Downtown Traffic Court handled 20,000 to 30,000 DUI cases per year. It initially referred only a small proportion of its cases to treatment. One year after the legislature mandated presentence investigations, the court streamlined a system requiring two steps for referral to treatment, hired additional staff, and required automatic interviews for all second offenders and selected first offenders with a high BAC. In this case, therefore, the increased caseload encouraged standardization.

8. Court procedures for drinking-driving cases may be routinized and standardized to the point where much of the two crucial judicial functions—adjudication and sentencing—can be done by persons other than judges.

Prosecutors, of course, can determine whether some cases even reach the judges. For example, where prosecutors engage in standardized plea-bargaining for all cases where the BAC is 0.15 percent or lower, the prosecutors are intruding into the adjudication function. Such practices were widespread among most ASAP jurisdictions (though in both Puerto Rico and Idaho there was no evidence that prosecutors were exercising their preemptive power). Similarly, probation officers determine which criteria to use to classify a person as a social drinker or problem drinker; this classification determines which "track" the person will be placed on when he or she is sentenced. In all the jurisdictions visited, the judges agreed to most (usually more than 90 percent) of the probation officers' recommendations.

9. Almost anyone in the court system can classify defendants into drinker types. The choice of who will do this screening depends almost entirely on local desires and situational factors. Only very limited training is necessary.

Many different kinds of court workers did screening in different communities. Screening was done by prosecutors, judges, probation officers, presentence investigators, court clerks, volunteers, treatment personnel, and secretaries. The two key developments in the field are the issuance of NHTSA criteria for problem drinking-driving, and the development of the Highway Safety Research Institute Drinking Driver Questionnaire and Interview (Mortimer-Filkins protocol). These criteria and instruments may be used by anyone with fairly minimal training.

In Phoenix the screening was done by case coordinators with no specified prior background. In Los Angeles screening was done by the Probation Department, by the Public Health investigators in the county health department, and by volunteers from a local alcoholism council. In Minnesota it was done by presentence investigators and in Puerto Rico by probation officers who lacked special training. In Cincinnati a secretary supervised administration of a screening questionnaire (first stage). In Kansas City computers classified about half of the defendants on the day of arrest.

10. The monitoring of referrals, and followup to determine compliance with court dispositions, are often major weaknesses in the referral systems developed by ASAP.

For example, the Idaho system for followup was eminently sensible; each person in the program was to be monitored either by a counselor or by a probation officer, whichever had responsibility for the person's program. The monitors were to look especially for subsequent violations. But in fact the system did not work well, partly because some jurisdictions allowed offenders to forfeit bond or issued them a withheld judgment (resulting in a failure to record the offense in the traffic records system), partly because court employees could not both provide counseling and monitor services for the large numbers of cases they were given.

Each court system in the Los Angeles area used a different method to determine compliance, and that county provides several effective models. Generally speaking, traditional monitoring by the Probation Department was the best method for extended, long-term monitoring and supervision (including record checks and monthly visits where necessary, and extending for the full length of the probation period).

Recommendations

The study team concluded that ASAP's have helped courts improve their methods for dealing with DWI offenders. But it also concluded that much more needs to be learned about the courts themselves, and about the relationship of judicial actions to highway safety. The team therefore made four major recommendations to the Department of Transportation. They are the following:

—Continue to sponsor work by Federal Executive agencies and private organizations, such as the American Medical Association, to determine how courts should handle DWI cases in view of current social and medical theories of alcoholism.

—Develop a national policy toward DWI offenses that is based on professional knowledge rather than tradition and speculation. The ASAP's offer the base upon which such a national policy could be built.

—Cooperate with the American Bar Association, the American Correctional Association, and other organizations to develop standards on judicial processing of DWI cases. A model for such standards already exists in the ABA's traffic justice standards.

—Develop, in cooperation with the ABA and other professional organizations, model drinking-driving legislation similar to model legislation developed in other areas by the National Conference of Commissioners on Uniform State Laws and the National Committee on Uniform Traffic Laws and Ordinances.

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